

Bank of America's Cash Management Essentials Treasury Services Agreement consists of the following:

**Cash Management Essentials Treasury Services Agreement.** The Cash Management Essentials Treasury Services Agreement (the "CME") contains terms and conditions that apply to all treasury services specified herein. Additionally, a number of other Services may also be made available by signing a separate Service Addendum. Such Service Addendum together with the General Provisions section of this CME will comprise the entire agreement for the additional Service.

Services Covered By This Cash Management Essentials Treasury Services Agreement:

- Account Reconciliation
- ACH
- ACH Blocks & Authorizations
- BillPay and Invoice Management Online
- CashPro Credit
- Commercial Deposits (including Remote Deposit Service, Image Cash Letter, Vaults & Banking Centers)
- Controlled Balance Accounts
- Data Aggregation and Usage (CashPro Accelerate)
- Electronic Stop Payments
- Image Access
- Information Reporting
- Lockbox
- eStatements & Notification Service
- Positive Pay (checks & ACH)
- Reclear
- Wire Transfers and Electronic Funds Transfers

**Service Addenda.** Once the CME has been executed by both Client and Bank, the relevant Service Addendum can be executed by both parties for additional treasury services which are not already included as part of this CME. Such additional Service Addenda together with the General Provisions section of this CME will comprise the entire agreement for the additional Service(s). Any reference to the "General Provisions" in such Service Addenda means the General Provisions section of this CME.

Accompanying these documents is a List of Banks and Services, which provides the names under which various Bank of America banks or locations offer Treasury Services. In connection with the provision of many Services, the Bank will also provide User Documentation containing detailed instructions regarding the use of such Service. User Documentation may vary from one jurisdiction to another.

**GENERAL PROVISIONS**

Any reference to "General Provisions" in this CME and / or any Service Addendum shall mean this General Provisions section of this CME. This General Provisions section together with each Service section herein will govern Client's use of any of Bank's treasury services specified herein. Additional terms and conditions for certain specific Services are contained herein while additional terms and conditions for any other particular Service are contained in any relevant, but separate, Service Addendum. These General Provisions will govern Client's use of any of Bank's treasury services specified on the accompanying List of Banks and Services. Collectively "General Provisions", "CME" and "Service Addenda/Addendum" are referred to as the "Agreement". Bank may update the list from time to time. Client may contact its Bank representative at any time in order to obtain an updated list.

**1. TREASURY SERVICES**

The Agreement becomes effective with respect to a Service contained herein when this CME has been executed and the Agreement becomes effective for any additional Services when this CME and any relevant Service Addendum have been executed by Client and Bank. Subject to the terms and conditions of the CME and any relevant Service Addenda, Bank will provide use of a Service when Bank has received all required and properly executed forms and Client has satisfactorily completed Bank's testing and training requirements, if any, in the use of the Service. To assist in Bank's establishment and maintenance of overdraft limits, any payment instructions and any electronic access to the Services and to assist in Bank's compliance with any applicable laws, rules and regulations, Client shall provide Bank with any information Bank requests, including but not limited to, financial information about Client and identification information and documentation about Client and Client's employees and any representatives authorized by Client to conduct transactions on Client's behalf. Client shall use the Service in accordance with this CME, these General Provisions, the relevant Service Addendum and any relevant User Documentation.

**2. PAYMENT OBLIGATIONS**

- a) Client must maintain and designate Bank account(s) which will be used for debiting or crediting with respect to all payments and deposits and related adjustments and charges.
- b) Except as otherwise provided, Client must have Collected and Available Funds on deposit in its account sufficient to cover such obligations under the Agreement. For purposes of satisfying Client's payment obligations, Bank may consider any overdraft line or credit arrangement Client has with Bank.
- c) Client shall pay Bank for each Service in accordance with Bank's schedule of charges currently in effect for Client, except as Bank agrees otherwise (in writing) from time to time. Bank will provide Client a copy of the current schedule of charges on request. All charges are subject to change upon 30 days prior written notice to Client from Bank (unless otherwise agreed in writing), except that any increase in charges to offset any increase in fees charged to Bank by a Supplier for services used in delivering any Service may become effective in less than 30 days. Bank will, on a monthly basis, debit Client's account with Bank for payment of charges due, unless Client arranges another payment procedure acceptable to Bank.
- d) All Service charges are exclusive of sales, value-added and use taxes, stamp and other duties and other governmental charges imposed on any Service or Materials and not based on Bank's net income. Such taxes, duties and charges are payable by Client.

**3. CONFIDENTIALITY**

- a) Bank will maintain the confidentiality of information obtained from Client in connection with any Service it provides to Client under the terms of this Agreement in accordance with its normal procedures for safeguarding customer information and the policy reflected in the Bank of America Corporation Code of Ethics, except as otherwise provided herein.
- b) Client acknowledges Bank's claim to proprietary rights in the Materials and that the Materials constitute "trade secrets" of Bank or its licensors or vendors. Client understands that all Materials are confidential. Client agrees to safeguard the Materials at all times and to establish and maintain procedures covering Client's employees and agents to assure the confidentiality of the Materials. Client shall extend the same protection to any password or code subsequently changed by Client. Client shall not, or allow anyone else to, disclose the Materials to any person or entity, except Client's authorized employees and agents with a need to know the Materials. Except as may be set forth in any software license agreement, or as otherwise agreed between the parties, Client shall not, or allow anyone else to, make any copies, in whole or in part, of any Materials in whatever form or medium (electronic, tangible, printed or otherwise) in which they may exist from time to time. Client shall not, or allow anyone else to, translate, disassemble, decompile or reverse-engineer any software or security devices. Client may use the Materials only for the purposes for which they were provided by Bank. Client agrees to notify Bank promptly by telephone, confirmed in writing, if any Materials are lost or the confidentiality of any Materials is compromised.
- c) Client shall have sole responsibility for the custody, control and use of all Materials. Client agrees that no individual will be allowed to initiate a request or other instruction contemplated in the Agreement or to have access to any Materials without proper supervision and strict security controls. If a Service requires use of user identification codes or passwords, Bank will be fully protected in relying on the correct user identification codes and passwords, as described in the relevant User Documentation.
- d) This section 3 does not limit either party's ability to disclose information (i) that the other party has approved by prior writing for disclosure; (ii) that is disclosed to its professional advisors or auditors; (iii) that is or becomes public other than through a breach of these confidentiality obligations, (iv) that was in its possession or available to it from a third party prior to its receipt in connection with any Service, (v) which is obtained by it from a third party who is not known by it to be bound by a confidentiality agreement with respect to that information, (vi) as required or requested by any securities exchange or regulatory body to which either party is subject or submits or (vii) as otherwise required to be disclosed by law or by legal or governmental process.
- e) In addition, Client agrees (i) that Bank may disclose to its offices, banking affiliates, officers, employees and agents with a need to know, any information Bank obtains about Client and (ii) that those offices, affiliates officers, employees and agents may disclose such information as permitted under the immediately preceding subsection.
- f) Client acknowledges and agrees that data processing related to Services covered by the Agreement and Client's associated accounts, or the partial or complete delivery of certain Services, may take place in countries other than those where Client and Client's accounts with Bank are located. Client further understands that information concerning Client's relationship with Bank may be available on Bank's electronic data system both for information management purposes and in order to enable Client to benefit from Bank's electronic banking services. Client understands and agrees that, as a result, Client's banking relationship information may be available to some of Bank's officers, offices, affiliates, employees and agents outside the country or countries where Client and Client's accounts are located. Client authorizes Bank to transmit Client's banking relationship information across national borders, notwithstanding the banking secrecy laws of any of the countries involved, as necessary or appropriate to provide any Services.
- g) It is possible that in providing one or more Services Bank will transmit Personal Data. Bank will only transmit Personal Data to its locations, to locations of its affiliates or to others in order to provide one or more Services. Bank may contract with others to provide data transmission or storage services to Bank. In that case, Bank will require that they treat Personal Data solely in accordance with Bank's instructions. Client agrees to comply with any directions Bank may give Client from time to time with respect to the Personal Data.

- h) This section 3 does not limit Bank's ability, or that of Bank's affiliates, to access and use transaction data related to any Service provided to Client in connection with the management of its or their business.
- i) Client's obligations under this section 3 shall survive termination of the Agreement.

#### 4. CURRENCY EXCHANGE RATES

If a transaction does not contain currency exchange rates obtained from Bank's daily rate sheet or from one of Bank's FX Advisors, then Client's funds will be exchanged for such other currency at a current rate of exchange on or before the transfer or debit date, as the case may be, in accordance with Bank's normal procedures (including applicable User Documentation). If Bank assigns an exchange rate to Client's transaction, such exchange rate will be determined by Bank in its sole discretion based upon such factors as Bank determines relevant, including but not limited to, market conditions, exchange rates charged by other parties, desired rates of return, market risk, credit risk, and other market and economic factors. Client acknowledges that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day, as reported in The Wall Street Journal or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from Bank's exchange rates. Client acknowledges that assigned exchange rates may include fees, costs, charges or other mark ups as determined by Bank in Bank's sole discretion. Bank does not accept any liability for Bank's exchange rates. Any and all liability for Bank's exchange rates is disclaimed, including without limitation, direct, indirect or consequential loss, and any liability if our exchange rates are different from rates offered or reported by third parties, and/or offered by Bank at a different time, at a different location, for a different transaction amount, or involving a different payment media (including but not limited to bank-notes, checks, wire transfers, etc.). Client should assume that Bank has an economic incentive to be a counterparty to any transaction with Client. Currency exchange rates fluctuate over time, and Client acknowledges and accepts the risks of such fluctuations: (i) in the case of Requests, between the time Client initiates a Request and the time the transfer is either completed or is unwound due to a cancellation, amendment, rejection or return, (ii) in the case of checks, between the time Client requests Bank to create a check and the time Bank debits Client's account to cover such check and/or the time Bank re-credits Client's account if the check is stopped in accordance with the applicable stop payment procedures and (iii) in the case of drafts, between the time Client requests Bank to print a draft, and the time Bank transfers funds from Client's account to cover such draft.

#### PRE-HEDGING DISCLOSURE:

From time to time in connection with Bank's market making and other activities, Bank may engage in pre-hedging activities to facilitate customer transactions and hedge the associated market risk. Such trading may include pre-execution hedging transactions. These transactions will be designed to be reasonable in relation to the risks associated with the potential transaction with Client. However, no assurance can be given that these transactions will not affect the price of the underlying currency. In each of these instances, Bank's trading activity could affect the market for the relevant currencies and consequently, Client's costs or proceeds. When Bank's hedging and risk liquidation activity is completed at prices that are superior (or inferior) to the agreed upon execution price or benchmark, Bank will keep the positive (negative) difference as a profit (loss) in connection with the transactions. Client will have no interest in any profits.

#### 5. CLIENT'S REPRESENTATIONS AND WARRANTIES

Client represents and warrants to Bank on each day on which a Service is provided that (i) the Agreement constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations and the consummation of the transactions contemplated under the Agreement will not (A) constitute or result in a breach of its governing documents or the provisions of any material contract to which it is a party or by which it is bound or (B) result in the violation of any law, regulation, judgment, decree or order applicable to it; (iii) the debiting of any account as provided in the Agreement is not inconsistent with any restriction on the use of that account; (iv) all approvals and authorizations required to permit the execution, delivery, performance and consummation by Client of the Agreement and the transactions contemplated under the Agreement have been obtained, including but not limited to due authorization from each applicable third party to allow Client to transfer funds and access information from such party's account; (v) neither Client's performance of its obligations nor Client's use of any Service will facilitate illegal transactions, for example those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., or otherwise violate any law, rule, regulation, judgment, decree or order applicable to Client; (vi) the Services Client receives pursuant to this Agreement are for business use only and are not primarily for personal, family or household use; and (vii) there is no lawsuit, tax claim or other dispute pending or threatened against Client which, if lost, would impair Client's financial condition or ability to pay Bank under the terms of this Agreement.

#### SECURITY PROCEDURE

- a) Client agrees to use the applicable Security Procedure as described in the Materials in connection with Client's use of a Service for Client's data delivery type or Service for the purpose of verifying the authenticity of any (i) electronic funds transfers or payments instructions, including, without limitation, cancellations, amendments or reversals thereto; and (ii) any instructions, data, transactions or other information sent between Client and Bank (collectively "transactions"). The purpose of the Security Procedure is to verify the authenticity of any such transactions between Client and Bank or Bank's third party processor and not to detect any errors in the transmission or content of any such transactions. Each time Client uses a Service, Client represents and warrants that, in view of Client's requirements, the Security Procedure is a satisfactory method of verifying the authenticity of any such transactions. Client agrees that Bank or Bank's third party processor may act on any transactions, the authenticity of which Bank or Bank's third party processor, as applicable, have verified through use of the Security Procedure.
- b) Client agrees that Bank may act on transactions, including, without limitation, electronic funds transfers and payments requests, even if they are unauthorized, if Bank acts in good faith and complies with the applicable Security Procedure and any written agreement with Client restricting Bank's action on such transactions. In such cases, Bank may enforce or retain Client's payment to Bank for such transactions; provided, however, Bank may not enforce or retain payment if Client proves that the unauthorized transactions were not caused by a person (i) entrusted at any time to act for Client with respect to any such transactions or the applicable Security Procedure, (ii) who obtained access to Client's premises, computer equipment or transmitting facilities or (iii) who obtained, from a source controlled by Client, information (such as keys and passwords) which facilitated breach of the applicable Security Procedure.
- c) Bank may implement internal monitoring systems to evaluate customer payments, including mechanisms that may evaluate the risk of possible fraudulent activity. Such monitoring is done solely at Bank's discretion for Bank's sole use and is not a component of the Security Procedures. Client agrees that Bank may process payments verified by the Security Procedure regardless of the results of transaction monitoring and Bank will be considered to have acted in good faith and in compliance with the Security Procedures, regardless of the results of transaction monitoring, including the detection of a risk of possible fraudulent activity. Client further agrees that the Security Procedures shall be considered commercially reasonable regardless of whether or not they incorporate information from transaction monitoring.

**6. LIMITATION OF LIABILITY****ALL SERVICES OTHER THAN ELECTRONIC FUNDS TRANSFER SERVICES**

Bank is liable to Client only for actual damages incurred as a direct result of Bank's failure to exercise reasonable care in providing a Service.

**ELECTRONIC FUNDS TRANSFER SERVICES**

For Requests and Entries which are subject to UCC 4A, Bank is liable only for damages required to be paid under UCC 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in the Agreement.

For all Requests and Entries not subject to UCC4A and for all other obligations under the Electronic Funds Transfer Services sections, Bank's liability is limited to actual damages, resulting directly from Bank's willful misconduct or Bank's failure to exercise reasonable care, not exceeding the following, as applicable: (i) in case of an excessive debit to Client's account, the amount of the excess plus compensation equivalent to interest; (ii) in case of payment to an account not specified by Client, the amount of the payment plus compensation equivalent to interest; (iii) in case of any delay in crediting a debit Entry or RCC to Client's account, the amount of compensation equivalent to interest for the period of delay; or (iv) in all other cases, the actual damages incurred by Client. Client will use reasonable efforts to assist Bank in recovering the amount of any overpayment for which Bank is liable.

If Bank is obligated to pay interest compensation, Bank will pay such compensation or credit Client's account, as Bank determines, upon Client's written request. Bank calculates compensation for the relevant period as specified in the Account Agreement or as advised by Client's customer services representative.

If Client transmits a Request to Bank by way of a funds-transfer system or other third-party communications system not specifically required by Bank, the system is deemed to be Client's agent for that purpose. Bank is not liable to Client for any discrepancy between the terms Client transmits to such system and the terms it then transmits to Bank.

**ALL SERVICES**

In no event will Bank be liable for any indirect, consequential or punitive loss, damage, cost or expense of any nature or any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of or corruption to Client's data, loss of operation time or loss of contracts, even if advised of the possibility of such loss, damage, cost or expense.

Bank will not be responsible for the acts or omissions of Client or Client's officers, employees or agents (including but not limited to the amount, accuracy, timeliness or authorization of any instructions or information from Client) or the acts or omissions of any other person or entity, including but not limited to any clearing house association or processor, any U.S. Federal Reserve Bank or any other country's central bank, any other financial institution or any Supplier, and no such person or entity will be deemed Bank's agent.

If Client permits any Subsidiary or other person to access one of Bank's Service installations on Client's premises through use of a remote access software package, Bank will not be responsible or liable for such Subsidiary or person's use or misuse of Bank's Services or access to accounts owned by Client and for which Client did not authorize that Subsidiary or person to have access via Client's installation. Bank may and will treat all instructions and information received by Bank through this arrangement as provided by and for the benefit of Client and subject to all Bank's rights under the Agreement with respect to the pertinent Services.

Bank will not be liable for and will be excused from any failure or delay in performing its obligations for any Service if such failure or delay is caused by circumstances beyond Bank's control, including any natural disaster (such as earthquakes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute), legal constraint or governmental action or inaction, breakdown or failure of equipment (including Internet failure), breakdown of any Supplier, or Client's act, omission, negligence or fault.

Bank also will not be liable for any failure to act on Bank's part if Bank reasonably believed that Bank's action would have violated any law, rule, regulation or court order or decree.

**7. PROTECTION FROM THIRD PARTIES**

- a) To the extent permitted by law, Client shall indemnify Bank against and hold it harmless from and defend Bank against any and all liabilities, claims, costs, expenses and damages of any nature (including but not limited to Legal Expenses) arising out of or relating to disputes or enforcement of laws, fines or rules, or legal actions by parties other than Client and Bank concerning a Service. This section does not apply to any such liabilities, claims, costs, expenses or damages attributable to the gross negligence or intentional misconduct of Bank. Client's obligations under this section shall survive termination of the Agreement.
- b) Further, with respect to any Service where Bank receives payment from a third party on Client's behalf, the amounts received (less related charges, disbursements and/or expenses) will be paid to Client, except that if Bank is required to return any such payment received upon the insolvency, bankruptcy or reorganization of such third party or for any other reason, Client will repay to Bank the amount paid to Client together with interest thereon from the date Bank returned the payment and so notified Client at the rate specified by Bank in Bank's schedule of charges with regard to the applicable Service.

**8. SUSPENSION AND TERMINATION**

- a) If at any time Bank believes (i) that Bank's provision of any Service to Client may create a risk of financial loss for Bank or result in an unacceptable credit exposure to Bank, or (ii) that an account associated with any Service may be subject to irregular, unauthorized, fraudulent or illegal activity, Bank may, in Bank's sole discretion, suspend or modify Bank's provision of any such Service until such time that such risk, exposure, or activity is eliminated or otherwise resolved or immediately terminate any or all Services.
- b) Client or Bank may terminate the Agreement or a Service upon 30 calendar days prior written notice to the other party.
- c) Notwithstanding subsection 8(b), Bank may terminate the Agreement or any or all Services effective immediately, and Bank will send Client notice of the termination, if any of the following occurs: (i) Client breaches any of the terms and conditions in this CME, the relevant Service Addendum or any other agreement with Bank; (ii) Client terminates, liquidates or dissolves its business, or disposes of a substantial portion of its assets; (iii) Client fails generally to pay its debts as they become due; (iv) Client, voluntarily or involuntarily, becomes the subject of any bankruptcy, insolvency, reorganization or other similar proceeding; (v) Client initiates any composition with creditors; (vi) Client experiences a material adverse change in its financial condition or its ability to perform its obligations under the terms and conditions in this Agreement; (vii) any guaranty of Client's obligations to Bank terminates, is revoked or its validity is contested by the guarantor, or any of the events set forth in items (i) through (vi) attributable to the Client occur to the guarantor; or the account necessary to provide any Service is closed.
- d) If the Agreement or a Service is terminated for any reason, Client shall (i) immediately stop using any Materials relating to the terminated Service; (ii) erase or delete any Bank-provided software relating to the terminated Service to the extent stored in Client's computers; and (iii) at the option of Bank, either return to Bank or destroy all Materials relating to the terminated Service and certify to Bank that it has done so. Client's obligations under this subsection 8(d) shall survive termination of the Agreement.
- e) Termination of the Agreement or a Service shall not affect Client's payment obligations with respect to services performed by Bank prior to termination, and any such termination is in addition to Bank's other rights under applicable law and under the terms of this Agreement. Also,

termination of the Agreement or a Service does not release the parties from any of their respective obligations which arose or became effective before such termination. Upon termination, all amounts owed by Client and outstanding will become immediately due and payable.

## 9. OVERDRAFTS

With respect to a Service, Bank may, at its sole discretion, allow an overdraft to occur in Client's account. Except as Bank agrees or advises Client otherwise in writing, Client must repay Bank immediately, without demand, the amount of the overdraft plus any overdraft charges. In such cases, the fact that Bank previously allowed an overdraft to occur does not obligate Bank to do so in the future. Additional terms and conditions contained in the Account Agreement may also apply to such overdrafts.

## 10. COMMUNICATIONS

- a) Client agrees that Bank may electronically record or monitor any telephone communications with Client in those countries which permit that practice. If Bank's records about any such communication are different from Client's, Bank's records will govern.
- b) If Client chooses to use unencrypted electronic mail to initiate payment requests or other instructions or otherwise communicate with Bank, Client's use of such electronic mail with respect to a Service will be subject to the terms and conditions of these General Provisions and will comply with the applicable User Documentation. Client further agrees to bear the risk that such electronic mail may be corrupted, modified, garbled or hacked or its confidentiality may be breached by a third party and the risk that Bank will rely on such mail, which appears to be from Client but which is unauthorized, and that such reliance will result in a loss. In addition, Client agrees that Bank may rely on the integrity of facsimile transmissions that Client sends Bank and Client agrees to bear the risk that the information Bank receives differs from that sent to Bank, and that such reliance will result in a loss.

## 11. E-STATEMENTS

If Client uses a Website, Client will receive e-Statements electronically, unless Client opts out. If Client is not currently receiving e-Statements, Bank reserves the right to switch Client to receipt of e-Statements unless Client notifies Bank that Client wishes to opt out. Client may opt out by contacting Client's treasury services representative. Client agrees that this Agreement constitutes an agreement under the Uniform Electronic Transactions Act pursuant to applicable state law.

## 12. PERFORMANCE

- a) Bank will be responsible only for performing the Services expressly provided for in the Agreement.
- b) Bank may contract with an outside vendor in providing any of these Services. With respect to any Service, Bank will provide Client with assistance by telephone at the numbers and during the hours specified by Bank in writing from time to time.
- c) Client is responsible for maintaining the security of its data and ensuring that it is adequately backed-up. Bank is not responsible for Client's loss of its data.

## 13. ADVERTISING

Neither Client nor Bank shall use the other party's name or refer to the other party directly or indirectly in any solicitation, marketing material, advertisement, news release or other release to any publication without receiving the other party's specific prior written approval for each such use or release, except that Bank may use Client's name as a reference in service proposals if it has obtained Client's prior oral approval for such use.

## 14. NOTICES

Any written notice or other written communication to be given under the Agreement shall be addressed to each party at its address set forth at the end of these General Provisions or to such other address as a party may specify in writing. Notices shall be effective upon receipt, except as otherwise provided in the Agreement.

## 15. ACCESSING SERVICES VIA THE INTERNET

- a) Bank may make certain Services available via one or more Websites.
- b) In addition to any other terms and conditions applicable to Client's use of such Websites, Bank reserves the right to suspend Client's access to, and use of, a Website upon notice of a violation of any of the terms and conditions applicable to such access and use. In addition, Bank may suspend Client's access to, and/or use of, a Website immediately, or revoke the access of any authorized user or administrator, without notice where such action may be required to prevent interference with or disruption to services to other customers, to protect the integrity of Bank's systems, as a result of a failure to comply with any requests for information or documentation, or as may be required by law or regulation.
- c) Websites shall only be used for lawful purposes. Without limiting the foregoing, Client agrees not to use a Website in any way that would:
  - infringe any third party copyright, patent, trademark, service mark, trade secret or other proprietary rights or rights of publicity or privacy;
  - be fraudulent or involve the use of counterfeit or stolen items;
  - violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, unfair competition, anti-discrimination, defamation or false advertising) or any applicable foreign exchange controls;
  - violate any contractual provision by which Client is bound;
  - be false, misleading or inaccurate;
  - create liability for Bank or any service provider(s) or cause Bank to lose (in whole or in part) the services of any service provider;
  - be defamatory, trade libelous, unlawfully threatening or unlawfully harassing;
  - interfere with or disrupt computer networks connected to the network(s) used by Client; and/or
  - interfere with or disrupt the use by any other customer of the Website and/or of any services accessed via the Website.
- d) Violations of system and network security are prohibited, including but not limited to unauthorized access to, or use of, systems or data. Client agrees not to attempt to probe, scan or test the vulnerability of a system or to breach security or authentication measures or to seek to interfere with any system or network security. Bank will investigate violations of system and/or network security and may involve law enforcement if criminal conduct is suspected. Indirect or attempted violations of these terms and conditions by Client, and any actual or attempted violations by a third party on Client's behalf, shall be considered violations by Client.
- e) Client agrees to follow all Bank's procedures and requirements with respect to security in accessing and using a Website and not to misrepresent Client's identity. Where passwords or other access information may be required, Client is solely responsible for the security of such access information and will hold Bank harmless from any unauthorized access to or use of systems that may result from Client's failure to properly maintain the security of such access information.

- f) Client agrees to cooperate with Bank and any service provider(s) with regard to Client's access to, and use of, a Website, including providing such technical assistance and information as Bank may reasonably request.
- g) Client agrees to access and use Websites only for the purpose intended and not for any purpose of commercial exploitation.

## 16. AGREEMENT

- a) Except with respect to terms governing a Website to which Client agrees when Client uses a Service through such Website, This Agreement constitutes and represents the entire agreement between Client and Bank regarding the Services Bank provides Client anywhere in the world and supersedes and extinguishes all prior agreements, understandings, representations, warranties and arrangements of any nature (including requests for proposals and other sales material), whether oral or written, between the parties relating to any such Service (including any International Treasury Services Terms and Conditions booklet, but excluding the current Account Agreement). Except as otherwise expressly provided in this Agreement, the Agreement controls in the event of any conflict between it and any relevant User Documentation, any other document or written or oral statement (including but not limited to the Account Agreement except as applicable law requires otherwise), but excluding terms governing a Website as noted above.
- b) THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

## 17. ORAL INSTRUCTIONS

Except as otherwise provided in the Agreement with respect to compliance with any applicable Security Procedure (as defined in the applicable CME and/or Service Addenda), Bank may rely on oral instructions from any person who identifies himself or herself by a name which is included on a written list from Client of persons authorized to give such instructions. Client will update this list from time to time as necessary to reflect any changes in authorized persons. Except as otherwise expressly stated in the Agreement, Bank is not required to act on any instruction from any person or to give notices to any person.

## 18. SEVERABILITY

If any provision of the Agreement or the application of any such provision to any person or set of circumstances is determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of the Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

## 19. CHANGES TO PROCESSING INSTRUCTIONS

Client may request Bank at any time to change the processing instructions for a Service by contacting its Bank representative. Bank will not be obligated to implement any requested changes until Bank has had a reasonable opportunity to act upon them. In making such changes, Bank is entitled to rely on requests purporting to be from Client. For certain changes, Bank may require that Client's requests be in writing, in a form and manner acceptable to Bank, or be from an authorized person designated by Client. In addition, certain requests may be subject to Bank's approval.

## 20. WAIVER

No delay or failure to exercise any right or remedy under the Agreement shall be deemed a waiver of such right or remedy. No waiver of a single breach or default under the Agreement shall be a waiver of any other breach or default. Any waiver under the Agreement must be in writing.

## 21. ASSIGNMENT

Client may assign any of its rights or duties under the Agreement with Bank's prior written consent. Client requests for consent shall be sent to the Bank address set forth on the signature page for this Agreement.

## 22. PARTIES IN INTEREST/RELATIONSHIP

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Agreement is not for the benefit of any other person, and no other person shall have any right under the Agreement against Client or Bank. Nothing contained in the Agreement shall create any agency, fiduciary, joint venture or partnership relationship between Client and Bank.

## 23. GOVERNING LAW

- a) With respect to each Service, this Agreement is governed by and interpreted according to (i) U.S. federal law and (ii) the law of (A) the state in the United States of America in which the account (or the principal account, in the case of multiple accounts) associated with such Service is located or, if there is no such state or no account associated with such Service, (B) the State of New York, without reference to the principles of conflicts of law of the U.S. and of such state.
- b) If Client is headquartered, or is using a Service, outside the United States of America, Client must appoint an agent for service of process in England, Hong Kong or Singapore and Client irrevocably agrees that any writ, summons, order, judgment or other document relating to or in conjunction with any proceeding, suit or action may be served on Client in such jurisdiction.

## 24. DISPUTE RESOLUTION

Bank tries to resolve its clients' Service problems or disputes as quickly as possible. In most cases, Bank can resolve a problem by telephone. Any dispute, controversy or claim arising out of or relating to the Agreement, including a breach of the Agreement, shall be decided by arbitration conducted in the United States of America (except as Client and Bank expressly agree otherwise) in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Under these procedures, the dispute, controversy or claim shall be submitted to a neutral person for determination in place of a trial before a judge or jury. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction. Without regard to the foregoing, any dispute or controversy that arises from an Electronic Funds Transfer Service will be decided by a judge without a jury in a United States of America federal or state court (except as Client and Bank expressly agree otherwise in writing). This means that in these instances Client waives any right to a trial by jury in any action or proceeding and agrees that such action or proceeding will be tried before a judge without a jury. This provision shall not limit the right of either party to the Agreement to exercise self-help remedies, or obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or

during the pendency of any proceeding. The exercise of such a remedy does not waive the right of either party to resort to arbitration or trial by a judge. Client or Bank may exercise or obtain these remedies at any time, even while the arbitration or trial by a judge is pending.

## 25. NOTICE OF ACCOUNT STATEMENT DISCREPANCIES

For all electronic transactions, information concerning Entries, Requests and/or Payment Transactions acted upon by Bank will be reflected in one or more Bank Statements. Client must give Bank written notice (including a statement of relevant facts) within 14 calendar days after Client receives the first Bank Statement indicating a discrepancy between Client's records and the information shown in the relevant Bank Statement. If Client fails to give Bank the required notice, Bank will not be liable for any loss of interest or for any compensation for any loss or cost relating to an unauthorized or erroneous debit to Client's account or relating to any other discrepancy in the Bank Statement. Client must notify Bank promptly by telephone, with such notice confirmed in writing, if it learns of or discovers from any source other than a Bank Statement, information concerning an unauthorized or erroneous debit to Client's account.

## 26. THIRD PARTY VENDORS

Client may, at Client's option, elect to permit a Subsidiary or other person, including Third Party to access any of Bank's Services provided to Client by Bank (which may include the Third Party Vendor's receipt, access to, and/or handling of any related sensitive information or PHI) through the use of a remote access software package, a Website, or data transmission mail delivery service, mobile access or telephone, as applicable. Bank will not be responsible for the acts or omissions of Client or Client's officers, employees or agents, including any Third Party Vendors retained by Client (including but not limited to the amount, accuracy, timeliness or authorization of any instructions or information) or the acts or omissions of any other person or entity, including but not limited to any clearing house association or processor, any U.S. Federal Reserve Bank or any other country's central bank, any other financial institution or any Supplier, and no such person or entity will be deemed Bank's agent.

If Client permits any Subsidiary or other person, including a Third Party Vendor, to access any of the Services provided to Client (which may include the Third Party Vendor's receipt, access to, and/or handling of any related sensitive information or PHI) through the use of a remote access software package, a Website, data file transmission, mail delivery service, mobile access or telephone, Bank will not be responsible or liable for such Subsidiary's, person's or Third Party Vendor's use or misuse of the Services or related accounts or any such party's access to, use, misuse or loss of any PHI or other sensitive information; provided Bank has complied with any applicable Security Procedure.. Bank may and will treat all instructions and information received by Bank through this arrangement as provided by and for the benefit of Client and subject to all of Bank's rights under the Agreement with respect to the pertinent Services.

### CLIENT REPRESENTATIONS, WARRANTIES, AND AGREEMENT SURROUNDING THIRD PARTY VENDORS

- a) Client represents and warrants to Bank that Client obtains a business benefit by allowing a Third Party Vendor to use, on Client's behalf, one or more of the Services provided to Client by Bank (which may include the Vendor's receipt, access to, and / or handling of any related sensitive information or PHI), and that Client has made available to each Third Party Vendor the General Provisions, all applicable Addenda and User Documentation.
- b) Client will provide and maintain a list of all such Third Party Vendors in a form and in a manner acceptable to Bank. Bank may act under this Agreement as a Third Party Vendor instructs and Client agrees that such Third Party Vendor will be acting as Client's agent with respect to the Services. Client further agrees that Client will cause a Third Party Vendor to use the Services on Client's behalf in accordance with the terms and conditions of this Agreement and all applicable User Documentation and that such Third Party Vendor shall have no other right to use a Service or to derive any benefit under the Agreement. Client agrees that Client is fully responsible for ensuring that all appropriate information protection, privacy, and cross border data movement and similar policies and procedures are implemented and followed by all such Third Party Vendors used by Client, and that they comply at all times with applicable law. Client shall provide Bank with information about any such Third Party Vendor as Bank may reasonably request.
- c) Client will indemnify and hold Bank harmless from and against any and all liabilities, losses, claims, costs, expenses and damages of any nature (including but not limited to the allocated cost of staff counsel, reasonable attorneys' fees and any fees and expenses incurred in enforcing this Agreement) (cumulatively, a "Loss") in any way relating to any action or inaction of a Third Party Vendor, unless such Loss is attributable to Bank's gross negligence or intentional misconduct.
- d) Bank may, at its sole discretion, either decline to act upon any instruction or communication received from any Third Party Vendor or terminate or suspend Client's use of the underlying Service, if, in Bank's sole discretion, Bank determines that a Third Party Vendor may pose a risk to Bank's operations or a Third Party Vendor or Client breaches any term of the Agreement or applicable User Documentation. In the event Client terminates its relationship with a Third Party Vendor it is Client's sole responsibility to terminate such Third Party Vendor's access to the Services (including access to any related PHI or other sensitive information). In the event of a conflict between like terms in another agreement between Client and Bank, then the terms of this Supplement shall prevail, but only to the extent necessary to resolve such conflict.

### ACCOUNT RECONCILEMENT (a "Service")

"Service" consists of the features selected by Client among those described in the applicable User Documentation for Account Reconciliation services. Client's use of a Service does not affect any of its obligations, which are described in the applicable Account Agreement, to discover and report with respect to Client's accounts (including joint accounts where permitted): (i) unauthorized signatures, alterations or endorsements on checks and (ii) unauthorized Requests and other discrepancies. Client's use of a Service or Bank's receipt of information associated with a Service does not increase Bank's duties with respect to accounts and the payment of checks.

### AUTOMATED CLEARING HOUSE (ACH) (a "Service")

"Service" means each ACH Service, including ACH Managed Processing, which allows Client to transfer funds to or from Client's accounts by initiating Entries which may be sent through the ACH system or directly to another bank or processor or processed directly to accounts with Bank, as more fully described in the applicable User Documentation. The capitalized ACH terms appearing in italics below are defined in the NACHA Rules. This section applies only to ACH Services processed within the United States of America and its territories.

The CME becomes effective with respect to a Service only after Bank has approved Client's use of the Service. Bank may send Entries to any ACH processor selected by Bank or directly to another bank. Client authorizes Bank to issue paper instruments or items such as drafts or remotely created checks (collectively, "RCCs"), as instructed by Client or as reasonably determined by Bank as appropriate.

Before using a Service, Client will provide Bank a written list, in a form acceptable to Bank, of persons authorized by Client to verify the authenticity of Entries and Reversal/Deletion Requests in accordance with the Security Procedure and to perform certain other duties in connection with a Service. Client shall update such list from time to time as necessary to reflect any changes in authorized persons. Bank may rely on information and any instructions from any person identifying himself or herself by a name which is included on such list.

**1. SECURITY PROCEDURE**

- a) Client agrees to use the Security Procedure, if any, when Client delivers Entries or Reversal/Deletion Requests to Bank. The purpose of the Security Procedure is to verify the authenticity of Entries and Reversal/Deletion Requests delivered in the name of Client to Bank and not to detect errors in the transmission or content of any Entries and Reversal/Deletion Requests. Each time Client uses a Service, Client represents and warrants to Bank that it has determined that, in view of Client's requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Entries and Reversal/Deletion Requests. Client agrees that Bank may act upon any Entry or Reversal/Deletion Request, the authenticity of which has been verified by Bank through the use of the Security Procedure.
- b) Client shall have sole responsibility for the custody, control and use of all Materials. Client agrees that no individual will be allowed to initiate a request or other instruction contemplated in the Agreement or to have access to any Materials without proper supervision and strict security controls. Bank will be fully protected in relying on the correct user identification codes and passwords, as described in the applicable User Documentation.

**2. CLIENT RESPONSIBILITIES**

- a) Client will utilize the ACH Service as provided in the User Documentation and the NACHA Rules, including, but not limited to, the delivery of Entries.
- b) Client must maintain and designate account(s) with Bank which Bank will use for debiting or crediting with respect to all Entries and RCCs and related adjustments and charges under the Agreement. Client must have Collected and Available Funds on deposit in its account sufficient to cover its payment obligations for a Service.
- c) Bank generally debits Client's account for credit Entries (including debit Reversals) on the settlement date, unless Client is prefunding the Entries. Prefunding means that Client pays for all credit Entries by such time before the settlement date as Bank may specify, using a Standalone Account. If Client's account is not a Standalone Account, Bank may at any time convert it to a Standalone Account for prefunding. Bank may, at its discretion, at any time and without notice, require payment before Bank processes Client's Entries. Even if Bank has done so in the past, Bank is not obligated to process any Entries without having first been paid by Client, but, if Bank does so, the amount is immediately due and payable without notice or demand.
- d) Bank generally credits Client's account for debit Entries (including credit Reversals) on the settlement date, unless Client is subject to ACH Managed Processing which will delay settlement for the Entries as further described in the User Documentation.
- e) Client shall pay Bank for the amount of any returned debit Entries (including rejected debit Entries), any returned RCCs or any adjustment Entries accepted by Bank, which Bank has previously credited to Client's account. Such amounts shall be immediately due and payable by Client to Bank. Returned debit Entries and returned RCCs, if any, appear on Client's reports to the extent agreed by Client and Bank, and Client agrees that Bank need not send a separate notice of debit Entries or RCCs which are returned unpaid.
- f) Client agrees to cooperate with Bank fully to facilitate Bank's adherence to guidance provided by any regulatory body, including, but not limited to, the Office of the Comptroller of the Currency ("OCC"), including guidance concerning risk management of ACH or any other Service. For this purpose, Client agrees that Bank may mandate specific internal controls at Client's locations, audit Client's operations and/or request additional information. Bank may restrict either Client's initiation or re-initiation, or apply certain risk management rules at Bank's discretion. Bank may monitor, assess and enforce limitations on initiation and return activity.
- g) If Client originates on behalf of any other party, Client also represents and warrants that Client will monitor, assess and enforce limitations in accordance with the NACHA Rules.

**3. BANK RESPONSIBILITIES**

- a) Subject to Bank's right to reject or return Entries under this CME, Bank will process Entries received from Client and (i) send Entries to the ACH processor selected by Bank or directly to another bank or processor for settlement on the Effective Entry Date shown in the related Entries, or a delayed settlement date if such Entries are subject to ACH Managed Processing, or (ii) send on-us Entries directly to the Receiver's account for credit or debit or other processing, as appropriate, on the Effective Entry Date shown in the related Entry; provided such Entries are received by Bank on a Business Day by its applicable processing deadline, as specified in the applicable User Documentation. Entries received by Bank after the applicable processing deadline on a Business Day may be treated by Bank as received on the next Business Day. Entries will be deemed received by Bank when Bank receives the complete file at the location specified in the User Documentation.
- b) Bank may reject any Entry if it does not comply with the requirements of the CME or the applicable User Documentation, including certain ACH processing and/or exposure limits described in the User Documentation, or which Bank has been unable to verify through use of the Security Procedure. Bank may also reject any Entry if it may be returned for any reason under the NACHA Rules or if Client breaches its payment obligations for any Service. Bank may also, without prior notice to Client, no longer accept or process Client's debit Entries or may require Client's Entries to be subject to ACH Managed Processing. Bank will give notices of rejection and/or Entries becoming subject to ACH Managed Processing to Client by telephone, by electronic means, by facsimile or by mail within the time period specified in the applicable User Documentation. Notices of rejection shall be effective when given to and not received by Client. Bank will have no liability to Client for the rejection or ACH Managed Processing requirement of any Entry as permitted under the Agreement, and Bank will have no obligation to pay interest for the period before Client receives the notice of rejection or ACH Managed Processing requirement. If any Entry is rejected, it is Client's responsibility to correct any Entry it intends to resubmit.
- c) Except as otherwise expressly provided in the CME, Bank will not be required to act upon any instruction from any person or to give notices to any person.

**4. CANCELLATION OR AMENDMENT BY CLIENT**

Bank has no obligation to cancel or amend Entries after Bank receives them. If Client sends Bank a Reversal/Deletion Request and Bank is able to verify the authenticity of the Reversal/Deletion Request using the Security Procedure, Bank will make a reasonable effort to act on the request. Bank has no liability if such Reversal/Deletion Request is not implemented (for example, but not limited to, if it is returned for non-sufficient funds). Client agrees to indemnify Bank in connection with any such Reversal/Deletion Request as provided in UCC 4A. Client's obligations under this section 4 shall survive termination of any Service.

**5. PROVISIONAL PAYMENTS**

- a) Client agrees to be bound by the provision of the NACHA Rules and UPIC Rules that payment of a credit Entry by the RDFI to the Receiver is provisional until the RDFI receives final settlement for the Entry. If final settlement is not received, the RDFI is entitled to a refund from the Receiver of the amount credited. This means that the Receiver will not have been paid.
- b) Any payment to Client by Bank for any debit Entry, returned credit Entry or credit Reversal is provisional until Bank receives final settlement for the Entry. If final settlement is not received, Bank is entitled to a refund and Bank may charge Client's account for the amount credited. Bank may delay the availability of any amount credited (i) for a debit Entry subject to ACH Managed Processing, or (ii) for a debit Entry or credit Reversal if it believes that there may not be sufficient funds in Client's account to cover chargeback or return of the Entry or Reversal. Bank's rights under this subsection shall survive termination of this CME.



**6. INCONSISTENCY OF NAME AND NUMBER**

A Receiving Depository Financial Institution RDFI can make payment to a Receiver based solely on the account number, even if the name in the Entry differs from the name on the account. Bank may send an Entry to an RDFI based solely on the bank identifying number, even if Client provides Bank with a different RDFI name.

**7. COMPLIANCE WITH NACHA RULES; LAWS; AND ADDITIONAL REQUIREMENTS**

Client and Bank shall comply with the NACHA Rules for all Entries whether or not an Entry is sent through a processor or the ACH network. Client acts as an *Originator* and Bank acts as an *Originating Depository Financial Institution ODFI* with respect to Entries. The NACHA Rules govern if they conflict with this Agreement, except that the file specification requirements in the User Documentation govern if they conflict with the NACHA Rules. For Entries that may be processed directly to accounts with Bank or other processor, debits and returns may be reported on next day information reporting. The User Documentation will govern if such timing conflicts with the NACHA Rules.

- a) Where a preauthorized debit Entry from a consumer's account varies in amount from the previous debit Entry, Client will comply with the notice requirements set forth in the NACHA Rules, the Electronic Funds Transfer Act and Regulation E of the Board of Governors of the Federal Reserve System, as applicable.
- b) Client agrees to comply with applicable laws and regulations. Client may not use this Service for any illegal transaction or activity, including under the regulations and laws of the receiver of Client's transaction. Client's compliance includes adherence to applicable laws and regulations, including United States economic sanctions laws and regulations, including regulations issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury, and Executive Orders issued by the President of the United States.
- c) Client agrees to cooperate with Bank fully to facilitate Bank's adherence to guidance provided by the Office of the Comptroller of the Currency ("OCC"), including guidance concerning risk management of ACH or any other Service. For this purpose, Client agrees that Bank may mandate specific internal controls at Client's locations, audit Client's operations and/or request additional information.
- d) If Client originates on behalf of any other entity, Bank may require information regarding such entity to verify Client's customer and the nature of their business. If Client is acting as a third party payment processor or a third party sender as defined by NACHA Rules, Bank may request that Client furnish to Bank additional information. Such information may include, without limitation, data: (i) regarding Client's financial condition; (ii) verifying Client's customers and the nature of their businesses; and (iii) sufficient for Bank to determine whether Client is working with additional ODFIs. Client agrees to comply with all audit requirements under the NACHA rules, and agrees to provide proof of compliance upon Bank's request.
- e) If Client makes International ACH Transactions ("IAT") using the Service such transactions are subject to the terms of this section for the portions of the transaction that occur and are processed within the United States of America and its territories.
- f) Each time Client uses a Service (i) Client represents and warrants that it has obtained the appropriate authorization from each Receiver and the Entries conform to the authorization and comply with the NACHA Rules, and (ii) Client makes the same warranties to Bank as Bank makes under the applicable section(s) of the NACHA Rules.

**8. SUPPLEMENTAL TERMINATION**

This subsection supplements the Suspension and Termination section. If Client originates on behalf of any other entity, and Bank determines, in Bank's sole discretion, that Bank no longer wishes to process transactions for such entity, Services may be suspended, modified or amended.

**ACH AUTHORIZATION - RECEIVE SERVICE (a "Service")**

"Service" means each ACH Authorization - Receive Service, as more fully described in the applicable User Documentation, which allows Client to provide Bank with the authorization criteria for Entries Client desires to receive for debit or credit to Client's account.

- a) Client will provide authorization criteria in a manner and form acceptable to Bank. In Client's authorization criteria, Client may specify a maximum amount or a fixed amount for the Entries. In either case, Client must specify the amount in dollars and cents.
- b) Bank will return automatically any Entry which does not meet Client's criteria. Bank may also return an Entry for any reason that an Entry may be returned under the NACHA Rules. The Service does not apply to transactions between Client and Bank, and Bank may pay Entries which Client has authorized Bank to originate to Client's account (e.g., loan or credit card payments), whether or not Client has included these in Client's authorization criteria. Bank may also pay any Entries, reversals or adjustments which Bank is required to accept under the NACHA Rules, EPN Rules, operating circulars or any other applicable rule, guideline or regulation.
- c) When a Service is terminated for any reason, Bank will no longer be obligated to monitor Entries against Client's authorization criteria and Bank will receive and accept or return Entries to Client's account in accordance with Bank's normal procedures. Client still has the right to return Entries in accordance with the NACHA Rules.
- d) For certain other ACH Authorization - Receive Services, where available, Bank may, in its sole discretion, assist Client to obtain a UPIC in accordance with the EPN UPIC Rules. Each time Client uses or authorize a transaction using a UPIC, Client represents and warrants that Client will abide by the UPIC Rules, and Client makes the same representations and warranties to Bank as Bank makes as a UPIC Participant under the UPIC Rules. Client may not assign or transfer Client's UPIC to any other entity without Bank's express, advance, written consent.
- e) If Client also subscribes to Bank's ACH Positive Pay Services as described, Client will still need to make Client's pay or return decisions under Client's ACH Positive Pay Services. Such decisions will supersede the terms contained in the ACH Blocks and Authorizations Services.

**1. PROVISIONAL PAYMENTS**

Client agrees to comply with the NACHA Rules and UPIC Rules for all Entries. Under the NACHA Rules, and UPIC Rules, credit Entries are provisional and may be revoked prior to final settlement. If the credit Entry is revoked before final settlement and Bank does not receive final settlement, Bank may charge Client's account for any amount credited. The person who sent the credit Entry is considered not to have paid Client. If this happens, Bank does not send a separate notice; Bank notifies Client of these credits and charges on Client's account statement.

**2. SUPPLEMENTAL TERMINATION**

This subsection supplements the Termination or the Suspension and Termination section, as applicable, in the General Provisions if Bank has assisted Client in obtaining a UPIC. In that case, notwithstanding the provisions of the Termination section of the General Provisions, and in addition to those provisions, Bank may terminate this Service immediately and send Client notice of the termination if Bank, in Bank's sole discretion, no longer wishes to provide Client this Service. If an ACH Blocks and Authorizations Service is terminated for any reason, Bank will no longer be obligated to monitor Entries against Client's authorization criteria and will receive and accept or return Entries to Client's account in accordance with Bank's normal procedures. Client still has the right to return Entries in accordance with the NACHA Rules.

**BILLPAY AND INVOICE MANAGEMENT ONLINE (a "Service")**

"Service" means the BillPay Service which consists of the Bill Payment Feature, the Invoice Management Feature and other related services, provided through our designated Website, as described in this Addendum and the applicable User Documentation. Client may only access the Service through the Bank's designated Website and use the Service to request Bank to make bill payments on Client's behalf to Vendors in payment of invoices and bills that Client received from such Vendors. Bank will process Client's bill payment request by means of an ACH credit entry to the bank account of the Vendor, by mailing a check on Client's behalf to the Vendor, or by other electronic payment means. Client may use the Service to receive invoices sent to Client from Vendors that choose to deliver invoices to Client via the Service. Client also may upload through the Service images of invoices that Client receives directly from Vendors. Client may view and manage these invoices through the Service.

## 1. INVOICE MANAGEMENT FEATURE

- a) The Service includes an online Inbox where Client can upload, store, index and manage your Bills and Documents. Client may upload Bills and Documents to Client's Service Inbox directly through the Service Website or by email using the email address assigned to Client's Service Inbox. Client may also may authorize Vendors to send Bills and Documents to the Service Inbox using the email assigned to it. Bank is not responsible for Bills that are misdirected or not received in Client's Inbox. Client should regularly review its Inbox to confirm that expected Bills from Vendors are received there. Client will resolve disputes regarding invoices from Vendors directly with such Vendors and Bank has no responsibility with respect to such disputes.
- b) Client also may submit and store other remittance information to the Service, including address and bank account and routing information for a Vendor. Client is responsible for verifying the accuracy of the Vendor information prior to scheduling a Payment Transaction, and Bank will have no liability for losses or damages due to Client or Client's Vendor's actions or inactions. If Client inputs a Vendor's bank routing number and bank account number, Client represents and warrants that (i) this information is accurate and correct, and (ii) Client has obtained from the Vendor any required authorizations, including the authorization to disclose the Vendor's account information and to request Bank to initiate ACH debit or credit entries, as applicable, to the Vendor's bank account in accordance with Client's Payment Transaction Request and, if necessary, the initiation of adjustments for any transactions debited or credited in error.
- c) By providing Bank with the name and bank account information of a Vendor to whom Client wishes to direct bill payments, Client authorizes Bank to use and follow this information when processing Client's Payment Transaction Requests to that Vendor. In order to process Payment Transactions more efficiently and effectively, Bank may submit payments to the best known Vendor address based on information in the Vendor Database. When necessary, Bank may alter payment data or data formats or change or reformat Client's Vendor's bank account number and routing information to match the account number or format and/or routing information required by Client's Vendor for electronic payment processing or as set forth in the Vendor Database.

## 2. BILL PAYMENT FEATURE

- a) Scheduling Bill Payment. To make a payment to a Vendor for a Bill, Client may use the Service to schedule a Payment Transaction and select the Process Date on which Bank will debit the Payment Account to originate the Payment Transaction. The Service will indicate the earliest possible Process Date for each Payment Transaction Request and will calculate an estimated Arrives By Date. Bank will use commercially reasonable efforts to issue the Payment Transaction within two business days following the Process Date, depending on the size of the payment and subject to Bank's own review of the Payment Transaction Request. Bank will determine the payment method for each scheduled Payment Transaction Request. Client is solely responsible for scheduling Payment Transactions and selecting a Process Date for each payment that allows sufficient time for the payment to be delivered on or prior to the due date on the Bill. Bank makes no representation or warranty to Client that a Payment Transaction will be received by the Vendor or credited to the Vendor's bank account on or before the Arrives By Date. Regardless of the Process Date selected by Client, Bank shall have no liability to Client or Client's Vendor in the event that Client incurs a late fee or other financial liability to a Vendor arising from a delayed, undelivered, or late payment.
- b) Payment Method and Transaction Limits. Client may, through the Service, request that Bank process a Payment Transaction Request as a check payment or as an ACH credit entry payment or other electronic payment; provided, however, that Bank reserves the right to select the method by which to process a Payment Transaction Request. ACH credit entry payments and other electronic payments may only be made to U.S. domestic bank accounts. All other payments made through the Service must be made by issuance and mailing of a check to a U.S. address. Bank may, in its sole discretion, impose limits on the amount of money sent through the Service, on a per-transaction or a cumulative basis, and change those limits at any time without prior notice to Client. Client may not submit a Payment Transaction Request that would require the processing of an international ACH transaction (IAT).
- c) Processing Bill Payments. Client hereby authorizes Bank to debit Client's Payment Account for the amount of each Payment Transaction Request and remit funds in accordance with Client's Payment Transaction Request through the ACH network or other electronic funds network or by paper check, as determined by Bank in Bank's sole discretion. Bank may debit Client's Payment Account by means of an ACH debit or direct posting/book transfer. Client is responsible for maintaining collected and available funds in the Payment Account in an amount sufficient to pay for all debits to fund the Payment Transaction Requests on or before the Process Date. Bank is not obligated to process any Payment Transaction Requests, even if Bank has done so in the past, without having first been paid by Client, but, if Bank does, the amount is immediately due and payable without notice or demand. Bank may post these debits to Client's Payment Account even if the debits cause Client's Account to have a negative intraday balance or to be in an overdraft position. After the Process Date and prior to origination of the ACH credit entry or payment of the issued check, funds deducted from Client's Payment Account will be held in a master bank account or general liability account at the Bank. Client acknowledges and agrees that Client has no ownership interest or right to the funds in this bank account. This bank account arrangement does not create a trust or other fiduciary obligations on the part of Bank to Client.
- d) Issuance of Check Payments. Client hereby authorizes Bank to print and issue a paper check drawn by Client, and to indicate on such check that Client is the drawer and/or that Client has authorized the drawing of the check. Bank may be identified on the check as the drawee bank. Client agrees that Bank shall not have any liability to Client or any other person on the check as an endorser, a drawer or a co-signer or in any other capacity. Client acknowledges and agrees that in the event of a returned check or other non-payment of an issued check, Client may be subject to claims from third parties under law in Client's capacity as drawer of the check. In addition to any other indemnification provided under this document or the Booklet, Client indemnifies Bank for any loss, damage or claim arising from our issuance of a check in accordance with Client's Payment Transaction Request.
- e) Returned Transactions. A Vendor, a Vendor's bank or the United States Postal Service may return a Payment Transaction for various reasons such as, but not limited to, Vendor's forwarding address expired, invalid bank routing number, invalid bank account number, Vendor remittance address is not correct, Vendor is unable to identify an account, or a Vendor account is paid in full. In addition, a Vendor may refuse to accept a Payment Transaction. Bank will use commercially reasonable efforts to provide Client with notice of a returned Payment Transaction. Client agrees that Bank shall not have any liability for any returned Payment Transaction or any resulting loss or damage that Client may incur. Unless otherwise directed, Bank will void such returned Payment Transaction and credit the returned Payment Transaction to Client's Payment Account.
- f) Payment Cancellation Requests. Client may cancel, reschedule or modify a Scheduled Payment Transaction prior to the time that Bank begins processing it, subject to any restrictions set forth in the User Documentation. Client may only cancel, reschedule or modify a Scheduled Payment Transaction through the Service Website. Once Bank has begun processing a Payment Transaction, it cannot be cancelled, rescheduled or modified by Client. In addition, Bank reserves the right in its sole discretion to suspend or cancel any Scheduled Payment Transaction if Client's Payment Account or Client's use of the Service is not in good standing, as determined by Bank in our sole discretion. Bank will credit back to the Payment Account any debits previously made to fund a cancelled Scheduled Payment Transaction.
- g) Stop Payment Requests. Client may use the Service to place a stop payment on a Payment Transaction that is processed by means of a check payment. There is no stop payment option for a Payment Transaction that is processed by ACH credit or other electronic payment. Bank's ability to

process a stop payment request on a check payment depends on whether or not a check has cleared. Bank must have a reasonable opportunity to act on any stop payment request after Bank receives the request from Client. In some cases, Bank may pay a check even if a stop payment request is in effect. For example, if one of Bank's branches (or banking centers) or affiliates becomes a "holder in due course" of the check that Client asked Bank to stop, Bank may still pay the check. Although Bank will use commercially reasonable efforts to accommodate stop payment requests, Bank will not have any liability to Client for failing to do so. If Bank does honor a stop payment request, Client agrees to indemnify Bank (and Bank's service provider) for any liability or claim that Bank incurs arising from a person that seeks payment from Bank on the check based on such person's status as a holder of the check and/or otherwise based on Bank's role in the issuance of the check on Client's behalf. Client further authorizes Bank to settle and pay any such claim from a holder or a payee of the check without prior notice to Client and Client further authorizes Bank to debit Client's Payment Account for the amount of such paid claim.

- h) **Prohibited Payments.** Client is prohibited from using the Service to make the following types of payments: (i) tax payments, (ii) payments to settle securities transactions, and (iii) court ordered payments. In no event shall Bank be liable for any claims for damages resulting from Client's scheduling of these types of payments. Client shall comply with all applicable state and federal laws in initiating any Payment Transaction.
- i) **Payment Review.** In Bank's discretion, Bank may place a hold on a Payment Transaction Request for as long as reasonably required to conduct an appropriate inquiry regarding Client, the Vendor, a Bill, payment history, and other relevant circumstances and factors. Depending on the results of this review, Bank may process the Payment Transaction Request, reverse or cancel the Payment Transaction Request, or hold the Payment Transaction Request and related funds pending instructions from a government agency. At any time, a Payment Transaction Request or a Payment Transaction may be reversed or canceled by Bank in our Bank's discretion and without prior notice to Client.
- j) **Compliance with Service Documentation.** Client is responsible for ensuring that each Payment Transaction Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation for the Service.

#### a) REGISTERED VENDOR DATABASE

Bank uses a third party company that operates an online database containing payment routing and other information regarding Registered Vendors. Bank does not operate or control the Vendor Database and Bank is not responsible for the accuracy of information that is stored in the Vendor Database. The Vendor Database is not part of the Service. When making a Payment Request, Client may look-up Client's Vendors in the Vendor Database to see if they are Registered Vendors. Client also may ask Client's Vendor to register with the Vendor Database and provide information regarding its preferred bank account number and routing information for bill payments processed through the Service to the Vendor. If Client's Vendor registers with the Vendor Database, Client's Vendor will be required to agree to the terms and conditions provided by the third party company that govern the use and operation of the Vendor Database.

The Service may obtain payment routing information and mailing address information for Client's Registered Vendors from the Vendor Database. Bank may at its option process a Payment Transaction to the Registered Vendor based upon the account and routing number information and/or mailing address information provided by the Registered Vendor without further investigation or confirmation by Bank. Client is responsible for any Payment Transaction that is processed by the Service using the Registered Vendor data contained in the Vendor Database.

#### b) SECURITY PROCEDURE

Client agrees to use the Security Procedure when Client electronically transmits Payment Transaction Requests to Bank or Bank's third party processor. The purpose of the Security Procedure is to verify the authenticity of Payment Transaction Requests delivered to Bank or Bank's third party processor and not to detect any errors in the transmission or content of these messages. Each time Client uses the Service, Client represents and warrants that, in view of Client's requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Payment Transaction Requests. Client agrees that Bank or Bank's third party processor may act on any electronically transmitted Payment Transaction Request, the authenticity of which Bank or Bank's third party processor, as applicable, have verified through use of the Security Procedure.

Client agrees that Bank may act on Payment Transaction Requests, even if they are unauthorized, if Bank acts in good faith and complies with the applicable Security Procedure and any written agreement with Client restricting Bank's action on Payment Transaction Requests. In such cases, Bank may enforce or retain Client's payment to Bank for such Payment Transaction Requests; provided, however, Bank may not enforce or retain payment if Client proves that the unauthorized Payment Transaction Requests were not caused by a person (i) entrusted at any time to act for Client with respect to Payment Transaction Requests or the applicable Security Procedure, (ii) who obtained access to Client's premises, computer equipment or transmitting facilities or (iii) who obtained, from a source controlled by Client, information (such as keys and passwords) which facilitated breach of the applicable Security Procedure.

#### c) PROVISIONAL PAYMENTS

For Payment Transactions processed through the ACH credit entry, Client agrees to be bound by the provision of the NACHA Rules providing that payment of a credit Entry by the Receiving Depository Financial Institution (RDFI) to the Receiver (the Vendor) is provisional until the RDFI receives final settlement for the Entry. If final settlement is not received, the RDFI is entitled to a refund from the Vendor of the amount credited. This means that the Vendor will not have been paid.

#### d) SUPPLEMENTAL LIMITED WARRANTY/DISCLAIMER

Client acknowledges and agrees that (i) Bank is making no representations or warranties of any kind regarding the content of Bills, Documents or the Vendor Database, and (ii) Client and Client's Vendors are transmitting and receiving Bills through the Service at their own risk. Bank disclaims any and all warranties of any kind (whether express or implied) including but not limited to any warranties of merchantability or fitness for a particular purpose with respect to the Service, the Vendor Database, and the content and timely delivery of the Bills and any related information. Bank will have no liability or responsibility for any losses, costs, expenses or damages incurred by Client or Client's Vendors with respect to the use of the Vendor Database or any Bills transmitted or received through the Service.

#### e) ADDITIONAL TERMS AND LIMITATIONS ON DAMAGES

Client acknowledges and agrees that Client's use of the Service is also governed by the terms of your deposit account agreement with Bank and the terms of this Agreement, including without limitation the General Provisions which includes provisions relating to Client's indemnification of Bank for claims by third parties arising from the use of the Service and limitations on Bank's liability to Client in connection with providing the Service and processing Payment Transactions.

**CASHPRO CREDIT SERVICE (a "Service")**

"Service" means each credit service, which allows Client to (i) electronically view credit information, (ii) if approved by Bank in its sole discretion, now or at any time in the future, engage in Credit Transactions, and (iii) initiate Processing Requests. Information services are available to every Client; Credit Transaction and Processing Request services may not be available to every Client or Credit Facility.

**1. SECURITY PROCEDURE**

- a) Client agrees to use the Security Procedure, if any, when Client uses the Service. The purpose of the Security Procedure is to verify the authenticity of persons using the Service on behalf of the Client and not to detect errors in the transmission or content of any Credit Transaction or Processing Request. Each time Client uses the Service, Client represents and warrants to Bank that it has determined that, in view of Client's requirements, the Security Procedure is a satisfactory method of verifying the authenticity of the person using the Service on behalf of Client.
- b) Client agrees to promptly notify the Bank if Client or any Authorized User becomes aware of, or suspects, a technical failure or any improper access to or use of the Service by any Authorized Users or other persons. Client further agrees to take action to terminate an Authorized User's access to and use of the Service to the extent any such improper access or use is by an Authorized User. The Bank reserves the right to terminate Client's access or any Authorized User's access to and use of the Service immediately and without notice.
- c) **Bank will have no liability to Client for unauthorized use of the Service by any person using valid access codes. Bank will also have no liability to Client for not executing Credit Transactions and/or Processing Requests if Bank has reason to believe that such Credit Transactions and/or Processing Requests have not been properly authenticated and/or are fraudulent.** If (i) Client wants to terminate an Authorized User's use of the Service and (ii) a Delegated Administrator has not been designated, Client must notify Bank of such termination in writing and give Bank a reasonable opportunity to act on such notice.

**3. TRANSACTION POSTING**

- a) Information available through the Service will not reflect transactions that have not yet been posted. Client should keep this in mind when taking any action on the basis of such information. Although Bank will strive to keep all information available through the Service accurate and timely, such information is subject to change to conform with additions, deletions or adjustments to the Credit Facilities which are appropriate pursuant to contractual relations between Bank and/or any subsidiary of Bank, as appropriate, and Client.
- b) Nothing in this Addendum, the General Provisions or the Service shall modify in any way any contractual obligations Client has to Bank and/or any subsidiary of Bank, as appropriate, pursuant to the Facility Documentation. Bank may refuse to execute any Credit Transaction and/or Processing Request that Bank has reason to believe does not comply with the terms of the Facility Documentation and will have no liability to Client for any such refusal.

**4. SUFFICIENT COLLECTED AND AVAILABLE FUNDS**

- a) Client authorizes Bank to withdraw, debit or charge the necessary funds from a Designated Account to the extent initiated by Client through the Service; provided, however, Bank is under no obligation to withdraw, debit or charge the necessary funds to the extent it conflicts with the terms of the Facility Documentation, if applicable.
- b) Client agrees that a Credit Transaction or Processing Request involving a payment will be initiated only when sufficient Collected and Available Funds are in such Designated Account. The completion of a Credit Transaction or Processing Request involving a payment is subject to the availability of sufficient Collected and Available Funds at the time such Credit Transaction or Processing Request is posted. If Collected and Available Funds sufficient to complete the Credit Transaction or Processing Request involving a payment are not available in the Designated Account, the Bank may, in its discretion, either (i) complete such Credit Transaction or Processing Request and overdraw the Designated Account or (ii) refuse to complete such Credit Transaction or Processing Request. In either case, Bank may charge a non-sufficient funds (NSF), returned item, overdraft, or similar fee. Please refer to the applicable Deposit Account Agreement and fee schedule for details.
- c) At Bank's option, Bank may make further attempts to process a Credit Transaction or Processing Request involving a payment if sufficient Collected and Available Funds were not originally available. The Bank is under no obligation to inform Client or any Authorized User if it does not complete a Credit Transaction or Processing Request involving a payment because there are not sufficient Collected and Available Funds in the Designated Account.

**5. TRANSFERS FROM MONEY MARKET DEPOSIT ACCOUNTS**

Federal regulations limit the number of preauthorized electronic fund transfers and telephone transfers - including payments on Credit Facilities - from money market deposit and savings accounts. Client is limited to six (6) preauthorized electronic fund transfers, telephone transfers, checks and point-of-sale transactions per statement cycle (for information on these accounts, see the applicable Account Agreement). Each payment through the Service from your money market account is counted as one of the six (6) limited transfers permitted each statement cycle. Bank charges a fee for each transaction in excess of this limit. Bank recommends that a money market account not be used by Client as a Designated Account because of these restrictions.

**6. SUPPLEMENTAL LIMITATION OF LIABILITY**

The following is in addition to Section 6 of the General Provisions: Bank will attempt to (i) maintain accurate and timely information available through the Service, (ii) receive and review documentation received from Client, and (iii) execute in a timely manner any Credit Transaction initiated by Client. However, the Bank does not guarantee such accuracy or timeliness, and will not be liable for any such inaccuracy or untimeliness of execution of Credit Transactions. In the event of any mistake or delay in posting information on, or executing Credit Transactions through, the Service, Bank's only liability or obligation will be to post corrected information as soon as possible on the Service and to process promptly any Credit Transaction initiated through the Service. Client hereby releases Bank and/or any subsidiary of Bank, as appropriate, from any claims, liabilities, damages or defenses that may arise out of or relate to the Service, the Credit Transactions initiated by the Client under the Service, or the refusal by Bank and/or any subsidiary of Bank, as appropriate, to execute a Credit Transaction in accordance with the terms hereof unless any such claim, liability, damage or defense is the result of Bank's and/or such subsidiary's gross negligence or willful misconduct as determined by a final nonappealable court of competent jurisdiction.

**7. CHANGE IN TERMS**

Bank may change the terms of this CME at any time. Bank will notify Client of such changes by mail, electronic message, or notice through the Service. Client's continued use of the Service after the effective date of the change shall be deemed to be Client's agreement to such change.

**8. TERMINATION**

- a) The following is in addition to the Termination and/or Termination and Suspension sections of the General Provisions. Notwithstanding anything to the contrary in the General Provisions or this Service Addendum, Bank may terminate the Service for any reason, including inactivity, at any time. Bank will try to notify Client in advance, but is not obligated to do so (unless required by applicable law).
- b) Termination of the Service by Bank or Client does not terminate any Credit Facilities and/or Designated Accounts.

**9. DELEGATION OF AUTHORITY**

Client may designate one or more Delegated Administrators to electronically authorize users to utilize one or more of the Services if approved by Bank in its sole discretion now or at any time in the future. If Client elects to use the CashPro Online ID of a third party (the "ID Owner") to access the Services, Client authorizes such ID Owner to designate one or more Delegated Administrators to electronically authorize users to utilize one or more of the Services if approved by Bank in its sole discretion now or at any time in the future. If Client elects (or authorizes the ID Owner) to delegate such authority to a Delegated Administrator(s), Client agrees that (i) Bank may rely without further investigation upon and shall not be responsible for any actions taken by such Delegated Administrator with respect to the authorization of additional users, (ii) Bank may rely without further investigation on each such user's authorization to use one or more of the Services, including without limitation providing such users access to information available through such Services and acting on instructions from such users, (iii) each such user will be considered for all purposes an Authorized User, and (iv) Bank shall not be responsible to Client for any loss, claim, liability, damage, cost or expense resulting from, related to, arising from or caused by such authorizations, notwithstanding anything to the contrary herein or in the Facility Documentation. Client agrees that any user authorized by a Delegated Administrator will be investigated, evaluated and approved by Client and that Bank may rely upon any instructions from such users as being authorized without further investigation.

**10. PROCESSING REQUESTS**

A Processing Request will be governed by the General Provisions between Client and Bank, this Service Addendum and the Facility Documentation. **Bank will not be liable to Client for its failure to execute any Processing Request.**

**COMMERCIAL DEPOSITS (a "Service")**

"Service" means each Commercial Deposits Service, which allows (i) Client or a third party acting as Client's agent to transmit an image cash letter (ICL) to Bank; (ii) Client to use the Bank's Remote Deposit Service, which allows Client to create or have created on Client's behalf an Image, or an IRD from an Electronic Image of an original paper check, as described in the applicable User Documentation; and/or (iii) Client to make deposits of coin and currency, checks and other payment instruments to one of Bank's designated banking centers with pre-approval, depository facilities (which may include a night depository facility), automated teller machines, ("ATM's"), processing centers or cash vaults. If these deposits are delivered by Client or its agent before the cut-off time specified at the deposit location or in the applicable User Documentation, Bank will give same-day provisional credit for such deposits, subject to later verification by Bank and Bank's availability schedule. Banking center deposits that are immediately verified are covered under Client's Account Agreement. Bank may create, on Client's behalf, a paper substitute check, Image or IRD from such electronic image transmission, as described in the applicable User Documentation.

**1. CLIENT RESPONSIBILITIES**

- a) Client agrees to follow all requirements set out in the User Documentation and to meet all specifications for returns contained in the User Documentation; provided, however, in the event that a relevant provision of the User Documentation conflicts with applicable regulatory requirements, Client agrees to follow the applicable regulatory requirements.
- b) Client shall prepare all deposits accurately and in good faith and follow the procedures for preparation, packaging and delivery of deposits according to the applicable User Documentation. In order to receive a receipt of deposit at banking centers, depository facilities (which may include a night depository facility), or processing centers, Bank may require Client to provide a duplicate deposit slip in addition to the number of original deposit slips required by Bank to process the deposit or to use other procedures as set forth in the User Documentation. If Bank requires Client to provide a duplicate deposit slip, Bank will stamp this duplicate deposit slip and return it to Client. In all cases, deposits are subject to later verification by Bank.
- c) If Client uses an armored carrier to transport its deposits, Client shall contract separately with an armored carrier service that is acceptable to Bank. For deposits made to one of Bank's cash vaults, Bank will require Client to use an armored carrier. Unless otherwise agreed in writing between Bank and Client, armored carriers are agents of Client.
- d) If Client uses an Image Cash Letter Service or a Remote Deposit Service, then prior to sending Bank an electronic image transmission, Bank and Client must agree on image and transmission standards as more fully described in the applicable User Documentation.
- e) Client warrants that all ICL file transmissions Client sends to Bank comply with the specifications outlined in the User Documentation, and Client agrees to indemnify Bank for any loss or expense incurred by Bank (including attorneys' fees and expenses of litigation) as a result of Client's breach of this warranty. With Bank's approval, Client may provide Bank with the reason for return of a check in the unqualified returns ICL cash letter file transmission instead of stamping the front of the check with the reason for return. Bank will use its best efforts to notify Client promptly when Bank cannot determine the bank of first deposit on a check in the amount of \$2,500 or greater, or such other amount as may be set forth in the User Documentation from time to time. Client will respond to Bank's notice by secure email promptly upon receipt.
- f) If Client intends to include reclears along with other items in a forward ICL file sent to Bank for processing, Client must identify the reclear items on the ICL file in accordance with Bank's instructions set forth in Bank's User Documentation.
- g) If Client uses an Image Cash Letter Service or a Remote Deposit Service, then except as provided herein, for any IRD or Image created under this Service, Client is deemed to be the warrantor of certain warranties under Check 21, and for each and every day an IRD is created, Client accepts all responsibilities as warrantor for those warranties under Check 21 regarding creation of the IRDs. Client understands that Client is responsible for capturing and sending fully legible copies of the original paper check or Electronic Image which will be cleared as an Image or IRD.
- h) If Client uses an Image Cash Letter Service or a Remote Deposit Service, then Client gives the same warranties and indemnities to Bank that Bank, as reconverting bank, gives under 12 CFR Parts 229.52 and 229.53 of Check 21 regulations or any successor legislation. With respect to any Image forward presented by Bank after Client's deposit, in paper check or Image form, in Client's account, Client gives the same representations, warranties and indemnities to Bank that Bank, as sending bank, gives pursuant to the image exchange rules, including any applicable clearing house rules and/or regulations, which govern Bank. With respect to Images sent by Client to Bank under this Service, Client's warranties include warranties that the Image accurately represents all the information on the front and back of the original check as of the time the original check was truncated, the MICR-line information contains all information needed for a substitute check or draft, and any transmission to Bank from Client complies with the specifications described in the applicable User Documentation. Client agrees to indemnify Bank and any receiving parties that suffer losses as a result of receiving the substitute instead of the original check, or receiving duplicate items, whether in paper or Image form. Client understands it is responsible for capturing and sending fully legible copies of the item which may be created as an IRD.

Notwithstanding the foregoing, provided Client complies with the agreed upon image and transmission standards and Bank accepts Client's transmission, and as more fully described in the applicable User Documentation, Bank will not hold Client responsible for any breach of warranty or indemnity either under Check 21 or under applicable image exchange rules, including any applicable clearing house rules and/or regulations, based on image quality for any Images, that Bank produces from Client's image transmission. If, in connection with Client's use of Bank's remote deposit service, Bank provides Client with Software and such Software provided by Bank operates in a manner which causes Client to breach any warranties under Check 21, in spite of Client's exercise of reasonable care, Client shall report such Software issues to Bank as soon as reasonably practicable, and as more fully described in the applicable User Documentation, and Bank will not hold Client responsible for such breach of warranty.

- (i) If Client uses an Image Cash Letter Service or a Remote Deposit Service, then Client shall pay Bank for the amount of any returned Images or IRDs (including rejected images or rejected IRDs) or any claims for adjustments accepted by Bank, for any IRD or Image which Bank has previously credited to Client's account. Such amounts shall be charged as returns or adjustments to Client's account and are immediately due and payable by Client to Bank. Such amounts appear on Client's reports to the extent agreed between Client and Bank. Certain returned IRDs and/or returned Images may be redeposited, if Client has a separate Reclear Service Agreement or arrangement with Bank. Any IRD created and deposited to Client's account must comply with all requirements mandated by Check 21.
- (ii) If Client uses Bank's remote deposit service, then, it is Client's responsibility to use check imaging equipment acceptable to Bank as specified to Client from time to time ("Hardware") to be installed at Client's site in order to use any such remote deposit service. The terms and conditions pursuant to which the Hardware is obtained, installed and maintained shall be as agreed between Client and the vendor and/or lessor of such Hardware and Bank assumes no responsibility therefore.
- (iii) If Client will be utilizing ACH components of Bank's Remote Deposit Service, Client must execute an agreement concerning such usage, as Bank may specify.
- (iv) If Client has captured Images from checks, Client agrees that Client will securely store safeguard and securely destroy the items as set forth in the User Documentation. Imaged documents (or original documents, if available) must be provided to Bank promptly, at Bank's request, to facilitate investigations related to unusual transactions or poor quality transmissions, or to resolve disputes.

Under all circumstances, when Client uses the Image Cash Letter Service or a Remote Deposit Service, Client agrees that Client provides the same warranties and indemnities that Bank is required to provide under applicable statutes, rules, clearinghouse arrangements, operating circulars and other applicable laws, rules or regulations. Without limiting the foregoing, Client warrants and guarantees that, if Client deposits a demand draft or remotely created check (an unsigned draft or a preauthorized draft) using the Service, the draft or remotely created check was created from paper (or from a paper item) and is authorized according to the terms on its face by the person identified as drawer. Client agrees to indemnify Bank from all loss, expense and liability related to a claim that such draft or check was not created from a paper item and/or was not authorized by the person on whose account it was drawn.

Client agrees to cooperate with Bank fully to facilitate Bank's adherence to guidance provided by the Federal Financial Institutions Examination Council, including guidance concerning risk management of remote deposit capture. For this purpose Client agrees that Bank may mandate specific internal controls at Client locations, audit Client operations, and/or request additional information.

## 2. ADDITIONAL CLIENT RESPONSIBILITIES UNDER ECCHO

- a) In the event Client is a financial institution and thereby eligible for ECCHO membership, Client may use Bank's Image Cash Letter Service or Remote Deposit Service, only if Client is a member of ECCHO.
- b) RETURN OF ON-YOU ITEMS BY ICL  
In the event Client is a financial institution to whom Bank may send, via ICL, On-You items pursuant to ECCHO rules, Client agrees that such ICL transmissions by Bank to Client shall be governed by, and be in accordance with, the applicable provisions hereof and of ECCHO rules.
- c) UNQUALIFIED RETURNS ICLs  
In the event that Client uses the Service to send Bank Unqualified Returns ICLs, Client additionally agrees as follows:
  - (i) Client agrees to send Bank return items only if Client returns the items within the requirements of the UCC and Regulation CC. Client warrants that all returned checks sent to Bank comply with the deadlines of Regulation CC and the UCC and Client agrees to indemnify Bank for any loss or expense incurred by Bank (including attorneys' fees and expenses of litigation) as a result of Client's breach of this warranty.
  - (ii) Client agrees to provide to Bank the same warranties that Bank provides to any receiver of a returned item that Client sends Bank using this Service, whether such warranty is made under Regulation J, Federal Reserve Operating Circular 3, or clearinghouse rules, including ECCHO rules, or other applicable regulations or rules. These warranties include, but are not limited to, a warranty that the image of the return item is an accurate representation of the front and the back of the related check; the electronic / image return accurately corresponds to the electronically returned item being returned; and the electronic / image return is not a duplicate of another electronic / image return.
  - (iii) When Client returns an item using the Image Cash Letter Service, Client agrees that Client provides the same warranties and indemnities that Bank is required to provide under applicable statutes, rules, clearinghouse arrangements, operating circulars and other applicable laws, rules or regulations. Without limiting the foregoing, Client warrants and guarantees that, if Client returns a demand draft or remotely created check (an unsigned draft or a preauthorized draft) using the Service, the draft or remotely created check was created from paper (or from a paper item) and is authorized according to the terms on its face by the person identified as drawer. Client agrees to indemnify Bank from all loss, expense and liability related to a claim that such draft or check was not created from a paper item and/or was not authorized by the person on whose account it was drawn.
- d) REDEPOSITING RETURNED ITEMS  
When Client redeposits a returned item using the Image Cash Letter Service, Client agrees to redeposit the image of the returned check or IRD, which was physically returned to Client, which shall include all endorsements and return item stamps. Client agrees that Client provides the same warranties and indemnities that Bank is required to provide under applicable statutes, rules, clearinghouse arrangements, operating circulars and other applicable laws, rules or regulations and Client agrees to indemnify Bank for any loss or expense incurred by Bank (including attorneys' fees and expenses of litigation) as a result of Client's breach of these warranties.

## 3. BANK RESPONSIBILITIES

- a) Bank will receive Client's deposits and credit Client's account for the amount declared by Client either on the deposit slip, or on the control total accompanying Client's ICL or other electronic image transmission, with Client's deposit subject to later verification by Bank.
- b) If Bank finds an error when Bank verifies Client's deposit, and the error is less than Bank's applicable standard adjustment amount, no correction to the deposit will be made. If the error exceeds such standard adjustment amount, Bank will debit or credit the amount of the error to the deposit account listed on the deposit slip, unless Client and Bank agree otherwise in writing. Bank's standard adjustment amount is subject to change from time to time.
- c) Bank will apply and be responsible for (i) the appropriate endorsement of the bank of first deposit if applicable as more fully described in the applicable User Documentation on the bank of each printed IRD; (ii) the appropriate legend of legal equivalency on the front of the printed IRD; and (iii) appropriate language identifying the reconverting bank if Bank does not clear Client's electronic image transmission through image exchange.

- d) Bank will give Client same-day provisional credit for deposits delivered to Bank before the cutoff time on a Business Day. For deposits delivered to Bank after the cutoff time or on a non-Business Day, Bank will give Client provisional credit on the next Business Day.
- e) If, upon Bank's review of Client's deposit account activity, Bank determines that abuse or unauthorized activity is or may be occurring with respect to deposited demand drafts, Bank may require Client to provide collateral to cover the return of and/or claims against deposited demand drafts. In addition, Bank may require Client to maintain such collateral coverage with Bank beyond termination of Client's use of any deposit service, such as Bank's Image Cash Letter Service and/or of Client's relationship with Bank as a bank customer.

#### 4. USE OF IMAGE CASH LETTER SERVICE WITH RESPECT TO SAVINGS BONDS

If Client is a financial institution, Client may use this Image Cash Letter Service to accept, transmit, deposit, exchange and/or otherwise process Savings Bonds only in accordance with those Savings Bonds Provisions applicable to Client, which include the regulations and operating guidelines of the U.S. Treasury Department.

Under all circumstances, each and every time Client uses this Image Cash Letter Service to accept, transmit, deposit, exchange and/or otherwise process Savings Bonds, in addition to the representations, warranties and undertakings otherwise provided in the Agreement, as amended hereby, Client represents and warrants that Client is an authorized Paying Agent, and that the Savings Bonds which Client accepts, transmits, deposits, exchanges and/or otherwise processes will be eligible for transmission by transmission of images thereof in accordance with the Savings Bonds Provisions as applicable. Client further agrees that, by Client's usage of this Image Cash Letter Service, Client is deemed to provide such other representations, warranties, undertakings and indemnities as are applicable to Client as a Paying Agent or otherwise under the Savings Bonds Provisions. In addition, Client agrees that Bank shall have no liability with respect to any Savings Bonds accepted, transmitted, deposited, exchanged and/or otherwise processed by Client, except such liabilities as may be imposed by operation of law or except where the relevant loss is caused solely by Bank's gross negligence or willful misconduct.

Client agrees to indemnify Bank from all loss, expense and liability arising from or related to Client's breach of any of Client's representations, warranties, undertakings or agreements herein regarding Savings Bonds. Client further agrees that its responsibilities, set forth in the Client Responsibilities section above, including those relating to representations, warranties and indemnities, shall be in addition to those set forth in this section concerning Savings Bonds specifically.

To the extent that any separate agreement between Client and Bank, independent of the Agreement as amended hereby, includes or excludes Savings Bonds, Client agrees that the terms hereof, including Client's obligation to comply with the Savings Bonds Provisions, shall govern in the event of a conflict. In addition, in the event of a conflict between the provisions of this section and any other provisions in this Agreement, the provisions of this section shall govern insofar as the same concern Savings bonds.

#### 5. SECURITY PROCEDURES

Client agrees to use the Security Procedures, if any, when Client makes requests or take actions with regard to the Service. The purpose of the Security Procedures is to verify the authenticity of the request or action and not to detect errors in the transmission or content of any Image or IRD. Each time Client uses a Service, Client represents and warrants to Bank that it has determined that, in view of Client's requirements, the Security Procedure is a satisfactory method of verifying the authenticity of the relevant requests or actions. Client agrees that Bank may act upon any request or action of Client, the authenticity of which has been verified through the use of the Security Procedures.

#### 6. ARMORED CARRIER PROVISIONS

In order to make commercial deposits to or pick up coin and currency orders from one of Bank's cash vaults, armored carrier vaults and/or other locations designated by Bank, Client must contract separately with an armored carrier service that is acceptable to Bank. Any subcontractors of Client's armored carriers who enter such cash vaults must also be acceptable to Bank. Such armored carriers and their subcontractors are Client's agents and Client is liable to Bank for their failure to comply with Bank's requirements. Client's armored carriers and their subcontractors must continue to meet Bank's requirements as they may be in effect from time to time. In the event that they do not, they may be refused entry to Bank's cash vaults, armored carrier vaults, and/or other locations, as applicable.

The Bank requirements include representations and warranties, minimum insurance coverages and other obligations applicable to your armored carriers and their subcontractors, as set forth in our Armored Carrier Requirements document, as in effect from time to time. Client will instruct their armored carriers to comply with Bank's requirements, including, without limitation, providing Bank with such information as Bank may request from them or their subcontractors in support of these requirements.

#### CHANGES IN DELIVERY LOCATIONS

If at any time Client would like to add or delete those locations of Client's that will deliver commercial deposits to Bank or order coin and currency from Bank, Client must notify Bank of such change in advance, by the deadline specified in the applicable User Documentation, or Bank may decline to accept such deposits and/or process such additional orders. With respect to commercial deposits, in the event Bank takes receipt and open bag(s) of, or otherwise access, coin and currency delivered to Bank cash vault(s) from an added or deleted location, regarding which Client has failed to provide the requisite advance notice as set forth herein, Bank shall not by such actions be deemed to have accepted such coin and currency for deposit, and Bank shall use commercially reasonable efforts to facilitate the return to Client of such coin and currency, with such facilitation to be initiated within a reasonable period of time from the date the coin and currency was delivered to Bank cash vault(s) without the appropriate advance notice.

#### SUPPLEMENTAL SUSPENSION AND TERMINATION PROVISIONS

If at any time Bank believes (i) that Bank's provision of the Service to Client may create a risk of financial loss for Bank or result in an unacceptable credit exposure to Bank, (ii) that an account associated with the Service may be subject to irregular, unauthorized, fraudulent or illegal activity, or (iii) that Client's armored carrier and/or their subcontractors create an unacceptable risk exposure to Bank, Bank may, in its sole discretion, immediately, without prior notice to Client, suspend or modify Bank's provision of the Service, or deny Client's armored carrier and/or their subcontractors access to Bank's cash vaults, armored carrier vaults and/or other locations until such time that such risk, exposure, or activity is eliminated or otherwise resolved to Bank's satisfaction. Additionally, Bank may suspend Bank's provision of the Service if Client does not use it for such period of time as Bank may establish from time to time. Bank may terminate the Service effective immediately, without prior notice to Client, if the account necessary to provide the Service is closed. These suspension and termination rights are in addition to any such rights that Bank may otherwise have under its agreements with Client.

#### CONTROLLED BALANCE ACCOUNTS (a "Service")

"Service" means each Controlled Balance Accounts Service which lets Client control the transfer of funds between accounts maintained with Bank. Zero balance accounts, also known as ZBAs, are covered under these Services. These Services may be restricted to certain account types.

#### 1. CONTROLLED BALANCE ACCOUNTS SERVICE

- a) Transfers Client makes from a U.S.-domiciled money market account using these Services are considered preauthorized transfers, are counted toward the number of transactions Client is permitted each month and may not be made to a checking account with an overdraft credit facility.

- b) Client may instruct Bank to make either date-related (where available) or balance-related transfers. Once Client instructs Bank to transfer funds between accounts, transfers will begin on a mutually agreed upon date or, for accounts domiciled in the United States of America, either immediately or on the date Client specifies.
- c) With a date-related transfer, funds are transferred in either direction between accounts. Bank transfers funds on the dates and for the amounts Client specifies. Both interstate and intrastate funds transfers are permitted as long as Client meets the requirements for the account type(s), transfer date and account location(s). If a date Client specifies is a non-Business Day, Bank makes the transfer on the next Business Day.
- d) With a balance-related transfer, Client may have funds transferred to an account when the balance falls below a certain amount or, from an account, when the balance rises above a certain amount, or both. Bank transfers the amount required to meet the account balance Client specifies.
- e) Unless Client and Bank have otherwise agreed in writing, Client may elect to have funds transferred to or from accounts of a U.S. Subsidiary; provided that (i) the U.S. Subsidiary's accounts are domiciled in the United States of America, (ii) Client represents and warrants that such U.S. Subsidiary has authorized Bank to transfer funds between its accounts and Client's accounts and between its accounts and other accounts in the Service relationship via transfers through Client's account and (iii) Client provides Bank with such documentation as Bank may request in connection with such transfers.

#### **Data Aggregation and Usage (a "Service")**

"Service" means a data aggregation, information reporting and data manipulation service which provides Client with on-line access to information reporting services. These services include not only data collection and manipulation but also information reporting, cash forecasting, and automated general ledger downloading, as applicable. The availability of one or more of the foregoing services may be dependent upon various factors, including the on-line channel(s) pursuant to which the Service may be accessed, and not all functionalities of the Service may be available for Client's use. Subject to the foregoing limitations concerning availability, upon Client's registration for the Service and completion of any other requirements, including identification of those accounts which Client wishes to be included for use with the Service, Client may use Client's on-line access to retrieve, analyze and/or manipulate data from Client's accounts with Bank and with third parties. Detailed information regarding Bank's Service, including information concerning the availability of the various functionalities, is set forth in the User Documentation.

Client agrees to use the Security Procedures Bank may designate from time to time with regard to access to the Service, verification of the authenticity of actions taken in connection with the Service, and safeguarding of correct user identification codes and passwords, as set forth in Bank's User Documentation.

#### **DATA AGGREGATION**

Client must identify for Bank those accounts which Client wishes to be included for use with the Service. Client must be the legal owner of, or have the legal right to access, such accounts. With regard to the accounts Client identifies, Client must obtain and provide to Bank any applicable third party consents and comply with all other requirements, including data feed requirements that Bank may specify from time to time as necessary or appropriate for Bank's receipt or retrieval of this account information. With regard to the foregoing, Client agrees to the following:

- Client represents that Client is a legal owner of, or has the legal right to access, the accounts at third party web sites which Client designates to Bank for information aggregation, information reporting or other purposes in connection with Bank's provision of the Service. Client further represents that Client has the authority to designate Bank and Bank's service provider(s), if applicable, as Client's agent and attorney-in-fact as set forth below.
- Client authorizes Bank, as Client's agent and attorney-in-fact, to access third party web sites, retrieve or receive account information, and use Client's account information for the purposes of providing the Service, and Client further authorizes Bank to take any action that Bank deems necessary and appropriate to facilitate the foregoing with respect to Client's accounts at third parties.
- Third party account providers shall be entitled to rely upon the above authorization and power of attorney granted by Client.
- CLIENT AGREES AND ACKNOWLEDGES THAT, WHEN BANK ACCESSES AND RETRIEVES OR RECEIVES INFORMATION FROM THIRD PARTY WEB SITES, BANK ACTS AS CLIENT'S AGENTS, AND NOT THE AGENTS OF THE THIRD PARTY.
- Bank does not have any responsibility or liability for transactions and/or inquiries Client makes with respect to any accounts Client has, or may legally access, with third parties, and all fees charged by any third parties with regard to actions involving Client's accounts with such parties are Client's sole responsibility. Client agrees to abide by the terms and conditions governing Client's accounts with third parties, and to resolve any dispute Client may have regarding such accounts with the relevant third party according to the relevant terms and conditions binding upon Client and the third party, without any involvement or liability on Bank's part.
- Subject to any constraints of third parties with whom Client has accounts, in providing Bank's services Bank will make reasonable efforts to comply with Client's instructions, given in accordance with Bank's designated procedures, regarding the timing and frequency of account data pulling activities. However, account information reflected via Client's use of the Service will constitute the most recent refresh successfully completed, but may not be accurate or current. Bank is not liable for any errors or delays in the content of such account information or for any action, and/or its consequences, which Client may take in reliance upon such information. Bank does not endorse or recommend the services of any unaffiliated third party whom Client selects for purposes of using the Service's capabilities, including information aggregation capabilities, and from whom Bank collects Client's account information pursuant to Client's authorization.

#### **DATA MANIPULATION**

Using the Service's data manipulation capabilities, Client may use various tools to populate and make other use of spreadsheet(s) as set forth in the User Documentation. With regard to the foregoing, Client agrees as follows:

- Client agrees and acknowledges that Bank is not responsible for any results associated with Client's use of any spreadsheet and/or similar representation, and/or Client's reliance thereupon; the appropriateness of the calculations performed in connection with Client's use of any spreadsheet or similar representation; the timeliness of any data populated in any spreadsheet or similar representation, as such data may not reflect true "real time" figures; the accuracy of any data provided by third parties, regardless of whether such data is populated by Bank or otherwise; and any data input by Client.

#### **CASH FORECASTING**

Using the Service's cash forecasting capabilities, Client may obtain estimates, analyses and other information based upon automated cash flow calculations. For these cash flow calculations, Client may select relevant factors, such as actual account and user history, historical patterns of check clearing times and seasonality trends. Client may use data from cash forecasting to take such steps (e.g. funds transfer) as Client designates via certain other services for cash management purposes. Client may also use the Service to obtain and implement recommended actions for managing liquidity. With regard to the foregoing, Client agrees as follows:

- Client agrees and acknowledges that, in connection with the Service's cash forecasting, Bank does not provide Client with any guaranty or warranty regarding future payments, collections, cash requirements, funds availability or other circumstance, and Client agrees that Client will take such steps as Client deems reasonable to assess, verify, test and otherwise evaluate any forecasts or recommended actions provided pursuant to the Service.
- In providing Client with various options, calculations and recommended actions to assist Client with cash forecasting, Bank does not represent that any such options, calculations and/or recommended actions are advisable, suitable or reliable for Client's use. Client expressly agrees and acknowledges that there are inherent risks in utilizing cash forecasting tools and Client assumes all liability in connection with such utilization.

#### **AUTOMATED GENERAL LEDGER INTERFACE**



Client may use the Service to access a capability which allows Client to automatically download file(s) from Client's general ledger. In the event Client elects to download general ledger information, Client is solely responsible for verifying the accuracy, scope, completeness and timeliness of this information. Client agrees and acknowledges that neither Bank nor Bank's service provider(s) undertake to reconcile such general ledger information in any manner or for any purpose, prior to, during or after downloading of this information to the Service. Client also agrees and acknowledges that Bank's provision of this capability does not create any duty of Bank either with regard to discrepancies or unauthorized actions or events or with regard to Client's responsibilities regarding accurate record keeping.

#### DISCLAIMER

Bank is not responsible for the accuracy, timeliness, scope, reconciliation and/or use of account and other information accessed or utilized in connection with the Service. Client agrees and acknowledges that all services and features utilized, and all actions taken by Client in connection with the Service are taken in Client's sole discretion and under Client's sole responsibility.

Without limiting the foregoing, Client agrees that the foreign exchange rates provided in connection with the Service are indicative only and are not live dealing rates. These indicative rates are provided by Bank solely as a courtesy. Bank does not accept any responsibility or liability for the accuracy or completeness of any indicative rates or for any reliance by or any other person on such rates. The indicative rates are derived from sources and models that Bank believes provide a reasonable approximation of market rates at the time of calculation. Rates based on other models or differing assumptions or for different purposes may be materially different. With respect to Client's receipt of indicative rates in connection with the Service, Client has full responsibility for all valuations of transactions for Client's own financial and regulatory reporting. Prices or valuations derived from use of indicative rates provided in connection with the Service do not necessarily represent or reflect prices or amounts at which any transaction could or would be entered into at this time or any other time, with Bank or with any other party.

In addition, Bank is not responsible for any data that is lost or destroyed in connection with Client's use of the Service. Without limiting the foregoing, Bank will not be responsible for any mechanical hard drive failure or other system failure, or if the Software is disabled (or "locked-up") as a result of Client's installation of other computer software on the personal computer, workstation or network on which Software is installed. Bank strongly recommends that Client take the necessary measures to ensure that Client performs daily back-ups of Client's data and the hard drives of the personal computers and/or services used in connection with the Software.

#### ELECTRONIC STOP PAYMENTS (a "Service")

"Service" means each Electronic Stop Payment Service, which allows Client to electronically place or cancel a Stop Payment Request. Stop payment requests made in person, by telephone or in writing are subject to the terms of the Account Agreement.

#### 1. REQUESTING STOP PAYMENTS

- a) Client shall include in each Stop Payment Request the Magnetic Ink Character Recognition (MICR) serial number and exact amount (dollars and cents) of the check for which payment is being stopped and the account number on which the check is drawn. Client understands and agrees that Bank can only stop a check that shows exactly the same MICR serial number and amount of the check as that included in the related Stop Payment Request since Bank's computer system identifies a check on the basis of the MICR serial number and the exact amount of the check.
- b) A Stop Payment Request will not be effective until Bank reviews the applicable records for the time period specified in the applicable User Documentation, determines that the check which is the subject of the Stop Payment Request has not been paid during that period and responds to Client with an online status of Client's request of "accepted" (rather than "rejected" or "pending").
- c) Client shall review its account statements prior to transmitting any Stop Payment Request and shall not transmit any Stop Payment Request relating to a check that has been shown to be paid on such statements. If a check does not appear as paid on a statement with the correct check serial number due to defective or damaged MICR information on the check, Bank is not liable for processing the check.
- d) Client acknowledges that under certain circumstances, Bank may pay a check even if a Stop Payment Request is in effect (for example, where a branch (or banking center) of Bank or any Bank affiliate becomes a "holder in due course" of the check being stopped).
- e) The procedures for placing and acknowledging Stop Payment Requests are described in the applicable User Documentation.
- f) A Stop Payment Request shall terminate at the end of the period designated in the applicable User Documentation unless it is renewed or canceled earlier. A Stop Payment Request shall be canceled automatically when the account on which the check is drawn is closed or transferred.

#### eSTATEMENTS & NOTIFICATIONS (a "Service")

#### eSTATEMENTS AND NOTIFICATION SERVICE

The eStatement Service, where available, allows Client to receive account statements, account analysis, pricing information and other information relating to account activity or services, transactional activity and/or cash management services with Bank and/or its affiliates electronically. Statements with respect to which Client opts for electronic delivery will be selected by Client as outlined in the applicable User Documentation.

The Notification Service, where available, allows Client to receive certain types of notices related to various Services through Bank's notification services ("Notification Services"). In connection with the Notification Services, Bank will provide notices to Client that are associated with and related to the Services provided by Bank to Client under the terms of this Amendment or other agreement between Client and Bank. The types of Notices relating to a particular Service are further described in the User Documentation.

#### 1. SUPPLEMENTAL REPRESENTATIONS AND WARRANTIES

By electing to receive Electronic Statements on any set-up form, Client represents and warrants to, and agrees with Bank and its affiliates that, (i) the e-mail address(es) to which Electronic Statements and Regulatory Information shall be sent are owned by Client and/or Client's authorized representative(s) and Client and/or Client's authorized representative(s) have access to such e-mail notifications informing it that Electronic Statements are available; (ii) it can access the Electronic Statements and Regulatory Information; (iii) Client will be responsible for the accuracy and validity of all e-mail address(es) provided to Bank by Client and/or Client's authorized representatives and Client shall notify Bank prior to any change of its e-mail address(es) for receipt of notices that Electronic Statements are available; (iv) Client understands and acknowledges that Electronic Statements shall be subject to reconciliation provisions in any other applicable agreement between Client and Bank.

#### 2. CLIENT RESPONSIBILITIES

Client agrees Notices are in addition to and not a replacement of or substitution for the Services received by Client under the the General Provisions and applicable Service Addenda ("Agreements") or any other agreement between Client and Bank. In addition, the Notification Services are governed solely by the terms of this Addendum, and further, the terms of this Addendum relating to Notification Services do not amend or otherwise change the terms of the Agreements or any other agreement between Client and Bank. As set forth in the User Documentation, Client's system administrator(s) shall instruct Bank with respect to use of the Notification Services by Client.

Client acknowledges and agrees that the Notices are provided as a convenience service exclusive of the terms of the Booklet or any other agreement and as such Client (a) acknowledges and agrees that Client may not rely on the receipt or expected receipt of a Notice, or the contents (or lack thereof) of any Notice, to relieve

Client of any of Client's obligations or duties under the terms of the Agreements or otherwise, and (b) must continue to use the Services in compliance with the applicable terms of the Agreements or such other agreement between Client and Bank. Notwithstanding any terms in the Agreements to the contrary, Client agrees that Bank shall not be liable in any case: (i) for any failure to provide or any delay in providing any Notice, (ii) if any Notice is intercepted or received by an unauthorized person or entity, and (iii) if any of the Notices are inaccurate or incorrect in any way.

With regard to the eStatements Service Client consents both to electronic delivery of such Statements and to electronic delivery of regulatory information that Bank or its affiliates would typically include in mailings of paper Statements, such as mandated disclosures. Notwithstanding the foregoing, Bank may, at Bank's option, deliver paper Statements and/or Regulatory Information at any time. In addition, Client may request a paper Statement and/or Regulatory Information by contacting Client's service representative. A fee may apply for such requests.

#### **IMAGE ACCESS (a "Service")**

"Service" means each Image Services which makes available to Client digital images of checks, drafts, deposited items, returned items, notices of debit adjustments (with respect to this Addendum, "debits"), and/or notices of credit adjustments and deposit slips (with respect to this section, "credits") with respect to specified accounts established with Bank.

#### **1. IMAGE SERVICES**

- a) Digital images, with respect to the Service, will be made available to Client at such times as may be set forth in the applicable User Documentation or as otherwise established by Bank. Such services do not include Image Lockbox Services, which are provided in connection with Bank's Lockbox Services.
- b) Images may be made available to Client by Websites, file transmission or by CD-ROM/DVDs. Images made available via Website access include checks, drafts, deposited items, returned items, debits and credits. Images available via file transmission include checks, drafts, returned items, debits and credits. Digital images made available via CD-ROM/DVDs, which may be accessed through the use of CD-ROM/DVD software that Bank provides to Client, include checks, drafts, debits and credits.
- c) If Client elects to receive Account Reconciliation reports and/or Demand Deposit Account (DDA) statements on a CD-ROM/DVD, images of such reports and/or statements will also be made available to Client by CD-ROM/DVD or image transmission.
- d) If an image of a check or draft is missing or illegible, Bank will provide Client with a copy upon Client's request. Client's request must include the account number, the check serial number, the exact amount (dollars and cents) of the payment and the date payment was made. Bank may assess a fee for copies it provides to Client. Bank will not be liable to Client for failure to provide copies by a given time or for failure to provide copies if Bank is not, in Bank's sole discretion, reasonably able to do so.

#### **2. LIMITATION OF LIABILITY; CLAIMS**

- a) Notwithstanding the Limitation of Liability section of the General Provisions, Bank will not be liable for damages arising under any Service in excess of the amount of the check, draft or miscellaneous debit giving rise to Client's claim.
- b) Any claim Client makes for damages arising out of this Agreement must include the account number, the check serial number, the exact amount (dollars and cents) of the payment, the date the payment was made, the name of the payee, a detailed explanation of how the claimed loss occurred and the name, address and phone number of the payee.

#### **3. TERMINATION**

Notwithstanding the Termination or Suspension and Termination section, as applicable, of the General Provisions, with respect to a Service using CD-ROM/DVDs, Client or Bank may terminate such Service upon at least 30 days prior written notice to the other party; provided, however, that the termination date may not be earlier than the first day of the statement period immediately following the statement period during which such notice is given.

#### **4. SUPPLEMENTAL CD-ROM DVDs SOFTWARE LICENSE PROVISIONS**

- a) This section supplements the Software License Agreement, entered into between Client and Bank as a supplement to the General Provisions, with respect to Software Bank provide for the Image Services, under which Bank provide Clients with CD-ROM/DVDs, and shall control in the event of conflict between it and the balance of the Software License Agreement. This section does not apply to the Image Lockbox Service. If Bank provides Client a CD-ROM/DVD which contains a media defect or is unreadable in its entirety, Client must notify Bank in writing of such defect within 30 days after the CD-ROM/DVD creation date appearing on the CD-ROM/DVD. If Client provides Bank with such notice within such time period, Bank will use reasonable efforts to replace the CD-ROM/DVD. Client acknowledges and agrees that this shall be Bank's sole obligation and Client's sole remedy with respect to any such defects in the CD-ROM/DVD.
- b) Notwithstanding anything to the contrary in the Suspension and Termination section of the General Provisions, if an Image Service under which Bank provides Client with CD-ROM/DVDs is terminated for a reason other than Client's breach of any terms and conditions in this Agreement, Client may continue to use the Software and Materials for such Service after termination of such Service for six months, or for such longer period as Bank approves, subject to the terms of this section or such other software license agreement as Bank, at Bank's election, require Client to sign for this purpose. At the end of such six-month or longer period, the license for Client's use of such Software and Materials will then terminate automatically.

#### **INFORMATION REPORTING (a "Service")**

"Service" means each Information Reporting Service which makes certain account, transaction and related information available to help Client control and manage its accounts.

#### **1. INFORMATION REPORTING SERVICE**

- a) A Service may include information generated from other treasury services provided to Client. A Service is comprised of one or more features selected by Client, which are described in the applicable User Documentation.
- b) Client shall notify its Bank representative of the features and accounts for which it requests Bank to provide a Service. In addition to making Client's account information at Bank available, a Service can make available information regarding accounts at Bank belonging to an Other Company. Certain Services can also make available information regarding accounts of Client or accounts of an Other Company maintained at another financial institution.
- c) If Client elects to have accounts of an Other Company at Bank reported to it with a Service and the Other Company is not a Subsidiary, Client agrees that, for each such account, the Other Company will provide Bank with its written authorization, in a form acceptable to Bank, so Bank can make the Other Company's information available. However, Client does not need to have the Other Company provide this authorization if (i) the Other Company's accounts are domiciled in the United States of America and (ii) Client represents and warrants to Bank that the Other Company is a U.S. Subsidiary and that the Subsidiary has authorized Bank to make its account information available to Client.
- d) If Client elects to have its accounts, or accounts of an Other Company, that are maintained at another financial institution reported to it with certain Services, Client agrees that it and the Other Company will authorize the other financial institution to make the reporting information available to Bank and to take all other actions necessary for Bank to provide the Service.

- e) Information reported on a current day basis is subject to updating and, therefore, at any point in time may not reflect the information on the Bank's records at such time. In addition, such information may be subject to adjustment upon final posting.
- f) Bank shall not be responsible for the accuracy or timeliness of any information provided to Bank by any other financial institution.
- g) If Client gains, through Client's use of one or more treasury services, access to any information relating to any person other than Bank, Client or any of Client's Subsidiaries which have authorized Client's receipt of such information, Client agrees that Client will treat such third-party information as strictly confidential and Client shall not disclose it to any person outside Client's company or to any persons within Client's company except those who have a need to know. Further, Client shall ensure that adequate measures have been taken to prevent the unauthorized use of any such third-party information. Client agrees that Client will not use any such third-party information for Client's own purposes other than in a communication to Bank relating to the respective treasury service.

#### **LOCKBOX SERVICE (a "Service")**

"Service" means each Lockbox Service which involves processing only Checks that are received at a Lockbox Address, which excludes without limitation cash, stock certificates and tangible valuables.

#### **1. LOCKBOX SERVICE**

- a) Bank will provide Client with a Service for a Lockbox Address when Bank's then current set-up documents for the Lockbox Address have been completed based on Client's instructions to Bank.
- b) Client shall instruct its Clients to mail Checks it wants to have processed under a Service to the applicable Lockbox Address. Bank or its agents will have unrestricted and exclusive access to the mail (which may be accessed in image form) sent to each Lockbox Address. Bank will not be liable to Client for losses Client suffers if anything other than checks or other payment instruments are sent to the Lockbox Address.
- c) Any mail containing Client's Lockbox Address number delivered to and received by Bank at its lockbox operations location (instead of the Lockbox Address) may be handled by Bank, and Bank reserves the right to deposit the items, as if such mail or items had been received at the Lockbox Address.
- d) As specified in the set-up documents, Bank will process Checks for provisional credit to the account designated by Client at Bank. Bank will handle Checks received at a Lockbox Address in accordance with the applicable Account Agreement and Bank's availability schedule, as if the Checks were delivered by Client to Bank for deposit to the designated account, except as modified by this CME.
- e) Client or Bank may terminate a Service with respect to a particular Lockbox Address upon 30 calendar days prior written notice to the other party. Bank may terminate a Service with respect to a particular Lockbox Address effective immediately at any time upon the occurrence of any of the events specified in subsection 9(b) of the General Provisions. Bank will send Client notice of the termination

#### **2. PROCESSING**

For image lockbox, all envelopes will be opened and scanned once received at Bank's lockbox processing site. Images will then be used to identify Client's lockbox address and to process each transaction for deposit using Client's predetermined lockbox processing instructions. For paper lockbox, Bank will open the envelopes picked up from the Lockbox Address and remove the contents. Checks and other documents contained in the envelopes will be inspected and handled in the manner specified in the set-up documents for the applicable Lockbox Address. Bank will capture and report information related to the lockbox processing, where available, if Client has specified this option in the set-up documents. Bank will endorse all Checks it processes on behalf of Client and deposit them in the account Client designates for the applicable Service.

- a) *Acceptable Payees.* For each Lockbox Address, Client shall provide to Bank the names of Acceptable Payees in writing. Bank will process a Check only if it is made payable to an Acceptable Payee and if the Check is otherwise processable. Client warrants that each Acceptable Payee is either Client or an affiliate of Client. If an Acceptable Payee is an affiliate, then Client also warrants that such Acceptable Payee has authorized Checks payable to it to be credited to the account designated by Client. Bank may require written authorization from any Acceptable Payee other than Client. Bank may treat as an Acceptable Payee any variation of any Acceptable Payee's name that Bank deems to be reasonable. Notwithstanding the preceding paragraph, if this option is available and if Client instructs Bank to process checks received at the Lockbox Address made payable to any name, Bank will process the check made payable to any name, if the check is otherwise processable, and deposit it to the account Client designates for a Lockbox Service. Client warrants that the payee of each such check has authorized checks payable to it to be credited to the account Client designates for a Lockbox Service. Bank may require written authorization from any such payee.
- b) *Payment in Full Check.* If this option is available and if Client instructs Bank not to process a Check which bears a handwritten or typed notation "Payment in Full" or words of similar import on the face of the Check, Client understands that Bank has adopted procedures designed to detect Checks bearing such notations; however, Client agrees that Bank will not be liable to Client for losses Client suffers if Bank fails to detect Checks bearing such notations.
- c) *Unsigned Check.* If Bank processes an unsigned Check as instructed in the set-up documents and the Check is paid, but the account owner does not authorize payment, Client agrees to indemnify Bank, the drawee bank (which may include Bank) and any intervening collecting bank for any liability or expense incurred by such indemnitee due to the payment and collection of the Check.

#### **3. LOCKBOX MATERIALS**

Each Business Day, Bank will prepare and send remittance materials (images via internet electronic file and/or paper packages) relating to each Lockbox Address to Client at the address specified by Client for each Lockbox Address unless otherwise agreed with Client. For the wholesale Lockbox Service, the return of paper documents may include, but is not limited to, any checks (which checks may be in the form of Image Replacement Documents) not processed in accordance with the set-up documents along with requested remittance materials in the form of copies, versus the originals.

If Client subscribes to the Image Lockbox Service, unless Bank agrees otherwise, Bank will retain images of processed lockbox checks, remittance documents and correspondence as well as original remittance documents for a current historical archive period as Bank communicates to Client from time to time. The images will be sent to Client via an encrypted CD-ROM or other encrypted medium as specified in the User Documentation. Upon receipt, Client must promptly notify Bank if such CD-ROM contains a media defect or is unreadable in its entirety. Subject to the terms herein regarding the retention of lockbox images, Bank will use reasonable efforts to replace the CD-ROM, which shall be Bank's sole obligation and Client's sole remedy with respect to defects in the CD-ROM. If Client elects to not receive an encrypted CD-ROM of the lockbox images, Bank will have no obligation to provide copies of such items, other than a copy of the check image.

#### **POSITIVE PAY (a "Service")**

"Service" means each Positive Pay Service which allows Client to identify and make payment decisions regarding exception items.

#### **1. POSITIVE PAY SERVICE**

- a) With a Service for paper check issuance, Client can identify exception items, request photocopies and/or electronic images of exception items and instruct Bank whether to pay or return those items. The options and features available for a Service are described in the applicable User Documentation.
- b) In many locations, if Client sends Bank an issue file, Client's information may be made available at the teller line. This is called "Teller Positive Pay," which helps identify fraudulent checks that are presented for payment or deposit at many of Bank's banking centers. Where available, Client also has the option to include payee names with the information available at the teller line. This service is called "Payee Positive Pay." With Teller Positive Pay, or Payee Positive Pay, the decision whether to pay such an item may be made by Bank at the teller line.
- c) With an ACH Positive Pay Service, for ACH Entries, where available, Client can identify exception Entries, and instruct Bank whether to pay or

return those Entries. An exception item is an ACH Entry not previously authorized by Client.

## 2. AUTHORIZED PERSONS

- a) Before using a Service, Client shall provide Bank in a form or manner acceptable to Bank, a list of persons authorized by Client to perform certain duties in connection with a Service. Client shall update such list from time to time as necessary to reflect any changes in authorized persons. Bank may rely on instructions from any person identifying himself or herself as a person authorized by Client to give such instructions.
- b) Client shall notify its Bank representative of the accounts for which it requests Bank to provide a Service and its selection of either online processing or manual processing, where available. With online processing, Client may access the daily reports of exceptions via one of Bank's Websites. Using that system, Client must then notify Bank by the appropriate deadlines which exception items to pay or which to return. Notwithstanding any courtesy alerts Bank may provide to Client regarding reports of exception items, Client is responsible for checking the applicable Website for daily reports of exception items and notifying Bank by the appropriate deadlines which exception items to pay or which to return. Client may request photocopies of exception items, which Bank will fax to Client, as more fully described in the applicable User Documentation. If available, Client may arrange to receive and display electronic images or information regarding exception items. With manual processing, where available, Bank will provide Client a report of exception items for its review. Client must then notify Bank by the appropriate deadlines which items to pay or which to return.
- c) On each Business Day, for paper items, Bank provides Client a report of checks presented to Bank for payment on the prior Business Day and which Bank has identified as exceptions, based on information Client has provided to Bank and as more fully described in the applicable User Documentation. Exceptions are determined by comparing checks presented to Bank (either by other depository institutions or, where applicable, for cashing at one of Bank's banking centers) with lists of checks issued or canceled by Client which Client transmits electronically to Bank by the time specified in the applicable User Documentation. Alternatively, where available Client may choose an option under which Bank reports all checks presented for payment. In that case, Bank will treat all checks it receives as exception items.
- d) On each Business Day, for ACH Entries, Bank notifies Client of ACH Debit and Credit Entries presented to Bank on that Business Day and which Bank has identified as exceptions based on authorization information Client has provided to Bank and as more fully described in the applicable User Documentation. Exceptions are determined by comparing ACH Entries presented to Bank (including by other depository institutions, ACH Operators or, by Bank) with authorization instructions which Client has provided. Alternatively, Client may choose not to authorize any ACH Entries, in which case Bank will treat all such ACH Entries as exception items.
- e) If Client also subscribes to Bank's services, for ACH blocks and filters (authorizations) Client will still need to make Client's pay or return decisions under Client's ACH Positive Pay Services. Such decision will supersede the terms contained in Client's service agreement for ACH block and filter (authorization).
- f) For ACH Entries, on the same day Bank reports exception Entries to Client, Client must notify Bank, by the deadline specified in the applicable User Documentation, which ACH Entries Client wants Bank to pay/accept or which to return. If Client fails to notify Bank by the deadline, Bank will handle the exception items in accordance with the prescribed default procedure which Client may choose where the choice is available as outlined in the User Documentation. Where required, Client will indicate which ACH Entries Client wants Bank to return, having been deemed by Client to be fraudulent. Bank deadlines, default procedures, return procedures and procedures for authorizing ACH Entries are described in the applicable User Documentation. In order to assist Client in making its decision whether Bank should pay or return exception items, Client may wish to contact its trading partner or ACH customer support for further information. This will not however extend Client's deadlines to pay or return.

## 3. ONLINE OPTION

Client may access the daily reports of exception items via one of Bank's Websites. Using that system, Client must then notify Bank by the appropriate deadline which exception items to pay/accept or which to return. If Client fails to notify Bank by the deadline, Bank will handle the exception items in accordance with the prescribed default procedure as outlined in the User Documentation. Client may wish to contact its trading partner or ACH customer support for further information. This will not however extend Client's deadlines to pay or return.

## 4. MANUAL OPTION

- a) Where a manual option is available, Bank provides Client a report of exception items. Client must then notify Bank which items to pay/accept or which to return. If Client fails to notify Bank by the deadline, Bank will handle the exception items in accordance with the prescribed default procedure as outlined in the User Documentation.
- b) Where a notification option is available, Client may request to receive certain types of notifications of its exception items. These notifications are further described in the applicable User Documentation.
- c) For paper items, Client must notify Bank the same day Bank reports exception items to Client, by the prescribed deadline specified in the applicable User Documentation, which checks Client wants Bank to pay or which to dishonor and return. If Client fails to notify Bank by the deadline, Bank will handle the exception items in the manner described under the default procedure which Client may choose where the choice is available as outlined in the User Documentation. Where required, Client will indicate which checks Client wants Bank to return are deemed by Client to be fraudulent. Bank's deadline, default procedures and procedures for acknowledging pay and return requests are described in the applicable User Documentation. Client may request a copy of any exception item in order to assist in making a pay/no-pay decision.

## 5. CLIENT ACKNOWLEDGMENTS

- a) Client authorizes Bank to return or to pay any check or Entry in accordance with Client's instructions and the default procedure set forth in the applicable User Documentation.
- b) Client acknowledges that Bank will have no liability for payment of a check or Entry which is unauthorized or fraudulent if (i) the check or Entry was included in a report of exception items, (ii) Client has not selected a return default, where available for exception items, and (iii) Client did not timely instruct Bank to return the check or Entry.
- c) Client acknowledges that a Service does not preclude Bank's standard check processing or ACH processing procedures, which may cause a check or Entry to be dishonored even if Client's instructions or the default procedure, where available does not otherwise require Bank to return such check or Entry.
- d) Client acknowledges that if Bank receives an ACH Entry after the deadline, which is identified as an exception item, the exception item will be handled as more fully described in the applicable User Documentation.
- e) Client acknowledges that Bank's ACH Positive Pay Services are intended to be used to identify and return ACH Entries which Client suspects in good faith are fraudulent. They are not intended to be used as a substitute for authorization instructions, delaying Client's pay/accept return decisions on exception items, including and not limited to stop payment orders on ACH Entries which are not suspected in good faith to be unauthorized. If Bank suspects or deems, in its sole discretion, that Client is using these Services contrary to those intentions. Bank may require Client to provide evidence that ACH Entries Bank returns pursuant to Client's instructions were in fact unauthorized. In addition, Bank may hold Client liable for losses Bank sustains on ACH Entries which Bank is requested to return under these Services and which Client does not reasonably establish as unauthorized ACH Entries.
- f) Client acknowledges that, if Client has Bank's Teller Positive Pay Service or Payee Positive Pay Service, the decision whether to pay or not pay an item may be made by Bank at a banking center.
- g) If Client declines to use a Teller Positive Pay Service or Payee Positive Pay Service offered by Bank, or fails to meet the applicable issue file deadlines in the User Documentation, Client also acknowledges that, as between Client and Bank, Client will bear the full loss on checks which are

drawn on Client's accounts with Bank and paid or deposited by Bank, in good faith, if the checks are counterfeits or bear unauthorized alternations to the amounts or unauthorized maker signatures, even if such checks would otherwise be exception items.

- h) Client acknowledges that Bank's Positive Pay Services are intended to be used to identify and return checks which Client suspects in good faith are fraudulent. They are not intended to be used as a substitute for stop payment orders on checks which are not suspected in good faith to be fraudulent. If Bank suspects or deems, in its sole discretion, that Client is using these Services contrary to those intentions, Bank may require Client to provide evidence that checks Bank returns pursuant to Client's instructions or the return default, if applicable, were in fact fraudulent. In addition, Bank may hold Client liable for losses Bank sustains on checks which Bank is requested to return under these Services and which Client does not reasonably establish as fraudulent checks.
- i) Bank will use reasonable efforts under the circumstances to respond promptly to proper requests for copies of paper exception items if image items are unavailable but Client acknowledges that Bank's failure to provide copies of paper exception items does not extend the deadlines by which Client must notify Bank of Client's pay/no-pay decisions.
- j) Client acknowledges that if it wishes to contact its trading partner or ACH customer support for further information, this will not however extend Client's deadlines to pay or return.
- k) Client acknowledges that it must fulfill its responsibilities in connection with a Service on each Business Day.
- l) In the event Bank is required to utilize its business continuity procedures, Bank will, if feasible, apply the default procedure in the applicable User Documentation. In some cases, Bank may attempt to contact Client.
- m) If Client chooses not to use Positive Pay services but continues to use any disbursement accounts, then Client will be deemed to have agreed that, as between Client and Bank, Client will bear any resulting check fraud losses that would have otherwise been prevented by proper use of available Positive Pay services.

#### **RECLEAR SERVICE (a "Service")**

"Service" means each Reclear Service which involves resubmitting a returned check or other payment instrument, which has been returned to Bank as unpaid with the notation "refer to maker," "nonsufficient funds" or "uncollected funds," through the check clearing system a second time in an attempt to clear the check.

#### **1. RECLEAR SERVICE**

- a) Client shall specify, in a form acceptable to Bank, the accounts for which Client wants a Service. For these accounts, Bank will follow its standard procedures to reclear those checks or other payments instruments deposited by Client which have been returned unpaid by the paying bank.
- b) Bank agrees to submit a returned check or other payment instrument through the clearing system a second time in an attempt to clear the check or other payment instrument.
- c) Client agrees that Bank is not required to send return item notices to Client for recleared checks or other recleared payment instruments.
- d) If a check or other payment instrument is returned again, Bank will debit Client's account of deposit, unless Client has indicated another of its accounts to be debited. Bank generally totals Client's returned items each day, debits Client's account for the total amount and then sends the returned checks and payment instructions to Client. Bank will return such items to Client and such items will serve as Client's notice of the non-payments.

#### **SOFTWARE LICENSE AGREEMENT**

"Services" means each service Bank provides to Client in which Bank provides Software to the Client.

#### **1. LICENSE**

- a) This License applies to all Software Bank provides to Client, unless Bank provides Client with a separate license agreement for specific Software (including a "click-wrap" Software license Client may obtain from Bank by downloading from Bank's Website).
- b) For each Software application Bank provides to Client for one or more Electronic Trade Services, Bank grants Client a non-exclusive, revocable, non-transferable license for the use of that Software and any related Materials related to the Software that Bank provides Client. Each license is granted solely for use in object code form only in connection with one or more Services. Client may use the Software only in accordance with the applicable User Documentation.
- c) Client may not remove, obscure or otherwise tamper with or alter any such notices or legends affixed to or otherwise contained in the Software or related Materials or copies. Client will also take appropriate action to instruct and obligate its representatives who are permitted access to the Software and/or Materials (including copies) to comply with its obligations to protect the Software and Materials.
- d) Client will, at its expense, cause a computer to be installed and kept in good condition and working order at its site for use of the Software. The computer and its components must be equipment which is acceptable by Bank from time to time.
- e) At Bank's option, Bank may assist Client with the installation of Software on its computer and with the training of persons who will use the Software, but Bank will not bear any responsibility for the (i) such training or (ii) proper installation and or use of the Software. Except as Client and Bank may agree otherwise, Client will be deemed to have accepted the Software upon its installation.
- f) Client may not:
  - (i) sell, assign, transfer, license, sublicense or publish the Software or Materials (including any permitted copies) to third parties without Bank's express approval;
  - (ii) copy, or allow anyone else to copy, the Software or Materials, without Bank's prior written approval, except that Client may make two copies of the Software for backup and/or archival purposes. In the event that Bank provides Client with Bank's prior written approval to make an additional copy of the Software, Client will (i) pay Bank any fees assessed by Bank and (ii) provide Bank notice, in writing or by electronic means approved by Bank for such purpose, of the location and the date of such copy; or
  - (iii) alter, repair, modify or adapt any Software or materials, including, but not limited to, translating, reverse engineering, decompiling, disassembling or creating derivative works from it.
- g) If Bank has provided Client with Software to be installed on Client's computer, Client may not install the Software on more than one computer or electronically distribute it to any other computer, without Bank's prior written approval and the payment of any fees that Bank may assess. Client may move the Software to another computer replacing the one on which the Software was originally installed or to another site, but only after Client gives Bank notice, in writing or by electronic means approved by Bank for such purpose, specifying the new computer and site.
- h) If Bank has provided Client with Software to be installed on Client's network server, Client may not electronically distribute, or allow anyone else to electronically distribute, the Software except from the network server on which it is installed to workstations on that network.
- i) Client will provide Bank notice, in writing or by electronic means approved by Bank for such purpose, each time Client installs the Software on more than one computer (subject to Bank's prior written approval) or electronically distributes the Software to a workstation, on that network, as applicable, in each case indicating the location and the date of such installation or distribution.
- j) Client will provide Bank with reasonable access to the Software and Materials at Client's site to provide assistance or to verify the status or location of the Software and Materials. In addition, Bank may audit Client's site and have access to the Software and Materials provided to Client to confirm compliance with this Software License section. Furthermore, Bank may audit Client's site and have access to such Software and Materials if Client fails to provide Bank with any notices or reports or if Bank reasonably believes Client is using unauthorized copies of the Software and/or Materials, using the Software and/or Materials in an unauthorized manner, and/or otherwise failing to comply with any of the terms and conditions of this Agreement.
- k) Client may not alter, repair, modify or adapt any Software or Materials, including, but not limited to, translating, reverse engineering, decompiling, disassembling or creating derivative works from it.

**2. INSTALLATION**

- a) Client shall, at its expense, cause a computer to be installed and kept in good condition and working order at Client's site for use of the Software. The computer and all its components must be equipment which is acceptable as specified by Bank from time to time.
- b) Although Bank may assist Client in the installation of the Software on Client's computer and may assist Client in training persons in connection with the use of the Software, Client shall bear all responsibility for the proper installation and use of the Software (including training). Client will be deemed to have accepted the Software upon its installation and upon Bank having made such training available to Client.
- c) Bank shall have reasonable access to the Software and Materials while it is at Client's site to provide assistance to Client or to verify the status or location of the Software.

**3. SUPPORT**

During the term of this License, Client agrees to inform Bank's Client support unit of all errors, difficulties or other problems with the Software. Bank will make reasonable efforts to fix or provide workarounds for material reported errors and to provide Client with support and consultation concerning the Software. The reasonable effort, support and consultation shall be such as Bank, in its sole discretion, shall determine. Client shall cooperate with Bank in the expeditious resolution of such errors, difficulties or other problems by providing Bank on request a listing of input, output, and all other data which Bank may reasonably request in order to reproduce operating conditions similar to those present when such errors, difficulties or other problems were discovered. Bank shall be obligated to provide Client with only those updates, upgrades or new releases of the Software which are made generally available to other Clients that license the same Software. Any corrections, updates, upgrades or new releases that are provided by Bank must be installed promptly by Client, and shall be deemed part of the Software upon delivery. Bank will only provide support for the most current version of the Software provided to the Client. Client will pay Bank for Software support in excess of that contemplated herein and such charges will be specified by Bank before they are incurred or as otherwise agreed by Client and Bank from time to time.

**4. PROPRIETARY RIGHTS**

- a) Except as expressly granted in this License, no rights in the Software shall pass to Client. The Software, its source code, the documentation (and all copies of such materials) and all copyright, patent, trademark, trade secret and other rights in them shall be and remain at all times the exclusive property of Bank or its licensors.
- b) Client agrees to secure and protect the Software and Materials (Including all copies) in a manner consistent with the maintenance of the rights of Bank and those of Bank's licensors. Client also agrees to take appropriate action by instruction or agreement with Client's Representatives who are permitted access to the Software or copies thereof to satisfy Client's obligations hereunder.
- c) In order to protect Bank's proprietary rights and those of others in the Software, Client agrees to reproduce and incorporate copyright notices and all other proprietary legends prescribed by Bank in any permitted copies.
- d) Client shall provide Bank notice, in writing or by electronic means approved by Bank for such purpose, each time a permitted copy of the Software is made (except for backup or archival copies, but including those copies permitted under Section 2(b)(iv)), indicating the location of the copy and the date it was made. Bank may audit Client's site to confirm compliance with this License if Client fails to make the reports called for herein or if Bank reasonably believes Client is using unauthorized copies of the Software.

**5. LIMITED WARRANTY**

- a) Bank warrants that the Software will substantially conform to the documentation provided with the Software for a period of 30 days after delivery to Client provided that: (i) the Software has been used by Client in strict compliance with the terms and conditions of the Agreement and the Materials, (ii) the Software has not been modified in any way by Client and (iii) Client promptly notifies Bank and reproduces for Bank any defects, errors or bugs in the Software which result in the Software not substantially conforming to such documentation. In the event that such warranty is breached, Bank shall, at Bank's option, (i) use reasonable efforts to correct or work around any Software errors, defects or bugs or (ii) accept return of the Software and refund any license fees paid by Client for the Software. Client agrees that the foregoing is its sole and exclusive remedy for breach of warranty and Bank's sole obligation in connection with the performance or operation of the Software and Materials.
- b) **Except as specifically provided above and in the Indemnities section, Bank makes no representation or warranty, express or implied, written or oral, and, to the full extent permitted by law, disclaims all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose, with respect to the Software, Materials any CD-ROM/DVDs provided to Client and all other property, services or rights covered by the General Provisions, this License or any Service Addenda.**

**6. LIMITATION OF LIABILITY**

- a) In addition to the disclaimer of warranties above, Client understands further that Bank makes no representation concerning the completeness, accuracy, operation or performance of the Software or its compatibility with any hardware. Client acknowledges that the operation of the Software may not be error-free or without interruption and that the Software and Materials are provided on an "AS IS" basis. Client acknowledges that the Software has not been produced to meet Client's specific requirements and has not been tested in every possible combination or operating environment. Client is responsible for satisfying itself that the Software is satisfactory for its purposes.
- b) **In no event shall Bank be liable for any special, indirect, incidental, consequential, punitive or exemplary loss, damage, cost or expense (even if advised of the possibility of such loss, damage, cost or expense), including, without limitation, any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of, or corruption to, Client's data, loss of operation time or loss of contracts. To the extent permitted by applicable law, and except as otherwise provided in this section, Bank shall not be liable for damages of any kind arising out of the installation of, use of, or inability to use, the Software or Materials.**
- c) Client agrees that the United Nations Convention on Contracts for the International Sales of Goods will not apply to Bank's provision to Client, or Client's use of any Software and Materials.

**7. INDEMNITIES**

- a) Client agrees to indemnify, defend at its expense and hold Bank, its licensors and agents harmless from all losses, damages, liabilities, claims, costs and expenses (including Legal Expenses) in connection with any claims, suits or proceedings of any third party in any way related to Client's use of the Software; provided, however, Client's indemnity does not apply to any losses, damages, liabilities, claims, costs or expenses attributable to the gross negligence or intentional misconduct of Bank.
- b) Notwithstanding the foregoing, Bank will defend at its own expense or settle any action brought against Client to the extent it is based on a third party claim that Client's use of the Software and/or the Materials provided by Bank to Client pursuant to this License infringes any Berne Convention country copyright or any United States of America or United Kingdom patent, trade secret or trademark of any third party, and Bank will pay all costs and damages finally awarded in any such action.
- c) Bank's obligations under the indemnity above are subject to (i) prompt notice from Client of any such claim or action, (ii) Client not having made any admission of liability or agreed to any settlement or compromise, (iii) Client providing Bank, in a prompt and timely manner, the documents, information and assistance Bank reasonably requests, (iv) Bank having sole control of defending such claim or action, (v) Client having used the current version of the Software and Materials as provided to Client by Bank, in compliance with the terms and conditions of this License, (vi) Client using the Software and Materials only in the manner for which the Software and Materials were intended, (vii) Client not modifying the Software and Materials and (viii) Client not incorporating the Software and Materials with products not approved by Bank.

- d) Client acknowledges and agrees that Bank's obligation under this indemnity are Bank's only obligations to Client with respect to any infringement claim in connection with Client's use of the Software and/or Materials.

## 8. EXPORT CONTROLS

Client understands and acknowledges that any of Bank's obligations to provide the Software, any Materials, data, technical assistance, training and related technical data and any media in which any of the foregoing is contained (all of which shall be collectively referred to as "Data"), will be subject in all respects to all applicable laws and regulations as shall from time to time govern the export or diversion of certain products and technology to and from certain countries. Client warrants and agrees that it will comply in all respects with the export and re-export restrictions applicable to the Data shipped and/or provided to Client and that Client will comply with all applicable laws and regulations governing the export and diversion of the Data.

## 9. TERMINATION

This License is effective until terminated. Bank may terminate this License as to one or more Software applications upon at least 30 days notice. Client may terminate this License at any time as to one or more Software applications by certifying destruction of or returning the Software (including all copies) to Bank. This License and Client's right to use the Software automatically terminate if Client breaches a material term of this License. This License automatically terminates as to any Software application if the service agreement for the related Service has been terminated. If the License is terminated for a Software application, this License shall remain in effect as to other Software applications as to which this License became effective and has not been terminated. Client agrees that upon termination of the License for any Software application, Client will at Bank's option, certify destruction or return to Bank all its existing copies of that application.

## 10. GENERAL

- a) Notwithstanding the Governing Law provisions in the General Provisions, this License is governed by and interpreted according to the laws of the State of California without reference to its principles of conflicts of laws.
- b) The provisions in Sections 5, 6, 7, 8, 9, 10 and 11 shall survive termination or cancellation of this License.

### WIRE TRANSFERS AND ELECTRONIC FUNDS TRANSFERS (a "Service")

"Wire Transfers and Electronic Funds Transfers Service" means each of the Bank's U.S. domestic and worldwide wire transfer services, including the Multibank Service.

## 1. WIRE TRANSFER AND INTERNATIONAL ELECTRONIC FUNDS TRANSFER SERVICES

- a) Wire Transfer and International Electronic Funds Transfer Services permit Client to transfer funds electronically and, as appropriate, to transmit related messages as more fully described in the applicable User Documentation. These transfers are typically from Client's accounts with Bank to other accounts at Bank, at Bank's affiliates or at other eligible banks. These transfers may also include transfers to Client's accounts with Bank from Client's accounts at other banks. These transfers may be made according to a specific request from Client or according to Client's standing instructions (which may include daily sweeps from Client's accounts at Bank's affiliates to Client's account with Bank). They also may be low-value single payments as well as batch payments made according to multiple requests within a single electronic data file for transfers to or from Client's accounts.
- b) If a Request involves a currency other than the currency in which the relevant account is denominated, then Client's funds will be exchanged for such other currency at a current rate of exchange on or before the transfer or debit date, as the case may be, in accordance with Bank's normal procedures (including applicable User Documentation). If Bank assigns an exchange rate to Client's transaction, such exchange rate will be determined by Bank in Bank's sole discretion based upon such factors as Bank determines relevant, including but not limited to, market conditions, exchange rates charged by other parties, desired rates of return, market risk, credit risk, and other market and economic factors. Client acknowledges that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day, as reported in The Wall Street Journal or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from our exchange rates. Client acknowledges that assigned exchange rates may include fees, costs, charges or other mark ups as determined by Bank in Bank's sole discretion. Currency exchange rates fluctuate over time, and Client acknowledges and accepts the risks of such fluctuations between the time Client initiates a Request and the time the transfer is either completed or is unwound due to a cancellation, amendment, rejection or return.

## 2. MULTIBANK SERVICE

- a) The Multibank Service permits Multibank Instructions.
- b) Before using the Multibank Service, Client must provide Bank with the account number and bank name for each account to be debited using this Service. Client also must provide the bank holding the debit account with express, written authorization (with a copy to Bank where requested) to act on SWIFT payment instructions Bank sends to it under this Service. Client agrees that Bank may rely on that authorization until Bank has had a reasonable opportunity to act on notice that it has been revoked.
- c) Multibank Instructions are not payment orders to Bank, and Bank has no obligation to execute, transmit or accept any payment orders made to Bank under the Multibank Service.
- d) If Bank receives any Multibank Instruction via SWIFT, Bank will relay Client's instructions to the receiving bank, subject to business day schedules for Bank, SWIFT and the receiving bank. Bank will have no liability arising out of or relating to Bank's forwarding, or any rejection by the other bank of, any such instruction which is not in the SWIFT format required by the other bank for such instruction. Client's Multibank Instructions to Bank via SWIFT must be sent to the SWIFT address specified by Bank to Client from time to time.
- e) If Bank receives any Multibank Instructions other than via SWIFT, Bank will either (i) where feasible, create a SWIFT formatted message from Client's instruction and relay it by SWIFT to the other bank or (ii) use whatever means or medium Bank deems appropriate, including use of third-party facilities, to reformat and transmit Client's payment order to another bank, and Bank has no duty to do so if Client's request is defective, incomplete, erroneous or inconsistent with the terms of this Agreement. Bank may act on Client's multibank Instructions as Bank reasonably considers appropriate notwithstanding any error, omission, defect or lack of clarity in its terms and even if the requests appear to duplicate other multibank Instructions. Client agrees that Client's indemnity of Bank, as set forth in the Protection from Third Parties section (section 7) of the General Provisions, applies to any claims by another bank based on Bank's sending a multibank request containing any error, omission, defect or lack of clarity.
- f) If Client wishes to cancel or amend a payment order set forth in a Multibank Instruction, Client must contact the bank to which the payment order is directed and act in accordance with its procedures.
- g) Reports on Multibank Instructions which Bank has processed may be included in an Information Reporting Service if Client has arranged such reports from the bank that is subject to such instructions.

## 3. SECURITY PROCEDURE

- a) Client agrees to use the Security Procedure when Client delivers Requests to Bank. The purpose of the Security Procedure is to verify the authenticity of Requests delivered in the name of Client to Bank and not to detect errors in the transmission or content of any Request. Each time

Client uses a Service, Client represents and warrants to Bank that it has determined that, in view of Client's requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Requests.

- b) Client agrees that Bank may act upon any Request, even if it is unauthorized, if Bank acts in good faith and complies with the applicable Security Procedure and any written agreement between Client and Bank restricting Bank's action on Requests. In such cases, Bank may enforce or retain Client's payment to Bank for such Requests; provided, however, Bank may not enforce or retain payment if Client proves that the unauthorized Requests were not caused by a person (i) entrusted at any time to act for Client with respect to Requests or the applicable Security Procedure, (ii) who obtained access to Client's premises, computer equipment or transmitting facilities or (iii) who obtained, from a source controlled by Client, information (such as keys and passwords) which facilitated breach of the applicable Security Procedure.
- c) Client shall have sole responsibility for the custody, control and use of all Materials. Client agrees that no individual will be allowed to initiate a Request or other instruction contemplated in the Agreement or to have access to any Materials without proper supervision and strict security controls. Bank will be fully protected in relying on the correct user identification codes and passwords, as described in the applicable User Documentation.

#### 4. CLIENT RESPONSIBILITIES

- a) Before using a Service, Client shall provide Bank a written list, in a form acceptable to Bank, of the persons authorized to perform certain duties in connection with the Service. Client shall update such list from time to time as necessary to reflect any changes in authorized persons.
- b) Client must maintain and designate account(s) with Bank which Bank may, without prior notice or demand, use for debiting or crediting with respect to all Requests and related adjustments and charges under the Agreement. Client must have Collected and Available Funds on deposit in its account which, when added to funds which may be made available under a line of credit, are sufficient to cover its payment obligations for a Service.
- c) Client shall deliver each Request in accordance with the requirements of the Agreement and any applicable User Documentation. Client agrees that it shall not initiate any Request which would cause the applicable account balance, according to Client's records, including the available line of credit (if any), to be exceeded. Client further agrees that if a conflict occurs regarding the applicable account balance, Bank's records (including information on accounts at other banks which are debited under a Service) will be controlling for the processing of any Request.
- d) Client shall pay Bank the amount of each payment made pursuant to a Request once Bank acts on, other than to reject, the Request. Bank may, at its discretion, at any time without notice, require payment before Bank processes Client's Request. Even if Bank has done so in the past, Bank is not obligated to process any Request without having first been paid by Client, but, if Bank does so, the amount is immediately due and payable without notice or demand.
- e) Client will pay Bank for the amount of any returned or rejected transactions, or any adjustments, which Bank has previously credited to Client's account.
- f) If, for any Business Day, Bank receives more than one Request and/or other items payable from Client's account, Bank may debit Client's account for such Requests and items in any sequence Bank determines in its sole discretion.
- g) Prior to initiating any Wire Transfer Service Request which instructs Bank to debit an account of a third party, Client shall provide Bank with documents, in form and substance satisfactory to Bank, from the third party authorizing such debits.

#### 5. BANK RESPONSIBILITIES

- a) Subject to the terms and conditions of the Agreement (including but not limited to subsection 5(b) of this CME) and the applicable User Documentation, Bank will act upon a Request after receipt of such Request by making applicable accounting entries or by transmitting payment instructions to the applicable bank or other party no later than the stated value date (if such date is not earlier than the day such Request is received), if such Request is received on a Business Day prior to Bank's applicable processing deadline, as specified in the applicable User Documentation. If applicable, Bank's acting upon a Request will also be subject to the business day schedule of any Bank banking center or affiliate holding an account to be debited or credited under a Service. Any Request received by Bank after the applicable processing deadline may be treated as received by Bank on the next Business Day. International Electronic Funds Transfers Service Requests will be deemed received by Bank when Bank receives the complete electronic data file at the location specified in the applicable User Documentation.
- b)
  - (i) Bank may reject any Request which does not comply with the requirements of this Agreement or the applicable User Documentation, including any processing limits described in such User Documentation, or which Bank has been unable to verify through use of the Security Procedure.
  - (ii) Bank may also reject any Request which exceeds the Collected and Available Funds (including funds made available under a line of credit) on deposit in the applicable account.
  - (iii) Bank may also reject any Request if it may be returned for any reason under the applicable national payment system rules of the receiving country of Client's transaction.
  - (iv) Bank may also reject a Request which does not identify as the debit account an account of Client or an account of a third party with respect to which Client has met its obligations under subsection 4(g) of this CME.
- c) Bank may give notices of rejection to Client by telephone, by electronic means, by facsimile or by mail, depending upon the method of origination. Notices of rejection shall be effective when given.
- d) In acting on any Request, Bank may utilize any means of transmission, funds transfer system, clearing house or intermediary bank reasonably selected by Bank, even if Bank's selection differs from instructions in the Request.
- e) Except as otherwise expressly provided in the Agreement, Bank will not be required to act upon any notice or instruction received from Client or any other person or to provide any notice or advice to Client or any other person with respect to any matter under the Agreement. Bank may rely on oral instructions from any person who identifies himself or herself by a name which is included on a written list from Client of persons authorized to give such instructions. If Client's records about such communication differ from Bank's, Bank's records will govern.

#### 6. CANCELLATION OR AMENDMENT BY CLIENT

Bank has no obligation to cancel, amend, or recall a Request after its receipt by Bank or to cancel, amend, or recall any particular funds transfer requested by a standing instruction which is in effect, however, if Client sends Bank a Request instructing Bank to cancel, amend, or recall a prior Request and Bank is able to verify the authenticity of the cancellation, amendment, or recall Request using the Security Procedure, Bank will make a reasonable effort to act on that Request, but Bank has no liability if such Request is not affected. Client agrees to indemnify Bank against and hold Bank harmless from any and all liabilities, claims, costs, expenses and damages of any nature, including Legal Expenses, Bank incurs in connection with a Request to cancel, amend, or recall. Client's obligations under this section 6 shall survive termination of any Service.

#### 7. PROVISIONAL PAYMENTS

Any payment to Client by Bank for any transaction Bank credits to Client's account is provisional until Bank receives final settlement for the transaction. If final settlement is not received, Bank is entitled to a refund and Bank may charge Client's account for the amount previously credited. Bank may delay the availability of any amount credited for a transaction if Bank believes that there may not be sufficient funds in Client's account to cover chargeback or return of the transaction. Bank's rights under this Section 7 shall survive termination of the Agreement.

#### 8. INCONSISTENCY OF NAME AND NUMBER

A beneficiary's bank (including Bank when it is the beneficiary's bank) may make payment to a beneficiary based solely on the account or other identifying number. Bank or any intermediary bank may send a Request to an intermediary bank or beneficiary's bank based solely on the bank identifying number. Bank, any intermediary bank and any beneficiary's bank may do so even if the Requests include names inconsistent with the account



or other identifying number as long as the inconsistency is not known by Bank or such other bank. Neither Bank nor any other bank has a duty to determine whether a Request contains an inconsistent name and number.

#### 9. FEDWIRE NOTICE

In connection with Client's use of a Service, Bank in acting upon a Request, and any subsequent bank in acting in a funds transfer intended to carry out a Request, may use Fedwire. The rights and obligations of Client and Bank in a funds transfer intended to carry out a Request, any part of which is carried out through the use of Fedwire, are governed by the Fedwire Regulation.

#### 10. COMPLIANCE WITH RULES AND LAWS

Client agrees to comply with all applicable payment system rules, including the national payment system rules and any other applicable laws and regulations of the receiving country of Client's transaction, including but not limited to NACHA Rules for low-value payments processed within the United States. Client also agrees to comply with the authorization and notice requirements applicable to any Request to debit another person's account.

#### DEFINED TERMS:

"Acceptable Payee" means Client and any other payee name provided by Client to Bank as an acceptable payee for Checks to be processed under a Service.

"Account Agreement" means, with respect to each deposit, savings or current account for which Client is using a Service, the current signature card, International Account Agreement or SAOTC and the publication(s) provided by Bank containing terms and conditions applicable to such account, as such publication(s) may be amended from time to time.

"ACH Managed Processing" means that all credit Entries are required to be prefunded and settlement of debit Entries will receive delayed availability as further described in the applicable User Documentation

"Agreement" means, with respect to a Service, This CME and/or the General Provisions section of this CME together with the relevant Service Addendum for such Service, as each may be amended from time to time.

"Arrives By Date" means an estimated date by which a payment will arrive at the Vendor, as generated by the Service based on information that Client provides and the Process Date the Client establishes for the Payment Transaction within the Service.

"Authorized User" means any person authorized by Client to use the Service on behalf of Client.

"Bank Statement" means, for the applicable account, (i) each periodic account statement issued to Client by Bank, (ii) any written or electronic advice to Client from Bank or (iii) any electronic report produced through one of Bank's information reporting services which Client receives.

"Business Day" means each day on which the bank or bank office providing or facilitating a Service is open for business related to that Service.

"Bills" means invoices, bills and other statements of account that Client receives from Vendors which Client seeks to pay using the Service.

"Bill Payment Feature" means the feature of the Service whereby the Client requests Bank to make a payment to a designated Vendor. Bank may make such payment by originating an ACH credit entry to the account of the Vendor, issuing a check drawn by Client and payable to the Vendor, or by other electronic method. When Bank makes a bill payment Bank will send with the payment any remittance information that Client provides.

"Check" means any check or other payment instrument, such as drafts.

"Check 21" means any Check Clearing for the 21st Century Act, 12 CFR 229 or any successor legislation.

"Collected and Available Funds" means funds in an account equal to the ledger balance minus float which, in Bank's reasonable determination, are not subject to a hold, dispute or legal process preventing their withdrawal.

"Credit Facility (ies)" means each loan, line of credit, letter of credit and other similar financial arrangement in favor of Client made by Bank and/or any subsidiary of Bank or in respect of which Bank serves as agent. Each Credit Facility is governed by the Facility Documentation. Not all Credit Facilities are eligible for the Service.

"Credit Transaction" means a payment made on a Credit Facility by transferring funds from a Designated Account or an advance under a Credit Facility initiated by the Client using the Service (excluding Processing Requests).

"Damages" means any expense, loss, damage or cost.

"Delegated Administrator" means a person designated by Client or on Client's behalf to electronically authorize a person to use the Service on Client's behalf.

"Designated Account" means each demand deposit account maintained with Bank which is linked to Client's Credit Facilities through remittance instructions or otherwise.

"Documents" means documents that are not Bills that Client wishes to store and manage electronically through the Service.

"ECCHO" means the Electronic Check Clearing House Organization.

"Effective Entry Date" means the date specified, in accordance with the NACHA Rules, on the Entry by the Originator on which the Originator intends the Entry to be settled.

"Electronic Funds Transfer Services" means the Automated Clearing House (ACH) Services, International Electronic Funds Transfer Services and Wire Transfer Services specified on the accompanying List of Banks and Services.

"Electronic Image" means an image conforming to the applicable industry standards for Images.

"Electronic Statements" means Statements with respect to which Client opts for electronic delivery will be selected by Client as outlined in the applicable User Documentation.

"Entry" has the meaning provided in the NACHA Rules and also includes any data for Entries, any pre-notification and any Entries initiated through an EDI payments system approved by Bank.

"EPN Rules" means the Electronic Payments Network Rules of Membership and the Operating rules, or such later revisions as may be adopted, and includes, but is not limited to, the Rules pertaining to UPICs (EPN UPIC Rules), all collectively referred to as the EPN Rules.

"e-Statements" means statements with respect to which Client opts for electronic delivery and which are selected by Client as outlined in the applicable User Documentation.

"Facility Documentation" means the documentation evidencing, securing and guaranteeing the Credit Facility(ies) or executed in connection therewith.

"Facsimile Signature" means the signing of checks, documents and other items by producing a facsimile signature manually or by means of a device or machine.

"Federal Reserve Operating Circular 3" means the Federal Reserve Board's Operating Circular 3, Collection of Cash Items and Returned Checks.

"Fedwire" means the funds transfer system owned and operated by the Federal Reserve Banks of the United States of America that is used primarily for the transmission and settlement of payment orders governed by the Fedwire Regulation, but does not include the system for making automated clearing house transfers.

"Fedwire Regulation" means Subpart B of Regulation J of the Board of Governors of the Federal Reserve System of the United States of America, as amended from time to time.

"ICL" means an image cash letter.

"Image" means an Electronic Image or Paper Image. With regard to an Image of an original paper check, Client agrees that the check Image that is deposited with Bank under the Remote Deposit Service shall be a "check" and/or an "item" (as applicable) for all purposes under this Amendment, any agreement between Client and Bank relating to the collection of checks generally, the Uniform Commercial Code, the Expedited Funds Availability Act, Regulation CC, any other federal or state check law, and federal and clearinghouse rules, to the same extent as that original is a "check" or an "item" as applicable.

"International Account Agreement" means a form of Account Agreement used in some countries.

"International Electronic Funds Transfer Service" means each electronic payment service which allows Client to transfer funds to or from Client's accounts outside the United States of America or to or from Client's accounts in the United States of America to or from an account in a different receiving country. These services include low-value single payments as well as batch payments made according to multiple requests within a single electronic data file. International Electronic Funds Transfer Services exclude ACH Services within the United States of America and exclude Wire Transfer Services.

"Invoice Management Feature" means the feature of the Service whereby the Client receives Bills from Vendors via the Service or whereby the Client uploads invoices from Vendors into the Service. Client may use the Service to upload and manage these Bills.

"IRD" means a paper substitute check or image replacement document, created from an electronic image or an original paper check, as allowed under Check 21, and further described in the applicable User Documentation.

"Legal Expenses" means any reasonable lawyer's fees, allocated costs of staff counsel (unless prohibited by applicable law), fees and expenses of litigation and any other fees and expenses incurred in enforcing any provision of the Agreement.

"Lockbox Address" means each United States Post Office address assigned to Client by Bank or which Bank accepts from Client for a Service.

"Materials" means any software, user identification code, password, code, key, test key, security device, embedded algorithms, digital signatures and certificates, other similar devices and information, User Documentation and related documentation provided to Client by Bank in connection with a Service.

"Multibank Instructions" means Client's ability to relay instructions through Bank to another bank to wire transfer funds from one of Client's accounts held at the other bank.

"NACHA Rules" means the rules of the National Automated Clearing House Association (including any other clearing house rules applicable to automated clearing house transactions), as amended from time to time.

"Notice(s)" means In connection with the Notification Services, Bank will provide notices to Client that are associated with and related to the Services provided by Bank to Client under the terms of this Amendment or other agreement between Client and Bank.

"ODFI" means an Originating Depository Financial Institution as defined in the NACHA Rules.

"Originator" has the meaning provided in the NACHA Rules.

"Other Company" means a company or other organization other than Client.

"Paper Image" means an Image that is a paper reproduction of the related physical check (the original paper item or substitute check created from an image of the original paper item) created with image technology.

"Paying Agent" means an entity as defined in 31 C.F.R. Section 321(i) of the U.S. Treasury Department's regulations.

"Payment Account" means one or more demand deposit accounts maintained by Client with Bank and used in connection with the Service.

"Payment Transaction" means a request by Client to Bank to initiate a bill payment on Client's behalf to a Vendor by means of an ACH credit entry, other electronic funds transfer, or a check payment.

"Payment Transaction Request" means using the Bill Payment Feature, a message transmitted electronically from Client to Bank through the Service requesting Bank to initiate a Payment Transaction.

"Personal Data" means information Bank receives from Client in connection with one or more Services consisting of an individual's bank accounts or other financial data or identifying a living individual.

"PHI" shall have the same meaning as the term "protected health information" under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and its implementing regulations.

"Process Date" means the date that Client selects in the Bill Payment Feature for the processing of Client's Payment Transaction. Funds will be deducted from Client's Payment Account on or before this date.

"Processing Request" means a request by Client to Bank submitted through the Service to take an action, including the process of a payment or advance when a Credit Transaction cannot be effected. A Processing Request will be considered by the Bank after appropriate due diligence is completed. Not all Processing Requests may be completed.

"RDFI" means a Receiving Depository Financial Institution as defined in the NACHA Rules.

"Receiver" has the meaning provided in the NACHA rules.

"Registered Vendor" means a Vendor that registers its payment information with the Vendor Database that can be accessed through the Service.

"Regulation CC" means The Federal Reserve Board's Regulation CC, Availability of Funds and Collection of Checks.

"Regulation J" means The Federal Reserve Board's Regulation J, Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire.

"Regulatory Information" means the electronic delivery of regulatory information that Bank or its affiliates would typically include in mailings of paper Statements, such as mandated disclosures.

"Representatives" means a party and its employees, officers, agents, contractors or advisors.

"Request" means a request by means permitted under the relevant Service to transfer funds to or from a specified account or beneficiary (including standing instructions) or to amend or cancel a prior request to transfer funds.

"Reversal/Deletion Request" means a request for a Reversal or a request to delete a previously delivered Entry.

"Reversals" means data for reversing Entries.

"SAOTC" means each form of Standard Account Opening Terms and Conditions used in certain countries as an Account Agreement.

"Savings Bonds" means U.S. savings bonds that each meet the definitional requirements set forth in the Savings Bonds Provisions.

"Savings Bonds Provisions" means relevant regulations and guidelines of the Bureau of Public Debt of the U.S. Department of the Treasury, the Federal Reserve Operating Circular 3, the ECCHO Operating Rules, and such other statutory, regulatory, clearinghouse, association and other requirements and terms (including image exchange rules), as applicable, regarding the acceptance, transmission, deposit, exchange and/or processing of Savings Bonds by way of the transmission of the images of such Savings Bonds.

"Scheduled Payment Transaction" means a Payment Transaction that Client has scheduled through the Bill Payment Feature prior to the Process Date.

"Security Procedure" means, unless Bank agrees otherwise with Client, the applicable security procedure described in the Materials for Client's data delivery type or Service for verifying the authenticity of any (i) electronic funds transfers or payments instructions, including, without limitation, cancellations, amendments or reversals thereto; and (ii) any instructions, data, transactions or other information sent between Client and Bank.

"Service" means, with respect to a treasury service, each service provided in a specific Bank location, identified in the List of Banks and Services and described in any relevant Service Addendum or the CME.

"Services (as used in the Software License Agreement)" means each service Bank provides to Client in which Bank provides Software to the Client.

"Service Addendum" means any addendum to this CME which sets forth the specific terms relating to a Service.

"Standalone Account" means one or more demand deposit accounts maintained by Client with Bank that is not linked to another account as part of a treasury service relationship or that is not linked as a sub-account to another account in a treasury service relationship.

"Service Online" means an electronic communication channel through which Client may submit requests for limited types of transactions. Service Online is a communication channel only; it does not allow Client to conduct transactions.

"Statements" means Account statements, account analysis, pricing information and other information relating to account activity or services, transactional activity and/or cash management services with Bank and/or its affiliates.

"Software" means one or more applications, including the software known as "Image Onsite Software", and the documentation related thereto which Bank provides to Client with regard to a Service.

"Stop Payment Request" means a message from Client to Bank, transmitted electronically by use of a Service, requesting that payment be stopped on a check drawn on an eligible account.

"Subsidiary" means any entity in which more than 50% of the ownership interest is owned, directly or indirectly, by Client. The term "Subsidiary" does not include affiliates or other entities in which 50% or less of the ownership interest is owned, directly or indirectly by Client.

"Supplier" means any private or common carrier communication or transmission facility, any time-sharing supplier or any mail or courier service.

"SWIFT" means the international electronic message-transfer service known as the Society for Worldwide Interbank Financial Telecommunication.

"Third Party Vendor" means any third party vendor (including but not limited to, such third party vendor's agent, subcontractor, affiliate, representative and/or assignee) used by Client to perform certain actions with respect to the Services.

"UCC" means the Uniform Commercial Code.

"UCC 4A" means Article 4A of the Uniform Commercial Code - Funds Transfers, as adopted by the state in the United States of America whose law applies to a Service, as amended from time to time.

"UPIC" means the Universal Payment Identification Code, which is a unique number that identifies both an eligible account at a UPIC Participant, and the UPIC Participant that holds the eligible account. Capitalized terms in this Addendum, not otherwise defined, are defined in the EPN Rules.

"Unqualified Return" means an Unqualified Return Item Deposit as defined by the Federal Reserve Board.

"User Documentation" means any written information Bank provides to Client, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service, as provided by a particular banking center or office. User Documentation may vary from one jurisdiction to another. Current User Documentation is available upon Client's request.

"Website" means any internet website and/or online access channel for use in accessing one or more Services.