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**BUSINESS ONLINE BANKING/TREASURY MANAGEMENT**

**MASTER TERMS AND CONDITIONS**

**BANK OZK**  
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## BANK OZK

### BUSINESS ONLINE BANKING/TREASURY MANAGEMENT MASTER TERMS AND CONDITIONS

These Business Online Banking/Treasury Management Master Terms and Conditions govern Customer's use of Bank's various business banking Services (individually, each a "Service," and collectively, the "Services"). These Services include, but are not limited to, the following:

- Business Online Banking
  - Business Bill Pay
  - Mobile Banking
  - Mobile Deposit
- Treasury Management
  - Account Reconciliation
  - ACH Positive Pay
  - ACH Services
  - Image Cash Letter
  - Information Reporting
  - Lockbox Services
  - Positive Pay
  - Remote Deposit Capture
  - Vault/Currency Cash Ordering
  - Wire Transfers
  - Zero Balance Accounts

The entirety of the Business Online Banking/Treasury Management Master Terms and Conditions, including all relevant Applications for each such Service, any Service Setup Detail forms, and all attachments, Authorizations, schedules and exhibits, together with all amendments or modifications thereto, pertaining to each such Service(s) shall be referenced throughout herein collectively as the "Agreement". The Agreement obligates the parties with regard to the general terms and conditions related to use by Customer of any Service or Services offered by Bank, regardless of whether such Service is performed traditionally, online, or through some combination thereof. Nonetheless, before Customer begins using any of the Services, Customer must mail or deliver a duly authorized and executed copy of the Agreement to Bank for review and approval. Customer is considered to be utilizing "Treasury Management Services" and Customer should provide all Notices as set forth herein to Treasury Management Services, if in addition to Business Online Banking, Customer utilizes any of the following Services: Account Reconciliation Services, ACH Positive Pay, ACH Services, Image Cash Letter, Information Reporting Services, Lockbox Services, Positive Pay Services, Remote Deposit Capture, Vault/Currency Cash Ordering, Wire Transfer Services and Zero Balance Account Services.

Capitalized terms used in the Agreement have the meaning indicated in the Glossary of Defined Terms contained in Section A(1), below.

The terms and conditions of Customer's Deposit Account(s) with Bank, for which Services are performed, are also governed by Bank's current Business Deposit Agreement and the Credit Services Agreement and Disclosures, as all may be amended from time to time (herein collectively, the "Account Agreement"). To the extent that there are any conflicts or inconsistencies between any provisions made in the Agreement and the Account Agreement, the Agreement shall control to the extent of the inconsistency. The Account Agreement, as it may be amended from time to time, is incorporated into the Agreement by this reference.

#### A. General Provisions.

##### 1. Glossary of Defined Terms.

As used in the Agreement, the following capitalized terms shall have the following meanings.

**"Account"** means a Deposit Account, investment Account, or Credit Account as the context requires.

**"ACH"** means electronic payments made through an Automated Clearing House network.

**"ACH Entry(ies)"** means an Instruction to initiate through Bank orders or Requests for the deposit of money to the Account of a third-party (a **"Credit Entry(ies)"**) or for the payment of money from the Account of a third-party (a **"Debit Entry(ies)"**), where such Accounts are maintained at one or more financial institutions that have agreed to accept such Credit Entries and Debit Entries through automated clearing houses or separately from the Federal Reserve System.

**"Affiliate"** means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person.

**"Agent"** means any Person who has been legally empowered to act on behalf of another Person.

**"ANSI X9"** means the standards and specifications for paper-based and Image-based payments as defined by the American National Standards Institute.

**"Authorization"** means a corporate resolution, entity resolution or other evidence, in a form and substance satisfactory to Bank of proper authority to perform an act, including but not limited to, Customer's ability to agree to the Agreement and to comply with Customer's obligations hereunder and any other of Customer's obligations with Bank.

**"Available Funds"** means funds on deposit in an Account and available for withdrawal pursuant to Regulation CC and Bank's Funds Availability Schedule and Policies.

**"Bank," "we," "our," and "us"** refer to Bank OZK and its Affiliates and any independent third-parties Bank may designate to provide Services pursuant to the Agreement.

**"Billers"** is the Person or entity to which Customer wishes a bill payment to be directed or is the Person or entity from which Customer receives electronic bills, as the case may be.

**"Billing Account"** is the checking Account from which all Business Bill Pay Services fees will be automatically debited.

**"Business Online Banking/Treasury Management Authorization and Resolution"** references a document that serves as the official act of the Customer in regard to Customer enrolling in the Services.

**"Business Day"** means Monday through Friday, excluding federal holidays and any other day on which Bank is closed for business.

**"Check"** means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for Forward Collection or return, including a Substitute Check and a traveler's Check; and does not include a noncash Item or an Item payable in a medium other than United States dollars.

**"Check 21 Act"** means Federal Check Clearing for the 21<sup>st</sup> Century Act, which allows creation of a digital version of an original Check.

**"Check Capture"** means the conversion of a paper Check or deposit document to electronic format by the means of a Check scanning device and software.

**"Check Image"** means an electronic or digital Image of the front and back of an original Check or Substitute Check that is created by a depositor, a bank, or other participants in the Check collection process.

**"Codes"** means any User ID, password, token or other means provided by Bank to Customer for the purpose of using the Services.

**"Collecting Bank"** means any bank handling a Check for collection except the Paying Bank.

**"Confidential Information"** means any Software, Systems, data, user guides, procedures, and Instructions published or made available to Customer by Bank.

**"Control"** means in relation to an Affiliate or Person the power to direct or cause the direction of the management or policies of any such Affiliate or Person, whether through ownership, voting rights, by contract or otherwise, which evidence of which must be to the satisfaction of Bank in Bank's sole discretion.

**"Controlling Ownership Interest"** means the principal member, shareholder, business owner or other individuals authorized to make significant business decisions regarding the direction and finances of Customer.

**"Converting Bank"** means any bank that has truncated the original Check or Substitute Check to a digital Image.

**"Credit Account"** means any line of credit or loan established by Bank for Customer's benefit.

**"Customer," "you" and "your"** means the Customer who executes the Agreement that is accepted by Bank, including, but not limited to, Customer's officers, directors, and principals.

**“Deposit Account”** means a deposit Account (checking, savings, money market, IRA or certificate of deposit) maintained with Bank.

**“Due Date”** is the date reflected on Customer’s Biller statement for which the payment is due; it is not the late date or grace period.

**“Eligible Account”** means any of Customer’s business Accounts or Accounts of Customer’s Related Entities currently enrolled in Treasury Management Services and/or Business Online Banking Services pursuant to this Agreement and for which Customer currently utilizes the Online Banking System in accordance with the Bank’s process and procedures. In order to be an **“Eligible Account”** valid ownership and authorization in regard to the Account must be established by the Customer to the satisfaction of Bank, in Bank’s sole and absolute discretion.

**“Exception Items”** means an Item that cannot be processed by Bank.

**“Exposure Limit”** for RDC, means the maximum dollar amount of Checks and Substitute Checks deposited daily that may be transacted through the Service. For ACH, means the total dollar amount of all ACH Entries delivered to Bank in any one file of ACH Entries, plus all other ACH Entries that remain unsettled in the ACH network.

**“Fedwire”** means the funds transfer system owned and operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of payment orders governed by the Fedwire Regulations.

**“Fedwire Regulations”** means subpart B of Regulation J of the Board of Governors of the Federal Reserve System, as amended from time to time.

**“Forward Collection”** means the transfer by a bank of a Check to a Collecting Bank for settlement or the Paying Bank for payment.

**“FRB”** shall mean a Federal Reserve Bank.

**“Funds Availability Schedule and Policies”** means Bank’s policies relating to the availability of funds, as such policies may be amended from time to time in Bank’s sole discretion.

**“Image”** means the electronic Image of the front and back of an Item, in addition to other information, as required by Bank, in the format Bank specifies.

**“Image Exchange Network”** means a company, bank, FRB or other entities that operate networks for the purpose of receiving and forwarding Check Images and Substitute Checks for collection.

**“Image Replacement Document”** or **“IRD”** means a substitute Check, as defined in the Check 21 Act.

**“Instructions”** means oral Instructions or Written Instructions.

**“Item”** is an original Check, cashier’s Check, official Check, United States Treasury Check, or any other payment instrument, drawn on a financial institution within the United States and payable in United States currency that is payable to Customer. Items are deemed to be “items” under the Uniform Commercial Code and “Checks” under Regulation CC. Although convenience or credit card Checks fall under the definition of an “Item”, mobile deposit of these Items are subject to prior Bank approval.

**“Laws”** means applicable foreign, federal, state and local laws, regulations, rules and policies of applicable payment, card or other associations used in connection with the Agreement, including, without limiting the foregoing, all criminal statutes, the Uniform Commercial Code, Bank Secrecy Act, the U.S. PATRIOT Act, the ACH Rules, the Unlawful Internet Gambling Enforcement Act, the federal anti-money laundering statutes and any laws or regulations that are enforced or administered by the Office of Foreign Assets Control, applicable letters or guidelines issued by regulatory authorities.

**“Losses”** or **“Loss”** means liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs, and expenses, including, but not limited to, attorneys’ fees.

**“Master Concentration Account”** means a Deposit Account used to aggregate funds from several locations into one centralized Account.

**“Mobile Device”** means any device acceptable to Bank from time to time, including a mobile phone, tablet or personal digital assistant, that is Internet enabled and that provides access to a number of banking functions, including the ability to take pictures of Items and to deliver the Images to the Bank for transmission through the Clearing House Image Exchange Network.

**“NACHA”** means the National Automated Clearing House Association.

**“On-Us Entry”** means an Entry received by Bank for credit or debit to an Account maintained with Bank.

**“Organization”** includes, but is not limited to, a corporation, limited or general partnership, limited liability partnership or limited liability limited partnership, limited liability company, business trust, real estate investment trust, cooperative, association, or other for-profit or nonprofit Organization.

**“Overdraft”** means any event that results in a negative balance to Customer’s Account.

**“Payment Account”** is the checking Account from which bill payments will be debited.

**“Payment Instruction”** is the information provided by Customer to the Business Bill Pay Services for a bill payment to be made to the Biller (such as, but not limited to, Biller name, Biller Account number, and Scheduled Payment Date).

**“Parent”** means an Organization that, directly or indirectly through or with one or more of its Subsidiaries: (a) owns at least 50 percent of the outstanding ownership or membership interests of another Organization; or (b) possesses at least 50 percent of the voting power of the owners or members of another Organization.

**“Paying Bank”** means a bank by which a Check is payable, unless the Check is payable at or through another bank and is sent to the other bank for payment or collection; or a bank at or through which a Check is payable and to which the Check is sent for payment or collection.

**“Person”** means an individual, corporation, partnership, association, joint venture, trust, unincorporated Organization, or any other governmental entity.

**“Receiver”** means a Person that has authorized an ACH Entry to be applied to its Account.

**“Reconverting Bank”** means a bank that creates a Substitute Check; or if a Substitute Check is created by a Person other than a bank, the first bank that transfers or presents such Substitute Check.

**“Related Entity”** or **“Related Entities”** means either: (a) a Parent, (b) a Subsidiary, or (c) an Affiliate of Customer, satisfactory evidence of which must be provided to Bank in a form acceptable to Bank in Bank’s sole discretion.

**“Request”** means a properly authorized Request, made and delivered in accordance with the Agreement, that instructs Bank to conduct a banking transaction for Customer.

**“Rules”** means, as applicable to any transaction hereunder, the federal Check Clearing for the 21st Century Act, FRB Regulation CC, the National Automated Clearing House Association (NACHA) rules, policies and procedures, the American National Standards Institute X9 specifications, the Uniform Commercial Code as adopted by the State of Arkansas, and any applicable network association agreements, and the rules and regulations of any federal or state agency that supervises Bank’s activities or insures Accounts at the Bank, in each case as currently in effect and as amended from time to time.

**“Scheduled Payment”** is a payment that has been scheduled through the Business Bill Pay Services but has not begun processing.

**“Scheduled Payment Date”** is the day Customer wants its Biller to receive its bill payment and is also the day Customer’s Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day.

**“Security Procedures”** means the credentials, call back protocols, and other Systems or procedures provided by Bank or its service providers for authenticating Instructions, transactions and use of the Services.

**“Servicer”** means any third party retained and authorized by Bank or Customer to assist with Bank or Customer’s obligations under this Agreement.

**“Services”** has the meaning assigned to that term in the preamble.

**“Subsidiary”** means an Organization for which another Organization, either directly or indirectly through or with one or more of its other Subsidiaries: (a) owns at least 50 percent of the outstanding ownership or membership interests of the Organization; or (b) possesses at least 50 percent of the voting power of the owners or members of the Organization.

**“Subsidiary Account”** means an Account where excess collected funds are automatically transferred to a Master Concentration Account leaving the subsidiary Account(s) with a daily zero balance.

**“Substitute Check”** (or **“Image Replacement Document”**) means a paper reproduction of the original Check that (a) contains an Image of the front and back of the original Check, (b) bears a MICR line containing all of the information appearing on the MICR line of the original Check,

except as provided under generally applicable industry standards for substitute Checks to facilitate the processing of substitute Checks, (c) conforms, in paper stock, dimension and otherwise, with generally applicable industry standards for substitute Checks and (d) is suitable for automated processing in the same manner as the original Check.

“**System**” means the Software applications, including applications provided by third-parties, used to provide the Services.

“**Uniform Commercial Code (UCC)**” means the Uniform Commercial Code as adopted by the State of Arkansas.

“**User(s)**” shall mean collectively the Authorization Signer(s)/Authorized Signer(s)/Contracting Executive(s), Administrator(s) and Base User(s) that utilize the Online Banking System.

“**Volume Limit**” means the maximum number of Checks and Substitute Checks deposited daily that may be transacted through the Service.

“**Written Instructions**” means Instructions actually received by Bank by letter, electronic communication, through the System or via such other methods as Bank may authorize from time to time.

## **2. Enrollment in a Service or Services.**

Enrollment in any individual Service requires the completion of an application pertaining to each such Service (herein referenced throughout collectively and individually for each such Service as an “Application”). By executing an Application for the Services to be provided, Customer agrees to the terms contained herein as they relate to such Services. Enrollment in a Service or Services is accomplished by obtaining, completing, signing, and submitting the Application to Bank in Person, through regular mail, by facsimile, or electronically.

**Customer must currently have at least one (1) commercial Deposit Account with Bank in accordance with the specifications and regulations defined in the Account Agreement with Bank and the Agreement. Upon approval of Customer’s Application, Bank will provide such Services and ancillary Services as Customer may select from the suite of Services offered. Each such Service shall be provided by Bank pursuant to the Agreement and is subject to change from time to time by Bank in Bank’s sole discretion. Customer represents and warrants that Customer will use the Services for commercial purposes only.**

## **3. Customer Training.**

Bank offers tutorials for some Services as the primary training for Customers using such Services. Customer may contact Bank to request separate training, as needed, for such Services as applicable.

## **4. Accounts.**

### **(a) Generally.**

Customer agrees to maintain a minimum of at least one (1) business/commercial checking Account (“Demand Deposit Account”) with Bank with funds sufficient to cover the transactions initiated pursuant to the Agreement, and to cover fees required to pay for Services provided hereunder.

### **(b) Business Purpose.**

Customer agrees that only Deposit Accounts established exclusively for business purposes will be used for transactions pursuant to the Agreement, and that in no event will transactions hereunder be conducted using Deposit Accounts of Customer or its employees, officers, directors, members, or owners that were established primarily for personal, family or household purposes.

### **(c) Authorization for Transfers to and from Accounts.**

Customer expressly authorizes Bank to debit or credit the appropriate Deposit Account in the amount of any Bank transfer initiated by Customer and pursuant to the Agreement, or initiated by any other Person Customer has authorized or Bank reasonably believes Customer has authorized to initiate such transfers pursuant to the Agreement. Customer agrees that Bank: (i) may treat any Bank transfer, whether initiated online or otherwise, from a Deposit Account the same as a duly executed written withdrawal, transfer, or Check; (ii) may treat any Bank transfer to a Deposit Account the same as a deposit by cash; and (iii) may treat any Bank transfer to a loan Account held by Customer the same as a loan payment to Bank, all in accordance with the terms of the Agreement and Customer’s agreement with Bank governing the Deposit Account (the “Deposit Account Agreement” or “Account Agreement”) or Customer’s agreement with Bank governing any such loan Account (the “Loan Account Agreement”), as applicable.

**(d) Account Limitations.**

Customer's ability to initiate Bank transfers between Deposit Accounts may be limited by state or federal Law or by the terms of the applicable Deposit Account Agreement, any applicable Loan Account Agreement or this Agreement and the terms and conditions of enrollment in any of the Services pursuant to this Agreement, as all may be amended from time to time in the Bank's sole discretion. Bank transfers from Deposit Accounts that are savings or money market Deposit Accounts are limited as required by federal Regulation in effect at the time a Bank transfer is initiated. Customer agrees that Bank may, without Notice or other obligation to Customer, for security reasons or as otherwise expressly provided in this Agreement, the Deposit Account Agreement, or the Loan Account Agreement, (a) refuse to make any Bank transfer, or (b) refuse to accept a Remote Deposit Capture transaction.

Bank also reserves the right, in its sole discretion, to set a maximum dollar amount of transactions or a maximum number of Items that may be processed on a daily or weekly basis through a particular Service. To the extent such limitations may vary from Service to Service, the limits pertaining to the Service being utilized to conduct such transaction(s) or process such Item(s) shall control. Bank has the right to reduce or otherwise alter such daily and weekly limitations upon reasonable notice to the Customer.

**(e) Customer Printed Checks.**

Bank reserves the right, with respect to any and all of the Services, to require Customer to submit any non-Bank printed Checks (i.e. Checks that are printed by Customer, or printed by an independent printer at the Request of Customer) for Bank's review and approval regarding format, size and other requirements. If Bank exercises such review and approval right for any of the Services, Customer shall be required to submit such non-Bank printed Checks for Bank's review and approval prior to Customer using such non-Bank printed Checks.

**5. The Agreement.**

**(a) Generally.**

The terms and conditions of the Agreement are cumulative with and in addition to any terms of the Deposit Account Agreements and related Deposit Account signature cards and Authorizations, Business Deposit Agreement, Mobile Banking Services Agreement, if applicable, Credit Services Agreement and Disclosure, Funds Transfer Agreements, Loan Account Agreements, the applicable Deposit and Loan Account disclosures, Bank's service schedule, Bank's policy regarding availability of funds, any Credit Account agreements relating to any Credit Accounts Customer may have with Bank (together the "Bank Agreements"), the Rules and Regulations of any federal or state agency that supervises Bank's activities or insures Accounts at Bank, and any applicable Clearing House Operating Rules and guidelines, including but not limited to, those of the National Automated Clearing House Association ("NACHA"), and any other applicable local Clearing House association, all as may be amended from time to time.

**(b) Inconsistencies.**

Should any inconsistency exist or arise between the terms of the Agreement, as it relates to any Service or Services hereunder, and the terms of any other Bank Agreements, schedules and disclosures, the terms of the Agreement shall control, but only to the extent of the inconsistency. Furthermore, to the extent expressly provided for otherwise herein, should any inconsistency exist or arise between the General Provisions of the Agreement and the applicable Service specific provisions, the terms of the Service specific provisions shall control, but only to the extent of the inconsistency.

**(c) Amendment.**

Bank may amend the Agreement from time to time. If no federal or state Law specifically governs an amendment, Bank will deliver Notice to Customer of the amendment, as provided for herein. Notwithstanding the foregoing and to the extent permitted by applicable Law, Bank may amend any term of the Agreement without prior Notice or obligation to Customer: (i) if a service provider or a Bank Servicer changes any term impacting or revising the Agreement without providing Bank sufficient prior Notice to enable Bank to timely notify Customer; (ii) for security reasons; (iii) to comply with applicable Law; or (iv) as otherwise expressly provided in the Agreement. Use by Customer of the Service(s) following the effective date of any amendment(s) shall constitute Customer's acceptance of and agreement to the amendment(s). If Customer does not agree to the changes as set forth in an amendment, Customer may choose to terminate the Service(s) affected by the amendment prior to the effective date of the amendment by discontinuing further use of the Service(s) and following the procedures set forth for termination herein. Unless otherwise provided for herein, the Agreement may not be amended or modified unless agreed to in writing by Bank.



## 6. Submission of Information and Documents; Privacy; Dual Control.

### (a) Delivery of Documents.

Customer agrees to deliver, in a form and content satisfactory to Bank, such additional executed, or as the case may be, certified, documents required by Bank from time to time to obtain and to continue to receive the specific Service(s) requested by Customer, including Deposit Account signature cards, declarations, annual assessments, Authorizations, resolutions, implementation documents and updated financial statements, if applicable.

Prior to initiating a new Service, Customer agrees to provide all information which Bank may request including specifications, test results, Check samples, transmissions, and documents. In the event that Bank determines, in its sole discretion, that any specification, test result, sampling, transmission or document does not meet its requirements, Bank may advise Customer that Customer will not be eligible to obtain the Service(s) until requested information that is satisfactory to Bank is provided by Customer.

Customer authorizes Bank to make inquiries, from time to time, of credit reporting agencies and other sources of commercial credit information regarding Customer's financial status and banking history. Customer agrees to provide Bank with the information pertaining to Customer's financial status and further provide Authorization as Bank may reasonably request from time to time to enable Bank to obtain this information.

Customer further consents to Bank obtaining background and/or credit reports on each Person who has a Controlling Ownership Interest in Customer as necessary to comply with any federal or state Laws or industry Regulations. Customer also agrees to provide Bank with a current financial statement and other information regarding Customer's financial condition upon Bank's request.

### (b) Authorizations.

By executing and providing all required Authorizations and documentation required by Bank, including but not limited to, the Business Online Banking/Treasury Management Authorization and Resolution to Bank, any applicable Applications for Services and the appropriate Service Setup Detail forms, Customer authorizes the individual(s) named therein in such capacity as set forth therein. The following describe the potential categories of Users and the authority granted such User:

(i) **"Contracting Executives"** (sometimes referenced as an "Authorization Signer(s)" or "Authorized Signer(s)") are identified at Account opening as the Customer representative(s) who is authorized and appointed by Customer to have power and authority to enter into and execute Bank Agreements on behalf of Customer and have the authority: to sign the Agreement and any addenda thereof; to accept on behalf of Customer the terms and conditions governing the use of Services, including acceptance of Security Procedures; to enroll in, modify features of or terminate Services; request permanent or temporary limit changes; to appoint and remove Administrator(s) (as defined below) and/or Base User(s) (as defined below); to provide the required information to set up and administer Services; to perform the functions of an Administrator; to authorize and remove the Authorization of other Administrators and/or Base Users who perform transactions related to a Service or Services; and to perform transactions related to any Service hereunder.

(ii) **"Senior Administrators"** have the authority of an Administrator (as defined below), but unlike an Administrator, Senior Administrators also have the ability to grant online Account access to other Administrators or Base Users and/or to remove other Administrators and Base Users from online Account access.

(iii) **"Administrators"** if assigned, both have the authority: to authorize and remove the Authorization of Base Users who perform transactions related to a Service or Services, including using online self-administration, if offered by Bank; to grant access to services functions for specific Deposit Accounts; to Request temporary limit changes, if applicable; to re-set passwords; to audit Service activities of Users who perform transactions related to a Service or Services; and to perform transactions related to any Service hereunder. As Online Banking provides online access to a number of Services, the authority for the Administrators and Senior Administrators assigned to Online Banking will supersede the authority of other Base Users to the extent necessary to ensure unanimity of authority whenever a Service is provided through Online Banking (i.e. including, but not limited to Online Wire Transfers, ACH, Positive Pay and Lockbox as applicable).

If offered by Bank and Customer chooses, Bank's Online Banking self-administration functionality may permit Customer to set up more than one Administrator, including a "Senior Administrator", to segment duties or establish controls. Although segmenting duties among more than one individual can serve to establish internal controls for Customer, Bank cannot prevent a particular Administrator from granting the assigned functionalities, which that particular Administrator has been delegated, to other Base Users. In the case of the Senior Administrator, Bank cannot prevent a Senior Administrator from granting assigned functionalities, which that particular Senior Administrator has been delegated, to other Administrators or Base Users.

**(iv) “Base Users”** are those individuals who are authorized to act on behalf of Customer with respect to the Service and to perform certain transactions on behalf of the Customer, but do not have administrative authority to add or remove other Users or perform other administrative tasks.

Bank may rely on the Authorizations and documentation provided by Customer, including but not limited to, the Business Online Banking/Treasury Management Authorization and Resolution to be a true and correct representation of Customer’s Authorizations.

Prior to utilizing any specific Service, Customer shall furnish Bank with an executed Application and service related forms, naming Customer’s employees, Agents and third-party vendors authorized by Customer to perform any of the transactions required by Customer under the Agreement and naming those individuals who are authorized to act on behalf of Customer with respect to the Service (herein throughout “Users”).

CUSTOMER AGREES THAT IN THE EVENT CUSTOMER DESIRES TO NAME ADDITIONAL USERS OR REMOVE THE AUTHORITY OF AN EXISTING USERS, CUSTOMER MUST PROVIDE BANK WITH WRITTEN INSTRUCTIONS ADVISING BANK OF THE CHANGE IN AUTHORITY SIGNED BY A PERSON NAMED AS A CONTRACTING EXECUTIVE ON THE MOST CURRENT BUSINESS ONLINE BANKING/TREASURY MANAGEMENT AUTHORIZATION AND RESOLUTION (EXCEPT IN THE CASE THAT THE CUSTOMER HAS BEEN OFFERED AND IS UTILIZING THE SELF-ADMINISTRATION FUNCTION). IF ASSIGNED BY A CONTRACTING EXECUTIVE, AN ADMINISTRATOR WILL HAVE AUTHORITY TO ADD USERS OR REMOVE THE AUTHORITY OF EXISTING USERS. CUSTOMER MUST PROVIDE BANK WITH WRITTEN INSTRUCTIONS, SIGNED BY A PERSON NAMED AS A CONTRACTING EXECUTIVE, ADVISING BANK OF THE CHANGE IN AUTHORITY (EXCEPT IN THE CASE THAT THE CUSTOMER HAS BEEN OFFERED AND IS UTILIZING THE SELF-ADMINISTRATION FUNCTION). CUSTOMER AGREES THAT BANK WILL RELY ON THE MOST CURRENT BUSINESS ONLINE BANKING/TREASURY MANAGEMENT AUTHORIZATION AND RESOLUTION AND THE MOST CURRENT SERVICE-RELATED USER AUTHORIZATIONS SUPPLIED BY CUSTOMER AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BANK SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACTIONS TAKEN OR TRANSACTIONS PERFORMED BY THOSE INDIVIDUALS NAMED AS CONTRACTING EXECUTIVES ON THE CURRENT BUSINESS ONLINE BANKING/TREASURY MANAGEMENT AUTHORIZATION AND RESOLUTION OR AS USERS ON SERVICE-RELATED AUTHORIZATIONS.

Customer understands and agrees that any employees or applicants for employment with Customer who are or may become Users, or may otherwise have any responsibility for handling Customer’s financial affairs (including processing, writing or receiving Checks or electronic transfers, handling Account statements or other financial information, conducting Remote Deposit Capture transactions such as scanning or storing Original Checks, or creating, transmitting or storing Substitute Check Images), or acting otherwise in a responsible manner regarding Customer’s financial affairs has been asked specifically whether they have ever been convicted of a felony, that a thorough background check of such employee or applicant has been conducted, that a system of reasonable financial controls is in place and that Customer has instituted a program that encourages Customer’s employees to report fraudulent or dishonest activities to Customer’s management.

**(c) Privacy.**

Customer authorizes Bank to share information about Customer and Customer’s Services with Related Entities and third-parties, unless applicable Law, Bank’s Privacy Notice, or Bank’s Online Privacy Policy prohibits Bank from doing so. Please see Bank’s Privacy Notice and Online Privacy Policy on [www.ozk.com/privacy](http://www.ozk.com/privacy) for Customer’s choices about information sharing. It is possible that third-parties involved in the negotiation, mediation, and arbitration protocol, such as lawyers, accountants, or contractors, who offer products or services to the public may also be Bank customers. Bank provides this information only as a courtesy and convenience to Customer. Bank does not make any warranties or representations about the third-parties or their products or services. Bank is not responsible for any third-party’s performance or for helping resolve any dispute between Customer and the third-party.

**(d) Dual Control.**

Bank provides Customer with functionality to implement dual internal approval for certain Services offered by Bank. Customer acknowledges that Bank has offered to Customer, and strongly recommended that, in addition to the security features inherent with the Services, Customer use a dual control Security Procedure in which certain activities may be initiated by one User but must be approved by a second User before being released and sent to Bank (the “Dual Control Security Procedure”). Customer understands that, in Bank’s judgment, the Dual Control Security Procedure described is a commercially reasonable Security Procedure. Customer further understands that Bank does not consider deviations from these Dual Control Security Procedures to be commercially reasonable. Should Customer opt out of this Dual Control Security Procedure, Customer agrees to defend, indemnify, and hold Bank, Bank’s Affiliates, directors, officers, shareholders, employees, and Agents, individually and collectively harmless as well as each Bank director, officer, Agent, and employee against any claims, damages, Losses, lawsuits, settlements, judgments, costs, penalties, and expenses (including, but not limited to, reasonable attorney’s fees) arising in whole or in part from opting out of such Dual Control Security Procedure, including, without limitation, Losses incurred by Customer or any other effected party.

**(e) Payment of Fees.**

Bank reserves the right to change any fee schedule at any time and from time to time. Applicable fees do not include, and Customer will be solely responsible for, payment of any sales, use, excise, value added, utility tax, or tariffs relating to the Service(s) provided hereunder, and

for all telephone charges, Internet access service charges, tolls, tariffs, and any other ancillary costs for any Services utilized by Customer or Customer's Users and/or Customer's Authorized representatives.

Customer agrees to pay the fees and compensation set forth in Bank's then current pricing schedule or as otherwise agreed by Bank in writing, as well as Bank's reasonable out-of-pocket expenses incurred in connection with the Services. If Customer is utilizing Treasury Management Services, upon Request, Bank may submit periodic analysis statements specifying the amount of all out-of-pocket expenses, fees, and compensation then due to Bank hereunder. Bank's default service charge method is to debit Customer's Account. If Customer's Account has insufficient funds to pay any amount due, Bank may debit any other Account maintained by Customer at Bank, whether or not such debit creates an Overdraft. If there are no Accounts at Bank with sufficient funds to cover the amount due to Bank, Customer agrees to pay such amounts directly to Bank upon demand. Customer agrees to maintain available balances in the Account(s) at all times sufficient to pay all fees and expenses debited from the Account(s). Bank may charge interest at the rate of one and one half percent (1.5%) per month, or the highest rate allowed by applicable Law, whichever is less, on all overdue amounts due Bank related to the Services. All taxes, duties and other charges with respect to any amount payable hereunder (other than any taxes based on Bank's net income imposed by any federal, state, or local taxing authority) shall be Customer's responsibility. If Bank is obliged to pay any such tax, duty or other charge or if any amount payable to Bank hereunder is subject to any deduction or withholding, then the amount paid to Bank shall be increased so that the net amount received by Bank after such payment, deduction or withholding shall equal the amount which otherwise would have been owed to Bank. Customer agrees that Customer is liable for and will pay all taxes applicable to the Services other than such taxes as may be assessed against Bank for performing Bank's obligations under the Agreement. All fees and charges are subject to change from time to time upon written Notice to Customer. Customer's continued use of the Services after the effective date of any such change constitutes Customer's agreement to such revised fees and charges.

Customer also agrees to reimburse Bank for any actual expenses Bank may incur to effect, administer, or revoke any Service(s). In the event any fees or taxes are owed to Bank and are not paid; Bank shall have no obligation to execute any Service for Customer, or to continue any Service(s) previously provided to Customer.

#### **7. Availability of Funds.**

Bank's Funds Availability Schedule and Policies, as may be amended from time to time, are incorporated into the Agreement by reference and shall be applicable to all Accounts and the Services provided hereunder.

#### **8. Honoring Transactions and Instructions; Furnishing Information.**

##### **(a) Generally.**

Bank will honor Customer's transactions and Instructions (including adjustments and cancellations) only when Customer has complied with the Agreement. Bank will be under no obligation to complete any transaction or Instruction that: (i) exceeds Customer's collected or Available Funds on deposit with Bank, even if Bank has done so in the past; (ii) Bank believes in good faith is not in accordance with certain conditions requested by Customer and agreed to by Bank; (iii) Bank has reason to believe may not be authorized by Customer; (iv) involves funds subject to a hold, dispute or legal process preventing their withdrawal; (v) violates, in the opinion of Bank, any provision of any present or future risk control program of the Federal Reserve or any other applicable federal or state Law; (vi) Bank has reason to suspect is a transaction in violation of the Unlawful Internet Gambling Enforcement Act (the "UIGEA"); (vii) does not comply with any other requirement stated in the Agreement or any Bank policy, procedure or practice; and/or (viii) for the protection of Bank or Customer, Bank has reasonable cause, in its sole discretion, not to honor.

##### **(b) Restricted Transactions.**

Under UIGEA and related federal Regulations (both state and federal regulations applicable to the Agreement or the Services collectively referenced throughout as the "Regulations") promulgated by the U.S. Treasury Department and Federal Reserve Board, Bank is required to notify its Customer that transactions to fund unlawful Internet gambling activities are prohibited, and as such Bank will either block/deny transactions, and/or close Accounts if it has "actual knowledge" of "restricted transactions." A "restricted transaction" is defined as any transaction or transmittal involving any credit, funds, instrument, or proceeds, that the UIGEA and the Regulations prohibit any Person engaged in the business of betting or wagering from knowingly accepting in connection with the participation of another Person in unlawful Internet gambling. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, Checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

##### **(c) Insufficient Account Balances for Service(s).**

When a Service requires Customer's Deposit Account(s) to contain sufficient, good, collected, and Available Funds to cover Customer's obligations for the required Service, Customer agrees to maintain sufficient, good, collected, and Available Funds in those Accounts from which the funds are to be withdrawn or transferred. If there are insufficient funds in the designated Deposit Account to cover the required withdrawal(s), transfer(s), or related fees, except as specifically modified in an applicable implementation document, Bank may: (i) withhold the Service; (ii) in its sole discretion, elect to dishonor any Item or transaction that creates a negative balance and has no duty to notify

Customer prior to dishonoring any Overdraft, even if Bank has paid Overdrafts on behalf of Customer in the past; (iii) in its sole discretion, provide the Service, and Customer agrees to pay Bank promptly or on demand the amount of Overdraft and any fees or other costs including those set forth in the Deposit Account Agreement; and/or (iv) require Customer to pre-fund transactions prior to settlement date or effective date. Bank may, in its sole discretion, on occasion provide a Service against insufficient, good, collected, and Available Funds in Deposit Account(s), but Bank is not obligated to do so, and any action by Bank of this nature will not constitute an obligation by Bank to provide the Service in the future.

**(d) Inconsistent Name and Identifying Number.**

If any funds transfer Instruction by Customer describes the intended recipient of funds inconsistently by name and Account number, Customer agrees that payment by the receiving bank (which may be Bank) may be made on the basis of the Account number alone even if that Account is not owned by the Person or entity named in the funds transfer Instruction. If any funds transfer Instruction identifies an intermediary bank or the payee's bank inconsistently by name and identifying number, Customer agrees that Bank may rely solely on the identifying number as the proper identification of the intermediary bank or the payee's bank even if it identifies a bank different from bank Customer identified by name. To the extent permitted by applicable Law, Customer acknowledges and agrees that its obligation to pay Bank the amount of the funds transfer pursuant to a funds transfer Instruction will not be excused in any circumstance as more fully described below, and that Customer will reimburse Bank for any Losses or expenses Bank incurs as a result of Bank's reliance on the identifying number provided in the funds transfer Instruction.

**(e) Account Holder's Liability for Funds Transfers.**

In accordance with the applicable provisions of UCC Article 4A as adopted by the State of Arkansas, Customer agrees to be bound by any funds transfer, amendment, or cancellation to a funds transfer issued in Customer's name and received by Bank, whether or not authorized, if Bank accepts the funds transfer, amendment or cancellation in good faith and in compliance with the Security Procedures agreed to herein. In the event that a funds transfer is unauthorized but effective pursuant to the Security Procedures agreed to herein, Bank is entitled to enforce or retain payment for the funds transfer from Customer unless Customer can prove that the funds transfer was not caused, directly or indirectly, by a Person (i) entrusted at any time with duties to act on Customer's behalf with respect to such funds transfer or the Security Procedures; or (ii) who obtained access to Customer's transmitting facilities or who obtained, from a source controlled by Customer and without authority of Bank, information facilitating breach of the Security Procedures, regardless of how the information was obtained or whether Customer was at fault.

**(f) Account Reconciliation and Reporting of Discrepancies.**

**(i) Generally.**

The Deposit Account statements provided to Customer by Bank will notify Customer of: (i) the execution of funds transfers and all debits or credits to Accounts of Customer held by Bank resulting from transactions pursuant to the Agreement; and (ii) amounts debited by Bank from the Account(s) for payment of fees for the Services hereunder or other charges pursuant to the Agreement. Customer agrees that Bank will not be required to provide any other Notice to Customer of the execution of any funds transfers, debits, credits, or charges.

**(ii) Notification of Discrepancies.**

Customer agrees to promptly report to Bank any discrepancies between Customer's records and Bank's records and/or Deposit Account statements and any relevant facts pertaining to a potentially unauthorized or erroneous funds transfer of any kind. (i) For funds transfers, such report should be made within thirty (30) calendar days from the date Customer receives Notice from Bank that the funds transfer was processed or that Customer's Account was debited with respect to the funds transfer. Customer's failure to notify Bank of any such discrepancies may result in Customer forfeiting any interest potentially due on the amount of the unauthorized or erroneous funds transfer due to Customer's failure to provide notification within thirty (30) days as stated herein. (ii) For all ACH transactions that are believed to be unauthorized or erroneous, such report should be made no later than one (1) Business Day following the date of the unauthorized or erroneous ACH Entry so that Bank can return the Item to the Originating Depository Financial Institution (the "ODFI") within the two (2) Business Day period required under NACHA Rules. Failure to do so for debits against an Account will preclude Bank from returning the transaction through the ACH system and re-crediting the Account. At Customer's Request, Bank will attempt to go outside the ACH system and request a credit from the ODFI based on a violation of the ODFI's warranty that the transaction was authorized.

**(g) Settlement of Obligations.**

To the fullest extent permitted by applicable Law, Customer authorizes Bank to obtain payment of Customer's obligations to Bank under the Agreement from time to time by (i) initiating debit or credit transfers to any of the Deposit Accounts; or (ii) deducting the payment from the amount of any Bank transfer. Such obligations include, without limitation, fees owed to Bank, in conjunction with any of the Services or otherwise, and settlement for funds transfers initiated pursuant to the Agreement. At the time any Deposit Account is closed (whether by Customer, by Bank, or otherwise) or any Service is terminated (whether by Customer, by Bank, or otherwise), Customer agrees that all such fees and other obligations will be immediately due and payable to Bank, and Customer authorizes Bank to withhold the amount of any such

fees and other obligations from any Deposit Account. Debiting a Deposit Account or deducting payment from the amount of any Bank transfer is not Bank's exclusive remedy under this or any other section of the Agreement, and Bank will not be deemed to have made an election of remedies by making any such debit or deduction on any one or more occasion.

**(h) Cooperation in Loss Recovery Efforts.**

Except as otherwise stated in the Agreement, in the event of any damages for which Bank or Customer may be liable to the other or to a third-party with respect to the Service(s), Bank and Customer will undertake commercially reasonable efforts to cooperate with each other (as permitted by applicable Law) in performing Loss recovery efforts and in connection with any action(s) that the relevant party may be obligated to defend or elect to pursue against a third-party.

**9. Courier Agreements.**

Customer may utilize a courier to conduct transactions for certain Treasury Management Services pursuant to the Agreement. In so doing, Customer agrees at all times and in all respects, regardless of the source of payment for the courier services, that (i) the courier is the Agent of Customer and not Bank; (ii) Bank makes no representations or warranties regarding any courier, and assumes no responsibility with respect to any services performed or promised by any courier; and (iii) Customer assumes all risk of Loss (including Loss or theft by third-parties or employees of Customer or the courier) prior to Bank's acceptance of such transactions from the courier and subsequent to the courier's acceptance of transactions from Bank. Customer agrees that Customer and the courier will be responsible for all Loss recovery procedures and processes, although Bank may undertake commercially reasonable efforts to facilitate Loss recovery.

**10. Confidential Information.**

Customer agrees to keep confidential all Confidential Information published or made available to Customer by Bank; to disclose any such Confidential information to Customer's employees and Agents only on a need-to-know basis; not to disclose the Confidential Information to anyone else without prior written consent from Bank, except as required by Law or as permitted hereunder and upon termination of Bank's agreement to provide Services to Customer, to return all Confidential Information to Bank, together with any reproductions or extracts of such Confidential Information. Prior to Customer's first use of the Services, Customer agrees to: (a) adopt and maintain safeguarding and security policies and procedures that (i) comply with applicable Laws, Regulations and regulatory pronouncements, including without limitation the Gramm-Leach-Bliley Act and its implementing regulations, and (ii) are acceptable to Bank; (b) adopt and maintain appropriate disaster recovery and business resumption policies and procedures that comply with applicable Laws, Regulations and regulatory pronouncements; and (c) upon Bank's request, provide Bank with copies of such policies and procedures. **Customer agrees to provide Bank with immediate written Notice of any breach of Customer's computer or IT systems or of any unauthorized use or disclosure of, or access to, any Confidential Information of which Customer becomes aware. Such written Notice shall include a reasonably detailed summary of the nature of the unauthorized use, disclosure or access, as well as its effect or anticipated effect on Bank, and any corrective action taken, or to be taken by Customer. Customer expressly agrees to take appropriate actions promptly upon becoming aware of any such breach or unauthorized use, disclosure or access.**

**11. Customer Records; Ownership of Data; Response to Data Security Breach Incidents; Responsibility for Loss.**

**(a) Customer Records.**

The Agreement will not relieve Customer of any obligation imposed by Law, contract, or otherwise regarding the maintenance of records or from employing adequate audit, accounting, and review practices. Customer shall retain and provide to Bank upon request all information necessary to remake or reconstruct any deposit, transmission file, or ACH Entry for at least ten (10) Business Days following receipt by Bank of the deposit, transmission file, ACH Entry, or other order affecting any of Customer's Account(s); provided, however, that Bank's records, kept in the ordinary course of business, will be presumed to accurately reflect the contents of Customer's Instructions to Bank and, in the absence of manifest error, will be binding and conclusive.

**(b) Ownership of Data.**

The parties understand, acknowledge and agree that all data provided by Customer to Bank including, but not limited to, electronic Images of Substitute Checks retained on any processing equipment, processing Software, including Customer's computer used by Customer in conjunction with Remote Deposit Capture, and all data produced, compiled or otherwise provided by Bank to Customer, in any form or format, is the sole and exclusive property of Customer and copies thereof shall be provided to Customer at Customer's Request from time to time and at any time ("Customer-owned Data"). Once Customer-owned Data is delivered by Bank to Customer, retrieved by Customer from Bank, or otherwise created as a by-product of a transaction between Customer and Bank and retained by Customer, such Customer-owned Data is solely within Customer's possession and control.

**(c) Response to Data Security Breach Incidents.**

Customer has the sole responsibility for security and protection of Customer-owned Data. In the event of any security breach incident involving any potential or actual unauthorized access or acquisition of Customer-owned Data (e.g., computer hacking, Virus attack, or theft or Loss of any equipment containing Customer-owned Data), it is Customer's sole responsibility to determine whether Customer has the obligation, under applicable Law, to notify potentially affected individuals whose sensitive Personally Identifiable Information ("PII") may have been compromised by the security breach incident. Customer must conduct, at its sole cost and expense, any audit and forensic investigation of such security breach incident. Customer bears the sole responsibility for any and all costs of complying with required data breach notifications to individuals, credit bureaus, and/or governmental entities as required by applicable Law, and any and all costs for credit report monitoring or fraud monitoring associated with such security breach incident.

**(d) Responsibility for Loss.**

If, despite Customer efforts, Customer suffers any damage or Loss as a result of any unauthorized access or data security breach (e.g. computer hacking, Virus attack, or theft or loss of equipment or other information containing Customer-owned Data), and regardless of whether such unauthorized access or breach results from the activities of Customer's employees, Agents, subcontractors, or any unaffiliated third-party, any such Loss or damage shall be the sole responsibility of Customer regardless of channel of access (e.g., online or mobile access).

**12. Corporate Authority; Partnership Authority.**

Customer represents, warrants and agrees that (i) the execution, delivery and performance by Customer under the Agreement are within Customer's powers, have been duly authorized by all necessary action and do not contravene Customer's governing documents (if any) or any Law or contractual restrictions; (ii) no Authorization, approval or other act, and no notice to or filing with any governmental authority or regulatory body is required for the execution, delivery and performance by Customer of the Agreement; (iii) the Agreement constitutes the legal, valid and binding obligation of Customer and that the Agreement is enforceable against Customer in accordance with the terms of the Agreement; (iv) no information furnished by Customer to Bank in connection with the Agreement is inaccurate in any material respect, contains any material misstatement of fact, or omits any fact necessary to make such statements not misleading, as of the date it is dated, or if not dated, the date it is given to Bank; and (v) Customer has not been induced to enter into the Agreement by any representations or statements, oral or written that have not been expressly incorporated herein by reference. Customer agrees to deliver to Bank, upon execution of the Agreement and at any time upon Bank's request, a certified copy of a duly adopted resolution, unanimous consent or other similar corporate or entity document or official record authorizing the execution of the Authorization and Agreement and the granting of authority to the Person(s) identified therein.

In the event that Customer obtains any Services under this Agreement for any of Customer's Related Entities, Customer agrees that such Related Entities are bound by this Agreement. In addition, Customer makes the following additional representations and warranties to Bank each time that a Customer's Related Entity is authorized to obtain Services under this Agreement: (i) if Customer is a Parent of any Subsidiary Related Entity listed, that Customer is authorized under applicable governing documents to exercise both the voting power and equity of the Related Entity, and that no third-party holds any veto power or approval right over (A) Customer's ability to appoint a majority of the directors, managers or other members of the Related Entity's governing body, (B) Customer's ability to determine the Related Entity's strategy and direction, or (C) Customer's ability to bind the Related Entity to this Agreement; (ii) if Customer is a Subsidiary of any Parent Related Entity listed, that Customer has been duly authorized by the Parent to enter into this Agreement, to bind the Parent to this Agreement and to take all necessary actions to obtain Services under this Agreement, and that no third-party holds any veto power or approval right over Customer's ability to fulfill Customer's obligations under this Agreement; (iii) if Customer is an Affiliate of any Affiliate Related Entity listed, that Customer is duly authorized by its governing documents, or by actions of the Affiliate Related Entity, to enter into this Agreement, to bind the Affiliate Related Entity to this Agreement, and to take all necessary actions to obtain Services under this Agreement, and that no third-party holds any veto power or approval right over Customer's ability to fulfill Customer's obligations under this Agreement. Customer further represents and warrants that it has all requisite authority to bind such Related Entities to this Agreement and all related documentation, and that Customer shall be responsible for activities carried out by such Related Entities under this Agreement.

**13. Linking of Eligible Accounts for Related Entities.**

Once Customer enrolls in Treasury Management Services and/or Business Online Banking Services, Customer can access Eligible Accounts through the Online Banking System and may link certain Eligible Accounts of Related Entities. Eligible Accounts may change from time to time. Eligibility is based on Account type and the relationship of the Customer to the Account. By enrolling in Treasury Management Services and/or Online Banking Services and utilizing the Online Banking System, Customer may be able to link Eligible Accounts for which Customer is an owner (including joint accounts) and authorized to do so and those that are considered Eligible Accounts by providing the required documentation to Bank, including but not limited to, that certain Business Online Banking/Treasury Management Authorization and Resolution. Customer must represent and warrant to Bank, in the sole satisfaction of Bank, that Customer has the authority to act on behalf of the Eligible Accounts and Related Entities and that each Related Entity has, through appropriate corporate or entity resolution, undertaken each and every obligation required of a corporation or an entity under the Law.

If Customer and Customer's Related Entities share the same Codes and Security Procedures, Customer acknowledges the increased security risk and Customer assumes the additional risk resulting from such common use. It is Customer's responsibility to establish policies and procedures with Customer's Related Entities to mitigate such risk.

Customer represents that any Users in regard to linked Eligible Accounts who initiate and transmit Instructions to Bank in electronic form, have the full authority to act in regard to such Eligible Accounts pursuant to this Agreement. Customer agrees that Bank may act upon and shall incur no liability in acting upon any such Instructions as reasonably understood by Bank to be authorized by Customer. Customer agrees that Customer is responsible for and Bank may rely upon the accuracy and authenticity of all data and other information furnished to Customer or Bank by Customer's Users, including Users for Customer's linked Eligible Accounts. Customer understands that by electing to link Eligible Accounts and to use a common Online ID, passcode or token for Treasury Management Services and/or Business Online Banking Services for all such linked Eligible Accounts, Customer does so at Customer's risk and that of the Related Entities and the Bank assumes no liability for the same. Customer should only link Accounts for which Customer is authorized to do so and is further authorized on such Accounts to use all the functions of Business Online Banking and the Services for each Eligible Account. Customer agrees to inform Bank if Customer's authority over any linked Eligible Account decreases. Bank is not liable if Customer's authority over any Eligible Account decreases until it is informed of the change in authority using the Notice requirements set forth herein and Bank is given a reasonable time to act upon such Notice.

#### **14. Use of Servicers.**

##### **(a) Customer's Use of Servicers.**

If Customer designates and provides Authorization for a Servicer to use one of the Services in relation to Customer's Account(s) on Customer's behalf, Customer shall notify Bank of such Servicer and the authorized representative(s) of such Servicer (herein "Servicer Representative") to whom Bank is to provide all components of, and information relating to, the Security Procedures associated with the Service(s) so that the Servicer may access and use the Services on Customer's behalf.

Customer authorizes the Servicer to designate individual User(s) to have access to Customer's information and Account(s) and authority to initiate and transmit Instructions to Bank on Customer's behalf using any method of designation accepted by Bank. Customer acknowledges that Bank reserves the right to decline to accept any Instructions or to execute any transactions for Customer's Account(s) in Bank's sole discretion and Bank shall not be required to accept Instructions or to otherwise act with respect to Customer's Account(s) unless indemnified to Bank's satisfaction.

Customer represents that the Servicer and such Servicer Representative(s) who initiate and transmit Instructions to Bank on Customer's behalf in electronic form, have the full authority to agree to any terms and conditions that are required to use the Services in electronic form. Customer agrees that Bank may act upon and shall incur no liability in acting upon any such Instructions as reasonably understood by Bank, provided such Instructions reasonably appear to be genuine to Bank. Customer agrees that Customer is responsible for and Bank may rely upon the accuracy and authenticity of all data and other information furnished by Customer's Servicer and Servicer Representatives.

Bank strongly recommends that Customer develop strong internal controls for administering and tracking any and all Servicer(s). Customer understands that Bank recommends that both Customer and such Servicer(s) review their internal controls, anti-Virus and "malware protection" on a regular basis to reduce the opportunity for fraud. Customer acknowledges that the use of a Servicer may create an increased security risk for Customer and Customer assumes all risk resulting from the same.

It is Customer's responsibility to establish policies and procedures with any such Servicer to mitigate any risk presented. Bank strongly recommends that Customer develop strong internal controls for administering and tracking any and all Servicer(s) who have authority to perform transactions on Customer's Account(s). Customer understands that Bank recommends that both Customer and Servicer review Customer's and Servicer's internal controls, anti-Virus and "malware protection" on a regular basis to reduce risk and opportunity for fraud.

Customer assumes all responsibility for being regularly informed of any Servicer's actions with regard to the Services and Customer's Account(s) and all other circumstances related to authorizing such Servicer and Servicer Representatives to access Customer's Account(s) information and initiate and transmit Instructions on Customer's behalf. Bank has no duty to advise Customer of such risks or information that may be known to Bank regarding such circumstances or risks.

**By requesting Bank allow a Servicer to act in regard to the Services related to Customer's Account(s), Customer expressly agrees to indemnify, protect, hold harmless and defend Bank and its Affiliates, directors, officers, shareholders, employees, and Agents, individually and collectively, from and against any and all damages, expenses, liabilities, Losses or costs (including attorneys' fees and court costs), of whatever kind or nature, including those claimed by third-parties, arising from the Servicer(s) acting on Customer's behalf in regard to the Service(s) related to Customer's Account(s). Customer understands and agrees that in the event of a fraudulent or unauthorized transaction initiated by a Servicer that Customer will not have any recourse against Bank and Customer accepts liability for all the acts of such Servicer and Servicer Representative(s), including but not limited to, the negligent, grossly negligent, willful or fraudulent acts of such Servicer(s) and Servicer Representative(s) in relation to any Service(s) under this Agreement or any agreement with the Bank and Customer's Account(s).**

**(b) Bank's Use of Servicers.**

Bank's ability to provide certain Services depends on its ability to provide access to third-party networks and other third-party services. In the event Bank determines, in its sole discretion, that it is unable to provide a third-party network or Service(s) access, Bank may discontinue the related Service or may provide the Service through an alternate third-party network or vendor and shall have no liability for the unavailability of such Service.

**15. Licensing of Technology.**

Customer agrees to use, and warrant that Customer's Related Entities or Servicers will use the Services and any Software, programs, applets, scripts, and macros related to technology ideas and know-how either owned by Bank or licensed to Customer by Bank and used in connection with the Services at any time, including all modifications, updates, new releases and replacements thereof (the "Technology") in accordance with the Agreement and solely for Customer's own internal business purposes. The Technology is subject to the Confidential Information provisions of the Agreement and there is no transfer of title to, and ownership of, the Technology.

**16. Recording of Calls.**

Customer acknowledges and consents to Bank's recording transmissions by, or telephone conversations with, Customer and Customer's employees and Agents, including any Related Entity of Customer or Servicer, regarding the Agreement, the Services or the Account(s). Customer agrees that Bank may retain the recordings by any reasonable means for the period of time that Bank deems to be necessary or appropriate, in Bank's sole and absolute discretion. However, unless included as part of particular Security Procedures, neither Customer nor Bank has an obligation to record any telephone conversations or data transmissions or to retain for any period of time any telephone conversations or data transmissions that may have been recorded. Bank will not be liable to Customer if Bank does not record or retain a record of a transmission or conversation regarding the Agreement, the Services, or the Account(s).

Customer is responsible for obtaining any required consents from Customer's Users for these recordings. If Bank's records about a Request are different from Customer's records, Bank's records will govern. Bank's records include Bank's written records and any tape recordings relating to any Services hereunder.

**17. Information, Reports, Receipts, and Images.**

Certain Services include statements, reports and other information relating to the Account(s) and the Services that Bank makes available from time to time. Any such information reported prior to final posting or settlement is subject to correction in case of error. Various types of Information and reports provided electronically are current as of different dates and times (*e.g.*, they may be reported in real-time, may be updated periodically throughout the day or have prior day status). Customer agrees that Customer will be commercially reasonable in determining when information and reports were last made current. Bank will not be responsible for any Losses Customer may suffer as a result of Customer's misinterpretation of how current information may be. Information regarding balances of any credit facilities that Customer may have with Bank may not include any applicable pre-payment premiums or other costs, expenses or fees, which may be due and owing to Bank under applicable loan documents.

Certain Services may involve transmission of files or information between Bank and Customer. Bank has no obligation to confirm receipt of (or failure to receive) any file or information unless Bank specifically agrees otherwise. Regardless of whether Bank has agreed to confirm receipt, if Customer expects to receive, but does not receive, any such confirmation, Customer must communicate with Bank directly to verify whether or not Bank actually received the file or information. Bank will not be liable for Customer's failure to receive any file or information that Bank transmits to Customer by facsimile or other electronic means.

In connection with certain Services, Bank may endeavor to capture Images of Items deposited into or presented for payment from the Accounts, remittances or other documents. However, Bank will not in any way be liable for Bank's failure to do so. Customer agrees to verify the readability, clarity and quality of all information and Images made available to Customer by Bank, including, without limitation, electronic Images. Customer agrees that Customer will notify Bank within forty eight (48) hours of Bank's delivering or making information or Images available, if the quality of the information is insufficient and that Customer is in need of a replacement of the information or Image provided.

**18. Systems; Equipment.**

Customer is responsible for purchasing, maintaining, and using equipment and software that is compatible with Bank's System as set forth herein. Customer is responsible for the security and integrity of Customer's equipment, software, and Internet service, and Customer agrees to provide such security as may be necessary to protect Customer from unauthorized access to the System, including, but not limited to, by acquiring and maintaining adequate anti-Virus and spyware protection. Customer is responsible for all charges incurred in connecting to Bank's System and for all charges for any service provider providing an internet connection. Bank is not responsible for any Losses or delays caused by Customer's Internet service provider. Bank has no liability or responsibility for any Losses incurred by Customer as a result of any Software or equipment used by Customer in conjunction with the Services and transactions contemplated hereby.



IN ADDITION TO OTHER WARRANTY DISCLAIMERS CONTAINED ELSEWHERE HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW OR REGULATION, BANK MAKES NO WARRANTIES THAT CUSTOMER'S EQUIPMENT, SOFTWARE, OR ANY INTERNET BROWSER USED BY CUSTOMER IN CONNECTION WITH THE SERVICES ARE MERCHANTABLE OR FIT FOR A PARTICULAR PURPOSE AND BANK HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE SERVICES. ANY PROBLEMS WITH CUSTOMER'S EQUIPMENT, SOFTWARE, OR INTERNET BROWSER MUST BE RESOLVED DIRECTLY WITH THE MANUFACTURER OR OTHER SUPPLIER. BANK DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SOFTWARE, EQUIPMENT, OR SERVICES WILL BE UNINTERRUPTED OR THAT OPERATION OF THE SERVICES WILL BE ERROR-FREE OR SECURE.

**19. Electronic Mail/Internet.**

If Customer sends Bank electronic mail ("email"), Bank may not receive or review it immediately. Bank will have a reasonable time to act upon any email Request or Notice, and reserve the right to reject any transaction or Request received by email. Customer acknowledges that, even though email may be encrypted, Bank cannot ensure that it will not be intercepted or affected by the actions or omissions of others, such as third-party networks or Persons with access to the Internet. As such, Bank recommends that Customer not send Account data or other sensitive information to Bank by email.

Customer's use of the Internet will be entirely at Customer's own risk. Bank makes no representation, warranty or endorsement with respect to: (a) information placed on the Internet by third-parties; (b) the security or continued availability of the Internet or of any Internet website, including without limitation Bank's website; or (c) the Services, products or information made available over the Internet by others whose sites may be accessed, directly or indirectly, as a result of Bank's Services.

Customer understands and agrees that: (a) Internet Services are provided to Customer on an "as is" basis, without warranties of any kind; (b) Bank, Bank's Affiliates, Internet service providers, and licensors will not be liable for any errors, defects in, or the untimeliness or lack of authenticity of, any information provided over the Internet; (c) Customer will comply with all Laws applicable to Customer's Internet activities; (d) Customer will not transmit any information that may give rise to civil liability; (e) Bank may monitor Customer's email and Internet communications with Bank's employees; and (f) Bank's Internet service will be subject to the additional qualifications and operating Rules, if any, set forth on Bank's website or as otherwise established by Bank in Bank's sole discretion.

**20. Statements and Notices.**

**(a) Notices to Bank.**

Customer understands and agrees that all Notices, demands, claims, consents, approvals, waivers, and other communications required or permitted under the Agreement or in connection with Accounts or Services (each, a "Notice") must be in writing as set forth below unless the Agreement expressly provides otherwise.

Unless otherwise expressly stated herein, any written Notice required or permitted to be given hereunder to Bank shall be given by: (1) registered or certified mail, return receipt requested, postage prepaid at the address provided below; (2) by facsimile at the number provided below; or (4) via nationally recognized courier service to Bank at the addresses listed below or to such other address as Bank may designate in writing. Notice shall be effective upon receipt.

All Notices to be delivered by Customer to Bank for **Business Online Banking** shall be made as set forth below:

**Bank's physical notification address:**

Bank OZK  
Attn: Digital Services  
17901 Chenal Parkway  
Little Rock, AR 72223

**Bank's postal (i.e., P.O. Box) notification address:**

Bank OZK  
Attn: Digital Services  
P. O. Box 196  
Ozark AR, 72949

**Bank's telephone number and fax number:**

Phone Number: (800) 274-4482  
Fax Number: (479) 431-6846

All Notices to be delivered by Customer to Bank for **Treasury Management Services** shall be made as set forth below:

**Bank's physical notification address:**

Bank OZK  
ATTN: Treasury Management Services  
17901 Chenal Parkway  
Little Rock, AR 72223

**Bank's postal (i.e., P.O. Box) notification address:**

Bank OZK  
ATTN: Treasury Management Services  
P.O. Box 8811  
Little Rock, AR 72231-8811

**Bank's telephone number, fax number, and email address:**

Phone number: (844) 479-8502  
Fax Number: (501) 978-2261  
Email address: TMS-Support@ozk.com

As stated below, information from Bank on transfers to or from Customer's Accounts will be reflected on Customer's periodic statements and will be available to Customer online and such will be deemed sufficient Notice to Customer of the same. Customer agrees to notify Bank immediately if Customer discovers: (a) any error or discrepancy between Customer's records and the information Bank provides to Customer about Customer's Accounts or transactions (*e.g.*, in a statement, confirmation, or electronic report); (b) unauthorized transactions involving any Account; (c) a breach in the confidentiality of the Codes; or (d) other problems related to the Services. Customer must send Bank a written Notice of any discrepancy or other problem, including a statement of the relevant facts, within a reasonable time (not to exceed sixty (60) days from the date Customer receives information reflecting the problem). If Customer fails to notify Bank within sixty (60) days, Customer agrees that, in addition to any other limitations on Bank's liability, Customer will be liable for all Losses up to the amount thereof (as well as any loss of interest), that result from Customer's failure to give Bank such Notice or that might have been prevented by Customer giving Bank such Notice.

Customer specifically acknowledges and agrees that the maximum sixty (60) day period described in this section is a reasonable period of time for Customer to detect errors and discrepancies involving Customer's Accounts and transactions and that Bank has agreed to provide Services to Customer, at the fees and charges established for such Services, in reliance upon this time period being commercially reasonable.

**Notwithstanding the above, Bank is entitled to rely on any Notice or other communication from Customer believed by Bank in good faith to be genuine and to have been initiated by an authorized representative of Customer and such communication will be deemed to have been authorized by Customer. The parties agree that Bank's records of telephonic or electronic Instructions shall be conclusive evidence of the actual Notice or Instructions given by Customer and recorded by Bank.**

Bank will have a reasonable time to act upon any Notices, Instructions, or forms Bank receives related to the Agreement or the Services.

Except as otherwise expressly provided in the Agreement, Bank is not required to act upon any Notice received from any party or to provide any Notice or advice to Customer or any other Person.

Any Notice is deemed given: (i) on the day of delivery if personally delivered or delivered by a courier service on a Business Day before 5:00 p.m. local time in the place of delivery; (ii) on the next business day if delivered after 5:00 p.m. local time in the place of delivery; (iii) if mailed by First Class U.S. Mail to Bank, on the Business Day Bank actually receives the Notice; or (iv) if delivered by electronic mail to Bank, on the Business Day Customer receives electronic confirmation of receipt from Bank, if the confirmation is received by 5:00 p.m. local time in the place of delivery or receipt, and otherwise, on the next Business Day.

**(b) Notices to Customer.**

Information on transfers to or from Customer's Accounts will be reflected on Customer's periodic statements and will be available to Customer online and such will be deemed sufficient Notice to Customer of the same.

To the extent permitted by applicable Law, Bank may give Notice to Customer by electronic means (including, but not limited to, Customer's confirmed email address on file with the Bank or an electronic banner within Online Banking), mail, or national courier, in Bank's sole discretion. Any written Notice required or permitted to be given hereunder shall be given by: (1) registered or certified mail, return receipt requested, postage prepaid at the address on file with the Bank; (2) Customer's confirmed email address on file with the Bank; (3) Customer's confirmed facsimile on file with the Bank; or (4) a nationally recognized courier service to the addresses of Customer on file with the Bank. Notice shall be effective upon receipt.

Any Notice is deemed given: (i) on the day of delivery if personally delivered or delivered by a courier service on a Business Day before 5:00 p.m. local time in the place of delivery; (ii) on the next business day if delivered after 5:00 p.m. local time in the place of delivery; (iii) if mailed by First Class U.S. Mail to Customer, on the day on which Bank mails it; or (iv) if delivered by electronic mail to Customer on the day that Bank sent the electronic mail message to Customer.

**(c) Notices Generally.**

In the event that the parties agree that Notice may be given orally for a specific aspect of a Service or with respect to a particular matter arising under the Agreement, such oral Notice must be confirmed in writing or electronically subject to the provisions above. Customer agrees that there is risk in acting on oral Notice and Bank's records of the oral Notice controls.

Each party may rely upon the other party's current contact information in its possession until a written notification of change is received and the receiving party has had a reasonable time to act to amend its records accordingly. It is Customer's responsibility to provide Bank, in writing, with any changes to Customer's contact information, including without limitation, Customer's facsimile number, or email address, in a timely manner so as to afford Bank a reasonable time to act to implement such changes.

**21. Security Procedures.**

**(a) Security Procedures under the Agreement.**

Where required for any Service, Customer will agree to one or more Security Procedures that must be used by Customer in connection with the Service(s). Security Procedures offered by Bank are described herein and in documentation related to the applicable Service. As part of the Security Procedures, Bank may employ various authentication Technologies. As part of Bank's "Online Banking Services" and "Treasury Management Services" for commercial Customers, Bank employs various security and authentication Technologies to ensure that Contracting Executive(s), Administrator(s) (if applicable), and Users are communicating directly with Bank, and also to ensure that Customer's computer is communicating with a legitimate Bank computer. Such Bank authentication procedures and Technologies include, but are not limited to, use of Customer Online Banking Services User IDs, passwords, tokens and other "Additional Authentication Information" ("AAI") that Bank may require Customers to provide at Bank's sole discretion. Such AAI is required as a component of various Online Banking Services authentication procedures that Bank may employ, including, but not limited to, tokens, security questions and responses and/or use of other hardware-based and software-based security and authentication tools, programs and procedures. Customer is responsible for the establishment and maintenance of its internal procedures reasonably adapted to insure the confidentiality and security of Security Procedures. CUSTOMER UNDERSTANDS AND AGREES THAT CUSTOMER WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER ALL USER IDS AND PASSWORDS OF CUSTOMER'S USERS, AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL CUSTOMER WOULD USE FOR CASH, OR A MECHANICAL CHECK-SIGNING MACHINE, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL UNDER THE CIRCUMSTANCES. If Customer or its employees or Agents have reason to believe that any Security Procedure has or may have become known by unauthorized Persons (whether or not employed by Customer), Customer shall immediately notify Bank by telephone and confirm such oral notification in writing to Bank within twenty-four (24) hours of the oral notification. Bank will replace the Security Procedures in accordance with Bank's standard security requirements related to the applicable Service(s). To the maximum extent permitted by applicable Law, Customer will be solely liable for all transactions, including funds transfer Instructions and other communications, initiated before Bank has received such notification and has had a reasonable opportunity to act on such notification. Bank reserves the right to modify, amend, supplement, or cancel any or all of the Security Procedures, at any time and from time to time in Bank's discretion. Bank will endeavor to give Customer reasonable Notice of any change in Security Procedures; provided that Bank may make any change in Security Procedures without advance Notice if Bank, in Bank's judgment and discretion, believe such change to be necessary or desirable to protect the security of Bank's Systems or assets. Customer's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Customer's agreement to the change and agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended. Customer acknowledges that the purpose of Security Procedures is to authenticate the identity of the Person initiating the action, not to detect errors in any transmission or content. Bank is not responsible to detect Customer errors in regard to the Service(s) utilized by Customer or Customer's Account(s) and Customer should not rely on Bank's Security Procedures to detect or otherwise protect Customer from error in regard to the Service(s) or Customer's Account(s). Customer represents that for the Service(s) it Requests, it considers the Security Procedures implemented by the Bank to be commercially reasonable with respect to the size, type, and frequency of funds transfers Customer anticipates issuing and the information which will be transmitted by Customer.

**(b) Customer's Data Security Obligations.**

With regard to obtaining any Services under this Agreement, Customer must comply with the Computer (as defined herein) hardware, software, and Security Procedure requirements as set forth in these General Provisions and/or as set forth in any Service specific provisions or any supplemental information and/or Instructions provided by Bank. Bank reserves the right as encryption Technology develops to impose further reasonable requirements to maintain the appropriate level of security for the Services and transactions contemplated hereunder and Customer agrees to abide by such requirements. Furthermore, Customer understands and acknowledges that if Customer does not follow commercially reasonable hardware, software, physical access and physical storage security procedures regarding any Customer-owned Data (defined herein), including such data containing the sensitive Personally Identifiable Information ("PII") of any individual, the security of

Customer's transactions and/or Customer-owned Data (including sensitive PII) may be compromised. Customer understands, acknowledges, and agrees that installation, maintenance and operation of Customer's Computer (hardware and software) and related security procedures, including, but not limited to, data security protection, firewalls and anti-Virus software, is Customer's sole responsibility, and that Customer is solely responsible for securing, encrypting, protecting, and otherwise safeguarding Customer-owned Data.

**(c) Limitation on Liability.**

Customer understands, acknowledges and agrees that Bank is not responsible for any Loss or damages resulting from any errors or failures of Customer's Computer or data processing systems, including, but not limited to any computer Virus or malware attack (such as a keystroke logging program or similar malware), any attack by a Person attempting or actually gaining unauthorized access to Customer-owned Data, or any Internet-related problems that may be associated with Customer's access and use of the Services.

**(d) Serious Potential Threat to Customer's Business; Notification to Bank.**

Customer acknowledges and agrees that the threat of fraud resulting from theft of electronic data is a serious potential threat to Customer's business and, accordingly, Customer will take all reasonable steps to make certain that its Computers and data security systems are protected from unauthorized access or use, and in an event of any unauthorized access or use, Customer will take all reasonable steps to immediately inform Bank of the security breach.

**(e) Responsibility for Loss.**

If, despite Customer efforts, Customer suffers any damage or Loss as a result of Customer's failure to comply with its data security obligations, and regardless of whether such damage or Loss results from the activities of Customer's employees, Agents, subcontractors or any unaffiliated third-party, any such Loss or damage shall be the sole responsibility of Customer.

**22. Cooperation.**

Within ten (10) Business Days after receipt of a written request from Bank, Customer agrees to furnish such financial statements or other documents and information as Bank may reasonably request.

**23. Audit Rights.**

Customer agrees to permit Bank, and Bank's authorized representatives, (i) to visit and inspect any of Customer's locations for the purpose of evaluating physical, information security and operational controls, (ii) to examine and make excerpts from Customer's books and records relating to Customer's Account transactions with Bank, (iii) to audit Customer's compliance with the Agreement, the Law and the Rules and Regulations (including the Check 21 Act, FRB Regulation CC, National Clearing House Association (NACHA), American National Standards Institute X9 Specification, UCC Articles 3 and 4, and any network association agreements as are currently in effect and as amended from time to time); and (iv) to discuss Customer's Transactions and Accounts with Customer's officers and employees, all in such detail and at such times and as often as Bank may reasonably request; provided, however, that Bank shall give Customer reasonable Notice prior to any such visitation, inspection or audit. Bank shall endeavor to avoid disrupting Customer's normal business operations during any visit to Customer's locations.

**24. General Representations and Warranties.**

Customer represents and warrants that, (i) Customer has taken all necessary actions to authorize the execution and delivery of this Agreement; (ii) the Person signing the documents establishing Customer's Account relationship is duly authorized to do so; (iii) Customer has obtained all Authorizations of any governmental body required to establish or maintain Customer's business and such Authorizations are in full force and effect; (iv) Customer's acceptance of this Agreement and its Terms and Conditions and Customer's performance of Customer's obligations under this Agreement and its Terms and Conditions will not violate any Law, ordinance, charter, by-law, or Rule applicable to it or any agreement by which Customer is bound or by which any of Customer's assets are affected; and (v) all information, documents, statements (written or oral), agreements and work papers furnished or to be furnished in writing to Bank by Customer related to ("Customer Information"), including without limitation any Customer Information containing any representation, warranty, covenant or agreement made in respect of Customer, Customer's Related Entities or their business and operations, is or will be at the time of delivery to Bank accurate and complete in all material respects. Customer understands and agrees that Bank may rely on such Information in connection with transactions effected for credit to Customer's Accounts.

**25. Liability for Related Entities and Actions of Third Parties.**

Customer agrees that Customer will be liable to Bank for any and all actions taken or not taken with respect to the Services or the Accounts, (i) by or on behalf of any of Customer's Related Entities, or (ii) by any Servicer or other third-party engaged by Customer to act on Customer's behalf with respect to any Service or Account, without regard to whether Customer knew of or authorized Customer's Related Entity's,

Customer's Servicer's or other third-party's actions in advance. This assumption of liability by Customer is also applicable to the Confidential Information provisions in the Agreement.

In any instance in which Customer provides, or asks Bank to provide, a third-party payroll provider or other Servicer with Customer's Checks drawn on Bank, Customer will reimburse Bank for all Checks negotiated, whether or not authorized by Customer. In addition, Customer agrees that Customer will indemnify Bank, Bank's Affiliates, directors, officers, shareholders, employees, and Agents, individually and collectively against any and all Losses resulting from any actions taken by such third-party with respect to the Checks provided to it by Customer or at Customer's Request, unless such Losses result solely from Bank's gross negligence or willful misconduct.

## **26. Limitation of Liability.**

To the maximum extent permitted by applicable Law, Customer agrees that Bank is not liable for any error or delay on the part of any third-party used by Bank in connection with the Services. Bank will be responsible only for performing the Services expressly provided for herein, and shall be liable only for Bank's fraud, willful misconduct, or gross negligence in performing the Services. Bank shall not be responsible for Customer's acts or omissions or for those of any other Person, including without limitation any Federal Reserve Bank, Automated Clearing House, transmission or communications facility or any intermediary, Receiver or Receiving Depository Financial Institution, and no such Person shall be deemed Bank's Agent.

Bank's ability to provide certain Services (*e.g.*, in connection with electronic data interchange) is dependent upon Bank's ability to obtain or provide access to third-party networks. In the event any third-party network is unavailable or Bank determines, in Bank's discretion, that Bank cannot continue providing any third-party network access, Bank may discontinue the related Service or may provide the Service through an alternate third-party network. In such situations, Bank will have no liability for the unavailability of access.

Bank will not be liable for any Losses that Customer may incur due to Customer's failure to comply with the Agreement, including any applicable Security Procedures, provisions regarding deadlines or conditions for initiating transactions or restrictions, or conditions regarding access to information or data by any means. Bank will have no liability to Customer for Customer's, Customer's Related Entities' or Customer's Servicer's selection, operation or maintenance of the Services, including the Security Procedures. Customer represents and warrants that Customer has acquired appropriate equipment, Internet browser, software and/or communication facilities required to use the Services and maintain appropriate security in connection with the Services.

Bank will have no obligations to Customer other than those clearly stated in the Agreement. Bank will be liable to Customer only for Bank's gross negligence or willful misconduct. Without in any way limiting the foregoing, Bank will have no liability for any damage to Customer's or Customer's Servicer's computer systems caused by a Virus or any similar problem (herein throughout "Viruses") that result from the use of the Services. Although Bank does not warrant that the Services will be free from all Viruses, Bank has employed efforts to check for the most commonly known Viruses prior to making the Services available. Nonetheless, Customer, Customer's Related Entities, and Customer's Servicers are solely responsible for protecting Customer and Customer's systems, including network servers and technology-related assets, against unauthorized access or intrusion including, Viruses, malicious or criminal acts or network attacks, and to correct defects and/or problems, which affect the functioning of network, operating or other systems.

In the event of any damages for which Bank may be liable to Customer or to a third-party pursuant to the Services provided under this Agreement, Customer will undertake reasonable efforts to cooperate with Bank, as permitted by applicable Law, in performing Loss recovery efforts and in connection with any actions that Bank may be obligated to defend or elect to pursue against a third-party.

**IN NO EVENT SHALL BANK BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH CUSTOMER MAY INCUR OR SUFFER IN CONNECTION WITH THE SERVICES OR THE AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN TO OR CONTEMPLATED BY BANK AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY WHICH CUSTOMER MAY ASSERT, INCLUDING WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM BANK'S ACTS OR OMISSIONS PURSUANT TO THE AGREEMENT.**

Customer agrees that Bank will not be liable for events or circumstances beyond Bank's reasonable control, and the liability of Bank will be limited to correcting errors caused by Bank and in no event shall the cumulative liability of Bank to Customer for all claims relating to, arising out of, or stemming in any way from the Services, this Agreement or the relationship between Customer and Bank with respect thereto, including any cause of action in contract, negligence, tort, strict liability or otherwise, exceed the total amount paid by Customer to Bank as fees for the Services only during the three-month period immediately preceding the origination of the claim giving rise to the liability.

In no event shall Bank, Bank's directors, officers, shareholders, employees, or Agents be liable or responsible for consequential, exemplary, punitive, special, or incidental damages or Losses, including lost profits. Bank makes no representation or warranties of merchantability or fitness or suitability of the Services or Software products for a particular purpose or as to the suitability or compatibility of Bank's Software, equipment, or communication interfaces with those used by Customer.

## 27. Indemnification.

To the maximum extent permitted by applicable Law, Customer hereby agrees to indemnify, defend, release, and hold harmless Bank and its Affiliates, directors, officers, shareholders, employees, and Agents, individually and collectively, from and against any and all claims, costs, Losses or damage, including reasonable attorneys' fees and expenses, that Bank may sustain or incur or which may be asserted against Bank by reason of or as a result of any action taken or omitted by Bank in connection with Bank's providing Services to Customer hereunder, even if such Losses arise from Bank's negligence, but excluding any Losses arising out of Bank's willful misconduct or gross negligence, unless otherwise specified in the Agreement or any applicable Deposit Account Agreement. Customer also hereby indemnifies and holds Bank and its Affiliates, directors, officers, shareholders, employees, and Agents, individually and collectively, harmless for any claim, cost, Loss or damage caused directly or indirectly by Customer's failure to comply with the terms of this Agreement or any agreement with Bank related to Customer's use of the Services or Customer's Account(s) with Bank or caused by Customer's breach of any representation or warranty contained herein.

Customer further understands and agrees that Customer is required to indemnify Bank's technology partners and hold harmless their Affiliates, directors, officers, employees and Agents against any Third-Party Claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and expenses, arising from such claims, to the extent such claim is related to Bank or Customer's use of the Services, including but not limited to, the Mobile Banking Services, the Mobile Deposit Service, the Mobile Banking Application or Bank's technology partners' applications relating thereto, unless such claim directly results from an action or omission made by Bank's technology partners in bad faith. Customer understands and agrees that this paragraph shall survive the termination of this Agreement.

For purposes of this indemnification provision, "Customer" includes Customer's directors, officers, employees, Servicers, Contracting Executives, Administrator(s) (if applicable), and Base User(s). Customer will indemnify, defend and hold Bank harmless as well as Bank's Affiliates or Bank's respective officers, directors, employees, Agents and assigns from and against all Losses arising directly or indirectly, out of or relating to the following:

- Customer's breach of any agreement, representation, warranty or obligation under the Agreement;
- Customer's violation of any Law in connection with Customer's fulfilling Customer's obligations under the Agreement;
- Customer's alleged infringement of a third-party's patent, trademark or copyright, or alleged misappropriation of a third-party's trade secret;
- Provision by Customer of incorrect or incomplete data to Bank;
- Any action that Bank takes in accordance with Instructions that Bank reasonably believed to have been authorized by Customer, whether or not transmitted using a Security Procedure;
- Customer's failure to perform Customer's covenants, duties or obligations under the Agreement; provided, however that Customer will not be required to indemnify Bank for any such Losses to the extent that they are caused directly by Bank's gross negligence or willful misconduct;
- Any actions taken by Customer's Related Entities, Servicers or other third-party providers; or
- Any damage caused to Bank's computer Systems resulting from any Viruses or similar programs transmitted from Customer or Customer's Servicer's systems to Bank's Systems through Customer's use of the Services or Bank's Systems.

In any case where Bank seeks indemnification for third-party Losses (herein referred to as a "Third-Party Claim"), the following procedures will apply:

- Bank will give prompt written Notice to Customer of each Third-Party Claim, specifying the amount and nature of the claim (herein referred to as a "Notice of Claim"). If the Notice of Claim is given or the failure to provide the Notice of Claim does not prejudice Customer's interests, Customer, at Customer's own expense and using counsel of Customer's own choosing, will promptly defend, contest, and otherwise protect against any such Third-Party Claim.
- If Customer is defending against the Third-Party Claim, Bank may, but will not be obligated to, participate in the defense of the Third-Party Claim, at Bank's own expense and using counsel of Bank's own choosing, but Customer

will be entitled to control the defense unless Bank has relieved Customer in writing from liability with respect to the particular matter. Bank will cooperate and provide such assistance as Customer reasonably requests in connection with Customer's defense and will be entitled to recover from Customer the reasonable costs of providing such assistance. Customer will inform Bank on a regular basis of the status of such Third-Party Claim and Customer's defense of it.

- In any Third-Party Claim in which Customer controls the defense, Customer will not, without Bank's prior written consent, compromise or settle such Claim, suit or proceeding if: (i) such compromise or settlement would impose an injunction, obligation or other equitable relief upon Bank; or (ii) such compromise or settlement does not include the third-party's release of Bank from all liability relating to such Third-Party Claim.
- If Customer fails to timely defend, contest, or otherwise protect against any such Third-Party Claim, Bank may, but will not be obligated to, defend, contest or otherwise protect against the Third-Party Claim, and make any compromise or settlement and recover from Customer the entire costs Bank expended, including reasonable attorneys' fees and costs of counsel and all amounts paid as a result of the Third-Party Claim and the compromise or settlement of it.
- Customer's obligation to indemnify Bank's officers, directors, shareholders, employees and Agents in accordance with this section may be enforced exclusively by Bank and nothing in the Agreement will be construed to grant such officers, directors, shareholders, employees and Agents any individual rights, remedies, obligations or liabilities with respect to Customer.

## **28. Intellectual Property.**

All Bank Proprietary Property and intellectual property provided by Bank remains Bank's exclusive property. Customer acknowledges that the Services are Bank's intellectual property and that Bank owns all rights, title and interest in same, or Bank has otherwise obtained the authority to provide the Services to Customer. Nothing in the Agreement expressly or implicitly waives or diminishes any of Bank's rights, title or interest to or in Bank's intellectual property, trademark, service mark, trade dress, copyright, or patents related to or reflected in the information and intellectual property provided by Bank.

Bank represents that to the best of its knowledge, Bank has all necessary rights and approvals to provide the Services to Customer, and that the Services do not infringe upon any copyright, patent, trademark, or other intellectual property rights of any third-party. As to any demands, claims or suits by a third-party arising out of any alleged infringement of any such intellectual property or other rights, Bank's entire liability to Customer shall be to use Bank's best efforts to provide Customer with a non-infringing alternative or to obtain a license from such third-party at a royalty rate that Bank determines to be reasonable. If Bank cannot provide Customer with a non-infringing alternative or obtain a license at a reasonable rate, Customer agrees to cease using any Service at Bank's request.

Customer acknowledges and agrees that all intellectual property, trademarks, trade names, service marks, copyrights, programs, specifications, Software, Systems designs, applications, routines, techniques, enhancements, Software codes, test keys, security devices, Security Procedures, documentation, manuals, ideas and formulas (collectively, referred to throughout collectively as the "Bank Proprietary Property") utilized or developed and provided by Bank in connection with the Agreement and the Services provided hereunder, whether online via Bank's website or otherwise, are proprietary property of Bank having great commercial value to Bank. Customer shall have no ownership interest in Bank Proprietary Property or other rights related thereto, and Customer agrees to keep Bank Proprietary Property confidential at all times. Customer may use Bank Proprietary Property only for the purposes for which it was provided by Bank and shall notify Bank immediately of any breach of this section of which it becomes aware. Bank may require Customer to license specific Software in order to receive a particular Service. Unless agreed to the contrary between the parties with regard to certain Services, with such agreement approved by Bank in Bank's sole discretion, upon termination of the Agreement or any applicable Service, such license in Bank's Proprietary Property and any licensed Software shall automatically expire and Customer agrees to immediately cease using any Bank Proprietary Property and any licensed Software relating to the Service or Services affected by such termination. Additionally, and unless contrary to prior agreement regarding the Software, Customer agrees to erase any Software comprising Bank Proprietary Property and relating to the Service or Services terminated to the extent such Software is stored in Customer's computers, and, at the request of Bank, to return all copies of all items relating to Bank Proprietary Property which are in the possession of Customer. Alternatively, and at Bank's option, Customer will destroy all copies of all items relating to Bank Proprietary Property which are in the possession of Customer and, upon request from Bank, provide written certification to Bank that such destruction has occurred.

## **29. Duties Limited.**

Bank has no duties or responsibilities except such duties and responsibilities as are specifically set forth herein, and no covenant or obligation shall be implied against Bank. Bank's duties and responsibilities hereunder shall be performed in accordance with applicable Laws and Bank shall have no obligation to take actions which in Bank's reasonable opinion are either inconsistent with, or prejudice or impair Bank's rights under, any such Laws.

### **30. Requests for Instructions.**

Bank may, at any time, request Instructions with respect to any matter arising in connection with Bank's duties and obligations hereunder, and shall not be liable for any action taken or permitted by Bank in good faith in accordance with such Instructions. Such request for Instructions may, at Bank's option, set forth in writing any action proposed to be taken or omitted by Bank with respect to Bank's duties or obligations hereunder and the date on or after which such action shall be taken, and Bank shall not be liable for any action taken or omitted in accordance with a proposal included in any such request on or after the date specified therein (which shall be at least five (5) days after the date of Customer's receipt of such request) unless, prior to taking or omitting any such action, Bank has received Instructions in response to such request specifying the action to be taken or omitted. Bank may apply for and obtain the advice and opinion of Customer's counsel, or of Bank's own counsel, at Customer's expense, and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice or opinion. Customer is responsible for the correctness, both as to content and form, of all information submitted to Bank. If any information is not readable, out of balance, cannot be processed, or is otherwise inaccurate, incomplete, or inadequate, it is Customer's sole responsibility to correct and resubmit the information to Bank upon receipt of notification of such occurrence from Bank.

### **31. Delegation; Subcontracting.**

Bank may delegate any of Bank's duties and obligations hereunder to any delegatee and may employ Agents, subcontractors, or attorneys-in-fact: provided however, that no such delegation, subcontracting, or employment shall discharge Bank from Bank's obligations hereunder. Bank shall have no liability or responsibility whatsoever if any delegatee, Agent, subcontractor or attorney-in-fact shall have been selected or approved by Customer. Notwithstanding the foregoing, nothing contained herein shall obligate Bank to effect any delegation or to employ any Agent, subcontractor, or attorney-in-fact.

### **32. Termination.**

#### **(a) By Bank with Cause.**

Bank may, in its sole discretion, terminate the Agreement in its entirety or with respect to one or more specified Service(s) effective immediately if: (i) Customer fails to maintain adequate collected and available balances to cover all transactions, costs and expenses relating to one or more Service(s); (ii) there is an occurrence of a material change in Customer's credit and/or risk analysis criteria as determined by Bank in its sole and absolute discretion; (iii) Bank at any time determines that Customer or Customer's third-party vendor or Servicer does not meet Bank's risk or other qualification requirements; (iv) Bank discovers any willful misconduct (including but not limited to writing or knowingly passing bad Checks, or engaging in any kind of fraudulent activity) on the part of Customer or any other party with respect to electronic Images submitted by Customer if Customer utilizes Bank's Remote Deposit Capture Services or originated electronic entries if Customer utilizes Bank's ACH Services; (v) Customer is in default of any terms of a Service specific provision of this Agreement where such default gives Bank the right to terminate, immediately or otherwise, the Agreement or a specific Service; (vi) Customer has selected a particular Service, but Customer has not used such Service for a period of time deemed to constitute an inactive Service by Bank (in Bank's sole discretion); (vii) Customer is in default of any terms of the Agreement or any other agreement with Bank; or (viii) Customer is in violation, in the opinion of Bank, of any applicable federal or state Law, including the provisions of the Unlawful Internet Gambling Enforcement Act. In any of these events, Bank's sole obligation shall be to provide Notice of its termination of the Agreement to Customer as soon as is commercially reasonable.

#### **(b) By Either Party for Any Reason.**

Either party may terminate the Agreement, with or without cause, in its entirety or with respect to one or more specified Service(s) at any time, upon thirty (30) days written Notice to the other of its intent to do so.

#### **(c) Rights and Responsibilities upon Termination.**

In the event of termination of the Agreement or any Service hereunder, the rights and responsibilities of the parties shall continue through any applicable settlement period including Customer's responsibility to pay Bank for Service(s), and to maintain a Reserve Account as applicable or as otherwise stated in this Agreement, with respect to transactions processed prior to the effective date of termination unless otherwise expressly stated herein. If this Agreement, or any Service, is terminated by Bank, Bank may accelerate all amounts due and to become due under this Agreement, and Customer shall promptly make full payment to Bank of all amounts due and amounts incurred under this Agreement. If Customer utilizes the Remote Deposit Capture Service, termination of this Agreement for any reason shall automatically terminate the limited license to the processing Software granted in the Remote Deposit Capture section, and Bank has the right to demand immediate return of the processing Software, the processing equipment, and all documentation. In the event that Customer fails to return such Items upon the written demand of Bank within a reasonable period of time, Bank may, at Bank's discretion, exercise its right to enter the premises of Customer to remove such Items.



**(d) Inactive or Dormant Enrollment**

Customer acknowledges and agrees that Bank may consider Customer's enrollment in Online Banking inactive or dormant in the event Customer has not logged into Online Banking for a period in excess of one hundred eighty (180) days. Once Customer's enrollment has been placed on inactive or dormant status, Online Banking transactions may be declined. Customer may not be able to access Online Banking, and Customer will be required to re-enroll in Online Banking in order to continue using it.

Upon termination, Bank's sole obligation, which shall arise only after, and not before, Customer has paid to Bank all out-of-pocket expenses, fees, compensation and other amounts owed by Customer to Bank, shall be to deliver to Customer such records, if any, as may be owned by Customer, in the form and manner kept by Bank on such date of termination, and to pay to Customer any monies held for Customer's Account(s) hereunder.

**33. Compliance with Legal Requirements.**

Customer agrees that Customer will not initiate any transactions that violate any Laws. Customer represents that only lawful transactions will be originated with Bank.

Customer makes a continuing representation and warranty to Bank that, as of the effective date of the Agreement, any transaction Customer initiates will be with requisite corporate authority and licenses and Customer will comply with all Laws necessary for all transactions. Customer further represents and warrants that Customer is in compliance with all applicable domestic and foreign Laws, orders, and Regulations including, but not limited to, those relating to Regulations of OFAC. At Bank's request, Customer will provide Bank with compliance certificates.

Customer acknowledges that Bank may be subject to Regulations of OFAC. In the event Bank determines in Bank's sole discretion, which determination shall be conclusive, that performing any Service could subject Bank to any potential claim or violation of the OFAC Regulations, Bank shall take any and all actions required under the OFAC Regulations in connection with such Service including, without limitation, making any and all reports required under the OFAC Regulations, and shall immediately cease all performance with respect to any such Service until such time as Bank determines in Bank's sole discretion that performance of such Service would not be proscribed by the OFAC Regulations. Bank shall notify Customer of any determination made hereunder (unless such Notice is prohibited by OFAC Regulations), which Notice shall designate the Service affected and the implicated provisions of the OFAC Regulations; provided, however, that failure to so notify Customer shall not in any way require Bank to perform any Service or otherwise fail to comply with the OFAC Regulations. Bank reserves the right to temporarily suspend processing of a transaction for enhanced compliance reviews, which may result in a delay in settlement and/or availability. Customer shall hold Bank harmless from any liability whatsoever incurred by Customer in connection with a cessation of any Service under this section. Without limiting the generality of this section, Customer agrees to indemnify Bank and hold Bank harmless from and against any liabilities, damages, claims, costs, Losses and expenses that Bank incurs in relation to the OFAC Regulations as a result of Bank's performance of the Services on Customer's behalf.

If Customer's business is subject to compliance with the federal Bank Secrecy Act, the U.S. PATRIOT Act and similar state and federal Laws, Customer agrees as follows: to establish a compliance program to ensure that Customer fulfills any compliance requirement or obligation that Bank has under all applicable U.S. federal and state Laws, Regulations, Rulings, and other requirements relating to anti-money laundering, including, but not limited to, the federal Bank Secrecy Act, the U. S. PATRIOT Act and any Regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time (collectively, the "Anti-Money Laundering Laws"), including, (i) a customer identification program, in compliance with 31 C.F.R. § 1010.100, et seq., as amended from time to time, that seeks to verify the identity and business of each new client Customer may have, and (ii) a policy for identifying and reporting to Bank and to the appropriate federal and state law enforcement authority any suspicious transactions by any of Customer's clients with respect to the use of Bank's Services. Bank and Bank's designees shall have the right to review and audit Customer's program for compliance with Anti-Money Laundering Laws and Customer shall make any changes to such compliance program that are requested by Bank from time to time. Customer agrees to maintain all records relating to the implementation of Customer's identification program and Customer's compliance with the Anti-Money laundering Laws in the United States for a period of seven (7) years after the termination of the Agreement. Customer shall provide Bank with a copy of any records relating to Customer's anti-money laundering compliance program immediately upon Bank's request. Customer may be asked to certify, upon request from Bank during the effective period of the Agreement that Customer has implemented an anti- money laundering program and that Customer will perform the requirements of a customer identification program as established in the Agreement and as required by 31 C.F.R. § 1010.100 et seq., with respect to any of Customer's clients using Bank's Services.

**34. Right to Rely.**

The parties acknowledge and agree that Bank is entitled to and may rely upon, (i) any communications or Instructions that Bank reasonably believe were transmitted by Customer's Contracting Executives, Administrator(s) (if applicable), Base User(s), or an Authorized representative of Customer (ii) any written communication that Bank reasonably believes was sent by the individual whose name appears on the communication, and (iii) any Instruction received using a Security Procedure selected by Customer that Bank reasonably believes was transmitted by Customer's Contracting Executive, Administrator(s) (if applicable), Base User(s) or an Authorized representative of Customer.

**35. Governing Law.**

This Agreement shall be governed by and construed in accordance with federal Law and the Laws of the State of Arkansas and Customer consents to the jurisdiction and venue thereof and therein. If state and federal Law are inconsistent, or if Arkansas law is preempted by applicable federal law, federal law shall govern. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. Customer and the Bank confirm that this Agreement and all related documentation is and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Good is hereby expressly waived and excluded.

**36. Waiver of Jury Trial.**

**Customer knowingly, willingly, and irrevocably waives its right to a jury trial in any dispute with Bank related to or arising the Agreement and any other agreement with the Bank related to the Account(s) or the Services, as the same may be amended from time to time in Bank's sole discretion.**

**37. Waiver of Class Actions.**

Customer agrees that the transactions utilizing the Service arise from a unique relationship between Customer and Bank such that any alleged damage or Losses that may arise as a result of an alleged violation of this Agreement or the Laws and Regulations governing this Agreement are not the same for all Persons utilizing the Services and therefore not appropriate for class action treatment. CUSTOMER WAIVES CUSTOMER'S RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST BANK EITHER AS A MEMBER OF A PUTATIVE CLASS OR AS LEAD PLAINTIFF IN ANY DISPUTE AGAINST BANK.

**38. Legal Fees.**

In the event of any dispute arising out of or related to the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and experts' fees, in addition to any other recovery awarded by the court.

**39. Captions.**

The captions of the sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

**40. Entire Agreement.**

Unless otherwise stated herein, the Agreement, together with the Application(s) and any exhibits and schedules attached hereto or thereto, represent the complete and exclusive statement of the agreement between Bank and Customer with respect to the Services and supersede any prior agreement between Customer, Bank, or a predecessor with respect to the provisions hereunder. In the event performance of the Services in accordance with the Agreement would result in a violation of any present or future Laws to which Bank is subject, and which governs or affects the Services, then the Agreement shall be deemed amended to the extent necessary to comply with Law, and Bank shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between Customer and Bank will constitute a modification of the Agreement, the Rules, or the Security Procedures or constitute an agreement between Customer and Bank, regardless of whatever practices and procedures Customer or Bank may use.

**41. Enforceability.**

Upon execution of the Business Online Banking/Treasury Management Authorization and Resolution and any related Service Applications, the Agreement will constitute a binding and legal obligation of the parties enforceable against each party in accordance with its terms.

**42. No Waiver.**

Bank shall not be deemed to have waived any of Bank's rights or remedies hereunder unless such waiver is in writing and signed by Bank. No delay or omission on Bank's part in exercising any rights or remedies hereunder shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

**43. Binding Effect.**

The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. The Agreement is not for the benefit of any third-party and no third-party will have any right against Bank or Customer hereunder unless otherwise expressly stated herein. By written Notice to Bank, Customer may elect to jointly use the Services by, among, between, or on behalf of Customer, and Customer's Related Entities. In such case, Customer represents and warrants to Bank that Customer

directly or indirectly through one or more intermediaries, control, or are controlled by, or are under common Control with, each such Related Entity. Customer agrees that Customer is responsible for any and all obligations of any such Related Entity to Bank incurred in connection with the use of the Services.

**44. Amendments.**

Bank may amend or modify the Agreement or any of the Services at any time at Bank's sole discretion. Any use of the Services after Bank provides Customer with Notice of any such change will constitute Customer's agreement to such change(s). Further, Bank may, from time to time, revise or update the Agreement and/or related materials, which may render prior versions of the Agreement obsolete. Consequently, Bank reserves the right to terminate the Services and the Agreement as to all such prior versions of the Agreement and/or related materials and limit access to and compliance with only Bank's most recent revisions and updates.

**45. Severability.**

Headings are used herein for reference purposes only and shall not be deemed a part of the Agreement. In the event that any provision of the Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of the Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by Law.

**46. Remedies Cumulative.**

Each and every right granted to Bank hereunder or under any other document delivered hereunder or in connection herewith, or allowed it by Law or equity, shall be cumulative and may be exercised from time to time. No failure on Bank's part to exercise, and no delay in exercising, any right will operate as a waiver thereof; nor will any single or partial exercise by Bank of any right preclude any other or future exercise thereof or the exercise of any other right. Customer agrees that money damages may not be a sufficient remedy for Customer's breach of the Agreement and that Bank shall be entitled to specific performance in addition to any other remedies, at Law or in equity, as a remedy for any breach.

**47. Assignment.**

Customer may not assign all or any part of its rights or obligations under the Agreement without Bank's prior express written consent, which may be withheld in Bank's sole discretion. No assignment will be valid or binding on Bank, and Bank will not be considered to have "knowledge" of it, until Bank consents and the assignment is noted in Bank's records. By noting the assignment, Bank does not, however, have any responsibility to assure that the assignment is valid. Bank may assign or delegate all or any part of its rights or obligations under the Agreement, including, without limitation, the performance of the Services described herein. The Agreement will be binding on and inure to the benefit of the successors and permitted assigns of either party.

**48. No Third-Party Beneficiaries.**

Unless Bank otherwise expressly agrees in writing, this Agreement is for the benefit of Customer and Bank and is not intended to grant, and shall not be construed as granting, any rights to or otherwise benefiting any other Person or any other third-party.

**B. Business Online Banking.**

**1. Generally.**

Bank agrees to provide various Services and transaction functions to Customer on selected Customer Deposit Account(s) through Bank's Online Banking.

**2. Security Procedures.**

For avoidance of doubt, the Security Procedures as set forth in the Agreement apply to Bank's Business Online Banking.

**3. Customer's User ID and Password.**

A User ID, password, token, Codes and any applicable AAI are used to initiate transfers and payments through Online Banking. Customer authorizes Bank to follow any Instructions entered through Online Banking using Customer's User ID and password. Because Customer's password can be used to access money in Customer's Accounts, Customer should treat the password with the same degree of care and secrecy that Customer uses to protect cash and other sensitive personal financial data. Customer agrees not to allow access to its User ID and/or password to any unauthorized individuals. Customer acknowledges that the security measures described above are commercially reasonable. Customer authorizes and directs Bank to transfer funds on the basis of the Account number(s) provided even if such number(s) identify a Person or Account Customer did not intend.

#### **4. Authorization Control.**

Customer is responsible for controlling access to Online Banking and for any limitations placed on Customer's authorized Users of Online Banking.

Bank is not obligated to enforce or attempt to correct any authorized User limitation which has been set by Customer and is outside the scope of the controls and limitations that Bank represents it can enforce (for example, Bank is not responsible for enforcing the confidentiality of Account information by an authorized User should that User copy or reproduce Account information derived from his or her use of Online Banking and divulge that information to an unauthorized third-party). Customer understands that Persons designated by Customer may utilize Online Banking without regard to any restrictions otherwise applicable to an Account (e.g., if a Person is authorized in Online Banking to access and view Account information, that Person can do so whether or not they have been authorized to do so according to the Application).

#### **5. Balance Inquiries and Transfers.**

Customer may use Online Banking to check the balance of its Accounts and to transfer funds between or among its Accounts. Certain types of Accounts with Bank may have transfer limitations. If any of Customer's Accounts are subject to such limitations, those limitations will apply to transactions that Customer initiates through Online Banking. The total of all transfers made from an Account on a single day through Online Banking may not exceed the amount of funds available in the Account. The balance shown on Online Banking may include deposits still subject to verification by Bank. The balance shown also may differ from Customer's records because it may not include deposits in progress, outstanding Checks, or other withdrawals, payments, or charges. If Customer has Overdraft privilege, it will be accessed for transactions initiated with Online Banking.

#### **6. Cut-Off Times.**

A transfer completed through Online Banking before 7:00 p.m. Central Time on a Business Day is posted to Customer's Account the same day. All transfers initiated after 7:00 p.m. Central Time on a Business Day or a day that is not a Business Day, will be posted on the next Business Day.

#### **7. Funds Availability.**

When Customer Requests a transfer of funds or payment from an Account through Online Banking, Bank is not required to honor Customer's Request if the amount of the requested transfer or payment exceeds the amount of collected funds in the Account. If sufficient collected funds are not available in the Account at the time Customer Requests a transfer or payment, Bank can either (i) make the transfer or payment, in which case Customer will be liable for the deficit, or (ii) refuse to make the transfer or payment. In either case, Customer will be liable for any fee applicable to the withdrawal or attempted withdrawal of money from the Account in accordance with Customer's Account Terms and Conditions.

#### **8. Hours of Operation.**

Generally, Online Banking is available twenty four (24) hours a day, seven (7) days a week. At certain times, Business Online Banking may not be available due to System maintenance or circumstances beyond Bank's control and Bank shall not be liable for any claims, Losses, or other damages incurred as a result.

#### **9. Equipment.**

Customer is responsible for obtaining, installing, maintaining, and operating all equipment used to perform transfers and payments through Online Banking. Bank will not be responsible for any errors or failures from the malfunction or failure of Customer's equipment. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR TO THE EXTENT APPLICABLE LAW REQUIRES A DIFFERENT STANDARD, BANK WILL NOT BE RESPONSIBLE FOR ANY LIABILITY, LOSS, INJURY, OR DAMAGE (WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE) IN ANY WAY ARISING OUT OF (A) ANY ERROR IN THE INSTALLATION, MAINTENANCE, OPERATION OR USE, OR ANY CONFIGURATION PROBLEM OR INCOMPATIBILITY, OF CUSTOMER'S COMPUTER, RELATED EQUIPMENT OR SOFTWARE, (B) ANY FAILURE OR MALFUNCTION OF CUSTOMER'S COMPUTER, RELATED EQUIPMENT OR SOFTWARE, (C) ANY FAILURE OR MALFUNCTION OF, OR ANY COMPROMISE OF DATA SENT USING, ANY TELEPHONE, INTERNET ACCESS, OR OTHER SERVICE CUSTOMER USES TO CONNECT TO ONLINE BANKING OR (D) ANY VIRUS OR SIMILAR PROBLEM RESULTING FROM THE USE OF ONLINE BANKING.

#### **10. Customer User Profile.**

It is Customer's sole responsibility to ensure that the contact information in Customer's User profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and email addresses. Changes can be made by contacting Bank.

#### 11. Text Messages and/or Calls to Customer.

By providing Bank with a telephone number (including a wireless/cellular and/or mobile telephone number), Customer consents to receiving calls from Bank and Bank's service providers at that number INCLUDING THOSE MADE BY USE OF AN AUTOMATIC TELEPHONE DIALING SYSTEM ("ATDS"), and/or text messages from Bank for our everyday business purposes (including identify verification). Customer acknowledges and agrees that such telephone calls include, but are not limited to, live telephone calls, prerecorded or artificial voice message calls, text messages, and calls made by an ATDS from Bank or Bank's Affiliates and Agents. Please review Bank's Privacy Policy for more information.

#### 12. Electronic Mail.

Customer may communicate with Bank through email; however, Customer should not use email for confidential matters and Customer should never include full Account numbers or other detailed information regarding any of Customer's Accounts that Customer has with Bank in any email communication. Bank may not immediately receive an email sent by Customer. No action will be taken on any email sent to Bank until it is actually received, and Bank has had a reasonable time to act on it. For immediate assistance, please call Bank. Bank will never initiate an email communication that requests confidential information about Customer or Customer's Accounts, or that requests passwords for any Account. If Customer receives an email purporting to be from Bank and requesting any such information, Customer should not respond to that email but should notify Bank immediately.

#### 13. Account Transfers.

Transfers of funds between Accounts that are initiated prior to the established cut-off time on a Business Day will be effective as of the close of business on that Business Day. Transfers which are initiated after the established cut-off time on a Business Day or on a non-Business Day will be effective as of the close of business on the following Business Day or, if later, the date specified. Customer, by initiating the transfer of funds from an Account, represents and warrants to Bank that the balance of collected funds in the Account is equal to or greater than the amount of the transfer. Bank will verify the availability of collected funds in the Account at the time of the transfer Request. If there are insufficient collected funds in the Account, Bank will refuse the transfer. If an Overdraft is created as the result of a transfer Request, Customer agrees to reimburse Bank for the amount of the Overdraft immediately upon demand and to pay such charges as Bank may impose as a result of the Overdraft. Customer agrees to notify Bank promptly if an initiated transfer is not completed.

Transfers to/from Customer's Accounts are subject to the following Rules and limitations: (1) Transfers made against uncollected, insufficient, or unavailable funds will be subject to applicable fees and may be reversed the next Business Day. (2) Once initiated and processed, transfers cannot be cancelled. Once funds are delivered to any recipient, transfers are non-reversible and non-refundable to Customer.

#### 14. Alerts.

**Alerts.** Your enrollment in Bank OZK Online Banking and/or Mobile Banking (the "Service") includes enrollment to receive transaction alerts and notifications ("Alerts"). Alerts are electronic notices from us that contain transactional information about your Bank OZK account(s). Account Alerts and Additional Alerts must be managed and/or added online through the Service. We may add new alerts from time to time, or cancel old alerts. We usually notify you when we cancel alerts, but are not obligated to do so. Bank OZK reserves the right to terminate its alerts service at any time without prior notice to you.

*Methods of Delivery. We may provide alerts through one or more channels ("endpoints"): (a) a mobile device, by text message, (b) a mobile device, by push notification; (c) an email account, by an e-mail message; or (d) your Bank OZK Online Banking message inbox. You agree to receive alerts through these endpoints, and it is your responsibility to determine that each of the service providers for the endpoints described in (a) through (c) above supports the email, push notification, and text message alerts provided through the alerts service. Please be advised that text or data charges or rates may be imposed by your endpoint service provider. Alert frequency varies by account and preferences. You agree to provide us a valid mobile phone number or email address so that we may send you alerts. If your email address or your mobile device's number changes, you are responsible for informing us of that change. Your alerts will be updated to reflect the changes that you communicate to us with regard to your primary and secondary email addresses or mobile device number.*

**Alerts via Text Message.** To stop alerts via text message, text "STOP" to 41952 at any time. Alerts sent to your primary email address will be unaffected by this action. To restore alerts on your mobile phone, just visit the alerts tab in **Bank OZK** Online Banking. For help with SMS text alerts, text "HELP" to 41952. In case of questions please contact customer service at 800-274-4472. Our participating carriers include (but are not limited to) AT&T, SprintPCS, T-Mobile®, U.S. Cellular®, Verizon Wireless, MetroPCS.

**Limitations.** **Bank OZK** provides alerts as a convenience to you for information purposes only. An alert does not constitute a bank record for the deposit or credit account to which it pertains. We strive to provide alerts in a timely manner with accurate information. However, you acknowledge and agree that your receipt of any alerts may be delayed or prevented by factor(s) affecting your mobile phone service provider, internet service provider(s) and other factors outside **Bank OZK**'s control. We neither guarantee the delivery nor the accuracy of the contents of each Alert. You agree to not hold **Bank OZK**, its directors, officers, employees, agents, and

service providers liable for losses or damages, including attorneys' fees, that may arise, directly or indirectly, in whole or in part, from (a) a non-delivery, delayed delivery, or the misdirected delivery of an Alert; (b) inaccurate or incomplete content in an Alert; or (c) your reliance on or use of the information provided in an Alert for any purpose.

*Alert Information. As alerts delivered via SMS, email and push notifications are not encrypted, we will never include your passcode or full account number. You acknowledge and agree that alerts may not be encrypted and may include your name and some information about your accounts, and anyone with access to your alerts will be able to view the contents of these messages.*

#### **15. Check Management.**

The stop payment feature of the Business Online Banking System is an online entry System for issuing stop payment Requests between Customer and Bank. If Customer attempts to place a stop payment Request for an Item that has already been paid prior to Customer's entry of the Request, or if Bank has insufficient time to act on Customer's Request, Bank will not be liable for any Losses incurred by Customer arising from such payment. Customer agrees to accurately provide the Check number, date of Item, amount and payee when placing a stop payment Request. It is Customer's responsibility to print and retain all confirmations via Online Banking. Bank will not be responsible for the failure to place a stop payment or to stop payment on any Item if any of the information required is incomplete or inaccurate. In addition to the foregoing limitations, Bank will not be responsible for Losses incurred as a result of payment of an Item at any of Bank's locations on the same day that an online stop payment is placed. Stop payments on electronic drafts cannot be completed through Online Banking.

#### **16. Loan and Credit Line Payments/Advance.**

If permitted by Bank, this feature allows payments to be made from a Deposit Account to a Credit Account or from a Credit Account to a Deposit Account. Customer, by initiating a payment from a Deposit Account, represents and warrants to Bank that the balance of collected funds in such Deposit Account is equal to or greater than the amount of the payment. By initiating a payment from a Credit Account to a Deposit Account, Customer represents and warrants to Bank that all conditions of lending as provided in the documentation relating to such Credit Account have been satisfied in accordance with the terms thereof. Bank will verify the availability of collected funds in a Deposit Account and the availability of Customer's credit line at the time of payment Request. If there are insufficient collected funds in the Account or the amount of the payment exceeds Customer's available credit, Bank will refuse the payment. If an Overdraft is created as a result of a payment Request, Customer agrees to reimburse Bank for the amount of the Overdraft immediately upon demand and to pay such charges as may be imposed by Bank as a result of the Overdraft. Customer agrees to notify Bank promptly if an initiated payment is not completed.

#### **17. eStatements.**

Customer may elect to receive Bank statements via electronic delivery in lieu of receiving statements by paper delivery in the mail. These electronically delivered Bank statements are called "eStatements." BY ELECTING TO RECEIVE ESTATEMENTS, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

To receive eStatements, a computer with Internet access, a compatible web browser such as Internet Explorer or Mozilla Firefox, and a valid email address is required. Customer is also responsible for providing updated contact information to Bank, such as changes to email addresses. Email addresses can be updated within the eStatement Service under the Profile section.

Once enrolled, Customer authorizes Bank, at Bank's discretion, to electronically deliver Customer's eStatements and important disclosures and Notices about Customer's Account(s), including those that Bank is required to provide Customer under all applicable Laws where electronic delivery is permitted now or in the future. This may include, but may not be limited to, the following:

- Customer's periodic Deposit Account statements with Images of Customer's cancelled Deposit Account Checks;
- Disclosures regarding Customer's Accounts that are required to be provided at the time of Account opening;
- Notices regarding changes to Customer's Accounts;
- Amendments to any agreements and/or disclosures governing Customer's Accounts;
- Periodic security tips and alerts and other messages of interest;
- Information concerning new deposit products which may interest Customer.

eStatements will be available from the first Account statement cut-off date. Customer's normal statement cut-off date will not change when

Customer elects to receive eStatements. Customer's eStatements will be available through Online Banking within two (2) Business Days after Customer's statement cut-off date.

Bank will use reasonable efforts to deliver Customer's eStatement and disclosures in a timely manner and in accordance with applicable Law. However, Bank shall incur no liability if Bank is unable to deliver Customer's eStatement or disclosure because of the existence of any one or more of the following circumstances:

- Bank's website or the Online Banking System is not working properly and Customer knows or has been advised by Bank of the malfunction, or
- Circumstances beyond Bank's control (such as, but not limited to, fire, flood, interruption in telephone service or other communication lines, interference from an outside force, legal restriction or delays in mail service) prevent proper delivery and Bank has taken reasonable precautions to avoid those circumstances.

Customer must promptly review eStatements, electronic disclosures and any accompanying Items and notify Bank immediately of any suspected error, alteration or other irregularity, unauthorized access, or Customer is unable to view or print eStatement or disclosures. It is Customer's duty to exercise reasonable promptness in examining the eStatements and the Items referenced therein to determine whether any payment that has been made was not authorized because of an alteration of an Item or because a purported signature by or on behalf of Customer or other signatory on the Account was not authorized. The statute of limitations governing these responsibilities will commence at the time Bank sends email notification that the eStatements are available.

Customer has the right to withdraw consent to receive eStatements at any time by contacting Bank. eStatements will be discontinued within ten (10) working days and paper delivery of statement(s) will resume. There is no fee to withdraw consent to receive eStatements.

Each eStatement and disclosure will be available online for eighteen (18) months from the date it is made available. All eStatements and disclosures are retained by Bank for at least seven (7) years. Customer has the right to Request a reprint of any previous Bank statement. Bank reserves the right to charge additional fees for reprinted statements.

The "Bank Reports" feature is an electronic method of report delivery which may replace a paper report. By signing up for this Service, Customer authorizes Bank to electronically deliver certain reports set forth on Customer's Application, as the same may be changed by Customer from time to time upon thirty (30) days written Notice to Bank. Any electronic disclosure or communication made by Bank in connection with this Service will be considered made when transmitted by Bank. To discontinue receiving Bank Reports electronically, Customer must contact Bank.

Regulatory or other Bank disclosures, Notices, marketing information, confirmations, or changes to the Account(s) for which Customer has elected to receive eStatements may occur. Please regularly review disclosures.

Commercially reasonable measures, consistent with industry standards, will be used to maintain security of eStatements and Notices. The chief security feature guarding the use of eStatements is the unique combination of Customer's secret User ID, Codes and password. By using eStatements, Customer agrees to protect the security of its User ID, password, Codes and any other numbers, marks, signs, keys, or other means of personal identification of Customer as a Bank Customer.

By enrolling in eStatements, Customer understands and agrees that it will NOT receive statements in paper form delivered by regular United States Postal Service mail unless Customer specifically discontinues eStatements as described above. Customer agrees that electronic delivery will satisfy Bank's requirement to provide Customer a periodic statement of its Account(s). Bank retains the right to discontinue the eStatements Service at any time. eStatements will be discontinued if the email Notice to Customer is returned undeliverable for two (2) or more months. If eStatements are discontinued, Bank will resume paper delivery of statements via the United States Postal Service and Customer's Account will be subject to the terms and conditions applicable to that Account type with a paper statement.

### **C. Business Bill Pay Services.**

#### **1. Generally.**

Bank agrees to provide "Business Bill Pay Services" to Customer for the Deposit Accounts enrolled in Business Bill Pay Services in the Application. Customer must be enrolled in Bank's Online Banking Services to access Bank's Business Bill Pay Services. The Business Bill Pay Services allow Customer to direct Bank to make payments from Customer's designated Deposit Accounts to the "Billers" Customer chooses.

#### **2. Payment Scheduling.**

The earliest possible Scheduled Payment Date for each Biller (typically four (4) or fewer Business Days) will be designated within the Online Banking Services when Customer is scheduling the payment. Therefore, the Online Banking Services will not permit Customer to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Biller. When scheduling payments Customer must select a Scheduled Payment Date that is no later than the actual Due Date reflected on its Biller statement unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, Customer must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period.

#### **3. Business Bill Pay Services Guarantee.**

Due to circumstances beyond the control of Bank, particularly delays in handling and posting payments by Billers or financial institutions, some transactions may take longer to be credited to Customer's Account(s). The Bank will bear responsibility for late payment related charges only up to \$50.00 should a payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in this Agreement (herein "Business Bill Pay Services Guarantee"). Bank otherwise bears no responsibility in regard to any delays in handling and posting payments.

#### **4. Payment Authorization and Payment Remittance.**

By providing Bank with names and account information of Billers to whom Customer wishes to direct payments, Customer authorizes Bank to follow the Payment Instructions that it receives through the Online Banking Services. In order to process payments more efficiently and effectively, the Bank may edit or alter payment data or data formats in accordance with Biller directives.

When Bank receives a Payment Instruction, Customer authorizes Bank to debit Customer's Payment Account and remit funds on Customer's behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by Customer. Customer also



authorizes Bank to credit Customer's Payment Account for payments returned to Bank by the United States Postal Service or Biller, or payments remitted to Customer on behalf of another authorized User of the Business Bill Pay Services.

Bank will use reasonable efforts to make all Customer's payments properly. However, Bank shall incur no liability and any Business Bill Pay Services Guarantee shall be void if Bank is unable to complete any payments initiated by Customer because of the existence of any one or more of the following circumstances: (i) If, through no fault of Bank, Customer's Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of Customer's Overdraft Account; (ii) The payment processing center is not working properly and Customer knew or has been advised by Bank about the malfunction before Customer executes the transaction; (iii) Customer has not provided Bank with the correct Payment Account information, or the correct name, address, phone number, or account information for the Biller; and/or; (iv) Circumstances beyond control of Bank (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and Bank has taken reasonable precautions to avoid those circumstances.

Provided none of the foregoing exceptions are applicable, if Bank causes an incorrect amount of funds to be removed from Customer's Payment Account or causes funds from Customer's Payment Account to be directed to a Biller which does not comply with Customer's Payment Instructions, Bank shall be responsible for returning the improperly transferred funds to Customer's Payment Account, and for directing to the proper Biller any previously misdirected transactions, and, if applicable, for any late payment related charges.

#### **5. Payment Methods.**

Bank reserves the right to select the method in which to remit funds on Customer's behalf to its Biller. These payment methods may include, but may not be limited to, an electronic payment, an electronic to Check payment, or a laser draft payment (funds remitted to the Biller are deducted from Customer's Payment Account when the laser draft is presented to Bank for payment).

#### **6. Payment Cancellation Requests.**

Customer may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within Online Banking Services. There is no charge for canceling or editing a Scheduled Payment. Once Bank has begun processing a payment it cannot be cancelled or edited, therefore a stop payment Request must be submitted.

#### **7. Stop Payment Requests.**

Bank's ability to process a stop payment Request will depend on the payment method and whether or not a Check has cleared. Bank may also not have a reasonable opportunity to act on any stop payment Request after a payment has been processed. If Customer desires to stop any payment that has already been processed, Customer must contact Bank. Although Bank will make every effort to accommodate Customer's Request, Bank will have no liability for failing to do so. Bank may also require Customer to present its Request in writing within fourteen (14) days. The charge for each stop payment Request will be the current charge for such Service as set out in the applicable fee schedule.

#### **8. Prohibited Payments.**

The following types of payments are prohibited through Business Online Banking Services, and Bank has the right but not the obligation to monitor for, block, cancel and/or reverse such payments:

- Payments to or from Persons or entities located in prohibited territories (including any territory outside of the United States); and
- Payments that violate any Law, statute, ordinance or Regulation; and
- Payments that violate the Agreement, or any Bank Agreement, or any other Bank document; and
- Payments related to: (1) tobacco products, (2) prescription drugs and devices; (3) narcotics, steroids, controlled substances or other products that present a risk to consumer safety; (4) drug paraphernalia; (5) ammunition, firearms, or firearm parts or related accessories; (6) weapons or knives regulated under applicable Law; (7) goods or services that encourage, promote, facilitate or instruct others to engage in illegal activity; (8) goods or services that are sexually oriented; (9) goods or services that promote hate, violence, racial intolerance, or the financial exploitation of a crime; (10) goods or services that defame, abuse, harass or threaten others; (11) goods or services that include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent or discourteous; (12) goods or services that advertise, sell to, or solicit others; or (13) goods or services that infringe or violate any copyright, trademark, right of publicity or privacy, or any other proprietary right under the Law of any jurisdiction; and

- Payments related to gambling, gaming and/or any other activity with an entry fee and a prize, including, but not limited to, casino games, sports betting, horse or dog racing, lottery tickets, other ventures that facilitate gambling, games of skill (whether or not it is legally defined as a lottery) and sweepstakes; and
- Payments relating to transactions that (1) support pyramid or ponzi schemes, matrix programs, other “get rich quick” schemes or multi-level marketing programs, (2) are associated with purchases of real property, annuities or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card, (3) are for the sale of items before the seller has control or possession of the item, (4) constitute money-laundering or terrorist financing, (5) are associated with the following “money service business” activities: the sale of traveler’s Checks or money orders, currency dealers or exchanges, or Check cashing, or (6) provide credit repair or debt settlement services.

**9. Exception Payments.**

Tax payments and court ordered payments may be scheduled through the Business Bill Pay Services, however such payments are highly discouraged and must be scheduled at Customer’s own risk. In no event shall Bank be liable for any claims or damages resulting from Customer’s scheduling of these types of payments. The Business Bill Pay Services Guarantee as it applies to any late payment related changes is void when these types of payments are scheduled and/or processed by Bank. Bank has no obligation to research or resolve any claim resulting from a payment that cannot be processed (herein “Exception Payment”). All Business Bill Pay Services research and resolution for any misapplied, mis-posted or misdirected payments will be the sole responsibility of Customer and not of Bank.

**10. Electronic Bill Delivery and Presentment.**

This feature is for the presentment of electronic bills only and it is Customer’s sole responsibility to contact its Billers directly if Customer does not receive its statements. In addition, if Customer elects to activate one of Bank’s electronic bill options, Customer also agrees to the following:

**(a) Information Provided to the Biller.**

Bank is unable to update or change Customer’s personal information such as, but not limited to, name, address, phone numbers and email addresses, with the electronic Biller. Any changes will need to be made by contacting the Biller directly. Additionally, it is Customer’s responsibility to maintain all usernames and passwords for all electronic Biller sites. Customer also agrees not to use someone else’s information to gain unauthorized access to another Person’s bill. Bank may, at the request of the Biller, provide to the Biller Customer’s email address, service address, or other data specifically requested by the Biller at the time of activating the electronic bill for that Biller, for purposes of the Biller informing Customer about Business Bill Pay Services and/or bill information.

**(b) Activation.**

Upon activation of the electronic bill feature, Bank may notify the Biller of Customer’s Request to receive electronic billing information. The presentment of Customer’s first electronic bill may vary from Biller to Biller and may take up to sixty (60) days, depending on the billing cycle of each Biller. Additionally, the ability to receive a paper copy of Customer’s statement(s) is at the sole discretion of the Biller. While Customer’s electronic bill feature is being activated it is Customer’s responsibility to keep its accounts current. Each electronic Biller reserves the right to accept or deny Customer’s Request to receive electronic bills.

**(c) Authorization to obtain bill data.**

Customer’s activation of the electronic bill feature for a Biller shall be deemed by Bank to be Customer’s Authorization for Bank to obtain bill data from the Biller on Customer’s behalf. For some Billers, Customer will be asked to provide Bank with its user name and password for that Biller. By providing Bank with such information, Customer authorizes Bank to use the information to obtain Customer’s bill data.

**(d) Notification.**

Bank will use its best efforts to present all of Customer’s electronic bills promptly. In addition to notification within the Online Banking System, Bank may send an e-mail notification to the e-mail address listed for Customer’s Account(s) in Bank’s file. It is Customer’s sole responsibility to ensure that this information is accurate. In the event Customer does not receive notification, it is Customer’s responsibility to periodically login to the Business Bill Pay Services and check on the delivery of new electronic bills. The time for notification may vary from Biller to Biller. Customer is responsible for ensuring timely payment of all bills.

**(e) Cancellation of electronic bill notification.**

The electronic Biller reserves the right to cancel the presentment of electronic bills at any time. Customer may cancel electronic bill presentment at any time. The timeframe for cancellation of Customer’s electronic bill presentment may vary from Biller to Biller. It may take

up to sixty (60) days, depending on the billing cycle of each Biller. Bank will notify Customer's electronic Biller(s) as to the change in status of Customer's Account and it is Customer's sole responsibility to make arrangements for an alternative form of bill delivery. Bank will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

**(f) Non-Delivery of electronic bill(s).**

Customer agrees to hold Bank harmless should the Biller fail to deliver Customer's statement(s). Customer is responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Biller directly.

**(g) Accuracy and dispute of electronic bill.**

Bank is not responsible for the accuracy of Customer's electronic bill(s). Bank is only responsible for presenting the information Bank receives from the Biller. Any discrepancies or disputes regarding the accuracy of Customer's electronic bill summary or detail must be addressed with the Biller directly.

This Agreement does not alter Customer's liability or obligations that currently exist between it and its Billers.

**11. Failed or Returned Transactions.**

In using the Business Bill Pay Services, Customer is requesting Bank to make payments for Customer from Customer's Payment Account. If Bank is unable to complete the transaction for any reason associated with Customer's Payment Account (for example, there are insufficient funds in Customer's Payment Account to cover the transaction), the transaction may not be completed. In some instances, Customer will receive a return Notice from Bank. In each such case, Customer agrees that: (i) Customer will reimburse Bank immediately upon demand if the transaction amount has been returned to Bank; (ii) For any amount not reimbursed to Bank within fifteen (15) days of the initial notification, a late charge equal to 1.5% monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed; (iii) Customer will reimburse Bank for any fees imposed by any financial institution as a result of the return; and (iv) Customer will reimburse Bank for any fees or costs it incurs in attempting to collect the amount of the return from Customer. Customer agrees that Bank is authorized to report the facts concerning the return to any credit reporting agency.

**12. Service Termination, Cancellation, or Suspension.**

In the event Customer wishes to cancel the Business Bill Pay Services, Customer must contact Bank. Any payment(s) Bank has already processed before the requested cancellation date will be completed by Bank. All Scheduled Payments including recurring payments will not be processed once Business Bill Pay Services are cancelled. Bank may terminate or suspend the Business Bill Pay Services at any time. Neither termination nor suspension shall affect Customer's liability or obligations under this Agreement.

**13. Biller Limitation.**

Bank reserves the right to refuse to pay any Biller to whom Customer may direct a payment. Bank will notify Customer promptly if Bank decides to refuse to pay a Biller designated by Customer. This notification is not required if Customer attempts to make a prohibited payment or an exception payment under this Agreement.

**14. Returned Payments.**

In using the Business Bill Pay Services, Customer understands that Billers and/or the United States Postal Service may return payments to Bank for various reasons such as, but not limited to, Biller's forwarding address expired; Biller Account number is not valid; Biller is unable to locate account; or Biller's account is paid in full. Bank will use its best efforts to research and correct the returned payment and return it to Customer's Biller, or void the payment and credit Customer's Payment Account, but Bank assumes no responsibility for doing so and incurs no liability for any failure to do so. Customer may receive notification from Bank.

**15. Information Authorization.**

Customer's enrollment in the Business Bill Pay Services may not be fulfilled if Bank cannot verify Customer's identity or other necessary information. In order to verify ownership of the Payment Account(s) and/or Billing Account, Bank may issue offsetting debits and credits to the Payment Account(s) and/or Billing Account and require confirmation of such from Customer. Through Customer's enrollment in the Business Bill Pay Services, Customer agrees that Bank reserves the right to request a review of Customer's credit rating at Bank's expense through an authorized bureau. In addition, Customer agrees that Bank reserves the right to obtain financial information regarding Customer's Account from a Biller.

## 16. Updating Contact Information and Payment Account.

It is Customer's sole responsibility to ensure that the contact information in Customer's User profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and email addresses. Changes can be made by contacting Bank. With regard to the Business Bill Pay Service, Customer must contact Bank to make changes to Customer's Payment Account. We are not responsible for any payment processing errors or fees incurred if Customer does not provide accurate Payment Account or contact information.

### D. Mobile Banking Services.

#### 1. Generally.

Bank agrees to provide the "Mobile Banking Services" to Customers enrolled in Bank's Business Online Banking Services.

The Mobile Banking Services allow Customer to gain mobile access to Customer's Deposit Accounts with a downloadable Mobile Banking Services Application (herein "Mobile Banking Application"), which provides short message service ("SMS") capabilities (i.e., text messaging). In addition to accessing Account information and making transactions, Customer may select preferences and the types of "Alerts" for Bank to transmit to Customer by SMS. Examples of Alerts include notifications of low balance or large withdrawal. Enrollment requires identification of the Customer Account(s) along with a wireless phone number. Customer may opt out of Mobile Banking Service at any time by providing Notice to Bank and contacting Bank in a form reasonably acceptable to Bank. Bank shall have a reasonable time to act upon such opt out Notice.

#### 2. Wireless Service Providers.

Participating wireless service providers include (but are not limited to) AT&T®, Sprint®, T-Mobile® and Verizon®. Mobile Banking Services and any software ("Software") Customer may obtain through Mobile Banking Services may not be available at all times for reasons outside of the control of Bank or Mobile Device service provider. Customer is responsible for any fees or other charges that its Mobile Device service provider may charge for any related data or message services, including, without limitation, SMS. If Customer has questions about Mobile Banking Services, Customer may contact Bank or send a text message with the word "HELP" to number 99588. To stop Alerts, Customer may send a text with the word "STOP" to number 99588. Customer will receive a one-time opt-out confirmation text message.

In order to use the Mobile Banking Services and the Mobile Deposit Service, Customer must have a supported Mobile Device, such as a smartphone or tablet, with a camera and a supported operating system, which is compatible with the Mobile Banking Application (herein throughout "Mobile Device"). The Bank does not guarantee that all Mobile Devices and operating systems are compatible with the Mobile Banking Services, the Mobile Deposit Service or the Mobile Banking Application. Customer is responsible for the security of its Mobile Device and for allowing use of this Mobile Banking Service only by individuals authorized by Customer, including use by Customer's employees or authorized Agents or Users of Customer. Customer agrees to implement and maintain specific internal security controls to protect the Mobile Device and Customer information. Customer is strongly encouraged to mitigate the risks that Mobile Devices present by ensuring that Customer's Mobile Device is password protected and to ensure only authorized individuals access Customer's Accounts and Customer information utilizing the Business Mobile Banking Service. The Bank may require that Customer implement and maintain additional specific controls, which may be amended from time to time. Customer is responsible for all costs of using Customer's Mobile Device and related Services provided by the Bank

#### 3. Bank Third-Party Mobile Banking Service Providers

**Customer understands and agrees that Bank's third-party Mobile Banking Service providers may rely upon the provisions of this Agreement, including the disclaimer of warranties and/or limitations of liability set forth herein, and that such third-party Mobile Banking Service providers are, for the purposes of this Agreement, third-party beneficiaries under this Agreement with the power to enforce this Agreement against Customer.**

#### 4. Privacy and User Information.

Customer acknowledges that in connection with its use of the Mobile Banking Services, Bank, its Affiliates and Mobile Device Service providers, may receive names, domain names, addresses, passwords, telephone and Mobile Device numbers, the content of messages, data files and other data and information provided by Customer or from other sources in connection with the Mobile Banking Services (collectively "User Information"). Bank, its Affiliates and Mobile Device service providers will maintain reasonable safeguards to protect the information from unauthorized disclosure or use, but reserve the right to use and disclose this information as reasonably necessary to deliver the Mobile Banking Services and as otherwise permitted by Law, including compliance with court orders or lawful Instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by Customer. Bank, its Affiliates and Mobile Device service providers also reserve the right to monitor use of the Mobile Banking Services for purposes of verifying compliance with the Law, these terms and conditions and any applicable license, but disclaim any obligation to monitor, filter, or edit any content.

## **5. Restrictions on Use.**

Customer agrees not to use the Mobile Banking Services or the Software in or for any illegal, fraudulent, unauthorized or improper manner or purpose. Customer will only use the Mobile Banking Services, the Mobile Deposit Services, the Mobile Banking Application and Software in compliance with all applicable Laws, Rules and Regulations, including all applicable state, federal, and international Internet, data, telecommunications, telemarketing, "spam," and import/export Laws and Regulations, including the U.S. Export Administration Regulations. Without limiting the foregoing, Customer agrees that it will not use the Mobile Banking Services, the Mobile Deposit Services, the Mobile Banking Application or the Software to transmit or disseminate: (i) junk mail, spam, or unsolicited material to Persons or entities that have not agreed to receive such material or to whom Customer does not otherwise have a legal right to send such material; (ii) material that infringes or violates any third-party's intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any mobile phone service provider or any of its clients or subscribers; (iii) material or data that is illegal or material or data as determined by Bank (in its sole discretion) that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm the reputation of Bank or any third-party service provider involved in the provision of the Mobile Banking Services; (iv) material or data that is alcoholic beverage-related (e.g., beer, wine, or liquor), tobacco-related (e.g., cigarettes, cigars, pipes, chewing tobacco), guns or weapons-related (e.g., firearms, bullets), illegal drugs-related (e.g., marijuana, cocaine), pornographic-related (e.g., adult themes, sexual content), crime-related (e.g., organized crime, notorious characters), violence-related (e.g., violent games), death-related (e.g., funeral homes, mortuaries), hate-related (e.g. racist Organizations), gambling-related (e.g., casinos, lotteries), specifically mentions any Mobile Device service provider or copies or parodies the products or services of any Mobile Device service provider; (v) Viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programs that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; (vi) any material or information that is false, misleading, or inaccurate; (vii) any material that would expose Bank, any third-party service provider involved in providing the Mobile Banking Services, or any other third-party to liability; or (viii) any signal or impulse that could cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of any third-party. Customer agrees that it will not attempt to: (a) access any software or Services for which Customer's use has not been authorized; or (b) use or attempt to use a third-party's Account; or (c) interfere in any manner with the provision of the Mobile Banking Services, the Mobile Deposit Services, the Mobile Banking Application or the Software, the security of the Mobile Banking Services, the Mobile Deposit Services, the Mobile Banking Application or the Software, or other customers of the Mobile Banking Services, the Mobile Deposit Services, the Mobile Banking Application or the Software; or (d) otherwise abuse the Mobile Banking Services, the Mobile Deposit Services, the Mobile Banking Application or the Software.

## **6. End User License Agreement for Mobile Banking Services Application.**

By use of the Mobile Banking Services and all Services described herein, Customer agrees to ACCEPT ALL OF THE TERMS IN THIS END USER LICENSE AGREEMENT FOR THE MOBILE BANKING APPLICATION ("License"). In addition, Customer understands that by using the Mobile Banking Services and all Services described herein, Bank has licensed the Mobile Banking Application to Customer subject to all terms and conditions contained in this License.

BEFORE CUSTOMER CHOOSES TO USE THE SERVICE, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS LICENSE. BY USING THE MOBILE BANKING SERVICE, CUSTOMER IS CONSENTING TO BE BOUND BY THIS LICENSE. IF CUSTOMER DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS LICENSE, DO NOT USE THE SERVICE.

### **(a) Grant of License.**

Bank hereby grants Customer a limited, non-exclusive, non-transferable license to install the Mobile Banking Application on Customer's Mobile Device for Customer's business use. Customer may not (and shall not permit any third-party to): (i) copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Mobile Banking Application, any updates, or any part thereof; (ii) rent, lease, lend, sell, redistribute or sub-license the Mobile Banking Application; or (iii) otherwise exercise any other right to the Mobile Banking Application not expressly granted in this License. The terms of this License will govern any upgrades provided by Bank that replace and/or supplement the original Mobile Banking Application.

### **(b) No Warranty.**

CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE MOBILE BANKING APPLICATION AND ANY SERVICE PERFORMED OR PROVIDED BY THE MOBILE BANKING APPLICATION IS AT CUSTOMER'S SOLE RISK AND THAT THE ENTIRE RISK TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH CUSTOMER. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND THE BANK HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE MOBILE BANKING APPLICATION AND ANY SERVICE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND THE NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE BANK DOES NOT WARRANT AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE MOBILE BANKING APPLICATION, THAT THE FUNCTIONS CONTAINED THEREIN, OR THE SERVICE PERFORMED OR PROVIDED BY THE MOBILE BANKING APPLICATION WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OPERATION OF THE MOBILE BANKING APPLICATION OR SERVICE WILL BE

UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE MOBILE BANKING APPLICATION OR SERVICE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE BANK OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE MOBILE BANKING APPLICATION OR SERVICE PROVE DEFECTIVE, CUSTOMER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, AND SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO CUSTOMER.

THE BANK IS ONLY RESPONSIBLE FOR PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT AS EXPRESSLY SET FORTH HEREIN. THE BANK SHALL NOT BE LIABLE FOR ANY DAMAGES OTHER THAN THOSE CAUSED SOLELY AND DIRECTLY BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND ITS LIABILITY SHALL IN NO EVENT EXCEED THE TOTAL IN FEES CUSTOMER PAID FOR THE USE OF THE MOBILE DEPOSIT SERVICE DURING THE SIX-MONTH PERIOD PRIOR TO THE ALLEGED ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE BANK SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. CUSTOMER ACKNOWLEDGES THAT THE MOBILE DEPOSIT SERVICE IS PROVIDED BY THE BANK ON AN "AS IS" BASIS, AND THAT CUSTOMER USES IT AT CUSTOMER'S SOLE RISK. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE BANK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MOBILE DEPOSIT SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THIS MOBILE DEPOSIT SERVICE IS SUBJECT TO VARIOUS ELECTRONIC COMPONENTS BEING OPERATIONAL. IN THE EVENT OF TELECOMMUNICATIONS, INTERNET OR OTHER INFRASTRUCTURE FAILURE, CUSTOMER UNDERSTANDS THAT A PROCESSING DELAY MAY RESULT AND CUSTOMER HEREBY WAIVES ALL CLAIMS AGAINST THE BANK. CUSTOMER HEREBY REPRESENTS THAT CUSTOMER UNDERSTANDS THAT THE MOBILE BANKING SERVICES AND THE MOBILE DEPOSIT SERVICE IS SUBJECT TO VARIOUS ELECTRONIC COMPONENTS BEING OPERATIONAL. IN THE EVENT OF TELECOMMUNICATIONS, INTERNET, OR OTHER INFRASTRUCTURE FAILURE, CUSTOMER UNDERSTANDS THAT A PROCESSING DELAY MAY RESULT AND HEREBY WAIVE ANY CLAIMS AGAINST THE BANK AS A RESULT OF SUCH FAILURE.

**(c) Limitation of Liability.**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL THE BANK BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR CORRELATED TO CUSTOMER'S USE OR INABILITY TO USE THE MOBILE BANKING APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THE BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO CUSTOMER.

**(d) Ownership of Mobile Banking Application.**

This License does not convey to Customer an interest in or to the Mobile Banking Application, but only a limited right of use revocable in accordance with the terms of this License.

**(e) License.**

The Mobile Banking Application is NOT sold to Customer, and all rights not expressly granted herein are reserved to Bank and its licensors. Bank and its licensors own all right, title and interest in and to the Mobile Banking Application. No license or other right in or to the Mobile Banking Application is granted to Customer except for the rights specifically set forth in this License. Customer hereby agrees to abide by United States' copyright law and all other applicable Laws of the United States and other nations and by any applicable international treaties.

This License is valid until terminated by Customer or the Bank. **Customer may terminate the License by contacting the Bank by calling the Bank at 1-800-274-4482 and asking to speak to a customer service representative or sending an email to [info@ozk.com](mailto:info@ozk.com).** The Bank may terminate the License at any time or for any reason. Customer's rights under this License will terminate immediately if Customer breaches any term of this License. Upon termination of this License, Customer shall immediately cease all use of the Mobile Banking Application and destroy all copies, full or partial, of the Mobile Banking Application.

**(f) Consent to Use of Data.**

Customer agrees that Bank may collect and use technical data and related information, including but not limited to technical information about Customer's Mobile Device, system and application software and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other Services to Customer (if any) related to the Mobile Banking Application. Bank may use this information, as long as it is in a form that does not personally identify Customer, to improve its products or to provide Mobile Deposit Services or technologies to Customer.

**(g) Content and Services.**

Neither Bank nor the provider of the wireless network is the provider of any financial services available through or related to the Mobile Banking Application or Software; and neither Bank nor the provider of the wireless network or any contractor of the provider of the financial

services available through or related to the Mobile Banking Application or Software is responsible for any of the materials, information, products or Services made available to Customer via the Mobile Banking Application or Software.

**(h) Customer's Access ID and Password.**

A Customer's User ID, password and/or token or Codes are used to initiate transfers and payments through Mobile Banking Services and the Mobile Banking Application. Customer authorizes Bank to follow any Instructions entered through the Mobile Banking Services using Customer's User ID and password, and/or token or Codes. Because Customer's password can be used to access money in Customer's Deposit Accounts, Customer should treat the password with the same degree of care and secrecy that Customer uses to protect cash and other sensitive personal financial data. Customer agrees not to allow access to Customer's User ID and password, and/or token or Codes to any unauthorized individuals. Customer is responsible for any unauthorized transactions by anyone Customer allows to access the Mobile Banking Services. Customer acknowledges that the security measures described above are commercially reasonable. Customer authorizes and directs Bank to transfer funds on the basis of the Account number(s) provided even if such Account number(s) identify a Person or Account Customer did not intend. **If Customer believes that someone may attempt to use the Mobile Banking Services on Customer's behalf without Customer's consent or has transferred money without Customer's permission, Customer must notify Bank immediately.**

**(i) Balance Inquiries and Transfers.**

Customer may use the Mobile Banking Services to check the balance of Customer's Accounts and to transfer funds between or among its Accounts. Certain types of Accounts with Bank may have transfer limitations. If any of Customer's Accounts are subject to such limitations, those limitations will apply to transactions that Customer initiates through the Mobile Banking Services. The total of all transfers made from an Account on a single day through the Mobile Banking Services may not exceed the amount of the funds available in the Account. The balance shown on the Mobile Banking Services may include deposits still subject to verification by Bank. The balance shown also may differ from Customer's records because it may not include deposits in progress, outstanding Checks, or other withdrawals, payments, or charges. If Customer has Overdraft privilege, it will be accessed for transactions initiated with the Mobile Banking Services.

**(j) Cut-Off Times.**

Internal transfers completed through the Mobile Banking Services before 7:00 p.m. Central Time on a Business Day are posted to Customer's Account the same day. All internal transfers initiated after 7:00 p.m. Central Time on a Business Day or a day that is not a Business Day will be posted on the next Business Day.

**(k) Funds Availability.**

When Customer Requests a transfer of funds or payment from an Account through the Mobile Banking Services, Bank is not required to honor Customer's Request if the amount of the requested transfer or payment exceeds the amount of collected funds in the Account. If sufficient collected funds are not available in the Account at the time Customer Requests a transfer or payment, Bank can either (i) make the transfer or payment, in which case Customer will be liable for the deficit, or (ii) refuse to make the transfer or payment. In either case, Customer will be liable for any fee applicable to the withdrawal or attempted withdrawal of money from the Account in accordance with Customer's Account Agreement or Bank Agreements with Customer.

**(l) Google Maps.**

Customer agrees to abide by Google Maps/Google Earth Additional Terms of Service found at [http://maps.google.com/help/terms\\_maps.html](http://maps.google.com/help/terms_maps.html) and the Legal Notices for Google Maps found at [http://maps.google.com/help/legalnotices\\_maps.html](http://maps.google.com/help/legalnotices_maps.html) or other URLs as may be updated by Google.

**(m) Condition of Mobile Device.**

Customer agrees to and accepts responsibility to maintain a Mobile Device that is free from any harmful Viruses, malware, spyware, or any other malicious software or code intended for malicious use by another individual. Customer accepts legal and financial responsibility for any Loss Bank incurs as a result of financial theft or fraud traced to malicious software or code on Customer's Mobile Device. Liability would include financial fraud Loss incurred by Bank as a result of Customer's compromised Mobile Device. It is Customer's full and complete responsibility to maintain a Mobile Device free of any harmful Viruses, malicious software or code. The purchase, installation, and maintenance of Mobile Device Virus protection software is Customer's responsibility.

**7. Security of Mobile Device.**

Customer is solely responsible for (i) maintaining the confidentiality and security of its Mobile Device, access number(s), Codes, password(s), security question(s) and answer(s), Account number(s), log in information, and any other security or access information used by Customer to access the Mobile Banking Services, and (ii) preventing unauthorized access to or use of the information, files, or data that Customer stores,

transmits, or uses in connection with the Mobile Banking Services. Customer agrees not to supply its access information to anyone and to immediately notify Bank if it becomes aware of any Loss, theft, or unauthorized use of any access information, including Customer's User ID and password Bank reserves the right to deny Customer access to the Mobile Banking Services if Bank believes that any Loss, theft, or unauthorized use of access information has occurred.

#### **8. Export Controls.**

Customer may not use or otherwise export or re-export the Mobile Banking Application except as authorized by United States law and the Laws of the jurisdiction in which the Mobile Banking Application was obtained. In particular, but without limitation, the Mobile Banking Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the United States Department of Commerce Denied Person's List or Entity List. By using the Application, Customer represents and warrants that it is not located in any such country or on any such list. Customer also agrees that it will not use these products for any purposes prohibited by United States Law, including, without limitation, the development, design, manufacture or production of nuclear missiles, or chemical or biological weapons.

#### **9. United States Government End Users.**

The Mobile Banking Application is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all United States Government End Users acquire the Application with only those rights set forth therein.

#### **10. Fingerprint Login for Mobile Banking.**

Fingerprint Login is an optional fingerprint sign-in method for Mobile Banking that may be available for certain Apple® (via Touch ID™) and Android® Mobile Devices that have a built-in fingerprint scanner. To use Fingerprint Login, Customer will need to first save a fingerprint on its Mobile Device (for more help with fingerprint scanning, contact the manufacturer that supports Customer's Mobile Device.). Fingerprints are stored on Customer's Mobile Device only and Bank never sees or stores Customer's fingerprint information. Customer acknowledges that by enabling Fingerprint Login, Customer will allow anyone who has a fingerprint stored on its device access to Customer's payment Account information within the Mobile Banking Service. Bank reserves the right to suspend or disable this feature at any time. Fingerprint Login can only be associated with one Mobile Banking username at a time on a Mobile Device. If Customer's Mobile Device does not recognize a fingerprint, Customer can sign in using its standard login credentials (e.g. password). To use Fingerprint Login in conjunction with the Mobile Banking Service on multiple Mobile Devices, Customer will need to set it up for each Mobile Device. Customer can enable or disable Fingerprint Login anytime within the Mobile Banking Service. Apple and Touch ID are trademarks of Apple Inc. Android is a trademark of Google Inc.

### **E. Mobile Deposit Services.**

#### **1. Generally.**

The Mobile Deposit Service allows Customer to make deposits to Customer's checking, savings or money market Accounts using Customer's approved Mobile Device from any location. Customer may opt out of the Mobile Deposit Service at any time by providing Notice to Bank and contacting Bank in a form reasonably acceptable to Bank. Bank shall have a reasonable time to act upon such opt out Notice.

Pursuant to the terms of this Agreement, Customer may use the Mobile Deposit Service to deposit Items into Customer's Account(s) by creating an Image of the Item using a Mobile Device and transmitting that Image to Bank for deposit. Customer may transmit Images to the Bank only from a Mobile Device located in the United States. The Mobile Deposit Service is separate and apart from any other charges that may be assessed by Customer's wireless carrier for text messages sent to or received from the Bank. Customer is responsible for any fees or other charges that Customer's wireless carrier may charge for any related data or message services including, without limitation, short message services.

#### **2. Bank Third-Party Mobile Deposit Service Providers.**

Customer understands and agrees that Bank's third-party Mobile Deposit Service providers, including but not limited to, Fiserv Solutions, Inc., may rely upon the provisions of this Agreement, including the disclaimer of warranties and/or limitations of liability set forth herein, and that such third-party Mobile Deposit Service providers are, for the purposes of this Agreement, third-party beneficiaries under this Agreement with the power to enforce this Agreement against Customer.



### **3. Check Endorsement Requirements**

ALL CHECKS DEPOSITED VIA MOBILE DEVICE NEED TO HAVE THE FOLLOWING PHRASE BELOW THE ENDORSEMENT:

**“For Mobile Deposit Only”**

### **4. Processing Images.**

Customer authorizes Bank to process any Image that Customer sends to Bank or to convert an Image to an Image Replacement Document. Customer authorizes Bank and any other bank to which an Image is sent to handle the Image or IRD. Bank reserves the right to reject and to refuse to process any Image Customer sends to Bank for any reason or no reason, without prior Notice to Customer.

Customer is responsible for the Image quality of any Image that Customer transmits. If an Image that Bank receives from Customer for deposit to Customer's Account(s) is not of sufficient quality to satisfy Bank's Image quality standards as Bank may establish them from time to time, Bank may reject the Image prior to submission or upon further review of the Item by the Bank, and Customer may be instructed to deposit the Check using another method. Customer may experience delayed notification if the Item is rejected during review at the Bank. Each Image must include the front and back of the Item and the following information must be clearly readable: amount, payee name, drawer signature, date, Check number, account number, routing and transit number, MICR (Magnetic Ink Character Recognition) line, and any endorsement or other information written on the Check. Customer agrees that the Bank shall not be liable for any damages resulting from Items with poor image quality, including those relating to rejection of, or the delayed or improper crediting of, such a Check. Customer further agrees that the Bank shall not be liable for any damages resulting from any inaccurate information Customer supplies regarding a Check transmitted using the Mobile Deposit Service.

### **5. Limits.**

Bank reserves the right, in its sole discretion, to impose limits on the amount and/or number of deposits (over a period of time set by Bank) that Customer transmits using the Mobile Deposit Service and to modify such limits from time to time. Bank reserves the right to adjust these limits based on Account activity, abuse of the product, or general risk parameters. If Customer attempts to initiate a deposit in excess of these limits, Bank may reject Customer's deposit. If Bank permits Customer to make a deposit in excess of these limits, such deposit will still be subject to the terms of the Agreement and Bank will not be obligated to allow such a deposit at other times.

### **6. Deposit of Other Items; Deposits when Mobile Deposit Service Is Not Available.**

Customer agrees that Customer will not use the Mobile Deposit Service to deposit anything not meeting the definition of an Item. If Customer uses the Mobile Deposit Service to transmit anything that is not an Item, or if for any reason Bank is not able to recognize Customer's transmission as an Item, Bank may reject it without prior Notice to Customer. Customer agrees to make those deposits through other channels that Bank offers, such as at a branch or by mail. Customer further agrees to use such other channels when the Mobile Deposit Service may not be available such as at a Bank branch, night deposit or ATM, where available, or bank by mail.

### **7. Returned Items.**

Customer is solely responsible for any Item for which Customer has been given provisional credit, and any such Item that is returned or rejected may be charged to Customer's Account. Customer acknowledges that all credits received for deposits made through Mobile Deposit are provisional, subject to verification and final settlement. Any Item that Bank returns to Customer will be returned in the form of an Image or an IRD.

### **8. Handling of Transmitted Items.**

Customer will not allow the transmission of an Image of an Item that has already been presented to Bank or to any other bank by any other means. Customer will not allow transmission of an Image of an Item that has already been transmitted through the Mobile Deposit Service. If an Image of an Item has been transmitted to Bank or to any other bank, Customer will not allow the Item to be subsequently presented by any other means. If any Item is presented or deposited more than once, whether by Image or by any other means, Bank may, in its sole discretion, reject it or return it and charge it against Customer's Account without prior Notice to Customer. For any Image that Customer has transmitted, Customer shall be responsible for preventing the transmission of another Image of the Item or presentation of the Item by any other means. Customer agrees to retain the Item for a minimum of five (5) calendar days from the date of the Image transmission.

### **9. Destruction of Original Check.**

Upon confirming that Customer has received full credit for the Check deposited, Customer must destroy the Check by shredding or other means, or clearly mark "VOID" or "ELECTRONICALLY DEPOSITED" on the front and back of the Check. This prevents the Check from being presented for deposit multiple times.

**10. Cooperation with Investigations.**

Customer agrees to cooperate with Bank in the investigation of unusual transactions, poor quality transmissions, and resolution of Customer claims, by providing, upon request and without further cost, any originals or copies of Items in Customer's possession and Customer's records relating to Items and transmissions.

**11. Payment Processing.**

**(a) Item Processing**

In Bank's sole discretion, Bank may process the Images Customer sends to Bank electronically through other banks, or Bank may create Image Replacement Documents that will be processed through traditional Check processing methods. If Customer sends Bank Images that are incomplete, that fail to satisfy Bank's Image quality requirements, or otherwise do not allow Bank to meet the requirements of the Check 21 Act or any Image exchange agreement that would cover Bank's further electronic transmission of Images that Customer sends to Bank, or Bank is otherwise unable to process Images that Customer sends to Bank, Bank may charge the Images back to Customer's Account. Customer agrees to be bound by any Clearing House agreements, operating circulars, and Image exchange agreements to which Bank is a party.

**(b) Transmission of Items**

The Images Customer sends Bank are not considered received by Bank until Customer sees a memo post acknowledging that Bank has accepted Customer's deposit. However, this memo post confirmation does not mean that the transmission was complete or error-free. When Bank receives an Image, Bank will notify Customer only if a deposit is rejected. The Image is not deemed "received" by Bank until it is posted to Customer's Account. Bank may refuse to process any Image Customer sends to Bank for any reason or no reason at all. Likewise, an Image may be returned to Bank upon submission into the payment stream for a variety of reasons, including but not limited to, poor Image quality, duplicate Item, fraud, forged Items, etc.

**(c) Errors**

Customer agrees to notify Bank of any suspected errors regarding Items deposited through the Mobile Deposit Service as soon as possible after they occur, and in no event later than sixty (60) days from the date on the applicable Bank Account statement. Unless Customer notifies Bank within the aforementioned time period, such statement regarding all deposits made through the Mobile Deposit Service shall be deemed correct, and Customer is prohibited from bringing a claim against Bank for such alleged error.

**(d) Errors in Transmission**

By using the Mobile Deposit Service, Customer accepts the risk that an Item may be intercepted or misdirected during transmission. Bank bears no liability to Customer or others for any such intercepted or misdirected Items or information disclosed through such errors.

**(e) Presentment**

The manner in which the Items are cleared, presented for payment, and collected shall be in Bank's sole discretion subject to the terms and conditions in Customer's Account Agreement with Bank.

**(f) Cut-Off Times for Deposits**

Deposits made using the Mobile Deposit Service may be submitted at any time of the day, seven (7) days a week, including weekends and federal holidays. However, deposits received by Bank after the daily cut-off time for electronic deposits will be deposited on the next Business Day, provided that the deposit meets all of the requirements stated herein. Deposits submitted on weekends or federal holidays will also be deposited the next Business Day provided that the deposit meets all of the requirements stated herein. The daily cut-off time for deposits made using the Mobile Deposit Service is 5:00 p.m. Central Time and is subject to change without Notice to Customer.

**(g) Availability of Funds Deposited**

If an Image Customer transmits through the Mobile Deposit Service is received and accepted before 5:00 p.m. Central Time on a Business Day that Bank is open, Bank considers that day to be the day of Customer's deposit. Otherwise, Bank will consider that the deposit was made

on the next Business Day Bank is open. Funds from Items deposited through the Mobile Deposit Service will be made available to Customer pursuant to Bank's Funds Availability Schedule and Policies.

## **12. Limitations of Mobile Deposit.**

Maintenance to the Mobile Deposit Service may be performed from time to time resulting in interrupted Mobile Deposit Service, delays, or errors in the performance of the Mobile Deposit Service, and Bank shall have no liability for any such interruptions, delays, or errors. Similarly, when using the Mobile Deposit Service, Customer may experience technical or other difficulties that are outside Bank's control. Bank is not responsible for damages that Customer may incur as a result of such difficulties or the unavailability of the Mobile Deposit Service.

## **13. Representations and Warranties.**

Customer makes the following representations and warranties to Bank:

- Customer will use the Mobile Deposit Service to transmit and deposit Images of Items only.
- Customer will transmit only Images of Items acceptable for deposit through the Mobile Deposit Service and will handle Items as agreed upon herein.
- Customer is a Person, business, Organization, or association authorized to enforce each Item or are authorized to obtain payment of each Item on behalf of a Person, business, Organization, or association entitled to enforce an Item.
- Items have not been altered.
- Each Item bears all required and authorized signatures and endorsements.
- Each Item has been endorsed as **"FOR MOBILE DEPOSIT ONLY"**.
- All Images accurately and legibly represent all of the information on the front and back of the Item.
- Customer will not use the Mobile Deposit Service to transmit or deposit any Item, (i) payable to any Person or entity other than Customer, (ii) drawn on Customer's Account, (iii) that Customer knows or should know to be fraudulent, altered, unauthorized, or missing a necessary signature or endorsement, (iv) that is a Substitute Check or Image Replacement Document, (v) that is drawn on an institution located outside of the United States, (vi) that has previously been submitted through the Mobile Deposit Service or through a mobile deposit service offered at another financial institution, (vii) that is a remotely created Check, (viii) that is not payable in United States currency, (ix) that is dated more than six (6) months prior to the date of deposit, (x) that is post-dated, (xi) that is payable on sight or through drafts, (xii) with any endorsement on the back other than that specified in this Section, (xiii) that exceeds Customer's daily limit or number of Items, or (xiv) that is subject to a claim in recoupment of any party that can be asserted against Customer.
- Customer understands that acceptance of the End User License Agreement is required for use of the Mobile Deposit Service.
- Customer has no knowledge of insolvency proceedings against any Person or entity in connection with the Item.