Automated Clearing House (ACH) Origination Service Addendum to Business Online User and Access Agreement

We suggest you read this document carefully and print a copy for your reference. You may refer back to it at any time by accessing the Agreements tab within Internet Banking. We may amend this document from time to time and you should review it regularly. To print this document, select File, and Print from the menubar

1.   General Terms. The Automated Clearing House ("ACH") origination and associated services allows you to utilize the ACH services (the "Services") made available by us, as an Originating Depository Financial Institution ("ODFI"). This Automated Clearing House (ACH) Origination Service Addendum (the "Addendum") to the Business Online Access and User Agreement sets forth the terms and conditions regarding your use of the Services. This Addendum amends and becomes a part of the Bank's Deposit Account Terms and Conditions Agreement and the Business Online Access and User Agreement (collectively, the "Initial Agreement") between you and us. The terms of the Initial Agreement are hereby ratified, affirmed and incorporated herein and shall continue to apply in all respects, as amended hereby. As used herein, the term "Agreement" shall mean both the Initial Agreement and the Addendum, collectively. References in this Agreement to "you" shall be deemed to include your Authorized Representative (as defined below), except where expressly provided otherwise. Except as otherwise set forth herein, all capitalized terms used but not defined herein shall have the meaning given to them in the *NACHA Rules* (as defined below). By using the Services, you agree to the terms and conditions of this Agreement. Except as otherwise expressly provided in this Addendum, to the extent that this Addendum is inconsistent with the terms of the Initial Agreement, this Addendum and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

2.   ACH Service; Compliance with the NACHA Rules and Applicable Law. The ACH network is a funds transfer system which provides for the interbank clearing of electronic credit and debit Entries for participating financial institutions. The ACH system is governed by the National Automated Clearing House Association's ("NACHA") *Operating Rules and Operating Guidelines* (collectively, the "NACHA Rules"). Your rights and obligations with respect to any Entry are governed by the *NACHA Rules*, this Agreement and applicable law. You acknowledge that you have access to a copy of the *NACHA Rules* and agree to obtain and review a copy. (The *NACHA Rules* may be obtained at NACHA's website at www.NACHA.org or by contacting NACHA directly at 703-561-1100.) You also agree to subscribe to receive revisions to the *NACHA Rules* directly from NACHA. You represent and warrant that you will comply with the *NACHA Rules* and applicable laws, regulations and regulatory requirements. You further represent and warrant that you will not transmit any Entry or engage in any act or omission that violates or causes us to violate the *NACHA Rules* or the laws of the United States, or any other applicable laws, regulations or regulatory requirements, including, without limitation, regulations of the Office of Foreign Asset Control ("OFAC"), sanctions or executive orders.

3.   Types of Entries; Transmission Methods. You will only initiate those Entry types (Standard Entry Class or "SEC" Codes) that we have expressly authorized you to initiate. As of the date of this Agreement, authorized SEC Codes include PPD, CCD and CCD+. All other SEC Codes that we may subsequently permit in our sole discretion and from time to time with respect to the Service will require our pre-approval and may only be used with proper designation on the Business Online Service

Application or enrollment form(s) associated with the Service and in accordance with our additional instructions form and requirements, as applicable. We reserve the right to reject any Entry or group of Entries that includes an unauthorized SEC Code. You agree to initiate Entries described herein in accordance with the requirements of and in compliance with your responsibilities, representations and warranties as an Originator under the *NACHA Rules*. You may transmit a NACHA–formatted file to us via our Business Online Services or in such form and via such other transmission medium as may be set forth in **Schedule A**. You expressly authorize us to process each such file and to originate Entries on your behalf (as the Originator) to Receivers' accounts. You agree to the terms of the Business Online Services and its related security procedures when initiating Entries as described therein. If required by us, prior to the origination of Entries, you agree to create a test file pursuant to our established procedures.

4.   **Transmittal of Entries.**

4.1   You will transmit file(s) of credit and debit Entries to us with (i) computer readable information; (ii) an ACH file and format consistent with current NACHA file and/or Bank specifications; (iii) on the medium as agreed by the parties and in accordance with the security procedures associated with that transmission medium, and otherwise with the formatting and content requirements identified in **Schedule A** attached hereto or as otherwise instructed by us. We may establish exposure limits associated with your use of the Service, including a limit on the dollar amount of Entries or files transmitted by you to us and on the total dollar amount of Entries that may be transmitted by you on any one day as set forth in **Schedule A**. We shall establish your exposure limits and shall monitor Entries initiated by you relative to such exposure limits across multiple settlement dates. Such limits may be modified by us from time to time at our sole discretion with notice to you. We may in our sole discretion reject (a) any file that exceeds such exposure limits, (b) any Entry or file transmitted by you in the event we deem reasonably necessary in order to protect our safety and soundness, (c) any Entry or file if we reasonably suspects that the Entry or file includes fraudulent or unauthorized Entries, or (d) any Entry or file if we have such other reasonable basis upon which to reject the transmission.

4.2   With respect to any credit and debit Entries initiated and transmitted by you that involve consumers, you will comply with the following requirements, each as may be amended from time to time: (i) all authorization, disclosure and other requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, including, without limitation, any applicable requirements of Regulation E of the Consumer Financial Protection Bureau (or any successor entity who administers Regulation E) (hereinafter "Regulation E") and the Federal Electronic Funds Transfer Act.

4.3   You acknowledge the right of a consumer Receiver of an unauthorized debit Entry, as applicable and as described in the *NACHA Rules,* to obtain a refund of the funds debited from Receiver's account by such Receiver sending a written notice to Receiver's Depository Financial Institution within fifteen (15) calendar days after the Receiver's Depository Financial Institution sends or makes available to the Receiver information pertaining to that debit Entry. You also acknowledge the right of a corporate Receiver of a debit Entry, as applicable and as described in the *NACHA Rules,* to obtain a refund of the funds debited from such Receiver's account by such Receiver sending a notice to Receiver's Receiving Depository Financial Institution ("RDFI") within two (2) business days following the Settlement Date of the original Entry. You hereby indemnify us against any such claim for a refund by any Receiver.

5.   **Security Procedures.**

5.1   You shall comply with the security procedures described in the Initial Agreement with respect to Entries transmitted by you to us. You shall prevent and safeguard against unauthorized transmissions, disclosures and access to security-related items, including information associated with the transmittal of Entries, such as security procedures, instructions, passwords and user identifications, and

systems and equipment that interface with, connect to or allow access to Bank, its information, systems and equipment (hereinafter referred to collectively as "Security-Related Items"). Such practices, techniques and procedures shall be no less than the security-related requirements set forth in this Agreement and in the *NACHA Rules*. If you suspect, know, believe or have reason to believe that any such information or instructions have been known or otherwise accessed by unauthorized persons, you shall immediately notify us by phone, followed by written confirmation. The occurrence of unauthorized access shall not affect any transfers made in good faith by us prior to receipt of such notice and within a reasonable time period after notice is received to allow sufficient time for us to respond to such notice. We may, from time to time, propose additional or enhanced security procedures for use with the Service. You understand and agree that if you decline to use any such enhanced security procedures, you will be liable for any losses that would have been prevented by such security procedures. Notwithstanding anything to the contrary contained in this Agreement, if we believe immediate action is required for our security or the security of your funds, we may initiate additional security procedures immediately and provide prompt subsequent notice thereof to you.

5.2   Pursuant to the *NACHA Rules*, you are strictly responsible for establishing, implementing, updating and maintaining your own appropriate and commercially reasonable security procedures to safeguard against the unauthorized initiation, processing, transmission and storage of Entries to us and the resulting Protected Information (as defined below). Security policies, procedures, and systems related to the initiation, processing, and storage of Entries must: (1) protect the confidentiality and integrity of Protected Information; (2) protect against anticipated threats or hazards to the security or integrity of Protected Information; and (3) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person. The *NACHA Rules* define "Protected Information" as the non-public personal information, including financial information, of a natural person used to create, or contained within, an entry and any related addenda record.

6.   Compliance with Security Procedures.

6.1   If an Entry (or a request for cancellation or amendment of an Entry) received by us was transferred in accordance with the security procedures described in Initial Agreement and thereby purports to have been transmitted or authorized by you, it shall be deemed effective as your Entry (or request), even if the Entry (or request) was not authorized by you. If we accept the Entry (a) in compliance with the security procedures referred to in the Initial Agreement with respect to such Entry, (b) in compliance with your written agreement or instruction restricting acceptance of payment orders issued in your name, and (c) in good faith, then with respect to a credit Entry, you shall be obligated to pay us the amount of such Entry, and with respect to a debit Entry, you shall maintain sufficient funds in the Settlement Account, as defined in **Section 12,** to fund the reversal of such Entry, if necessary. If signature comparison is to be used as a part of a security procedure, we shall be deemed to have complied with that part of such procedures if it compares the signature received for a request for cancellation or amendment of an Entry with the signature of your authorized representative (an "Authorized Representative") as set forth in the ACH Service Application and, on the basis of such comparison, believes the signature to be that of such Authorized Representative.

6.2   If an Entry (or a request for cancellation or amendment of an Entry) received by us was actually transmitted or authorized by you, you shall pay us the amount of any such credit Entry and shall maintain funds in your Settlement Account to fund the reversal of any such debit Entry, whether or not we complied with the security procedures described in the Initial Agreement and whether or not that Entry was erroneous in any respect or that any such error would have been detected if we had complied with the security procedures.

7.   Processing, Transmittal and Settlement of Entries by Bank.

7.1   Except as provided in **Section 16** -- On-Us Entries and **Section 17** -- Rejection of Entries, we will process, transmit and settle for credit and debit Entries initiated by you as provided in the *NACHA Rules* as in effect from time to time and pursuant to this Agreement.

7.2   We will transmit such Entries as an ODFI to the ACH Operator by the deadline of the ACH Operator, provided such Entries are received by us prior to the cut-off time(s) set forth in **Schedule A** on a business day and the ACH Operator is open for business on such business day. Entries received after the cut-off time(s) set forth in **Schedule A** on a business day will be deemed received the following business day. Except for approved same day Entries, a credit Entry must have an effective date of at least two (2) business days, and a debit Entry must have an effective date of at least one (1) business day, after the business day such Entry is received by us. For those customers authorized to transmit same day transactions, same day Entries may have an effective date which is the same as the business day the Entry is received by us, so long as it meets the cut-off times set forth in **Schedule A. Neither** a credit Entry nor a debit Entry may have an effective date of more than seven (7) calendar days after the business day such Entry is received by us. You will hold us harmless from all charges that may be incurred by us as a result of your delivery of late Entries.

7.3   A "<u>business day</u>" shall mean a day on which we are open to the public for carrying on substantially all of our business, other than a Saturday, Sunday, or Federal holiday. Entries shall be deemed received by us, in the case of transmittal by electronic transmission, when the transmission (and compliance with any related security procedures provided for herein) is completed as provided in **Schedule A** and the Initial Agreement.

7.4   If any of the above requirements is not met by you, we shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deadline that is a business day and a day on which the ACH Operator is open for business.

7.5   You acknowledge and agree that credit given by us to you with respect to an ACH credit Entry is provisional until we receive final settlement for such Entry through a Federal Reserve Bank. If we do not receive such final settlement, you agree that we are entitled to a refund of the amount credited to you in connection with such Entry, and the party making payment to you via such Entry (i.e., the originator of the Entry) shall not be deemed to have paid you in the amount of such Entry. You also agree that we are not required, in our capacity as an RDFI under the *NACHA Rules,* to provide and therefore will not provide you, as the Receiver, with notice that we have received a credit Entry to your account.

8.   Payment by Customer for Credit Entries. You shall pay us the amount of each credit Entry transmitted by us pursuant to this Agreement at the effective date with respect to such Entry as we, in our discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date of such Entry as we, in our discretion, may determine, and in accordance with the requirements of **Section 12** -- Settlement Account; Pre-Funding.

9.   Customer Representations, Warranties and Agreements; Indemnification.

9.1   In addition to your obligations and agreements otherwise described in this Agreement, you further represent and warrant to us and agree, with respect to each and every Entry transmitted by you or by any Third-Party Service Provider on your behalf as further described in **Section 29**, that:

(i)   each person shown as the Receiver on an Entry received by us from you has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry;

(ii)   each authorization is operative at the time of transmittal, crediting or debiting by us as provided herein;

(iii)   Entries transmitted by you to us are limited as set forth in Section 3 and in Section 5;

(iv)   you shall perform your obligations under this Agreement in accordance with the *NACHA Rules* and all applicable laws, regulations and orders, including, but not limited to, the transaction screening and sanctions laws, regulations and orders administered by OFAC; laws, regulations and orders administered by FinCEN; and any state laws, regulations or orders applicable to the providers of ACH payment services;

(v)   You shall be bound by and comply with the provisions of the *NACHA Rules* (among other provisions of the *NACHA Rules*) that make payments of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry;

(vi)   You specifically acknowledge that you have received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount of the Entry;

(vii)   with respect to Prearranged Payment and Deposit (PPD) and Corporate Credit or Debit (CCD) Entries that you are permitted to initiate under this Agreement, you shall comply with and be subject to all requirements of the *NACHA Rules* with respect to such Entries;

(viii)   with respect to any International ACH Transactions (IATs) that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that you shall (a) classify and format payments transmitted to or received from a financial agency outside the U.S. as IATs in accordance with the *NACHA Rules*, (b) provide data necessary to accompany the transaction in compliance with the Bank Secrecy Act's "Travel Rule," (c) screen IATs prior to transmitting any file(s) of Entries to us in accordance with the requirements of OFAC and comply with OFAC sanctions, and (d) otherwise comply with and be subject to all other requirements of the *NACHA Rules* and OFAC, as well as the laws and payment rules of a non-U.S. foreign destination;

(ix)   as to any Internet-initiated (WEB) ACH Entries that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that (a) you employ commercially reasonable detection systems to minimize risk of fraud related to Internet-initiated payments, (b) you employ commercially reasonable procedures to verify validity of routing numbers, (c) you employ commercially reasonable methods of authentication to verify the identity of the Receiver, (d) you employ commercially reasonable security technology that at a minimum is equivalent to 128-bit encryption technology, and (e) where required by the *NACHA Rules* and/or us, you conduct annual audits as to our security practices and procedures that include, at a minimum, verification of adequate levels of (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use and (3) network security to ensure secure capture, storage, and distribution;

(x)   as to any Telephone-Initiated (TEL) Entries that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that you (a) have employed commercially reasonable procedures to verify the identity of the Receiver, and (b) have utilized commercially reasonable procedures to verify that routing numbers are valid;

(xi)   as to any Accounts Receivable (ARC) Entries that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that (a) the amount of the Entry, the routing number, the account number, and the check serial number are in accordance with the source document,

(b) you will retain a reproducible, legible image, microfilm, or copy of the front of the Receiver's source document for each ARC Entry for two (2) years from the Settlement Date of the ARC Entry, (c) you have employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, and (d) you have established reasonable procedures under which the Receiver may notify us that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's account and that you will allow the Receiver to opt-out of check conversion activity;

(xii)   as to any Back Office Conversion (BOC) Entries that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that (a) you have employed commercially reasonable procedures to verify the identity of the Receiver, (b) you have established and maintain a working telephone number for Receiver inquiries regarding the transaction that is answered during normal business hours and that such number is displayed on the notice required by the *NACHA Rules* for BOC Entries, (c) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (d) you will retain a reproducible, legible image, microfilm, or copy of the front of the Receiver's source document for each BOC Entry for two (2) years from the Settlement Date of the BOC Entry, (e) you have employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to BOC Entries;

(xiii)   as to any Point-of-Purchase (POP) Entries that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that the source document provided to you for use in obtaining the Receiver's routing number, account number, and check serial number for the initiation of the POP Entry (a) is returned voided to the Receiver after your use and (b) has not been provided to the Receiver for use in any prior POP Entry; and

(xiv)   as to any Returned Check (RCK) Entries that we may permit you to initiate, in our sole and exclusive discretion and from time to time, that (a) all signatures on the item are authentic and authorized, (b) the item has not been altered, (c) the item is not subject to a defense or claim, (d) the Entry accurately reflects the item, (e) the item will not be presented unless the related Entry has been returned by the RDFI, (f) the information encoded after issue in magnetic ink on the item is correct and (g) any restrictive endorsement placed on the item is void or ineffective.

9.2   You shall indemnify and defend us against any third-party claims, alleged claims, loss, liability or expense (including attorneys' fees and expenses) directly resulting from, related to or arising out of:

(i)   any material breach of the foregoing representations or this Agreement, including any claim brought by a third party in connection with a breach of any of the foregoing representations or agreements;

(ii)   your failure to exercise ordinary care in connection with your duties hereunder;

(iii)   any action by the RDFI upon an unauthorized or erroneous Entry initiated by you;

(iv)   any actions by your service provider or agent that result in a material breach of this Agreement by you; or

(v)   to the extent that it involves us, any litigation by an ACH Operator, an RDFI or any Receiver asserting noncompliance on your part with the *NACHA Rules* or any other applicable laws, regulations or regulatory requirements.

In the event a Report of Possible Rules Violation is filed against you as described in the *NACHA Rules*, you will immediately notify us of the filing and take appropriate steps to correct the problem within the time frames suggested by us.

10.   Bank Responsibilities; Limitations on Liability; Indemnity; Disclaimer of Warranties.

10.1   In the performance of the Service required by this Agreement, we shall be entitled to rely solely on the information, representations, and warranties provided by you pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. We shall be responsible only for performing the Service expressly provided for in this Agreement, and, subject to the disclaimers and limits on our liability set forth herein, shall be liable only for and to the extent of our gross negligence or willful misconduct in performing the Service. We shall not be responsible for your acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from you) or those of any other person, including without limitation any Federal Reserve Financial Institution, Automated Clearing House or transmission or communications facility, any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed our agent. You agree to indemnify and defend us against any loss, liability or expense (including reasonable attorney's fees and expenses) resulting from or arising out of any claim of any person that we are responsible for any of your acts or omissions or any act or omission of other persons described in this **Section 10.1.** You shall be responsible for any fines levied against us by NACHA, the ACH Rules Enforcement Panel, and any regulatory authority having jurisdiction over us arising from any violation or alleged violation of any applicable law, regulation, or the *NACHA Rules* directly resulting from Entries transmitted by you. You shall also be responsible for any fees imposed upon us by NACHA for the return of an Entry initiated by you that did not comply with the *NACHA Rules* or the terms of this Agreement.

10.2   We shall be liable only for your actual, direct damages. In no event shall we be liable for any consequential, special, incidental, punitive or indirect loss or damage that you may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by us and regardless of the legal or equitable theory of liability that you may assert, including, without limitation, loss or damage from loss of business, profits or subsequent wrongful dishonor resulting from our acts or omissions pursuant to this Agreement. Except to the extent otherwise provided by law or this Agreement, our aggregate liability to you for all losses, damages, and expenses incurred in connection with any single claim under this Agreement shall not exceed an amount equal to the monthly billing to you for the Service over the six (6) month-period immediately preceding the date on which the damage or injury giving rise to such claim is alleged to have occurred. This Agreement is only between you and us, and we shall have no liability hereunder to any third party.

10.3   Notwithstanding the foregoing, if you incur a loss pursuant to a transaction which you have properly processed through the Service, due to our gross negligence or willful misconduct in the handling of such transaction, we will be responsible for returning any improperly transferred funds, with interest at the rate paid by us at such time on statement savings accounts, from the date of such error to, but not including, the date such funds are returned to the Account from which the funds were withdrawn and for directing to the proper recipient any payments or transfers that were previously misdirected or not completed. **RE-CREDITING OF YOUR ACCOUNT AND RE-DIRECTING OF PAYMENTS AND TRANSFERS, AND INTEREST ONLY AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, SHALL CONSTITUTE OUR ENTIRE LIABILITY FOR INCOMPLETE OR INCORRECT PAYMENTS OR TRANSFERS, AND YOU AGREE THAT YOU SHALL NOT BE ENTITLED TO ANY OTHER RECOVERY OR RELIEF.** At our option, payment of such interest may be made by crediting an Account of Customer with us.

10.4   You acknowledge and agree that our provision of the Service hereunder may be interrupted from time to time. Without limiting the generality of the foregoing, we shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment or software error or malfunction, war, acts of terrorism, emergency conditions or other circumstances beyond our control. From time to time we may need to temporarily suspend processing of a transaction (particularly an international ACH transaction) for greater scrutiny or verification, including, but not limited to, suspending processing to review for suspected fraudulent activity or for OFAC compliance in accordance with applicable OFAC guidance, and we shall be excused if this action causes delay in the settlement and/or availability of the transaction. In addition, we shall be excused from failing to transmit or delay in transmitting an Entry (i) if such transmittal would result in our having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines; (ii) if, for any reason, the ACH Operator fails or declines to process an Entry; (iii) if, in our reasonable judgment, processing an Entry would violate or contribute to the violation of any present or future risk control program of the Federal Reserve or any applicable rule, law, regulation, or regulatory requirement; (iv) if we reasonably suspects that a transaction involves fraudulent activity, or (v) if processing an Entry, in our sole discretion, would cause it to engage in an unsafe or unsound practice.

10.5   EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, YOU EXPRESSLY AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK, AND THE SERVICES ARE PROVIDED "AS IS," AND WE AND OUR AGENTS DO NOT MAKE, AND EXPRESSLY DISCLAIM ANY, WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WITHOUT BREACHES OF SECURITY OR WITHOUT DELAYS. IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, OUR LIABILITY AND THE LIABIILTY OF OUR SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

11.   Set-Off and Other Bank Remedies. We may, but shall not be obligated to, complete any transaction in connection with providing the Service hereunder if there are insufficient available funds in your Settlement Account(s) (as defined below) to complete the transaction. In the event any actions by you result in an overdraft in your Settlement Accounts, including but not limited to your failure to maintain sufficient balances in any of your Settlement Accounts, you shall be responsible for repaying the overdraft immediately, without notice or demand. We have the right, in addition to all other rights and remedies available to us, to set-off the unpaid balance of any amount owed us in connection with the Service against any debt owing to you by us, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by us, whether collected or in the process of collection, or in any other account maintained by you at, or evidenced by any certificate of deposit issued by, us. If any of your Settlement Accounts become overdrawn, under-funded or for any reason contain a negative balance, then we shall have the right of set-off against all of your accounts and other property or deposit accounts maintained with us, and we shall have the right to enforce our interests in collateral held by us to secure your debts to us arising from notes or other indebtedness now or hereafter owing or existing under this Agreement, whether or not matured or liquidated.

12.   Settlement Account; Pre-Funding.

12.1   We may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the account or accounts of Customer identified in the Application

for ACH Service (which shall collectively, be referred to herein as the "Settlement Account") or any future accounts established by you at the Bank, and we shall credit the Settlement Account for any amount received by us by reason of the return of an Entry transmitted by us for which we have previously received payment from you. Such credit shall generally be made as of the day of such receipt by us.

12.2   You agree to irrevocably provide available funds in the Settlement Account for the total amount of all credit Entries submitted to us for processing. Your Settlement Account will generally be debited on the Settlement Date of the Entries/files.

12.3   Notwithstanding the requirements of **Section 12.2**, we require, as a condition of initiating any payroll-only ACH credit Entries/files, that you irrevocably provide available funds in the Settlement Account for the total amount of all payroll-only ACH credit Entries/files submitted to us for processing at least two (2) business days prior to the effective date of the transactions ("Pre-Funding"). We will place a hold on funds in the Settlement Account equal to the total amount of the ACH credit Entries on the business day that we begin processing your ACH file, and your Settlement Account will be debited on the Settlement Date of the Entries/files, simultaneously with removal of the hold on funds in the Settlement Account. We reserve the right, in our sole and exclusive discretion and at any time, to require Pre-Funding of any other ACH credit Entries/files requested by you, in accordance with the terms of this **Section 12.3**.

13.   Risk Mitigation. In order to reduce the risk of loss to which we are subject under this Agreement, we may in our sole discretion establish such risk mitigation procedures as we deem reasonably necessary, including without limitation requiring personal guaranties of your principals, limiting same day transactions, prefunding of credit Entries, delayed availability of funds to you to cover returned debit Entries, and submission of balanced or unbalanced files (e.g., submission of a credit file for which we shall then create the offsetting debit file.)

14.   Due Diligence. You will supply us with due diligence information when reasonably requested. This information may include, but is not limited to, financial data, names and other information concerning your principles, information about the business in which you participate, information regarding your creditworthiness, projected return rates, and payment history. We may, in our reasonable discretion, conduct a limited review of your operations to ensure compliance with the provisions of this Agreement. Where we reasonably believe that your financial condition is impaired or deteriorating, we may refuse to process any Entries or may require Pre-Funding of all Entries.

15.   Cancellation or Amendment of an Entry. You shall have no right to cancel or amend any Entry after its receipt by us. However, we shall use reasonable efforts to act on a request by you to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with this Agreement, including the security procedures described in the Initial Agreement. We shall have no liability if cancellation or amendment is not accomplished as requested. You shall reimburse us for any expenses, losses or damages we may incur in affecting or attempting to affect your request for the cancellation or amendment of an Entry.

16.   On-Us Entries. Except as provided in **Section 17** -- Rejection of Entries, in the case of an Entry received for credit or debit to an account maintained by us (an "On-Us Entry"), we shall debit or credit the Receiver's account, as applicable, in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in **Section 8** are met. If those requirements are not met, we shall use reasonable efforts to debit or credit the Receiver's account, as applicable, in the amount of such Entry no later than the next business day following such Effective Entry Date. In the case of an On-Us Entry, we will have all rights of an RDFI including, without limitation, the rights set forth in *NACHA Rules*.

17.   Rejection of Entries. We may reject any Entry which does not comply with the requirements of **Section 4** – Transmittal of Entries, or **Section 5** – Security Procedures or which contains an Effective Entry Date more than seven (7) days after the business day such Entry is received by us, unless otherwise agreed by us in our sole discretion. We may also reject an On-Us Entry for any reason for which an Entry may be rejected under the *NACHA Rules*. We may reject any Entry if Customer has failed to comply with its account balance or pre-funding obligations under **Section 12** – Settlement Account / Pre-Funding, and as otherwise provided in **Section 4** of this Agreement. We may reject any Entry if you do not adhere to the security procedures described in the Initial Agreement and may reject any Entry if you are not otherwise in compliance with the terms of this Agreement or the *NACHA Rules*. We shall notify you in accordance with **Schedule A** of such rejection no later than the business day such Entry would otherwise have been transmitted by us to the ACH Operator or, in the case of an On-Us Entry, its Effective Entry Date. Notices of rejection shall be effective when given. We shall have no liability to you by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

18.   Reversals; Re-Initiation of Entries. We may reverse a file or Entry pursuant to the *NACHA Rules*. If you reverse an Entry or file, you shall indemnify us against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal. You may not re-initiate Entries except as prescribed by the *NACHA Rules*.

19.   Notice of Returned Entries and Notifications of Change.

19.1   We shall notify you in accordance with **Schedule A** of the receipt of any returned Entry from the ACH Operator no later than one (1) business day after the business day of such receipt. We shall have no obligation to retransmit a returned Entry to the ACH Operator if we complied with the terms of this Agreement with respect to the original Entry. If your customer or client asserts that an Entry was unauthorized, you shall be solely responsible to collect any funds owed to you. We have no obligation to originate a transaction where authorization has been revoked.

19.2   We shall notify you of all Notifications of Change received by us relating to Entries transmitted by you, in accordance with **Schedule A,** no later than one (1) business day after receipt thereof. You shall ensure that changes requested by the Notifications of Change are made within six (6) business days of Company's receipt of the Notification of Change information from us or prior to initiating another Entry to the Receiver's account, whichever is later.

20.   Entries Returned as Unauthorized. You shall comply with all requirements in the *NACHA Rules*, including the duty to submit only those Entries that have been properly authorized. In the event that an Entry is returned as unauthorized or authorization revoked, you will contact the necessary parties and resolve any dispute. During this process, you may ask us to request from the RDFI a copy of the "Written Statement Under Penalty of Perjury." We will use reasonable efforts to obtain the statement and will deliver it to you when received. You agree not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer re-authorizes the Entry or Entry stream.

21.   Pre-Notification and Rejection of Pre-Notification. We recommends that, as permitted by the *NACHA Rules* or applicable law, you send pre-notifications at least six (6) business days prior to initiating an authorized Entry to a particular account in a format and medium approved by the *NACHA Rules*. You may also initiate a new pre-notification (i) when any changes are made to an account number, financial institution, or individual identification number or (ii) as otherwise stated in the *NACHA Rules*. If you receive a notice that any such pre-notification has been rejected by an RDFI, you will not initiate any related Entry until the cause for rejection is resolved as provided in the *NACHA Rules.* If you receive

notice that an RDFI will not receive Entries without having first received a copy of the authorization signed by its customer, you will not initiate any Entry to such customer(s) until it has provided the RDFI with such authorization within the time limits provided in the *NACHA Rules*. You understand and acknowledge that once a pre-notification has been initiated using the Services, you will be restricted from initiating any Entry to such customer(s) for six (6) business days.

22.   Unauthorized Rate in Excess of 0.5%. In the event the rate of unauthorized returns of Entries submitted by you exceeds 0.5% based on the calculations noted in the *NACHA Rules*, we will share the data with you and you will take immediate steps to revisit its authorization procedures to reduce the unauthorized return rate below 0.5% and shall further promptly prepare and submit a written plan and timeline to us noting your intended plan to reduce unauthorized returns.

23.   **Periodic Statement; Account Reconciliation.** Entries transmitted by us shall be reflected on your periodic statement issued by us with respect to the Settlement Account. You are responsible for monitoring the Service provided hereunder by us, including each individual transaction processed by us, and notifying us of any errors or other problems within ten (10) calendar days (or such longer period as may be required by applicable law) after we have made available to you any report, statement or other material containing or reflecting the error, including an account analysis statement or on-line account access. Except to the extent otherwise required by law, failure to notify us of an error or problem within such time will relieve us of any and all liability for interest upon correction of the error or problem (and for any loss from any subsequent transaction involving the same error or problem). In the event you fail to report such error or problem within thirty (30) calendar days after we made available such report, statement or on-line account access, the transaction shall be deemed to have been properly authorized and executed and we shall have no liability with respect to any such error or problem. You agree that our sole remedy in the event of an error in implementing any selection with the Service hereunder shall be to have us correct the error within a reasonable period of time after receiving timely notice of the error from you as described in this **Section 23**.

24.   Inconsistency of Name and Account Number. You acknowledge and agree that, if an Entry describes the Receiver inconsistently by name and account number, posting of the Entry transmitted by us to the RDFI may be made by the RDFI (or by us in the case of an On-Us Entry) on the basis of the account number supplied by you, even if such account number identifies a person different from the named Receiver. Your obligation to settle the amount of the Entry to us is not excused in such circumstances. Similarly, if an Entry describes an RDFI inconsistently by name and routing number, payment of such Entry may be made based on the routing number, and you shall be liable to pay that Entry.

25.   Right to Audit. You agree to review your compliance with the *NACHA Rules* on a periodic basis. Upon reasonable written notice to you (five (5) business days being deemed, in all circumstances, the maximum reasonable notice required), you shall permit us to review your operations as they relate to compliance with this Agreement and the *NACHA Rules*, and to examine and copy any books, records, and source documents related thereto.

26.   Amendments. From time to time we may amend the terms of this Addendum or **Schedule A**, including without limitation, any cut-off time, any Business Day, and any part of schedules attached hereto. Except as expressly provided otherwise in this Agreement or applicable law, any such changes generally will be effective immediately upon notice to you as described in the Business Online User and Access Agreement. You will be deemed to accept any such changes if you access or use any of the services after the date on which the change becomes effective. You will remain obligated under this Addendum, including without limitation, being obligated to pay all amounts owing hereunder, even if we amend this Addendum. Notwithstanding anything to the contrary in this Addendum, if we believe

immediate action is required for our security or the security of your funds, we may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to you.

27.   Data Retention. You shall retain data on file adequate to permit remaking of Entries for one (1) year following the date of their transmittal by us as provided herein, and shall provide such data to us upon request. Without limiting the generality of the foregoing provision, you specifically agree to be bound by and comply with all applicable provisions of the *NACHA Rules* regarding the retention of documents or any record, including, without limitation, your responsibility to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*. Both you and the Bank agree that all telephone conversations or data transmissions between us or our agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means.

28.   Evidence of Participant Authorization. To the extent required by the *NACHA Rules* or applicable law, you will obtain all consents and written authorizations for all Entries in accordance therewith. Such authorizations and any related disclosures shall be in a form that complies with (i) all requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, as the same may be amended from time to time, including, without limitation, any applicable requirements of Regulation E, the Federal Electronic Funds Transfer Act, and sanctions enforced by OFAC. You shall obtain and maintain current information regarding OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC or by visiting the OFAC website at www.ustreas.gov/ofac.) Each Entry will be made according to such authorization and shall comply with the *NACHA Rules*. No Entry will be initiated by you after such authorization has been revoked or the arrangement between Customer and such Receiver or other party has terminated. You shall retain all consents and authorizations for the period required by the *NACHA Rules*. You will furnish to Receiver, or to us upon our request, an original or a copy of an authorization as required under or for any purpose required by the *NACHA Rules*. No investigation or verification procedure undertaken by us shall be deemed to limit or waive your obligations under this Section.

29.   Third-Party Service Provider.

29.1   Subject to our prior approval and in our sole and exclusive discretion, you may appoint a third party to act as your agent to process Entries on your behalf and for purposes of the services provided hereunder ("Third-Party Service Provider"), as set forth in applicable set-up form(s) associated with the Service. All data received by us from Third-Party Service Provider, including Entries and instructions (and corrections or adjustments thereto), are hereby authorized by you. All acts and omissions of Third-Party Service Provider shall be your acts, omissions and responsibility and shall be governed by the provisions of this Agreement. You agree, jointly and severally with Third-Party Service Provider, to indemnify and hold us harmless from any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not we shall be designated a party thereto) which may be incurred by us relating to or arising out of the acts or omissions of Third-Party Service Provider on your behalf. You and Third-Party Service Provider shall execute any such other agreement(s) or documents as deemed necessary or appropriate by us prior to the initiation or continuation by Third-Party Service Provider of any ACH services on your behalf. Notice of any termination of Third-Party Service Provider's authority to transmit data and instructions to us on your behalf shall be given to us in writing. The effective date of such termination shall be ten (10) business days after we receive written notice of such termination. You agree that we retain the right to reject any Third-Party Service Provider and any Entries initiated by your Third-Party Service Provider in our sole discretion.

29.2   Also subject to our prior approval and in our sole discretion, you may elect to use the services provided hereunder to process Entries on behalf of your clients, who may or may not be our customers (defined as a "Third-Party Sender" under the *NACHA Rules*), as well as on your own behalf. You shall execute any such other agreement(s) or documents as we deem necessary or appropriate prior to the initiation or continuation by you of any ACH services in the capacity of a Third-Party Sender. You agree that we retain the right to reject any request by you to engage in Third-Party Sender activities as well as any Entries initiated by you in such capacity, in our sole discretion.

30.   Fees / Charges.

30.1   You agree to compensate us for the ACH origination service provided by us pursuant to this Agreement in accordance with the applicable fee schedules or agreements between you and us in effect from time to time that apply to the Service, as set forth in the Initial Agreement (the "Service Fees"). By and upon entering into this Agreement, you acknowledge receipt and acceptance of the Service Fees and agree to be bound by their terms, as those terms may be amended from time to time.

30.2   You authorize us to charge the Settlement Account for all applicable charges and fees for the Service to the extent that such charges and fees are not offset by earnings credits or other allowances for your deposit account(s) with us. If the balance of available funds in the Settlement Account is not sufficient to cover such fees, we may charge such fees to any other deposit account maintained by you with us.

30.3   We may amend the Service Fee(s) at any time. We will give notice to you of such changes in accordance with applicable law.

31.   Authorization to Obtain Credit Reports and Other Information. You authorize us to check your account, credit, and employment history and obtain a credit report from third parties, including credit reporting agencies, to verify your eligibility to utilize the Services.

32.   Governing Law. Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with federal law and, to the extent not preempted or inconsistent therewith, by the laws of the State of New York without regard to its choice of law provisions.

33.   Termination.

33.1   This Addendum shall continue in effect until terminated by either party with ten (10) calendar days' prior written notice to the other. In addition, if you breach the *NACHA Rules* or causes us to breach the *NACHA Rules*, this Addendum may be terminated or suspended by us without prior notice. Such notice shall be provided pursuant to the terms of the Initial Agreement.

33.2   Notwithstanding the foregoing, we may, without prior notice, terminate this Addendum and terminate or suspend any transaction or the Service (i) if you or the Bank closes any Account established in connection with the Services, (ii) if we determines that you have failed to maintain a financial condition deemed reasonably satisfactory to us to minimize any credit or other risks to us in providing the Service to you, including but in no way limited to the commencement of a voluntary or involuntary proceeding under the United States Bankruptcy Code or other statute or regulation relating to bankruptcy or relief of debtors, (iii) for security reasons or in the event of a material breach or default in the performance or observance of any term, or breach of any representation or warranty contained herein by you, (iv) in the event of material default by you in the payment of any sum owed by you to us

hereunder or under any note or other agreement, (v) if there has been a seizure, attachment, or garnishment of your deposit accounts, assets or properties or (vi) if we, in our sole discretion, believe that the continued provision of the Services in accordance with the terms of this Addendum would violate federal, state or local laws or regulations, or would subject us to unacceptable risk of loss.

33.3   Any termination of this Addendum shall not affect any of our rights and your obligations with respect to Entries initiated by you prior to the effective time of such termination, or the payment of your obligations with respect to Services performed hereunder by us prior to the effective time of such termination, or any other obligations that survive termination of this Addendum. The provisions of this Addendum that are necessary to give effect to the purposes of this Addendum shall survive its termination.

SCHEDULE A

TRANSMITTAL OF ENTRIES

A.   **Delivery Method(s)**: The Bank will accept the file transmission or delivery via the Business Online Service. If you initiate Entries via this method, you agree to the terms and conditions of the Business Online Services and its related security procedures when initiating Entries, as described therein.

Any method which utilizes the Internet must be appropriately encrypted using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit encryption technology.

B.   **Format and content of Entries:** File format and content must meet the specifications as detailed in Appendix Two of the *NACHA Rules* as in effect on the date of transmission.

C.   **Deadlines / Cut-Off Times:**

Except for faxed (or secure email) payroll files and such other faxed (or secure email) files as may be permitted by the Bank from time to time, all ACH transmissions must be received by the Bank as follows:

- **Debit transactions** must be received by the Bank no later than 4:30 p.m. ET on a business day, at least one (1) business day prior to the Effective Entry Date of the transactions contained in the submission. Transactions received after the cut-off time on a business day will be deemed to have been received on the following business day.

- **Credit transactions** must be received by the Bank no later than 4:30 p.m. ET on a business day, at least two (2) business days prior to the Effective Entry Date of the transactions contained in the submission. Transactions received after the cut-off time on a business day will be deemed to have been received on the following business day.

- **Same Day Transactions** must be received by the Bank no later than 1:00 p.m. ET on a business day which is the same day as the Effective Entry Date of the transactions contained in the submission. Transactions received after the cut-off time on a business day will be deemed to have been received on the following business day and will not qualify for **Same Day** processing.

You must fax (or secure email) its payroll or other faxed file information to **315-379-4541 no later than 10:00 a.m. ET** on a business day, **two (2) business days prior to the effective date** of the payroll or Entries. However, if all accounts being credited are with the Bank, one (1) business day is sufficient.

D.   **Federal Holidays:** The following Federal holidays shall not be considered a business day for purposes of the Agreement:

- New Year's Day
- Presidents' Day
- Independence Day
- Columbus Day
- Thanksgiving Day
- Martin Luther King, Jr. Day
- Memorial Day
- Labor Day
- Veterans' Day
- Christmas Day

F.   **Notice by Bank:** If an Entry is rejected, returned or if a Notification of Change is received, Bank shall notify Customer by mail or electronic transmission.