



Automated Clearing House (ACH) Origination Third Party Sender 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.

1.1 This Automated Clearing House (ACH) Third Party Service Addendum (the "Addendum") to the Business Online Access and User Agreement sets forth the terms and conditions regarding your use of the Services (as defined below). 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.

1.2 The Automated Clearing House ("ACH") origination third party sender service allows you to utilize the ACH services (the "Services") made available by us, as an Originating Depository Financial Institution ("ODFI"), to initiate ACH credit and/or debit Entries for yourself and for your clients that generally are not customers of the Bank (hereinafter "Clients"), pursuant to the terms of this Addendum and the *NACHA Rules*. You, on behalf of yourself, as well as on behalf of and as agent for your Clients, will generate and deliver to us, as ODFI, certain of your own and such Clients' Entries in a NACHA-formatted electronic transmission and Entry file for processing by us. You, as a customer of the Bank (hereinafter "Third-Party Sender"), on behalf of yourself, as well as on behalf of and as agent for your Clients, may also from time to time generate and deliver to Bank, as ODFI, a NACHA-formatted electronic transmission for the purpose of processing error corrections or adjustments by reversing the instructions contained in a prior Entry file. We are willing to act as an ODFI with respect to such Entries, so long as Entries that you transmit to us are in accordance with and as set forth in this Addendum.

2. **ACH Services.** 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*").

3. Third-Party Sender Obligations.

3.1 You, as the Third-Party Sender, will comply and shall cause your employees, officers, directors, agents and your Authorized Representative(s) (as described and set forth in the Business Online Service Application) and user(s) of the Services to comply with (i) this Addendum, (ii) the *NACHA Rules* as amended from time to time and (iii) any specifications, advisories, interim policies, or instructions related to ACH transactions issued, from time to time, by us, NACHA or any federal or state regulatory authorities. The duties of Third-Party Sender set forth in this Addendum in no way limit the requirement that Third-Party Sender comply with the *NACHA Rules*.

3.1.1 For Entries for which you are the Originator, you specifically adopt and make to the Bank all representations and warranties of an Originator under the *NACHA Rules*, including that you will not initiate such Entries or engage in any act or omission that violate or cause us to violate *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.

3.1.2 For Entries for which you are not the Originator, you represent and warrant that (i) you will not transmit to us any such Entries that violate the laws of the United States, and (ii) the Originator of any such Entry has (a) agreed to assume the responsibilities of an Originator under the *NACHA Rules* and (b) acknowledged that the Originator may not initiate Entries that violate the laws of the United States. You have access to a copy of the *NACHA Rules* and acknowledge receipt of 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 agree to subscribe to receive revisions to the *NACHA Rules* directly from NACHA.

3.1.3 You represent and warrant that your agreements with the Clients require each Client to comply with (i) the *NACHA Rules* as amended from time to time and (ii) any specifications, advisories, interim policies, or instructions related to ACH transactions issued from time to time by the Bank, NACHA, or any federal or state regulatory authorities.

3.2 You agree from time to time, upon our request and in accordance with this Addendum, to promptly provide us with information pertaining to your financial condition and business operations as we may reasonably request, including without limitation, the name(s) of any other financial institutions that you are using to originate Entries, whether on your own behalf or on behalf of the Clients.

3.3 Nothing in this Addendum or any course of dealing between you and the Bank (i) constitutes a commitment or obligation of the Bank to lend money to you or (ii) obligates the Bank to extend any credit to you, to make a loan to you, or otherwise to advance funds to you to pay for any payment order.

3.4 You are responsible for all tariffs, duties or taxes (excluding U.S. federal, state and local taxation of the income of the Bank) that may be imposed by any government or governmental agency in connection with any payment order executed pursuant to this Addendum.

3.5 You shall be liable for all fines incurred by us that are attributable to your failure to comply with (i) the *NACHA Rules*, or (ii) the laws, regulations and orders administered by the U.S., including without limitation, OFAC and the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

4. Risk Exposure Limits.

4.1 We will establish exposure limits associated with your use of the Services, including a limit on the dollar amount of Entries or files transmitted by you to the Bank and on the total dollar amount of Entries that may be transmitted by you on any one day. We shall establish exposure limits for you and shall monitor Entries initiated by you relative to such exposure limits across multiple settlement dates. Such limits may be modified from time to time by us at our sole discretion with notice to you. We may, in our sole discretion, reject any file that exceeds such exposure limits. We may further reject any Entry or file transmitted by you in the event we deem reasonably necessary in order to protect the safety and soundness of Bank, or if we reasonably suspects that the Entry or file includes fraudulent or unauthorized Entries, or if we have such other reasonable basis upon which to reject the transmission.

4.2 You shall promptly notify us if you anticipate a significant increase or decrease in the dollar amount of any of your ACH transactions.

5. Types of Entries; File Transmission Methods.

5.1 You will only initiate those Entry types (Standard Entry Class or “SEC” Codes) that we have expressly authorized a Third-Party Sender 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 Services will require pre-approval by the Bank and may only be used with proper designation on the set-up or enrollment form(s) associated with the Services and in accordance with additional instructions from and requirements by the Bank, as applicable. We reserve the right to reject any Entry or group of Entries that includes an unauthorized SEC Code.

5.2 You may elect, in accordance with the Services’ application form, to transmit a NACHA-formatted file to the Bank via the following methods, or via such other methods as we may permit from time to time in our sole and exclusive discretion:

5.2.1 **Business Online Services Transmission.** Third-Party Sender may transmit a NACHA-formatted file to the Bank via Bank’s Business Online Services and as described in or as otherwise provided in **Schedule A** attached hereto. Third-Party Sender must be enrolled in and agree to the terms of the Business Online Services and its related security procedures when initiating Entries as described therein.

5.2.2 **Direct Send Transmission.** Third-Party Sender may transmit a NACHA-formatted file directly to the Bank, as described in or as otherwise permitted in **Schedule A** attached hereto. Connectivity between Bank and Third-Party Sender must be established and successfully tested prior to live transactions.

6. Transmittal of Entries by Third-Party Sender.

6.1 You represent and warrant that you will and have been authorized by each Client to send file(s) of credit and debit Entries to the Bank (i) with computer readable information; (ii) with an ACH file and format consistent with current NACHA file and/or Bank specifications; and (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 the Initial Agreement or as otherwise instructed by Bank. You expressly authorize us to process each such file and to originate Entries on behalf of you (as Originator itself and/or on behalf of a Client as Originator) to Receivers’ accounts. You agree to initiate Entries described herein in accordance with the requirements of, and in compliance with its responsibilities, representations and warranties under, the *NACHA Rules* as a Third-Party Sender and, as applicable, as an Originator.

6.2 With respect to any credit and debit Entries initiated and transmitted by you that involves consumers, you will comply with, 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.

6.3 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. Third-Party Sender also acknowledges 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 indemnify us against any such claim for a refund by any Receiver.

6.4 You acknowledge and agree that, with respect to any International ACH Transactions (IATs) that may occur in connection with the Services, the processing, settlement and/or availability of such Entries may be delayed or suspended in the event that we determine that enhanced scrutiny or verification of such Entries is necessary under the *NACHA Rules* and/or applicable U.S. law. You further acknowledge and agree that IAT Entries may be subject to laws, regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. You expressly acknowledge and agree that for Outbound IAT Entries, the time frames for return of an Entry are determined by the payment system rules of the foreign country and may exceed the sixty (60) day return window defined by the U.S. ACH system and the *NACHA Rules*. To the extent not otherwise prohibited by law, in connection with IAT Entries, you assume the risk of all fluctuations in foreign exchange rates or availability.

7. Security Procedures.

7.1 Third-Party Sender and the Bank shall comply with the security procedures set forth or incorporated by reference in this Addendum and/or associated documents provided by the Bank, including, without limitation any Services’ application forms and Schedule A of the Business Online Access and User Agreement with respect to Entries transmitted by you to the Bank. You acknowledge and agree the security procedures described in Schedule A of the Business Online Access and User Agreement are a commercially reasonable method of providing security against unauthorized payment orders, and that we shall be deemed to have acted in good faith so long as we comply with such security procedure requirements. You acknowledge that the purpose of such security procedures is to attempt to verify the authenticity of Entries transmitted by you and not to detect errors in the transmission or content of an Entry. No security practice or procedure for the detection of any such error has been agreed upon between the Bank and the Third-Party Sender.

7.2 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. 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, our information, systems and equipment (hereinafter referred to collectively as “Security-Related Items”). You shall establish, maintain and enforce your own commercially reasonable security practices, techniques and procedures with respect to access to, storage and maintenance of Security-Related Items to safeguard against unauthorized transmissions and unauthorized access to 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*.

7.3 You warrant that no individual will be allowed to initiate transfers without proper supervision and safeguards, and agree to take reasonable steps to maintain the confidentiality of the Security-Related Items and to restrict access thereto to your employees trusted with the duty to transmit Entries to the Bank. 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 agree to 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.

7.4 We may, from time to time, propose additional or enhanced security procedures to you. 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 the security of the Bank or your funds, we may initiate additional security procedures immediately and provide prompt subsequent notice thereof to you.

8. Compliance with Security Procedures.

8.1 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 Schedule A of the Business Online Access and User 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 accepted the Entry (a) in compliance with the security procedures referred to herein 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 herein, to fund the reversal of such Entry, if necessary

8.2 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 the your Settlement Account to fund the reversal of any such debit Entry, whether or not we complied with the security procedures described in Schedule A of the Business Online Access and User 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.

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

9.1 Except as provided in **Section 10 -- On-Us Entries** and **Section 11 -- Rejection of Entries**, Bank 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.

9.2 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 time 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.

9.3 A “business day” 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 the Bank, 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**.

9.4 If any of the requirements of this Section 9 are not met, we shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline that is a business day and a day on which the ACH Operator is open for business.

9.5 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 acknowledge and 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 acknowledge and 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.

10. On-Us Entries. Except as otherwise provided in **Section 11 – Rejection of Entries**, with respect to rejected Entries, in the case of an Entry received for credit or debit to an account maintained by the Bank (an “On-Us Entry”), we will credit or debit 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 6 -- Transmittal of Entries by Third-Party Sender --** are otherwise 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*.

11. Rejection of Entries. We may reject any Entry which does not comply with the requirements of **Section 6 -- Transmittal of Entries by Third-Party Sender**, or **Section 7 -- 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 the Bank 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 you have failed to comply with your account balance or pre-funding obligations under **Section 21** -- Settlement Account / Pre-Funding, and as otherwise provided in **Section 4** of this Addendum. We may reject any Entry if you do not adhere to the security procedures described in Schedule A of the Business Online Access and User 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.

12. Reversals; Re-Initiation of Entries. You 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*.

13. Cancellation or Amendment by Third-Party Sender. You shall have no right to cancel or amend any Entry or file after its receipt by the Bank. 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 Schedule A of the Business Online Access and User 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 effecting or attempting to effect your request for the cancellation or amendment of an Entry.

14. Notice of Returned Entries. We will notify you as set forth in **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 re-transmit a returned Entry to the ACH Operator if we complied with the terms of this Agreement with respect to the original Entry. You will notify your Clients, as Originators, by phone or electronic transmission, of receipt of each return Entry no later than one (1) business day after the business day of receiving such notification from us as ODFI. If a customer or client of Third-Party Sender or its Clients asserts that an Entry was unauthorized, Third-Party Sender and/or its Clients shall be solely responsible to collect any funds owed to Third-Party Sender or its Clients. We have no obligation to originate a transaction where authorization has been revoked.

15. Notifications of Change. We will notify you of each Notification of Change (“NOC”) or Corrected Notification of Change (“Corrected NOC”) received by us related 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 NOC or Corrected NOC are made by, or on behalf of, the Originator within six (6) business days of your receipt of the NOC or Corrected NOC information from us or prior to initiating another Entry to the Receiver’s account, whichever is later.

16. 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.

17. Pre-Notification and Rejection of Pre-Notification. We recommend 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 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.

18. 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 your 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.

19. Evidence of Participant Authorization for Entries.

19.1 To the extent required by the *NACHA Rules* or applicable law, you will obtain, or ensure your Clients obtain, as applicable, 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 you, or your Clients, as applicable, and such Receiver or other party has terminated.

19.2 You shall retain, or ensure that your Clients retain, as applicable, all consents and authorizations for the period required by the *NACHA Rules*. You will furnish to Receiver, or to the Bank 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 the Bank shall be deemed to limit or waive your obligations under this Section.

20. Payment by Third-Party Sender for Credit Entries. You shall pay us the amount of each credit Entry transmitted by us pursuant to this Addendum at such time on the Settlement 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 21** -- Settlement Account; Pre-Funding.

21. Settlement Account; Pre-Funding.

21.1 We may, without prior notice or demand, obtain payment of any amount due and payable to us under this Addendum by debiting your account or accounts identified in the Business Online Service Application (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 the Bank.

21.2 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.

21.3 Notwithstanding the requirements of **Section 21.2**, 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 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 21.3**.

21.4 We also reserve the right, in our sole and exclusive discretion and at any time, to require you to enter into a Line of Credit (“**LOC**”) Agreement with us in an amount sufficient to cover your payment obligations under this Agreement. In the event there are not sufficient available funds in the Settlement Account to cover your obligations under this Agreement, you agree that we may draw against such an LOC Account maintained by you with the Bank or any affiliate of the Bank in order to obtain payment of your obligations under this Agreement.

22. Set-Off and Other Bank Remedies. We may, but shall not be obligated to, complete any transaction in connection with providing the Services hereunder if there are insufficient available funds in your Settlement Account(s) (as defined herein) 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 Services against any debt owing to you by the Bank, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by the Bank, 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, the Bank. 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 at the Bank, 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.

23. 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, in addition to exposure limits, 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 Bank shall then create the offsetting debit file.)

24. 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 principal, 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 Addendum. 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.

25. Periodic Statement; Account Reconciliation. Entries transmitted by the Bank shall be reflected on your periodic statement issued by us with respect to the Settlement Account. You are responsible for monitoring the Services 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 its sole remedy in the event of an error in implementing any selection with the Services 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 25**.

26. Third-Party Service Provider. Except as may otherwise be agreed by us in our sole and exclusive discretion, you may not appoint a third party to act as your agent to process Entries or for purposes of the Services provided hereunder ("Third-Party Service Provider"). Notwithstanding the foregoing, 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. You shall assume full liability for the acts and omissions of any Third-Party Service Provider used by you.

27. Obligations of Third-Party Sender as a Third-Party Sender under the NACHA Rules. Except for any Entry initiated by you as an Originator and in addition to any other duties, responsibilities, warranties, representations and liabilities of you under this Agreement, you represent and warrant to us for each and every Entry transmitted by you to us and agree that you shall (i) perform all of the duties of a Third-Party Sender under the *NACHA Rules*, including, but not limited to, the duty to identify Originators, (ii) assume all of the responsibilities of a Third-Party Sender under the *NACHA Rules*, including, but not limited to, the responsibilities of ODFIs and Originators, (iii) make all of the warranties of a Third-Party Sender under the *NACHA Rules*, including, but not limited to, the warranties of ODFIs and the warranty that Originators (e.g., Clients) have agreed to assume the responsibilities of Originators under the *NACHA Rules*, (iv) make all of the representations of a Third-Party Sender under the *NACHA Rules*, and (v) assume all of the liabilities of a Third-Party Sender under the *NACHA Rules*, including, but not limited to, liability to indemnify the Bank for failure of an Originator to perform its obligations as an Originator.

28. Identification and Approval of Originators. You will provide us with any information we deem reasonably necessary to identify each Originator for which you transmit Entries. You shall notify us of each new Originator. We reserve the right, in our sole and exclusive discretion and at any time, to require you to obtain our approval prior to initiating Entries for an Originator. As required by us, you will provide us with any information we deem reasonably necessary to approve an Originator. You will provide any information required hereunder upon request, within two (2) business days of the receipt of the request and in accordance with the Services' application form.

29. Third-Party Sender Representations and Agreements; Indemnity.

29.1 In addition to your obligations, representations, agreements and warranties otherwise described in this Agreement, you further represent and warrant to us and agree, with respect to each and every Entry transmitted by you that:

(i) Each person shown as the Receiver of an Entry received by the Bank 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 the Bank as provided herein;

(iii) Entries transmitted to the Bank by you are limited as set forth in Sections 4 and 6;

(iv) You shall perform your obligations under this Agreement in accordance with the *NACHA Rules*, the laws of the United States and all other 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, including without limitation the Uniform Commercial Code;

(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 IATs that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, you shall, and your Clients shall, as applicable, (a) classify and format payments transmitted to or received from a financial agency outside the U.S. as an IAT 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 the IAT prior to transmitting any file(s) of Entries to the Bank 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 U.S. law, the *NACHA Rules*, OFAC and FinCEN, as well as the laws and payment system rules of a non-U.S. receiving destination;

(ix) with respect to each Internet-initiated (WEB) ACH Entry that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, (a) you employ, and your Clients employ, as applicable (1) commercially reasonable detection systems to minimize risk of fraud related to Internet-initiated payments, (2) commercially reasonable procedures to verify validity of routing numbers, (3) commercially reasonable methods of authentication to verify the identity of the Receiver, and (4) commercially reasonable security technology that at a minimum is equivalent to 128-bit encryption technology, and (b) where required by the *NACHA Rules* and/or the Bank, you conduct, and your Clients conduct, as applicable, annual audits as to its 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) with respect to each Telephone-Initiated (TEL) Entry that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, you have, and your Clients have, as applicable (a) employed commercially reasonable procedures to verify the identity of the Receiver, and (b) utilized commercially procedures to verify that routing numbers are valid;

(xi) with respect to each Accounts Receivable (ARC) Entry that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, (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, and your Clients will retain, as applicable, 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, and your Clients have employed, as applicable, commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, (d) you have established, and your Clients have established, as applicable, reasonable procedures under which the Receiver may notify you that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's account and that you will allow, and your Clients will allow, as applicable, the Receiver to opt-out of check conversion activity, and (e) the source document to which each ARC Entry relates may not be presented or returned such that any person will be required to make payment based on the source document unless the ARC Entry is returned;

(xii) with respect to each Back Office Conversion (BOC) Entry that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, (a) you have employed, and your Clients have employed, as applicable, commercially reasonable procedures to verify the identity of the Receiver, (b) you have established and maintain, and your Clients 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, and your Clients will retain, as applicable, 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, and your Clients have employed, as applicable, commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to BOC Entries, and (f) the source document to which each BOC Entry relates will not be presented or returned such that any person will be required to make payment based on the source document unless the BOC Entry is returned;

(xiii) with respect to each Point-of-Purchase (POP) Entry that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, 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 use by you and (b) has not been provided to the Receiver for use in any prior POP Entry; and

(xiv) with respect to each Returned Check (RCK) Entry that you may be permitted by us to initiate, in our sole and exclusive discretion and from time to time, (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.

29.2 You shall indemnify and defend the Bank and its officers, employees, directors and agents 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 providers or agents that result in a material breach of this Agreement by you; or
- (v) to the extent that it involves the Bank, 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.

30. Inconsistency of Name and Account Number. You acknowledge and agree that if an Entry describes a Receiver inconsistently by name and account number, then (i) payment of such Entry transmitted to an RDFI may be made by the RDFI (or by the Bank for an On-Us Entry) on the basis of the account number, even if it identifies a person different from the named Receiver and (ii) your obligation to pay the amount of 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.

31. Banks Unable to Accept ACH Transactions. If you submit an Entry to us relating to an RDFI which is not a participant in an ACH network or submits an Entry which has a same-day settlement, then (i) we may reject such Entry and use reasonable efforts to notify you of such rejection or (ii) if we do not reject such Entry, upon receiving a return transaction related to the Entry from the ACH Operator, we may offset the Settlement Account and notify you of such transaction.

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

32.1 In the performance of the Services required by this Addendum, we shall be entitled to rely solely on the information, representations, and warranties provided by you pursuant to this Addendum, and shall not be responsible for the accuracy or completeness thereof. We shall be responsible only for performing the Services expressly provided for in this Addendum, and, subject to the disclaimers and limits on the Bank's liability set forth herein, shall be liable only for and to the extent of its gross negligence or willful misconduct in performing the Services. 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 act or omission of you or any other person described in this **Section 32.1**. 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 Addendum.

32.2 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 Addendum, 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 Addendum. Except to the extent otherwise provided by law or this Addendum, the Bank's aggregate liability to you for all losses, damages, and expenses incurred in connection with any single claim under this Addendum shall not exceed an amount equal to the monthly billing to you for the Services 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 Addendum is only between the Bank and Third-Party Sender, and the Bank shall have no liability hereunder to any third party.

32.3 Notwithstanding the foregoing, if you incur a loss pursuant to a transaction which you have properly processed through the Services, 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 THIRD-PARTY SENDER'S ACCOUNT AND RE-DIRECTING OF PAYMENTS AND TRANSFERS, AND INTEREST ONLY AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, SHALL CONSTITUTE THE BANK'S ENTIRE LIABILITY FOR INCOMPLETE OR INCORRECT PAYMENTS OR TRANSFERS, AND THIRD-PARTY SENDER AGREES THAT IT SHALL NOT BE ENTITLED TO ANY OTHER RECOVERY OR RELIEF.** At the Bank's option, payment of such interest may be made by crediting an Account of Third-Party Sender with the Bank.

32.4 You acknowledge and agree that our provision of the Services 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 Bank's 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 suspect 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.

32.5 EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THIRD-PARTY SENDER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT THIRD-PARTY SENDER'S SOLE RISK, AND THE SERVICES ARE PROVIDED "AS IS," AND THE BANK AND ITS 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, THE LIABILITY OF THE BANK AND ITS SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

33. Notices, Instructions, Etc.

33.1 Except as otherwise expressly provided herein, we shall not be required to act upon any notice or instruction received from you or any other person, or to provide any notice or advice to you or any other person with respect to any matter.

33.2 We shall be entitled to rely on any written notice or other written communication believed by us in good faith to be genuine and to have been signed by an Authorized Representative of Third-Party Sender, and any such communication shall be deemed to have been signed by such person. The names of Authorized Representatives are set forth in the Business Online Service Application. You may add or remove any Authorized Representative by written notice to us signed by the officer of Third-Party Sender that executed Business Online Service Application or by at least two (2) Authorized Representatives other than the representative being added or removed. Such notice shall be effective on the second business day following the day of our receipt thereof.

33.3 Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Addendum by you to the Bank shall be delivered, or sent by United States registered or certified mail, postage prepaid, or by express carrier, and addressed to:

COMMUNITY BANK, N.A.
Attention: Electronic Banking Department
1 Tallman Road
Canton, NY 13617
Phone: 866-764-8638

33.4 You authorize us to, and you agree that we may, send any notice or communication that we are required or permitted to give under this Addendum, including but not limited to notice of any change to the Services or this Addendum, to your business mailing address or your business e-mail address as it appears on our records, or electronically by posting the notice on the Bank's website when you use the Services with and transmits Entries/files via the Bank's Business Online Services, on an account statement or via facsimile, and that any such notice or communication will be effective and deemed delivered when provided to you in such a manner. You agree to notify us promptly about any change in your business mailing or business e-mail address and acknowledge and agree that no such change will be effective until we have had a reasonable opportunity to act upon such notice. You agree that we may consider any such notice or communication as being given to all account owners when such notice or communication is given to any one account owner.

34. 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 responsibilities to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*. You and the Bank agree that all telephone conversations or data transmissions between us or our agents made in connection with this Addendum may be electronically recorded and retained by either party by use of any reasonable means.

35. Data Breaches. You agree that you will adopt and implement its own commercially reasonable policies, procedures and systems to provide security as to the information being transmitted and to receive, store, transmit and destroy data or information in a secure manner to prevent loss, theft, or unauthorized access to data or information (“Data Breaches”), including but not limited to, Consumer-Level ACH Data. You agree that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions. You will provide prompt and accurate notification to us by calling the Electronic Banking Department with regard to any Data Breaches when known or reasonably suspected by you, including but not limited to, Data Breaches to Consumer-Level ACH Data, and will take all reasonable measures, including, without limitation, retaining computer forensic experts, to determine the scope of any data or transactions affected by any Data Breaches, providing all such determinations to the Bank.

36. Fees / Charges.

36.1 You agree to compensate us for the Services provided by us pursuant to this Addendum in accordance with the applicable fee schedules or agreements between you and the Bank in effect from time to time that apply to the Services (the “Service Fees”). By and upon entering into this Addendum, you acknowledge receipt and acceptance of the Service Fees and agrees to be bound by their terms, as those terms may be amended from time to time.

36.2 You authorize us to charge the Settlement Account for all applicable Service Fees to the extent that such Service Fees are not offset by earnings credits or other allowances for your deposit account(s) with Bank. If the balance of available funds in the Settlement Account is not sufficient to cover such fees, Bank may charge such fees to any other deposit account maintained by Third-Party Sender with Bank.

36.3 Bank may amend the Service Fee(s) at any time. Bank will give notice to Third-Party Sender of such changes in accordance with applicable law.

37. Right to Audit. Bank has the right to periodically audit Third-Party Sender’s compliance and Third-Party Sender’s Clients’ compliance, as applicable, with the *NACHA Rules*, U.S. law and this Agreement. Third-Party Sender agrees and warrants, in its capacity as a Third-Party Sender, that it will conduct all self-audits as are required under the *NACHA Rules*.

38. Termination.

38.1 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 cause us to breach the *NACHA Rules*, this Addendum may be terminated or suspended by us without prior notice.

38.2 Notwithstanding the foregoing, we may, without prior notice, terminate this Addendum and terminate or suspend any transaction or the Services (i) if you or the Bank closes any account established in connection with the Services, (ii) if we determine 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 Services 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 the Bank 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.

38.3 We may also terminate or suspend the Services with regard to any particular Client upon five (5) business days' notice. Notwithstanding the foregoing, we may, without notice, terminate or suspend the Services with regard to any particular Client in the event that (i) Client breaches the *NACHA Rules* or causes the Bank to breach the *NACHA Rules*, (ii) we determine that Client's financial or operating condition is unsatisfactory or otherwise presents unreasonable credit or other risks to us, or (iii) we reasonably 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, our policies or procedures, or would subject us to unacceptable risk to our safety and soundness.

38.4 Any termination of this Addendum shall not affect any of our rights and your obligations with respect to Entries initiated by you prior to termination, the payment of your obligations with respect to services performed by us prior to termination or any other obligations or provisions 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.

39. Cooperation in Loss Recovery Efforts. In the event of any damages for which you or the Bank may be liable to the other or to a third party relative to the Services, both parties shall undertake reasonable efforts to cooperate with the other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that you or the Bank may be obligated to defend or elects to pursue against a third party. You represent and warrant that each Client has agreed to undertake reasonable efforts to cooperate with you and with Bank, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that we may be obligated to defend or elects to pursue against a third party.

40. Assignment; Non-Assignment. We may assign this Addendum or any of our rights and duties hereunder without your prior notice or consent. You may not assign this Addendum or any of the rights or duties hereunder to any person without our prior written consent, which consent we may grant or withhold in our sole discretion.

41. Governing Law. Any claim, controversy or dispute arising under or related to this Addendum 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. In addition, the parties agree that if any payment order governed by this Addendum is part of a funds transfer subject to the federal Electronic Funds Transfer Act, then all actions and disputes as between you and the Bank shall be governed by *Article 4-A of the Uniform Commercial Code*, as varied by this Addendum.

42. 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 Addendum 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.

43. Authorization to Obtain Credit Reports and Other Information. You authorize the Bank 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.

SCHEDULE A

TRANSMITTAL OF ENTRIES

A. Delivery Method: Business Online Services – if Third-Party Sender initiates Entries via this method, Third-Party Sender agrees 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 RC4 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. Delivery Deadlines / Cut-Off Times:

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 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.

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

- 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

E. Notice by Bank: If an Entry is rejected, returned or if a Notification of Change is received, the Bank shall notify Third-Party Sender and/or Client by mail or electronic transmission.