

## **CUSTOMERS BANK REMOTE DEPOSIT SERVICE AGREEMENT**

This Remote Deposit Service Agreement (“Agreement”) is incorporated by reference into the Customers Bank Cash Management Master Services Agreement to add a business remote deposit capture service (the “Service”) to your cash management services with Customers Bank. The Service allows you to make deposits to your designated business deposit accounts at Customers Bank from your place of business by using a desktop scanner to scan and convert paper checks to either digitized check images or Automated Clearing House (“ACH”) paperless debit entries and delivering the images, data and information required hereby to the Bank through a secure Internet website. As used in this Agreement, the terms “Bank,” “we,” “us,” and “our” refer to Customers Bank. The terms “you” or “your” refer to the account holder(s) authorized by the Bank to use the Service, all persons authorized to sign on the account holder’s deposit accounts, and anyone else who uses the Service with the permission of the account holder(s). By using the Service, you agree to, and acknowledge that you have read and understand, the terms and conditions of this Agreement and the Cash Management Master Services Agreement.

### **1) SCOPE OF AGREEMENT**

This Agreement governs your use of the Service. This Agreement is a schedule to our Cash Management Master Services Agreement. This Agreement cancels, supersedes, and replaces any prior business remote deposit capture agreements or schedules that you may have entered into with the Bank, including, without limitation, the “Schedule to Cash Management Master Services Agreement Remote Deposit Capture Services.” Notwithstanding the foregoing, the terms and conditions in this Agreement are in addition to, and do not cancel, supersede or replace the Cash Management Master Services Agreement, or any other Bank account agreements, rules, disclosures, procedures, standards, policies, or signature cards relating to your deposits, loans, services, or other business relationships with the Bank. Additionally, your use of the Service will be subject to all of the terms or instructions which may appear on a computer screen when you access the Service, and Bank side letters, user guides and other documentation that the Bank may provide to you from time to time about the Service. Your use of the Service is also subject to, and you agree to comply with, the rules and regulations of the National Automated Clearing House Association (NACHA) rules, all other applicable clearing house rules, the Check Clearing for the 21<sup>st</sup> Century Act, 15 U.S.C. 5001-5018 (“Check 21”), Federal Reserve Regulation CC (12 C.F.R. Part 229)(“Reg CC”), Office of Foreign Assets Control sanction laws, the Bank Secrecy Act, the USA PATRIOT Act, the Uniform Commercial Code as enacted in Pennsylvania (“UCC”), and all other applicable state and federal laws and regulations, all as amended from time to time.

### **2) HARDWARE AND SOFTWARE REQUIREMENTS FOR THE SERVICE**

In order to use the Service, you must have a computer with high speed Internet access (DSL or better is preferred). You must also use the operating system(s), Internet browser(s) and hardware, which includes a compatible check scanner, and software

that satisfy all technical specifications and other requirements established by the Bank from time to time.

You must maintain software and operating system patches and updates, and you must install, maintain and update a current antivirus system in order to ensure that no checks or files you transmit to us will contain any viruses or other harmful, intrusive or invasive codes. You agree to scan your computer hardware and software on a regular basis using a reliable computer virus detection product in order to detect and remove computer viruses. You further agree to promptly install and implement any changes and upgrades to the Service and/or the hardware and software as required by us from time to time, including, but not limited to, those intended to ensure compliance with regulatory changes or to protect the integrity and security of the Service.

Unless otherwise provided in this Agreement, you are solely responsible, at your own expense, for purchasing, installing, operating, testing and maintaining all hardware, software, and other equipment necessary to use the Service. You must install and test your scanner, your system, and any other required hardware and software before you make your first deposit through the Service. You agree that you will perform, or cause to be performed, all vendor recommended maintenance, repairs, upgrades and replacements, and such performance shall be rendered by properly trained personnel. We are not responsible for, and you release us from any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using the Service, electronic mail or the Internet.

If hardware and/or software is provided by us to you for use of the Service, you agree to: (a) implement and use the equipment and software, as instructed by us to transmit the output files to us; (b) use the equipment and software solely for the purpose of transmitting output files to us and not for communications with others; (c) not allow access to the equipment and software or the use of the Service by any person other than your authorized personnel or representatives; and (d) comply with the applicable software license. Although we may provide certain "first level" support to you with respect to the equipment and software, we shall have no responsibility whatsoever for maintenance, support, infringement protection, or otherwise with respect to the equipment or software.

You agree to not reproduce the software or other functionality or content included or used with the Service or on which the Service is based, or decompile, reverse engineer or disassemble the software or otherwise attempt to derive computer source code from the software functionality of the Service.

Upon termination of this Agreement by you or the Bank, or upon request by the Bank for any reason, you will, at your expense, within seven (7) days after the date of the termination of the Agreement or the Bank's request, as applicable, promptly uninstall and remove all software provided for the Service from your computer and return to us all equipment provided for the Service, including scanners. You will be responsible and liable to us for the replacement cost of all lost, stolen or damaged (reasonable wear and tear excepted) equipment that was provided to you by us, including scanners.

### 3) CHECK REQUIREMENTS

- a) General Requirements. You agree that you will only scan and deposit a check(s) as that term is defined in Federal Reserve Regulation CC (each such check and other item shall be referred to in this Agreement as a “Check” and, if more than one, “Checks”). You agree that the image of the check that is transmitted to the Bank shall be deemed an “item” within the meaning of Article 4 of the UCC.
  
- b) Information on the Check. Any image of a Check that you transmit through the Service must accurately and legibly provide all of the information on the front and back of the check at the time it was presented to you. You must endorse the original Check with a restrictive endorsement before scanning it by applying your signature and the legend, “For deposit only,” followed by the title and account number of the account to which you are depositing the Check. Any virtual electronic endorsement on any Check or other item deposited through the Service shall have the same binding effect as a stamped, hand written or other manual endorsement. You authorize the Bank to supply an endorsement on your behalf for deposit to your account if a Check is missing or has an improper endorsement.

You agree that the scanned image of each Check shall provide the following information: (1) identification of the drawer and the paying bank that is preprinted on the Check, including complete, full-field, and accurate MICR (magnetic ink character recognition) line, American Bankers Association routing transit number, number of the account on which the Check is drawn, and drawer signature(s), (2) amount, payee, date, Check number, and (3) other information placed on the Check before imaging, such as any required identification written on the front of the Check and any endorsements applied to the back of the Check.

- c) Your Representations and Warranties with Respect to Prohibited Checks. The Bank in its sole discretion may refuse to accept, and you agree, warrant and represent that you will not use the Service to deposit, Checks or other items which:
  - i) are payable to any person or entity other than you;
  - ii) are drawn or otherwise issued by you, or any of your affiliates, or by any other person on any of your accounts or any account on which you are an authorized signer or joint account holder, or any account of any business entity of which you are a principal, officer or authorized signer;
  - iii) contain obvious alteration to any of the fields on the front of the Check, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the account holder;

- iv) are substitute checks as defined by Check 21 or IRDs (image replacement documents) that purport to be substitute checks and which have been previously endorsed by a financial institution;
  - v) are drawn on a financial institution located outside the United States or its territories or are not payable in United States currency;
  - vi) are dated more than six (6 ) months prior to the date of deposit;
  - vii) have a duplicate MICR code line;
  - viii) are missing or have an invalid or incorrect routing number;
  - ix) are photocopies or otherwise not original paper Checks when they are scanned;
  - x) are issued to multiple parties;
  - xi) are third party or second endorsed Checks;
  - xii) do not qualify as “original checks” as defined in Regulation CC
- d) Image Quality. Both the front and back of each Check must be transmitted to the Bank as provided in any user guide or other instructions provided to you by the Bank or the Service, including on-screen instructions. The Bank in its sole discretion may refuse to accept Checks that do not meet our image quality requirements. This includes, without limitation Checks where:
- i) the front and/or back image is too large or too small;
  - ii) the front and/or back image is too light or too dark;
  - iii) the front and back images have a dimension or other mismatch or discrepancy;
  - iv) the image has torn or folded edges, cut corners, or other damage;
  - v) the image does not comply with the standards for image quality established from time to time by the American National Standard Institute (ANSI), the Federal Reserve Board, and any other regulatory agency, clearing house or association, or by us, or by applicable law.

#### **4) REJECTION OF DEPOSITS BY THE BANK**

Upon our receipt from you of each file containing Check images and all other required data and information from or pertaining to the Checks and/or all batched ACH required data and information, we shall grant your designated account with a provisional credit for the total amount of such file. The provisional credit is subject to final payment of the Checks and subject to the terms of your Bank Account Agreement.

You agree that all deposits received by us are subject to our verification and final inspection and may be rejected by us in our sole discretion, and you shall remain liable to the Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against the Bank.

The Bank is not liable for any service or late charges that may be imposed against you due to the Bank’s rejection of any Check that you transmit for deposit through the Service. You acknowledge and agree that, while we normally provide notice of

rejected deposits, we may reject any Check transmitted through the Service in our sole discretion without notice to you, and we will not be liable for any such rejection or failure to notify you of such rejection. If we reject a Check for remote deposit, you must physically deposit the original Check.

#### **5) ITEMS RETURNED UNPAID**

You are solely responsible for verifying that Checks that you deposit by using the Service have been received and accepted for deposit by the Bank. The Bank will provide you with written notice of any deposits that it is unable to process because Checks were returned unpaid by the payor financial institution. You agree to accept such notices at your email address on file with us, but we may choose any reasonable method for providing notices under this Agreement. In the event that the Bank credits your account for a Check that is subsequently dishonored and returned, you authorize the Bank to debit the amount of such Check plus any associated fees from the account. Our right to charge your account will apply without regard to whether the Check was timely returned or whether there is any other claim or defense that the Check was improperly returned. You understand and agree, that since the original Check is your property, it will not be returned and the Bank may charge back an image of the Check, an ACH debit, or other electronic or paper debit to your account. You further agree that the image may be in the form of an electronic or paper reproduction of the original Check or a substitute check.

You may not use the Service to deposit a substitute check and you may not deposit the original Check through the Service or in any other manner if you receive a dishonored Check. You agree to abide by any additional instructions we may provide to you in connection with returned items. If the Bank receives a returned item after you or we have terminated this Agreement, then you agree that we may debit the amount of such item plus associated fees from your account, or if you have closed such account, you agree to pay the Bank for the returned item plus associated fees within seven (7) days after the date of our request for payment.

#### **6) YOUR DUTY TO REPORT ERRORS**

The Bank will provide you with periodic statements that will identify the deposits that you make using the Service. In addition, you may access the Bank's Online Access service for information about your deposits, deposit adjustments, Checks and other debit transactions on your accounts. You agree that it is your responsibility to review all such information that the Bank makes available to you in a timely manner to verify that deposits made through the Service have been received and accepted by the Bank and are accurate. Receipt of an item by the Bank through the Service does not constitute an acknowledgement by the Bank that the item is error-free or that we will be liable for the item. You agree to notify us of any errors, omissions, or discrepancies in a deposit as promptly as practicable. You agree to cooperate in any investigation by the Bank of any unsuccessful or lost transmission. Subject to applicable law, any failure by you to notify the Bank of any error, omission or other discrepancy in accordance with this Agreement and your Bank Account Agreement shall relieve the Bank of any liability for such error, omission or discrepancy.

## **7) AVAILABILITY OF THE SERVICE**

The Service is generally available 7 days a week, 24 hours a day. At certain times the Service may not be available due to system maintenance or circumstances beyond our control. If you are not able to use the Service to make deposits you may physically mail or deliver your deposits to the Bank through our branches or through certain of our ATMs. Deposit of original Checks at a branch of the Bank or an ATM shall be governed by the terms and conditions contained in your Bank Account Agreement and not by the terms of this Agreement. The Bank is not responsible for providing an alternate method of remote deposit if the Service is not available.

## **8) FUNDS AVAILABILITY**

The funds for the Checks that you deposit through the Service may not be immediately available to you. The funds for all accepted Checks will be available in accordance with the Bank's Funds Availability Disclosure, as amended from time to time, a copy of which is incorporated by reference into this Agreement. In order to determine the availability of your funds, you will need to determine the date and time that the Checks and all required data and information are received by the Bank. The deposit cut-off time for the Service is 6:00 PM EST. The Bank reserves the right to change the cut-off time in its sole discretion. Such change shall be effective immediately and may be implemented prior to your receipt of notice thereof. You may contact us at any time to verify the current cut-off time.

If you complete the scanning process and receive your electronic deposit receipt, Checks that you deposit before the cut-off time on our business days will be considered as received that same business day. For purposes of determining when a deposit is received, the Bank's records shall be determinative. Checks that are received by us through the Service after the cut-off time on a business day, or on any day that is not a business day, will be considered as received by us on the next business day.

You agree that it is your responsibility to understand and build into your transmission schedules the appropriate deadlines necessary to meet our funds availability schedules and time changes associated with Daylight Savings Time.

## **9) STORAGE, SECURITY AND DESTRUCTION OF ORIGINAL CHECKS**

You agree that once a Check has been deposited through the Service, the original Check is your property and not the property of the Bank. You shall securely store the original Check for a period of fourteen (14) days after you receive notice from the Bank that it has been accepted. While the original Check is in your possession, you agree to use a high degree of care to safeguard the original Check and related files against security risks. Security risks include, without limitation, the theft or reproduction of the original Check or unauthorized use of the information on the Check or in the file. You shall take appropriate security measures to ensure that only authorized personnel shall have access to the original Check, that the information

contained on the Check shall not be disclosed, and that the original Check will not be duplicated, will not be scanned more than one time, and will not be represented, redeposited or negotiated in any way. Upon request by the Bank you will promptly, but in any event within five (5) business days, provide to the Bank a retained original Check, or a sufficient copy of the front and back of the Check in form acceptable to the Bank, to aid in the clearing and collection process, to resolve claims by third parties, or for the Bank's audit or fraud loss prevention purposes.

After the fourteen (14) day period expires, you shall stamp "VOID" on and/or destroy the original Check by shredding it or by any other commercially reasonable permanent deletion manner that does not allow the original Check to be accessed by an unauthorized person(s) and in a manner that the original Check is no longer readable or capable of being reconstructed.

You agree to be responsible to us for any losses, costs, expenses, and damages we may incur as a result of your failure to comply the provisions of this Section.

#### **10) PROHIBITION AGAINST REPRESENTING CHECKS**

Once you have used the Service to deposit a Check you agree not to present or attempt to present the original Check or a substitute check of the original Check again for deposit ("Represent") through the Service or through any other means. You further agree not to allow anyone else, either directly or indirectly, to Represent or attempt to Represent the original Check or a substitute check of the original Check by any means. Should you or another party Represent a Check or substitute check in violation of this Agreement, the amount of the Check will be debited from your account, and you agree to indemnify, defend and hold the Bank harmless from and against all liability and damages that may result from any claims, suits or demands from third parties with respect to the Represented original Check or substitute check.

#### **11) DEPOSIT LIMITS**

The Bank reserves the right to establish and assign to you exposure limitations for the Service (including limits on the dollar amount and/or number of Checks and/or files that you may transmit through the Service each day) and to modify such limits from time to time in the Bank's sole discretion, and you agree to comply with all such limits.

#### **12) PROHIBITED BUSINESS ACTIVITIES**

You are prohibited from engaging in, and you represent and warrant to the Bank, that you do not and shall not engage in, any business or activity that: (a) would result in being or becoming a money service business that regularly cashes third party Checks, sells money orders, or handles wire transfers or other financial services for third parties; (b) would result in accepting restricted transactions in connection with another person in unlawful Internet gambling as defined in the Unlawful Internet Gambling Enforcement Act and Federal Reserve Regulation GG (Prohibition on Funding of Unlawful Internet Gambling); (c) would result in the Bank being used as a conduit for money laundering or other illicit purposes, or (d) would directly or indirectly result in any activity or use of the Service that may be illegal or fraudulent.

### **13) YOUR FINANCIAL INFORMATION; AUDIT BY THE BANK**

The Bank may request financial and other information from you from time to time in order to evaluate the risks of providing the Service to you. You agree to promptly provide any financial and other information we request to determine your financial condition and to ensure your compliance with the provisions of this Agreement. You authorize the Bank to investigate and audit your financial information, history, background, business activities, and records, including credit reports, before we authorize you to use the Service and for as long as you use the Service. You agree to inform the Bank immediately if there is a material adverse change in your financial circumstances. Upon request by the Bank, you authorize us to access any of your business premises for the purpose of ensuring that you are in compliance with this Agreement. If you fail to provide any requested financial or other information or access to your business premises, or if the Bank concludes, in its sole discretion, that the credit or other risks of continuing to provide the Service to you are not acceptable, the Bank may immediately terminate your access to the Service without prior notice.

### **14) BANK'S DUTIES AND RESPONSIBILITIES**

Our duties and responsibilities are limited to those described in this Agreement, the Cash Management Master Services Agreement, your Bank Account Agreement, and any other agreements governing your account(s). We will use commercially reasonable care in performing our responsibilities under this Agreement.

We shall not be responsible for suspension of performance of all or any of our obligations, responsibilities or covenants hereunder, whether expressed or implied, if at any time, or from time to time, compliance therewith is prevented or hindered by, or are in conflict with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, any act of God or of the public enemy, war, epidemic, strike, or work stoppages of the U.S. Postal Service and commercial carrier(s), or electric power disruption or shortage, telecommunications failure or computer failures; acts, omissions or errors of any carrier and/or agent operating between you and us or between us and any Federal Reserve Bank or other agency utilized to exercise transfers or any recipients of transferred funds; any incorrect, unauthorized or fraudulent use or other fraud by any person other than the Bank's employees; or, without limiting the generality of the foregoing, any other cause or circumstance beyond our control or other conditions or circumstances not wholly controlled by us, which would prohibit, retard or otherwise affect our complete or partial performance under this Agreement.

### **15) FEES AND CHARGES**

The fees and charges for your use of the Service are payable as applicable, as set forth in the fee schedule provided to you from time to time by the Bank in connection with the Service, and all other fees and charges as may be agreed upon from time to time by you and the Bank. You authorize the Bank to debit any fees and charges for the Service from your reserve amount and/or any of your accounts, on or after the date



such fees and charges are payable, even if such debit causes an overdraft on the account. If the account does not contain sufficient funds to pay such fees and charges on the date they are payable, then the Bank may, in its sole discretion, immediately terminate your access to the Service without prior notice. Should you fail or refuse to pay any fees or charges under this Agreement, you agree to pay all collection costs (including reasonable attorney's fees) that may be incurred by the Bank in connection therewith.

We shall have the right to increase or decrease the fees and charges imposed for the Service and will notify you of the changes, to the extent required by law. Your use of the Service after any such changes have been made shall constitute your agreement to the changes.

#### **16) RESERVE AMOUNT; SECURITY INTEREST**

We may require you to maintain a reserve of an amount that we determine in our sole discretion. We will provide notice to you of any reserve requirement, and you shall immediately fund the reserve amount with good funds. We may withhold and use any amounts we owe to you in order to maintain any reserve amounts at levels specified by us. You agree that any reserve will be deposited in a Bank account for the exclusive use by us for purposes of offsetting any of your obligations under this Agreement, without notice or demand to you. Your obligation to maintain a reserve shall survive the termination of this Agreement until all of your obligations under this Agreement have been fully offset.

To further secure all of your obligations arising from this Agreement, you grant the Bank a continuing security interest in all your account(s) with us, all funds in those accounts, any reserve account(s) and funds therein, all items, whether now or hereafter established by or for your benefit, and all proceeds of the foregoing ("Collateral"). This security interest is supplemental to and not in lieu of the security interest granted by you to us under any other agreement. You authorize us to file such financing statement(s) as we deem necessary to perfect and maintain our security interest in the Collateral.

#### **17) YOUR REPRESENTATIONS AND WARRANTIES**

In addition to your representations and warranties contained in other provisions of this Agreement, you represent and warrant that:

- a) All signatures on each Check or other item you deposit through the Service are authentic and authorized, and the Check or other item has not been altered.
- b) You are authorized to enforce each Check or other item you deposit or are authorized to obtain payment for each Check or other item on behalf of a person entitled to enforce the Check or other item.

If you breach any of the representations and warranties in subsection (a) or (b) above, you agree to indemnify, defend and hold the Bank, its shareholders, officers, directors, employees, agents, and its and their successors, heirs and

assigns harmless from and against any and all liability, damages, or losses arising from any claims, suits or demands from third parties with respect to a breach of these representations and warranties. You authorize the Bank to debit your account for the amount of any such claim, suit or demand that results from a breach of warranty claim as defined under the UCC.

- c) You are solely responsible for any and all financial risk that may be associated with the use of the Service including without limitation the risk that a Check will be returned for insufficient funds.
- d) You are solely responsible for the instructions you provide to the Bank, for failure on your part to properly access the Service, and for input errors.

#### **18) DISCLAIMER OF WARRANTY**

YOU AGREE THAT YOUR USE OF THE SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTY SERVICE PROVIDERS) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER THE BANK NOR ANY THIRD PARTY SERVICE PROVIDER MAKES ANY EXPRESS OR IMPLIED WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, QUALITY, ACCURACY, OR SUITABILITY OF THE SERVICE, AND NEITHER THE BANK NOR ANY THIRD PARTY SERVICE PROVIDER MAKES ANY OTHER WARRANTY WITH RESPECT TO THE SERVICE EXCEPT THOSE WARRANTIES, PROMISES, COMMITMENTS, GUARANTEES, OR REPRESENTATIONS SPECIFICALLY STATED IN THIS AGREEMENT.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BANK EXPRESSLY DISCLAIMS ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. YOU FURTHER ACKNOWLEDGE THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET, AND TELECOMMUNICATION LINES OR CIRCUITS. YOU HEREBY ASSUME ALL OF THE FOREGOING RISKS.

YOU AGREE THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR THE SERVICE.

#### **19) LIMITATION OF LIABILITY**

The Bank shall not be liable to you for any damages or losses suffered or incurred by you in connection with the Service, including, without limitation, any failure to provide, or delay in providing, access to the Service, except: (a) as specifically stated in this Agreement, or (b) to the extent such damages or losses are solely and proximately caused by the gross negligence or willful misconduct of the Bank.

Without limiting the foregoing, we shall not be liable to you for any of the following: (a) any damages, costs or other consequences caused by or related to our actions that are based on information or instructions that you provide; (b) any unauthorized actions initiated or caused by you or your employees or representatives; (c) the failure of third persons or vendors to perform satisfactorily; (d) any refusal of a payor financial institution to pay a substitute check for any reason (other than that caused by our breach of contract, gross negligence or willful misconduct), including without limitation, that the substitute check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (e) your or any other parties' inability to transmit or receive data; (f) failures or errors on the part of service providers, telecommunications/Internet providers or any other parties own internal systems; or (g) if you do not follow or comply with the representations or warranties set forth in this Agreement.

Our liability for errors or omissions with respect to the data transmitted or printed by us in connection with this Agreement will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the substitute checks to the payor financial institution.

The limitations of liability and remedies in this Section are in addition to, and not in lieu of, other limitations or remedies contained elsewhere in this Agreement and/or in the Cash Management Master Services Agreement.

OUR LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF YOUR ACTUAL DAMAGES OR THE FEES AND OTHER CHARGES PAID BY YOU TO US DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRIOR TO THE OCCURRENCE WHICH GIVES RISE TO THE CLAIM. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY BANK ACCOUNT AGREEMENT OR ACCOUNT DISCLOSURES TO THE CONTRARY, IN NO EVENT WILL THE BANK OR ANY THIRD PARTY SERVICE PROVIDER HAVE LIABILITY TO YOU OR ANY THIRD PARTY CLAIMING THROUGH YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER LOSSES INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE, INABILITY TO USE, OR THE TERMINATION OF THE USE OF THE SERVICE, WHETHER ANY CLAIM FOR SUCH DAMAGES OR LOSSES IS BASED ON TORT OR CONTRACT OR WHETHER THE BANK OR ANY THIRD PARTY SERVICE PROVIDER KNEW OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES OR LOSSES IN ANY CIRCUMSTANCE.

YOU ACKNOWLEDGE THAT, IN PROVIDING THE SERVICE, THE BANK MAY UTILIZE AND RELY UPON CERTAIN THIRD PARTY SERVICE PROVIDERS TO PROVIDE SERVICES TO THE BANK. YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOUR RIGHTS UNDER THIS AGREEMENT SHALL BE SOLELY AND EXCLUSIVELY AGAINST THE BANK, AND YOU SHALL HAVE NO RIGHT OR RECOURSE AGAINST ANY THIRD PARTY SERVICE PROVIDER HEREUNDER WHATSOEVER, AND YOU HEREBY WAIVE ANY AND ALL SUCH RIGHTS OR RECOURSE, DIRECTLY OR INDIRECTLY, AGAINST ANY THIRD PARTY SERVICE PROVIDER.

## 20) TERMINATION

- a) How to Cancel the Service. If you wish to cancel the Service, you must notify the Bank's Customer Service department, and you must also discontinue using the Service at that time.
- b) Closing your Bank Accounts. If you close all of your Bank accounts, you must notify the Bank's Customer Service department to cancel the Service and you must terminate your use of the Service at that time.
- c) Bank Termination of Access. We will not in any way be obligated to grant you access to the Service if: (1) such use or access is not in accordance with any term or condition applicable to the Service, (2) such use or access is not permitted by any state or federal law or regulation, (3) the Bank has reasonable cause to believe that such use or access may not be authorized by you or any third party whose authorization the Bank believes is necessary for such use or access, or (4) the Bank has reasonable cause to deny such use or access for your or our protection.
- d) Bank Termination of the Agreement. The Bank reserves the right in its sole discretion at any time to terminate this Agreement and therefore to terminate your access and use of the Service at any time. The Bank will not have liability to you for any losses or damages you may suffer or incur as a result of any such termination.

## 21) INDEMNITY

You agree to indemnify and hold us harmless and our licensors, service providers and/or contractors providing the Service, and our and their respective directors, officers, shareholders, employees, agents, parents, subsidiaries, and affiliates, from and against any and all losses, liabilities, penalties, damages, suits, proceedings, claims, demands, causes of action, costs and expenses (including reasonable attorney's fees and other legal expenses) that result from or arise out of your acts or omissions, or those of any person acting on your behalf (including without limitation your authorized processor, if any), in connection with the Service or processing of items hereunder, including without limitation: (a) the breach by you of any provision, representation or warranty of the Agreement or any other agreement between you and the Bank, including, without limitation, your Bank Account Agreement and/or Account Disclosures; (b) your negligence or willful misconduct (whether by act or omission) or that of your customers or any third party acting on your behalf; (c) any misuse of the Service by you, or any third party within your control or acting on your behalf; (d) your failure to comply with applicable state and federal laws and regulations; (e) any fine, penalty or sanction imposed on us by any clearing house, or any governmental entity, arising out of or connected with any item processed by us for you or at your instruction; (f) any act or omission by us that is in accordance with the Agreement or your instructions; (g) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Imaged Item to us; (h) any loss or corruption of data in transit from you to us; (i) any claim by any recipient of a substitute check corresponding to a Check processed by us that such

recipient incurred loss due to the receipt of the substitute check instead of the original Check; or (j) any claims, loss or damage resulting from your breach of, or failure to perform in accordance with, the terms of the Agreement.

The terms of this Section shall survive the termination of this Agreement.

## **22) WAIVERS**

The Bank will not be deemed to have waived any of its rights or powers under this Agreement unless such waiver is in writing and such writing is signed by an authorized representative of the Bank. No delay, extension of time, compromise, or other indulgence that may occur or be granted from time to time by the Bank under this Agreement will impair our rights or powers under this Agreement.

## **23) AMENDMENTS**

We may amend this Agreement at any time and from time to time, and any such amendment shall be effective immediately upon written notice to you. We agree to use reasonable efforts to give you prior notice of any such amendment to the extent reasonably practicable.

## **24) ASSIGNMENT**

You may not assign any of your rights, duties and obligations under this Agreement. We may assign or delegate certain of our rights and responsibilities under this Agreement to independent contractors, service providers, or other third parties.

## **25) GOVERNING LAW**

This Agreement is governed by, and is subject to, the laws of the Commonwealth of Pennsylvania, without regard to its choice or conflicts of laws provisions.

## **26) SEVERABILITY**

If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of such provision in other jurisdictions, and of the remaining provisions of this Agreement in all jurisdictions, will not in any way be affected or impaired.

## **27) ENTIRE AGREEMENT**

The terms of our Cash Management Master Services Agreement, the Bank Account Agreement, and all other agreements with the Bank pertaining to your account(s), are incorporated by reference and made a part of this Agreement. In the event of any inconsistency between such agreements, the provisions of this Agreement shall control to the extent necessary. You agree that this Agreement is the entire statement of the terms and conditions which apply to the subject matter hereof. Any

prior or contemporaneous agreements, representations, statements, negotiations, undertakings, promises or conditions, whether oral or written, with respect to the Service which conflict with the provisions in this Agreement are superseded by this Agreement.