

Copy 1

TOWN OF ANDOVER

CONTRACT

(GOODS / SERVICES)



DATE: 4/9/24

This Contract is entered into on, or as of, this date by and between the Town of Andover (the "Town"), and

TD Bank N.A,  
51 Main Street  
Newburyport, MA 01950  
George Dow, Vice President  
George.Dow@td.com

1. This is a Contract for the procurement of the following: Payroll and Vendor banking services. RFP 100/002/24.
2. The Contract price to be paid to TD Bank, N.A. ("the Contractor") by the Town of Andover is: Per pricing proposal dated August 10, 2023 and attached to this Contract.
3. Payment will be made as follows: Within thirty (30) days upon receipt of a reasonably detailed invoice.
4. Definitions
  - 4.1 Acceptance: All Contracts require proper acceptance of the described services by the Town of Andover. Proper acceptance shall be understood to include performance for services by authorized representatives of the Town to insure that the services are complete and are as specified in the Contract.
  - 4.2 Contract Documents: All documents relative to the Contract include the Request for Proposals, the TD Bank Pricing Proposal, dated August 10, 2023, the TD Bank Technical Proposal, dated August 10, 2023, the Town of Andover Cash Management Master Agreement, dated May 6, 2015, this Contract and all Addenda issued during the bidding period or proposal. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the document is to include all labor and materials, equipment, and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The "other party" to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used. The Contractor's relationship to the Town is that of an independent contractor and not that of an agent or employee of the Town. There is no relationship of employment or agency between the Town and the Contractor and neither party shall have or exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this Contract which the parties view as consistent with their independent contractor relationships.

4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.

4.5 SubContractor: The term "subcontracting" shall be expressly limited to independent contractors, vendors, or service providers engaged through contractual arrangements whereby and organization or person is specifically engaged by the Contractor to assist Contractor in performing some, or all, of the contract between Contractor and the Town. For purposes of further clarification, and independent contractor, vendor, or service provider that supplies the same or similar good and/or services to Contractor and others generally that Contractor will then use to deliver products and services to its customers generally shall not be deemed an "independent contract" arrangement. Additionally, for any services provider relationships for which Contractor must otherwise obtain the Town consent, such consent shall not be unreasonably withheld.

4.6 Work: The banking services.

## 5. Term of Contract and Time for Performance

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents through April 30, 2027, unless extended pursuant to a provision for extension contained in the Contract documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

## 6. Subject to Appropriation

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. The Town may immediately terminate or suspend this Contract without liability on the part of the Town for damages, penalties, or other charges in the event the appropriation(s) funding this Agreement is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Agreement.

## 7, Termination and Default

7.1 Without Cause. The Town may terminate this Contract at its sole discretion on thirty (30) calendar days' notice when in the best interests of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid, or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered through the date of termination.

7.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on thirty (30) days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid, or delivered by any other appropriate method evidencing actual receipt by the Contractor.

7.3 Default. The following shall constitute events of a default under the Contract:

- 1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal or state law and/or regulations, and Town bylaws and/or regulations.

7.4 Contractor may terminate SE without advance notice (i) if Town or Contractor closes any Accounts established in connection with the banking services that are necessary for the ongoing use of the banking services or necessary for Contractor to charge Service Fees, including, but not limited to, closure of the Primary Account as defined in the Cash Management Master Agreement, (ii) if Contractor determines that Town has failed to maintain a financial condition deemed reasonably satisfactory to Contractor to minimize any credit or other risks involuntary proceeding under the United States Bankruptcy Code or other statute or regulation relating to bankruptcy or relief of debtors, (iii) in the event of a material breach, default in the performance or observance of any term, or material breach of any representation or warranty by Town, (iv) in the

event of default by Town in the payment of any sum owned by the Town to Contractor hereunder or under any note or other agreement, as may be defined therein, (v) if there has been a seizure, attachment, or garnishment of Town's Accounts, assets, or properties, (vi) if Contractor believes immediate action is necessary for the security of Contractor or Town funds, or (vii) if Contractor reasonably believes that the condition provision of Service in accordance with the terms of this Agreement would violate federal, state, or local laws or regulations, or would subject Contractor to unacceptable risk of loss.

#### 8. The Contractor's Breach and the Town's Remedies

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and, except as limited by the Cash Management Master Agreement, the Town of Andover shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

#### 9. Statutory Compliance

9.1 This Contract will be construed and governed by the provisions of applicable federal, state, and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state, or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the Massachusetts General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

☞ M.G.L. Chapter 30B — Procurement of Goods and Services.

9.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

9.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

9.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the

Drawings, Specifications, Scope of Business or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

10. Conflict of Interest

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

11. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

12. Affirmative Action: Non-Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

13. Condition of Enforceability Against the Town

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

14. Corporate Contractor

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate or if a Limited Liability Corporation, a Manager's Certificate or other documentation satisfactory to the Town certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Andover unless and until the Contractor complies with this section.

15. Liability of Public Officials

To the full extent permitted by law, no official, employee, agent, or representative of the Town of Andover shall be individually or personally liable on any obligation of the Town under this Contract.

16. Additional Limitation on Liability

Town further agrees that, except as otherwise provided in Section 15.1 of the Cash Management Master Agreement, Bank shall not be liable or responsible under this Agreement for any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceedings, whether or not Contractor shall be designated a party thereto) to the extent they relate to or arises out of:

(i) any claim of any person that (a) Contractor is responsible for any act or omission of Town, or (b) a Town payment order contravenes or compromises the rights, title, or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order, or other mandate or prohibition with the force or effect of law;

(ii) any failure by Town to observe and perform properly all of its obligations hereunder or any wrongful act of Town or any of its Affiliates;

(iii) any breach by Town of any of its warranties, representations, or agreements;

(iv) any action taken by Contractor in reasonable reliance upon information provided to Contractor by Town or any Affiliate or subsidiary of Town; and

(v) any legal action that Contractor responds to or initiates, including any interpleader action Contractor commences, involving Town or Town's Account(s), including without limitation, any state or federal legal process, writ of attachment, execution, garnishment, tax levy, or subpoena.

17. Workers Compensation Insurance.

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and the Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the Town evidence of such insurance prior to the execution of this Contract in a form satisfactory to the Town before the same shall be binding on the parties thereto, except if specifically waived by the Town.

17.1 The Contractor further understands and agrees that in rendering services to the town under this Contract that the Contractor is an independent contractor and not an employee of the Town, that the Contractor is not covered by the Town's Workers' Compensation, or liability insurance, that the Contractor shall not make any claim against the Town, its officers, agents and employees and that the Contractor indemnifies, holds harmless, and releases the Town from any claims of the Contractor or of any other party that may arise in whole or in part out of or in connection with the work being performed by the Contractor,

18. Documents Materials Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except directors, officers, counsel, agents, servants, or employees of the Contractor) without the prior written approval of the Town, including as set forth in the Cash Management Master Agreement, except as otherwise required by law. The Contractor shall comply with the provisions of Chapter 66 and Chapter 66A of the General Laws of Massachusetts as they relate to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy, and use of confidential data.

Notwithstanding the foregoing, the Contractor shall not be required to inform or notify the Town, or any other party of any disclosure of the Town's Confidential Information: (i) that is made to or requested by a bank examiner, regulatory examiner, or a self-regulatory examiner or auditor in the course of such examiner's examination, inspection, or audit; or (ii) that is made to the extent required by applicable law or in connection with any legal proceedings or otherwise requested by any governmental agency or regulatory authority (including any self-regulatory organization claiming to have jurisdiction) and where notice with respect to such disclosure is prohibited by applicable law. Any such disclosure shall not be deemed a breach of this Agreement.

19. Confidentiality

Unless otherwise exempted by federal or state law or regulation, the Contractor shall comply with M.G.L. ch. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor's possession, or used by the Contractor in the performance of this Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment, or systems.

Town expressly covenants and agrees that Town will not disclose, nor authorize its agents or attorneys to disclose, directly or indirectly, orally or in writing, spontaneously or in response to inquiries from any entity or person, the terms of this Contract, and any other document or agreement to which reference is made herein, except pursuant to any order, summons, or other legal process issued by any state or federal court, or any state, federal, municipal, or other governmental agency, or as reasonably necessary to tax advisors, attorneys, accountants, and other professionals, or as necessary to fulfill any contractual undertakings hereunder. Town expressly recognizes that any unauthorized disclosure of information specified herein, or any threatened disclosure, would cause irreparable injury to Contractor which may not be adequately compensated by damages. Accordingly, in the event of a breach or threatened breach of the provisions of this section of the Contract by Town, Contractor shall be entitled to an injunction restraining and prohibiting Town from doing so or continuing to do so. Nothing herein shall be construed as prohibiting Contractor from pursuing any other remedies available for such breach or threatened breach, including the recovery of damages. The restrictions set forth in this section shall not apply to information which (i) was, is or becomes public knowledge not in violation of this section; (ii) is acquired by Town from a third party lawfully possessing such information; or (iii) is disclosed in testimony, pleadings, or papers filed by Contractor in any judicial proceeding. Town understands and agrees that this section is a material provision of this Contract, that Contractor would not have entered into this Contract without such confidentiality obligations, and that any breach of this section shall be a material breach of this Contract.

20. Record-Keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files, and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Contract.

Notwithstanding the foregoing, review and audit of bank records may be made available subject to bank policy and to various confidentiality, privacy, security, and other banking laws and regulations that may otherwise restrict or prohibit access to Contractor's financial and banking records by third parties.

21. Assignment

The Contractor shall not assign or delegate, in whole or in part or otherwise transfer any liability, responsibility, obligation, duty or interest under this Contract without the written approval of the Town.

Notwithstanding the foregoing, for the purpose of this Agreement, the Town acknowledges and agrees that the acquisition of all or substantially all of the Contractor's assets by another financial institution shall not be deemed as assignment nor shall the transfer of this Agreement or any of the Contractor's rights or obligations hereunder to an Affiliate be considered an assignment.

22. Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility, or liability arising under this Contract.

Notwithstanding the foregoing, for purposes of clarity and the avoidance of doubt, the term "subcontracting" shall be expressly limited to independent contractors, vendors, or service providers engaged through contractual arrangements whereby an organization or person is specifically engaged by the Contractor to assist Contractor in performing some, or all, of the contract between Contractor and the Town. For purposes of further clarification, an independent contractor, vendor or service provider that supplies the same or similar good and/or services to Contractor and others generally that Contractor will then use to deliver products and services to its customers generally shall not be deemed an "independent contract" arrangement. Additionally, for any services provider relationships for which Contractor must otherwise obtain the Town consent, such consent shall not be unreasonably withheld.

23. Minimum Wage

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

24. Audit, Inspection, and Recordkeeping

Review and audit of bank records may be made available subject to bank policy and to various confidentiality, privacy, security, and other banking laws and regulations that may otherwise restrict or prohibit access to Contractor's financial and banking records by third parties.

25. Payment

The Town agrees to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice.

26. Waiver and Amendment

Amendments or waivers of any additional term, condition, covenant, duty, or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

27. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth of Massachusetts, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

28. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town of Andover by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

Notwithstanding the foregoing, the Town authorizes Contractor to, and the Town agrees that Contractor may, send any notice or communication that Contractor is required or permitted to give to the Town, under the Contract, including but not limited to notice of any change to the Services, or the Contract to the Town's above referenced mailing address or the Town's email address as it appears on Contractor's record, or electronically by posting the notice on Contractor's website, or on an Account statement, and that any such notice or communication will be effective and deemed delivered when provided to the Town in such a manner. Notwithstanding the foregoing, for any material changes made to the rights and obligations of either party subject to this Agreement, the Contractor agrees to provide written notice to the Town's business mailing address for such changes. Town agrees to notify Contractor promptly about any change in Town's business mailing or Town's business email address and acknowledges and agrees that no such change will be effective until Contractor has had a reasonable opportunity to act upon such notice. Town agrees that Contractor may consider any such notice or communications as being given to all Account owners when such notice or communication is given to any one Account owner.

29. Binding on Successors

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest.

30. Complete Contract

This instrument, together with its endorsed supplements, and the other components of the Contract Documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

31. Contractor Certifications

31.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 15 IA, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

31.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity, or group of individuals.

31.3 Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

31.4 Business Ethics and Fraud, Waste, and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste, and abuse.

31.5 Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, 529F, M.G.L. ch. 30, S39R, M.G.L. ch. 149, \*27C, M.G.L. ch. 149, 544C, M.G.L. ch. 149, 5148B and M.G.L. ch. 152, S25C.

32. Additional Provisions:

## 32.1 Applicable to Contracts for Services

32.1.2 "Services" shall mean furnishing of labor, time, or effort by the Contractor. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

### 32.1.2 Change Orders:

Change orders for contracts subject to Massachusetts General laws Chapter 30B may not increase the total contract price by more than twenty-five (25%) per cent and shall be, in compliance with General Laws Chapter 30B, 513.

### 32.1.3 Minimum Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, S 1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

### 32.1.4 Insurance:

The Contractor shall obtain and maintain the following insurance:

32.1.4.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.

32.1.4.2 Broad Form Commercial General Liability coverage with limits of at least \$1 Million per occurrence and \$2 Million aggregate, and which shall cover bodily injury, death, or property damage arising out of the work.

32.1.4.3 Automobile Liability Coverage, including coverage for owned, hired, or borrowed vehicles with limits of at least \$1 Million per person, or \$1 Million combined single limit.

32.1.4.4 The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work.

32.1.4.5 Properly executed certificates acceptable to the Town signifying adequate coverage in effect in accordance with the requirements of this Contract for the duration of the contract must be submitted to the Town

prior to execution of this Contract by the Town, with renewal certificates issued not less than 30 days prior to expiration of a policy period.

32.1.4.6 Coverages are to be maintained for a period of 3 years after final payment.

32.1.4.7 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

32.1.4.8 The above referenced liability policies shall include a Waiver of Subrogation in favor of the Town.

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN

THE CONTRACTOR

Therese Reynolds 3/26/24  
Purchasing Agent Date

\_\_\_\_\_  
Company Name: TD Bank, N.A.

Pat Jaulon 3/27/24  
Division/Department Head Date  
Contract Manager

John Weston March 22, 2024  
Signature Date

[Signature] 4/9/24  
Town Manager Date

\_\_\_\_\_  
Print Name & Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Federal Identification No:

D. [Signature] 4.5.24  
Town Counsel Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

011452-5295

Her. S. 4/2/21

Town Accountant

Date

**CERTIFICATION OF GOOD FAITH & NON-COLLUSION**

The undersigned certifies under pains and penalties of perjury that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**CERTIFICATE OF STATE TAX COMPLIANCE**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

George Dow  
Signature of authorized individual submitting Proposal/proposal

George Dow  
Printed Name

TD Bank, N.A.  
Name of Business (if applicable)

01-0137770  
Social Security or Federal Tax Identification Number





**TD BANK, NATIONAL ASSOCIATION**

**SIGNATURE AUTHORITY AND INCUMBENCY CERTIFICATE**

I, Lydia C. Boose, hereby certify that I am the duly elected, qualified and acting Assistant Secretary of TD Bank, National Association (the "Bank"), a national bank organized under the laws of the United States of America, and that the following is a true copy of the resolutions approved June 6, 2023, by the Board of Directors of the Bank, at which meeting a quorum of the Board was present; and that said resolutions have not been further modified or rescinded and are still in full force and effect:

**1. General: Bank Officers**

**RESOLVED:** That the President and CEO, the Chairman, any State, Regional, Market or Divisional President, any Executive Vice President and any Senior Vice President of the Bank is hereby authorized and empowered to execute any and all contracts, deeds, mortgages, notes, security agreements, financing statements, letters of credit, leases, assignments, releases, discharges, renegotiated loan and mortgage documents, purchase and sale agreements for the purchase, lease, sale and conveyance of the Bank's real and personal property and general contracts, documents, agreements and any other instruments in order to effectuate the business of the Bank; and, that any Vice President and any Assistant Vice President is hereby authorized and empowered to execute such of the foregoing as are directly related to his or her respective duties and in furtherance of the business and the interests of the Bank; and

**2. Legal**

**FURTHER RESOLVED:** That the General Counsel and any other attorney in the Legal Department of the Bank is hereby authorized and empowered as attorney for the Bank to execute pleadings and court or administrative filings (within the scope of pertinent court and administrative rules), settlement agreements, regulatory filings, applications, corporate filings, correspondence, deeds, leases, assignments, releases, discharges, documents, contracts, agreements and any other instruments related to and within the scope of his or her respective duties on behalf of and in furtherance of the business and the interests of the Bank; and

**3. Finance: Certain Officers**

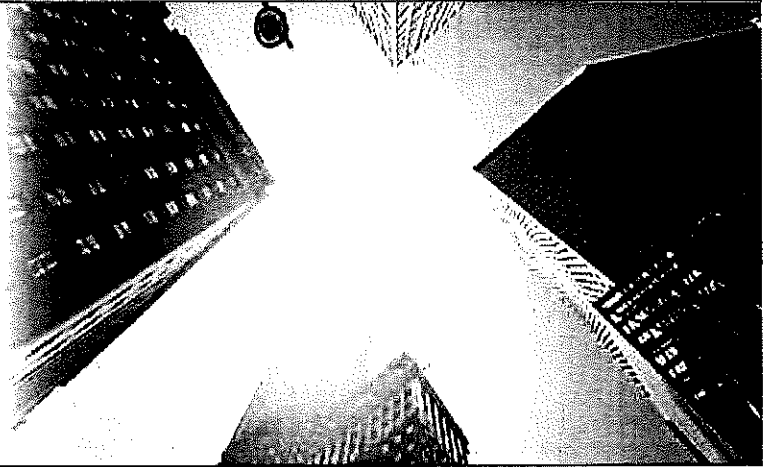
**FURTHER RESOLVED:** That any Executive Vice President, Senior Vice President, Vice President, and Assistant Vice President in the Finance Department of the Bank is hereby authorized and empowered to execute federal, state, or local tax filings or settlements with, or requests to taxing authorities, settlement agreements, regulatory filings or reports, applications, correspondence, checks, notes, documents, agreements, and any other instruments related to and



# Treasury Management Services

PROPOSAL FOR

**Town of Andover**  
**RFP for Banking Services**  
**RFP # 100/002/24**  
**August 10, 2023**  
**Pricing Proposal**



**PREPARED BY**

**George Dow**  
Vice President, Government Banking  
51 Main Street  
Newburyport, MA 01950  
Cell: (603) 339-8468  
Email: [George.Dow@td.com](mailto:George.Dow@td.com)

**Maria L. Krikorian**  
Vice President, Sales Officer  
2 West Main Street  
Waterbury, CT 06702  
Phone: (203) 759-4044  
Email: [Maria.Krikorian@td.com](mailto:Maria.Krikorian@td.com)







America's Most Convenient Bank<sup>®</sup>

August 10, 2023

Theresa Peznola  
Central Purchasing Department  
Town of Andover  
397 Lowell Street  
Andover, MA 01810

Re: TD Bank RFP Response – RFP# 100/002/24 General Depository Banking Services

Ms. Peznola,

TD Bank is proud to present the following Pricing Proposal to meet the banking services requirements for the Town of Andover's RFP# 100/002/24 General Depository Banking Services. A brief recap of the following proposal is as follows:

**Cost Proposal**

- **NO FEES** – Based on the Town's stated balances and service volumes in RFP # 100/002/24 and associated Addendums 1-2, and Supplemental documents, the Town will have **NO FEES**.
- **Compensating Balance** – The Average Collected balance of \$3,838,963 is required to avoid any pro-rated fees. *Note: All balances earn interest, even those used for calculating the Earnings Credit, which is uncommon in the industry today. Based on interest earnings combined with the earnings credit the Town would only be required to have approximately \$1MM on hand to offset all proposed service costs (\$5,135). Based on the Town's current balances the Town will have no service costs.*
- **Earnings Credit Rate – 1.75%** (This will generate an Earnings Credit of \$32,439, based on \$25MM in average balances. This level of Earnings Credit will easily cover any service costs the Town may generate.) Earnings Credit calculation is as follows: Average Collected Balance x ECR / # Days in Year x #days in month
- **Interest Rate on Average Collected Balances – 4.50%**
- **Estimated Monthly Interest Earned** – Based on the Town's Average Collected Balances of \$24,750,000, the Town will earn on average **\$94,592.47** per month in interest, OR an estimated \$1,135,109.00 per year

On behalf of TD Bank and the designated Town of Andover TD Bank Relationship Management Team, we would like to thank you for your time and continued business and consideration of TD Bank, *America's Most Convenient Bank*<sup>®</sup>, a trusted partner and advisor to Massachusetts government institutions for over 150 years.

Respectfully submitted,

George Dow, V.P.  
Sr. Government Banking Relationship Manager  
51 State Street, Newburyport, MA 01950  
[George.dow@td.com](mailto:George.dow@td.com)  
C: 603-339-8468



# Pricing Proposal



TD Bank is pleased to offer the Town of Andover our **Municipal NOW Checking Account** model. This proposed solution provides a competitive Earnings Credit Rate (ECR) to offset service costs as well as a competitive interest rate on the same dollar.

TD Bank is pleased to offer the Town an ECR of **1.75%\*** on collected balances less a 10% reserve to assist in offsetting any service fees incurred. This will allow the Town to potentially earn interest and earnings credits on the same deposits.

## Improve Cash Flow

- Same-day availability on cash and On-Us checks deposited.
- Next day availability for all other checks deposited.
- Unlike other banks, we will not delay your deposits by two, three, and more days.
- More to invest and fewer occurrences of uncollected balances.

## Bank Fees

- Projected net monthly cost for services outlined on the Volume Pro Forma, based on your current average balance of \$25,000,000 will be **\$0.00**. Should your collected balances fall below **\$3,838,963**, a pro-rated charge will be deducted from your account on the 15<sup>th</sup> of the month concluding the month of service. The calculation is as follows:

***Average Collected Balance x ECR / days in the year x days in the month***

***Note: All balances earn interest, even those used for calculating the Earnings Credit, which is uncommon in the industry today. Based on interest earnings combined with the earnings credit, the Town would only be required to have approximately \$1MM on hand to offset all proposed service costs. Based on the Town's current balances the Town will have no service costs.***

- Decrease costs.
- Better predictability of cash flow.

## Maximize Interest Income

- Based on your current average balance of \$25,000,000, you have exceeded the balance required to offset fees.
- The Town will earn interest on the first \$1.00 of the entire monthly Average Collected Balance
- Earn market based interest rate of **4.50%\***.
- Annual Interest Earnings, based on current rate, estimated at **\$1,112,178**.

*\*TD Bank reserves the right to change its rate and methodology from time to time in its sole and absolute discretion without regard to any external interest rate index or market conditions.*



Town Payroll/School

Payroll/Vendor

Annual Number  
of transactions

Per Item

Annual Cost

<b>Balance Related Services</b>			
FDIC assessment	15,000,000.00	\$0.00	
<b>Depository Services</b>			
Account Maintenance	36	\$27.00	\$972.00
Banking Center Deposit	1	\$1.20	\$1.20
General checks paid truncated	15000	\$0.26	\$3,900.00
Paper Deposit Statement Mailed	16	\$3.00	\$48.00
Returns-Duplicate Advice	36	\$17.00	\$612.00
Cks dep un-encoded items	1	\$0.23	\$0.23
Debits posted- electronic	1000	\$0.20	\$200.00
Credits posted electronic	150	\$0.20	\$30.00
Direct Account transfer	50		\$0.00
Check Paid images	56		\$0.00
<b>General ACH Services</b>			
Ach optional reports - fax		\$0.00	\$0.00
Ach delete/reversal	10	\$17.00	\$170.00
Ach return item	20	\$11.50	\$230.00
Ach monthly maintenance	36	\$52.00	\$1,872.00
Ach input file	380	\$20.00	\$7,600.00
Ach blocks auth instructions	16	\$21.00	\$336.00
Ach blocks auth maintenance	36	\$27.00	\$972.00
Ach originated addenda	1200	\$0.05	\$60.00
Ach blocks auth add- change		\$0.00	\$0.00
Ach notif of change (NOC)	20	\$4.50	\$90.00
Ach standard reports electronic	76	\$0.00	\$0.00
Ach consumer on us credit	15000	\$0.17	\$2,550.00
Ach consumer off us credit	75000	\$0.17	\$12,750.00
Ach on us credit same day		\$2.50	\$0.00
Ach on us debit same day		\$2.50	\$0.00
Ach credit received item	120	\$0.20	\$24.00
Ach debit received item	100	\$0.20	\$20.00



<b>Wire Transfer</b>			
Elec wire out-domestic	12	\$13.75	\$165.00
Elec wire out- book db			\$0.00
Incoming domestic wire	75		\$0.00
Book Credit			\$0.00
Book credit			\$0.00
Account reconciliation	36		\$0.00
Arp full ppay maint-ppr supp	16		\$0.00
Arp full ppay input per item	54000		\$0.00
Arp void cancel items	400		\$0.00
Payee positive pay- exceptions	46		\$0.00
Payee positive pay- issue match	36000		\$0.00
Payee positive pay return other	10		\$0.00
Payee positive pay- maint	36		\$0.00
<b>Information Services</b>			
Gcs transaction history		\$0.20	
<b>Image</b>			
TD proposes the Town utilize the online platform to view images			
Cd rom maintenance	36	\$0.00	
Cd rom per image	10058	\$0.00	
Cd rom disk	13	\$0.00	
Image archive -90 days	9471	\$0.00	
Image maintenance-cop	12	\$0.00	
<b>Miscellaneous</b>			
Check copy		\$0.00	
Check cashed -non customer		\$0.00	
Non relationship cust ck cashed	175	\$0.00	

Projected net monthly cost for services outlined on the Volume Proforma, based on your current average balances will be \$0.00. Should your collected balances fall below \$3,838,963, a pro-rated charge will be deducted from your account on the 15th of the month concluding the month of service.

Please Note: All balances earn interest, even those used for calculating the Earnings Credit, which is uncommon in the industry today. Based on interest earnings combined with the earnings credit the Town would only be required to have approximately \$1MM on hand to offset all proposed service costs of \$5,135. Based on the Town's current balances the Town will have no service costs.

\* Please refer to TD's Proforma attached for complete costs and pricing details.



**Description Depository**

	<b>Annual Units</b>	<b>Per Item</b>	<b>Annual Cost</b>
<b>Balance Related Services</b>			
FDIC assessment	15000000	\$0.00	\$0.00
<b>Depository Services</b>			
Account Maintenance	12	\$27.00	\$324.00
Banking Center Deposit	260	\$1.20	\$312.00
Paper Deposit Statement Mailed	12	\$3.00	\$36.00
Returns-Duplicate Advice			\$0.00
Deposit Account Statement	12	\$0.00	\$0.00
Debits posted- electronic	700	\$0.20	\$140.00
Credits posted electronic	25	\$0.20	\$5.00
Direct Account Transfer	100	\$0.60	\$60.00
Curr/coin dep/\$100 - BKG CTR	200	\$0.0005	\$0.10
Chk Dep Link Item Processed	25000	\$0.23	\$5,750.00
Chk Dep Link Batch	750	\$0.00	\$0.00
<b>General ACH Services</b>			\$0.00
ACH Debit Block Monthly	12	\$21.00	\$252.00
ACH Per Item	600	\$0.17	\$102.00
Ach monthly maintenance		\$52.00	\$0.00
Ach blocks auth instructions		\$21.00	\$0.00
Ach blocks auth maintenance		\$27.00	\$0.00
Ach originated addenda		\$0.05	\$0.00
Ach corporate on us credits		\$0.17	\$0.00
Ach credit received item		\$0.20	\$0.00
Ach debit received item		\$0.20	\$0.00



<b><u>Controlled Disbursement</u></b>			
Wire Transfer	75	\$13.75	\$1,031.25
Elec wire out- book db		\$13.75	\$0.00
Incoming domestic wire		\$14.00	\$0.00
Wire advice mail		\$2.50	\$0.00
Book Credit		\$14.00	\$0.00
<b><u>Account Reconciliation</u></b>			
Cd rom maintenance		\$0.00	
Cd rom per image		\$0.00	
Cd rom disk		\$0.00	
Image archive -90 days		\$0.00	
Image maintenance-cpo		\$0.00	
Full recon input trans		\$20.00	
<u>Prior Day Activity</u>		\$0.00	
<u>Current Day</u>		\$0.00	
<b><u>Miscellaneous</u></b>			
Check cashed -non customer	20	\$10.00	TD Bank will absorb this cost
<b><u>Quote all of the above prices without collateralization.</u></b>			
<b><u>Show all additional costs below:</u></b>			
* Please refer to TD's Proforma attached for complete costs and pricing details.			
Projected net monthly cost for services outlined on the Volume Proforma, based on your current average balances will be \$0.00. Should your collected balances fall below \$3,838,963, a pro-rated charge will be deducted from your account on the 15th of the month concluding the month of service.			
Please Note: All balances earn interest, even those used for calculating the Earnings Credit, which is uncommon in the industry today. Based on interest earnings combined with the earnings credit the Town would only be required to have approximately \$1MM on hand to offset all proposed service costs of \$5,135 <u>Based on the Town's current balances the Town will have no service costs.</u>			
<b><u>No other charges will be paid unless specifically stated and included in the proposal.</u></b>			





2023 Pricing Proforma ~ Municipal NOW Checking

Prepared for:

Town of Andover  
Consolidated Proforma

Date (MM/DD/YYYY): 8/10/2023

Days in Year: 365  
Days in Period: 31

Balance Information			
Average Ledger Balance			\$ 25,000,000.00
Less: Estimated Float	3.00%		750,000.00
Average Collected Balance			24,250,000.00
Less: Required Reserve	Rate 10.00%		2,425,000.00
Investable Balance			21,825,000.00
Collected Balances Required to Offset Services			3,838,962.72
Collected Balance Excess (Deficit)			20,411,037.28

Balance and Fee Summary			
Balances Available for Earnings Credit (Avg Coll Bal less Required Reserve)			\$ 21,825,000.00
Earnings Credit Allowance	Rate 1.75%		32,438.53
Less: Total Analyzed Services			5,135.27
Total Analyzed Charges			-
Total Fee Based Charges*			-
Total Charges Due			-

Interest Summary			
Average Collected Balance			\$ 24,250,000.00
Total Monthly Interest Earned	Rate: 4.50%		\$ 92,681.51

Summary of Services

AFP CODE	SERVICE CODE	SERVICE DESCRIPTION	VOLUME	PER ITEM FEE	TOTAL FEE	BALANCE TO SUPPORT SERVICES	
<b>General Account Services</b>						<b>439.00</b>	<b>328,182.28</b>
010000	01000	Account Maintenance	4	27.0000	108.00	80,737.33	
		Tier I (<5 Accounts)		27.0000			
		Tier II (5-10 Accounts)		25.0000			
		Tier III (11+ Accounts)		23.0000			
150100	15100	Checks Paid	1,250	0.2600	325.00	242,959.55	
010310	01401	DDA Paper Statement Fee	2	3.0000	6.00	4,485.41	
000214	00214	Dau [Drawn Against Uncollected]		Prime + 4%	-		
000230	00230	Balance Premium Assessment			0.00	0.00	
						<b>565.42</b>	<b>422,689.81</b>
<b>Depository Services</b>							
010101	10000	Deposits Processed	23	1.2000	27.60	20,632.87	
100200	10222	Checks Deposited	2,084	0.2300	479.32	358,324.22	
100015	10718	Branch Cash Deposit/\$100 (>\$10,000)	25,000		7.50	5,606.76	
		Tier 1: \$0 - \$10,000	10,000		-	0.00	
		Tier 2: \$10,000+	15,000	0.0005	0.00	0.00	
100400	10452	Return Checks First Presentment	0	17.0000	0.00	0.00	
150320	10400	Return Checks Final Presentment	3	17.0000	51.00	38,125.96	
						<b>0.00</b>	<b>0.00</b>
<b>Disbursement Services</b>							
150341	15345	Overdraft Per Item - Paid		35.0000	0.00	Fee-Based	
150342	15326	Overdraft Per Item - Return		35.0000	0.00	Fee-Based	
150341	15352	Uncollected Per Item - Paid		35.0000	0.00	0.00	
150342	15332	Uncollected Per Item - Return		35.0000	0.00	0.00	
150420	15420	Stop Payment - Manual		38.5000	0.00	0.00	
						<b>725.55</b>	<b>542,397.85</b>
<b>Information Reporting and Transfer Services</b>							
011000	44102	TD eTreasury Base Package Maintenance - Gold	1	130.0000	130.00	97,183.82	
011002	44108	TD eTreasury - Online Accounts (Gold)	4	20.0000	80.00	59,805.43	
400272	44107	TD eTreasury - Transaction Records (Gold)	1,478	0.2000	295.60	220,981.05	
250000	44110	TD eTreasury - ACH Module Maintenance (Gold)	1	15.0000	15.00	11,213.52	
350000	44144	TD eTreasury - Wire Transfer Module (Gold)	1	15.0000	15.00	11,213.52	
010821	44126	TD eTreasury - Online Security	5	14.0000	70.00	52,329.75	
150410	44129	TD eTreasury - Stop Payments	0	28.0000	0.00	0.00	
250102	44112	TD eTreasury - ACH Initiated	0	0.2200	0.00	0.00	
250505	44163	TD eTreasury - ACH Batch Initiated	0	1.2500	0.00	0.00	
350120	44142	TD eTreasury - Book Transfers	12	0.6000	7.20	5,382.49	
350100	44145	TD eTreasury - Wire Out Domestic	7	13.7500	96.25	71,953.41	
350551	44154	TD eTreasury - Customer Maint Wire Templates	0	0.9000	0.00	0.00	
200208	44151	TD eTreasury - Issue / Cancel Transactions	33	0.5000	16.50	12,334.87	
012014	44125	TD eTreasury - Extended Image Search	0	17.0000	0.00	0.00	
011021	44117	TD eTreasury - Automated Email Report Delivery	0	1.2500	0.00	0.00	



AFP CODE	SERVICE CODE	SERVICE DESCRIPTION	VOLUME	PER ITEM FEE	TOTAL FEE	BALANCE TO SUPPORT SERVICES
<b>Wire and Other Fund Transfer Services</b>					<b>84.00</b>	<b>62,795.70</b>
350200	35203	Wire Transfer Outgoing (Manual) - Domestic	0	45.0000	0.00	0.00
350300	35300	Wire Transfer Incoming - Domestic	6	14.0000	84.00	62,795.70
350402	35415	EFT Wire Notification - Email	0	2.5000	0.00	0.00
350330	35700	Wire Transfer Incoming - Exceptions	0	21.0000	0.00	0.00
<b>ACH Services</b>					<b>2,338.80</b>	<b>1,748,411.67</b>
250201	25201	ACH Received Credits	25	0.2000	5.00	3,737.84
250200	25202	ACH Received Debits	149	0.2000	29.80	22,277.52
250000	25001	ACH Maintenance Direct	3	52.0000	156.00	116,620.58
250102	25100	ACH Originated Items	7,550	0.1700	1,283.50	959,503.33
250141	25101	ACH Same Day Originated Surcharge	0	2.5000	0.00	0.00
		Tier 1: 1 - 99		2.5000		
		Tier 2: 100 - 499		2.0000		
		Tier 3: 500+		1.7500		
250120	25103	ACH Addenda Record Initiated	100	0.0500	5.00	3,737.84
251070	25850	ACH Notice Of Change	2	4.5000	9.00	6,728.11
250400	25301	ACH Returns Per Item	2	5.7500	11.50	8,597.03
250312	25302	ACH Unauthorized Return Surcharge		6.5000	0.00	0.00
250705	25401	ACH File Transmission	31	20.0000	620.00	463,492.06
251052	25802	ACH Debit Block	1	21.0000	21.00	15,698.92
251050	25804	ACH Positive Pay Accounts	3	27.0000	81.00	60,553.00
251057	25803	ACH Filter (Capped at \$100)	20	7.0000	100.00	74,756.78
250640	25602	ACH Manual Item Reversal	1	17.0000	17.00	12,708.65
2506ZZ	25603	ACH Manual File/Batch Reversal/Deletion	0	65.0000	0.00	0.00
250400	25334	ACH Returns File Transmission - Ftx		20.0000	0.00	0.00
250619	25851	Bank Assisted NOC Correct Surcharge		2.0000	0.00	0.00
251010	25605	ACH EDI Research		50.0000	0.00	0.00
<b>Account Reconciliation Services</b>					<b>822.50</b>	<b>614,874.55</b>
2001ZZ	20100	ARP Paid Items	1,250	0.0900	112.50	84,101.38
150030	15030	Positive Pay Maintenance	3	60.0000	180.00	134,562.21
150322	15032	Positive Pay Returned Item	1	15.0000	15.00	11,213.52
150320	15035	Check Block Positive Pay	0	25.0000	0.00	0.00
200010	20010	Full Reconciliation Maintenance	3	85.0000	255.00	190,629.80
200321	15230	Stale Dating Monthly Maintenance	0	7.5000	0.00	0.00
150124	15299	Payee PositivePay Monthly Maintenance	3	20.0000	60.00	44,854.07
20020D	20201	Issue File Transmission	12		200.00	149,513.57
		Tier 1: 1 - 10		20.0000		
		Tier 2: 10+	2	-		
<b>CD-ROM Service</b>					<b>0.00</b>	<b>0.00</b>
151350	15501	CD-ROM Maintenance	0	70.0000	0.00	0.00
151351	15503	CD-ROM Per Item	0	0.0900	0.00	0.00
151350	15502	CD-ROM Additional Account	0	12.0000	0.00	0.00
151353	15506	CD-ROM Additional CD	0	30.0000	0.00	0.00
<b>Other Miscellaneous Services</b>					<b>160.00</b>	<b>119,610.86</b>
150500	15050	Non-Customer Check Cashing Fee	16	10.0000	160.00	119,610.86
<b>TOTAL SERVICES PROVIDED</b>					<b>5,135.27</b>	<b>3,838,962.72</b>

The above Pro Forma Summary of Services and Activity reflects an understanding of your current banking relationship. Additional charges will apply should any additional services be discussed, offered or implemented after the presentation of this proposal. The proposed "per item fee" pricing will remain in effect for 90 days from the date of issuance; however ECR and other quoted rates may vary depending on current market conditions and are subject to change at any time.

\*Fee-Based service fees are not eligible for offset using Earnings Credit.

GB



**AFP SERVICE CODES  
Accredited Provider™**

Member FDIC | TD Bank, N.A.





## CASH MANAGEMENT MASTER AGREEMENT

Customer: **TOWN OF ANDOVER, MA TIN: [REDACTED] 1069**

Date: .....

TD Bank, N.A. ("Bank") provides a broad range of non-consumer cash management products and services to its customers. The customer identified above ("Customer") wishes to use, and Bank is willing to provide to Customer, those services that have been checked below:

1. TD eTreasury Services (Appendix I) .....
2. TD ACH Origination Services (Appendix II).....
3. TD Wire Transfer Services (Appendix III) .....
4. TD Sweep Services (Appendix IV) .....
5. TD Positive Pay Services (Appendix V).....
6. TD Controlled Disbursement Services (Appendix VI).....
7. TD Lockbox Services (Appendix VII).....
8. TD Digital Express Services (Appendix VIII).....
9. TD Account Reconciliation Services - Full (Appendix IX).....
10. TD Account Reconciliation Services – Partial (Appendix X).....
11. TD Deposit Reconciliation Services (Appendix XI) .....
12. TD Check Imaging Services (Appendix XII) .....
13. TD Zero Balance Account Services (Appendix XIII) .....
14. TD Currency Services (Appendix XIV).....
15. TD EscrowDirect Services (Appendix XV) .....
16. TD BAI2 File Transmission Services (Appendix XVI) .....
17. TD Data Exchange Services (Appendix XVII).....
18. TD ACH Third Party Sender Services (Appendix XVIII).....
19. TD Image Cash Letter Services (Appendix XIX) .....
20. TD Healthcare Remittance Management Services (Appendix XX) .....
21. TD Data Transmission Services (Appendix XXI) .....
22. TD ACH Positive Pay Services (Appendix XXII) .....
23. TD Currency Services for Smartsafe (Appendix XXIII) .....

- 24. TD Electronic Bill Payment Presentment & Payment Services (Appendix XXIV) .....
- 25. TD Integrated Payables Processing Services (Appendix XXV).....
- 25. TD Electronic Lockbox (Bill Payment Aggregation) Services (Appendix XXVI).....

The “Cash Management Service(s)” or “Service(s)” shall hereafter mean the cash management service(s) identified above and provided by Bank (and/or Bank’s third-party service providers) to Customer pursuant to this Agreement, the Appendices, including Amended Appendices, as defined below, exhibits, Setup Form(s), and any service guides or manuals made available to Customer by Bank.

**Agreement**

This Cash Management Master Agreement (this “Agreement”) is by and between Bank and Customer. Bank agrees to provide to Customer and Customer agrees to use certain Cash Management Services (as defined above) offered and approved by Bank for Customer’s use. Bank and Customer agree that the Cash Management Services will be governed by the general terms and conditions of this Agreement and the rules and procedures applicable to each of the Services (collectively, the “Rules”). The Rules are contained in the Appendices to this Agreement, and are hereby incorporated in and made a part of this Agreement. This Agreement shall be effective when signed by both parties.

By signing this Agreement, Customer agrees to be bound by the terms and conditions of this Agreement and all applicable Appendices, as the same may be amended from time to time as further described below. This Agreement becomes effective with respect to a Cash Management Service(s) described herein when this Agreement has been executed without modification by Customer, and the Agreement becomes effective for any subsequent Cash Management Service(s) that Customer may wish to use when any relevant Appendices have been executed without modification by Customer. Bank will provide use of a Cash Management Service when Bank has received all required and properly executed agreements and forms and when Customer has satisfactorily completed Bank’s implementation, testing and training requirements, if any, in the use of the Service(s). Customer may not modify any portion of this Agreement or any Appendices to this Agreement without Bank’s prior written consent and agreement, and any attempt by Customer to do otherwise shall render Customer’s Agreement null and void.

The following terms and conditions are applicable to all Cash Management Services provided to Customer hereunder.

1. **Definitions.** Capitalized terms used in this Agreement and in any Appendix, unless otherwise defined herein or therein, shall have the meanings set forth below:

“Access Devices” means collectively all security, identification and authentication mechanisms, including, without limitation, security codes or tokens, PINs, electronic identities or signatures, encryption keys and/or individual passwords associated with or necessary for Customer’s access to and use of any Cash Management Services.

“Account” means an Account, as such term is defined in the Account Agreement, used in connection with any Cash Management Services.

“Account Agreement” means the Business Deposit Account Agreement issued by Bank and governing Customer’s deposit relationship with Bank, as the same may be amended from time to time.

“Affiliate(s)” means, with respect to any party, any company controlled by, under the control of, or under common control with such party.

“Amended Appendix” means an amendment to an Appendix that supplements or revises, but does not revoke in its entirety, a prior Appendix for a particular Service.

“Appendix” means a description of the rules and procedures applicable to a particular Service to be provided by Bank to Customer. Each such Appendix, including any Amended Appendix, is incorporated herein by reference and made a part hereof. If there is any conflict between the provisions of this Agreement and any Appendix or Amended Appendix, the Appendix or Amended Appendix shall govern, but only to the extent reasonably necessary to resolve such conflict.

“Authorized Representative” means a person designated by Customer as an individual authorized to act on behalf of Customer and/or authorized to access and use the Services, as evidenced by certified copies of resolutions from Customer’s board of directors or other governing body, if any, or other certificate or evidence of authority satisfactory to Bank, including, without limitation, any Customer enrollment or Setup Form(s) completed by Customer.

“Bank Internet System” means Bank’s Internet-based electronic information delivery and transaction initiation system, as may be offered by Bank from time to time, including but not limited to Bank’s eTreasury Services.

“Bank Internet System Appendix” means the agreement issued by Bank and governing Customer’s use of the Bank Internet System.

"Business Day" has the meaning given to it in the Account Agreement.

"Calendar Day" has the meaning given to it in the Account Agreement.

"Primary Account" means the Account designated by Customer to which any direct Service fees due Bank may be charged in accordance with this Agreement. Unless otherwise agreed upon in writing by Bank, the address for Customer associated with the Primary Account shall be the address to which all notices and other communications concerning the Services may be sent by Bank.

"Substitute Check" has the meaning given to it in Section 3(16) of the *Check Clearing for the 21<sup>st</sup> Century Act* ("Check 21"), P.L. 108-100, 12 U.S.C. § 5002(16).

## 2. The Services.

2.1 Bank shall provide to Customer, subject to this Agreement and the applicable Appendix, all Cash Management Services that Customer may request from time to time. Bank shall not be required to provide any Services specified in an Appendix unless Customer also provides all information reasonably required by Bank to provide to Customer the Service(s) specified therein.

2.2 Customer, through its Authorized Representative, may use the Services solely in accordance with the terms and conditions of this Agreement and the related Appendices.

2.3 With the exception of scheduled off-peak downtime periods, Bank shall make all reasonable efforts to make the Services available to Customer each Business Day.

2.4 Access to on-line Services will be denied if invalid Access Devices are used or if the user exceeds the number of invalid attempts allowed by Bank.

2.5 Customer is authorized to use the Services only for the purposes and in the manner contemplated by this Agreement.

2.6 Customer agrees to cooperate with Bank, as Bank may reasonably request, in conjunction with the performance of the Services.

2.7 Customer agrees to comply with the Rules, as they may be amended from time to time by Bank.

2.8 A number of Bank's Services are subject to processing cut-off times on a Business Day. Customer can obtain information on Bank's current cut-off time(s) for Service(s) by reviewing the relevant Service's Setup Form(s), as applicable, or by calling Cash Management Customer Care at 1-866-475-7262, or by contacting Customer's Cash Management Sales

Representative. Instructions received after a cut-off time or on a day other than a Business Day may be deemed received as of the next Business Day.

2.9 Bank may make changes to this Agreement and any Appendix at any time by providing notice to Customer in accordance with the terms of this Agreement or as may be required by applicable law. Notwithstanding anything to the contrary herein, any Appendix that provides for an alternative form and method for making changes to such Appendix and for providing notice of the same shall govern for that Service. Further, notwithstanding anything to the contrary in this Agreement or in any Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may immediately initiate changes to any procedures and provide prompt subsequent notice thereof to Customer.

2.10 In connection with this Agreement and the Services, Customer agrees that it shall present, and Bank shall have a duty to process, only Substitute Checks that are created by financial institutions; provided, however, that this limitation shall not apply to Substitute Checks created with data from Customer pursuant to any Appendix for Services involving the creation of electronic check images using check conversion technology.

## 3. Covenants, Representations and Warranties.

3.1 Customer represents and warrants that the individual(s) executing this Agreement has/have been authorized by all necessary Customer action to sign such agreements and to issue such instructions as may be necessary to carry out the purposes and intent of this Agreement and to enable Customer to receive each selected Service. Each Authorized Representative whom Customer permits to access and use the Services is duly authorized by all necessary action on the part of Customer to (i) access the Account(s) and use the Services; (ii) access any information related to any Account(s) to which the Authorized Representative has access and (iii) engage in any transaction relating to any Account(s) to which the Authorized Representative has access.

3.2 Bank may unconditionally rely on the validity and accuracy of any communication or transaction made, or purported to be made, by an Authorized Representative.

3.3 Customer shall take all reasonable measures and exercise all reasonable precautions to prevent the unauthorized disclosure or use of all Access Devices associated with or necessary for Customer's use of the Services.

3.4 Customer is not a "consumer" as such term is defined in the regulations promulgated pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., nor a legal representative of a "consumer."

3.5 Customer shall use the Services only for its own lawful business purposes. Customer shall not

use the Services for or on behalf of any third party. Customer shall take all reasonable measures and exercise reasonable precautions to ensure that Customer officers, employees and Authorized Representatives do not use the Services for personal, family or household purposes, or any other purpose not contemplated by this Agreement.

3.6 Customer and Bank shall comply with (i) all applicable laws, regulations, rules and orders; (ii) the Account Agreement; (iii) all applicable National Automated Clearing House Association ("NACHA") rules, regulations, and policies; (iv) the Uniform Commercial Code; (v) Office of Foreign Asset Control ("OFAC") sanctions; and (vi) all applicable laws, regulations and orders administered by FinCEN (collectively (i) through (vi), "Compliance Laws").

#### 4. Account Agreement; Service Fees.

4.1 Bank and Customer agree that any Account established by Customer in connection with Services offered by Bank shall be governed by the Account Agreement, including one or more fee schedules issued by Bank for the Account. If there is any conflict between the terms and provisions of this Agreement and the Account Agreement, the terms and provisions of this Agreement shall govern, but only to the extent reasonably necessary to resolve such conflict.

4.2 Customer agrees to compensate Bank for all Accounts and Services that Bank provides pursuant to this Agreement, including any Appendices, in accordance with the applicable fee schedules or agreements between Bank and Customer in effect from time to time that apply to the Services (the "Service Fees"). By signing below, Customer acknowledges receipt of the Account Agreement and acceptance of the Service Fees, and agrees to be bound by their terms, as those terms may be amended from time to time.

4.3 Customer authorizes Bank to charge the Primary Account for all applicable charges and fees to the extent that such charges and fees are not offset by earnings credits or other allowances for Customer's Account(s). If the balance of available funds in the Primary Account is not sufficient to cover such fees, Bank may charge such fees to any other deposit Account maintained by Customer with Bank. Customer also agrees to pay all sales, use or other taxes (other than taxes based upon Bank's net income) that may be applicable to the Services provided by Bank hereunder. Bank may charge a service charge for Account research requested by Customer in accordance with the published schedule of charges for such research.

4.4 Bank may amend Service Fee(s), in aggregate or individually, at any time. To the extent that such changes adversely affect Customer, Bank will use commercially reasonable efforts to give notice to Customer of such changes, in accordance with applicable law, or as may otherwise be agreed to by the parties.

5. **Customer Identification Program.** Customer agrees to provide to Bank, before Bank begins providing any Services to Customer, any and all information required to comply with applicable law and Bank's policies and procedures relating to customer identification. Such information may include, without limitation, official certificates of customer existence, copies of Customer formation agreements, business resolutions or equivalent documents, in a form acceptable to Bank authorizing Customer to enter into this Agreement and to receive Services from Bank pursuant hereto, and designating certain individuals as Customer's Authorized Representatives.

#### 6. Software.

6.1 Bank may supply Customer with certain software owned by or licensed to Bank to be used by Customer in connection with the Services. Customer agrees that all such software is and shall remain the sole property of Bank and/or the vendor of such software. Customer agrees to comply with all of the terms and conditions of all such license agreements and other documents to which Customer agrees to be bound. Unless otherwise agreed in writing between Bank and Customer, Customer shall be responsible for the payment of all costs of software, installation of any software provided to Customer in connection with the Services, as well as for selection, installation, maintenance and repair of all hardware required on Customer's premises for the successful operation of the software.

6.2 Customer shall indemnify, defend and hold harmless Bank, its successors and assigns, from and against any loss, damage or other claim or liability attributable to Customer's unauthorized distribution or disclosure of any software provided with the Services or any other breach by Customer of any software license. The provisions of this paragraph shall survive termination of this Agreement.

6.3 Any breach or threatened breach of this Section will cause immediate irreparable injury to Bank, and Customer agrees that injunctive relief, including preliminary injunctive relief and specific performance, should be awarded as appropriate to remedy such breach, without limiting Bank's right to other remedies available in the case of such a breach. Bank may apply to a court for preliminary injunctive relief, permanent injunctive relief and specific performance, but such application shall not abrogate Bank's right to proceed with an action in a court of competent jurisdiction in order to resolve the underlying dispute.

7. **Computer Requirements.** For certain Cash Management Services, Customer will need to provide at Customer's own expense, a computer, all software and necessary telephone lines, Internet or other connections and equipment as needed to access the Services (collectively, the "Computer"). Customer's Internet or other web browser software must support a minimum 128-bit SSL encryption or other security measures as Bank may specify

from time to time. Customer's browser must be one that is certified and supported by Bank for optimal performance. Customer is responsible for the installation, maintenance and operation of the Computer and all related charges. Customer is responsible for installing and maintaining appropriate virus protection software on Customer's Computer. Bank is not responsible for any errors or failures caused by any malfunction of the Computer or any Computer virus or related problems that may be associated with access to or use of the Services or the Computer. Bank also is not responsible for any losses or delays in transmission of information Customer provides to Bank or otherwise arising out of or incurred in connection with the use of any Internet or other service provider providing Customer's connection to the Internet or any browser software.

## **8. Bank Third Parties.**

8.1 Customer acknowledges that certain third parties, agents or independent service providers (hereinafter "Third Parties") may, from time to time, provide services ("Third Party Services") to Bank in connection with Bank's provision of the Services to Customer and that accordingly, Bank's ability to provide the Services hereunder may be contingent upon the continuing availability of certain services from such Third Parties. Third Party Services may involve the processing and/or transmission of Customer's data, instructions (oral or written) and funds. In addition, Customer agrees that Bank may disclose Customer's financial information to such Third Parties (i) where it is necessary to provide the Services requested; (ii) in order to comply with laws, government agency rules or orders, court orders, subpoenas or other legal process or in order to give information to any government agency or official having legal authority to request such information; or (iii) when Customer gives its written permission.

8.2 Bank will be responsible for the acts and omissions of its Third Parties in the same manner as if Bank had performed that portion of the Services itself, and no claim may be brought by Customer against such Third Parties. Notwithstanding the foregoing, any claims against Bank (with respect to the acts or omissions of its Third Parties) or its Third Parties shall be subject to the limitations of liability set forth herein to the same extent as if Bank had performed that portion of the Services itself. However, Bank will not be deemed to be the agent of, or responsible for, the acts or omissions of any person (other than its Third Parties), and no such person shall be deemed Bank's agent.

## **9. Customer Information; Security Procedures.**

9.1 In providing the Services, Bank shall be entitled to rely upon the accuracy of all information and authorizations received from Customer or an Authorized Representative and the authenticity of any signatures purporting to be of Customer or an Authorized Representative. Customer agrees promptly to notify Bank of any changes to any information or authorizations

provided to Bank in connection with the Services, and further agrees to promptly execute any new or additional documentation Bank reasonably deems necessary from time to time in order to continue to provide the Services to Customer.

9.2 Customer agrees that it shall be solely responsible for ensuring compliance with any security procedures established by Bank in connection with the Services, as such may be amended from time to time, and that Bank shall have no liability for any losses sustained by Customer as a result of a breach of security procedures if Bank has substantially complied with the security procedures.

9.3 Bank shall be entitled to rely on any written list of Authorized Representatives provided to Bank by Customer until revoked or modified by Customer in writing. Customer agrees that Bank may refuse to comply with requests from any individual until Bank receives documentation reasonably satisfactory to it confirming the individual's authority. Bank shall be entitled to rely on any notice or other writing believed by it in good faith to be genuine and correct and to have been signed by the individual purporting to have signed such notice or other writing. Bank may also accept verbal instructions from persons identifying themselves as an Authorized Representative, and Bank's only obligation to verify the identity of such person as an Authorized Representative shall be to call back such person at a telephone number(s) provided to Bank by Customer. Bank may, but shall have no obligation to, call back an Authorized Representative other than the Authorized Representative from whom Bank purportedly received an instruction. Bank may, but shall have no obligation to, request additional confirmation, written or verbal, of an instruction received via telephone at any time or for any reason whatsoever prior to executing the instruction. Bank may also in its discretion require the use of security codes for Authorized Representatives and/or for receiving instructions or items from Customer. Customer understands and agrees, and Customer shall advise each Authorized Representative that, Bank may, at Bank's option, record telephone conversations regarding instructions received from an Authorized Representative.

9.4 Any security procedures maintained by Bank are not intended to detect errors in the content of an instruction received from Customer or Customer's agent or vendor. Any errors in an instruction from Customer, Customer's Authorized Representative, agent or vendor shall be Customer's sole responsibility. Customer agrees that all security procedures described in this Agreement and applicable Appendix are commercially reasonable and that Bank may charge Customer's Account for any instruction that Bank executed in good faith and in conformity with the security procedures, whether or not the transfer is in fact authorized.

9.5 Customer agrees to adopt and implement commercially reasonable policies, procedures and systems to provide security to 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"). Customer also agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions. Customer will provide timely and accurate notification to Bank of any Data Breaches when known or reasonably suspected by Customer and will take all reasonable measures, including, without limitation, retaining competent forensic experts, to determine the scope of and data or transactions affected by any Data Breaches, and immediately providing all such information to Bank.

9.6 **BANK'S SECURITY PROCEDURES ARE STRICTLY CONFIDENTIAL AND SHOULD BE DISCLOSED ONLY TO THOSE INDIVIDUALS WHO ARE REQUIRED TO KNOW THEM. IF A SECURITY PROCEDURE INVOLVES THE USE OF ACCESS DEVICES, THE CUSTOMER SHALL BE RESPONSIBLE TO SAFEGUARD THESE ACCESS DEVICES AND MAKE THEM AVAILABLE ONLY TO DESIGNATED INDIVIDUALS. CUSTOMER HAS THE SOLE RESPONSIBILITY TO INSTRUCT THOSE INDIVIDUALS THAT THEY MUST NOT DISCLOSE OR OTHERWISE MAKE AVAILABLE TO UNAUTHORIZED PERSONS THE SECURITY PROCEDURE OR ACCESS DEVICES TO ANYONE. CUSTOMER HAS THE SOLE RESPONSIBILITY TO ESTABLISH AND MAINTAIN PROCEDURES TO ASSURE THE CONFIDENTIALITY OF ANY PROTECTED ACCESS TO THE SECURITY PROCEDURE.**

10. **Fraud Detection / Deterrence; Positive Pay.** Bank offers certain products and services such as Positive Pay (with or without payee validation), ACH Positive Pay, and Account blocks and filters that are designed to detect and/or deter check, automated clearing house ("ACH") or other payment system fraud. While no product or service will be completely effective, Bank believes that the products and services it offers will reduce the likelihood that certain types of fraudulent items or transactions will be paid against Customer's Account. Failure to use such products or services could substantially increase the likelihood of fraud. **Customer agrees that if, after being informed by Bank or after Bank otherwise makes information about such products or services available to Customer consistent with Section 27 of this Agreement, Customer declines or fails to implement and use any of these products or services, or fails to follow these and other precautions reasonable for Customer's particular circumstances, Customer will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and Bank will not be required to re-credit Customer's Account or otherwise have any liability for paying such items.**

11. **Duty to Inspect.** Customer is responsible for monitoring all Services provided by Bank, including each

individual transaction processed by Bank, and notifying Bank of any errors or other problems within ten (10) Calendar Days (or such longer period as may be required by applicable law) after Bank has made available to Customer 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 required by law, failure to notify Bank of an error or problem within such time will relieve Bank 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 Customer fails to report such error or problem within thirty (30) Calendar Days after Bank made available such report, statement or on-line Account access, the transaction shall be deemed to have been properly authorized and executed, and Bank shall have no liability with respect to any error or problem. Customer agrees that its sole remedy in the event of an error in implementing any selection with the Services shall be to have Bank correct the error within a reasonable period of time after discovering or receiving notice of the error from Customer.

12. **Overdrafts; Set-off.** Bank may, but shall not be obligated to, complete any transaction in connection with providing the Services if there are insufficient available funds in Customer's Account(s) to complete the transaction. In the event any actions by Customer result in an overdraft in any of Customer's Accounts, including but not limited to Customer's failure to maintain sufficient balances in any of Customer's Accounts, Customer shall be responsible for repaying the overdraft immediately, without notice or demand. Bank has the right, in addition to all other rights and remedies available to it, to set off the unpaid balance of any amount owed it in connection with the Services against any debt owing to Customer by Bank, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by Bank, whether collected or in the process of collection, or in any other Account maintained by Customer at, or evidenced by any certificate of deposit issued by, Bank. If any of Customer's Accounts become overdrawn, underfunded or for any reason contain a negative balance, then Bank shall have the right of set-off against all of Customer's Accounts and other property or deposit Accounts maintained at Bank, and Bank shall have the right to enforce its interests in collateral held by it to secure debts of Customer to Bank arising from notes or other indebtedness now or hereafter owing or existing under this Agreement, whether or not matured or liquidated.

### 13. **Transaction Limits.**

13.1 In the event that providing the Services to Customer results in unacceptable credit exposure or other risk to Bank, or will cause Bank to violate any law, regulation, rule or order to which it is subject, Bank may, in Bank's sole and exclusive discretion, without prior notice, limit Customer's transaction volume or dollar amount and refuse to execute transactions that exceed any such limit, or Bank may terminate any Service then being provided to Customer.

13.2 Customer shall, upon request by Bank from time to time, provide Bank with such financial information and statements and such other documentation as Bank reasonably determines to be necessary or appropriate showing Customer's financial condition, assets, liabilities, stockholder's equity, current income and surplus, and such other information regarding the financial condition of Customer as Bank may reasonably request to enable Bank to evaluate its exposure or risk. Any limits established by Bank hereunder shall be made in Bank's sole discretion and shall be communicated promptly to Customer.

#### 14. Term and Termination.

14.1 This Agreement shall be effective when (i) signed by an Authorized Representative of Customer and accepted by Bank, and (ii) Customer delivers to Bank all documents and information, including any Setup Form(s) and electronic data, reasonably required by Bank prior to commencing to provide the Services. Bank will determine the adequacy of such documentation and information in its sole discretion and may refuse to provide the Services to Customer until adequate documentation and information are provided.

14.2 This Agreement shall continue in effect until terminated by either party with thirty (30) Calendar Days' prior written notice to the other. Either party may terminate an Appendix in accordance with the provisions of this Section without terminating either this Agreement or any other Appendix. Upon termination of this Agreement or any Appendix, Customer shall, at its expense, return to Bank, in the same condition as when delivered to Customer, normal wear and tear excepted, all property belonging to Bank and all proprietary material delivered to Customer in connection with the terminated Service(s).

14.3 If an Appendix is terminated in accordance with this Agreement, Customer must contact Cash Management Customer Care for instructions regarding the cancellation of all future dated payments and transfers. Bank may continue to make payments and transfers and to perform other Services that Customer has previously authorized or may subsequently authorize; however, Bank is not under any obligation to do so. Bank will not be liable if it chooses to make any payment or transfer or to perform any other Services that Customer has previously authorized or subsequently authorizes after an Appendix had terminated.

14.4 Notwithstanding the foregoing, Bank may, without prior notice, terminate this Agreement and terminate or suspend any Service(s) provided to Customer pursuant hereto (i) if Customer or Bank closes any Account established in connection with the Service, (ii) if Bank determines that Customer has failed to maintain a financial condition deemed reasonably satisfactory to Bank to minimize any credit or other risks to Bank in providing Services to Customer, including 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) in the event of a material breach, default in the performance or observance of any term, or breach of any representation or warranty by Customer, (iv) in the event of default by Customer in the payment of any sum owed by Customer to Bank hereunder or under any note or other agreement, (v) if there has been a seizure, attachment, or garnishment of Customer's Accounts, assets or properties, (vi) if Bank believes immediate action is required for the security of Bank or Customer funds or (vii) if Bank reasonably believes that the continued provision of Services in accordance with the terms of this Agreement or any Appendix would violate federal, state or local laws or regulations, or would subject Bank to unacceptable risk of loss. In the event of any termination hereunder, all fees due Bank under this Agreement as of the time of termination shall become immediately due and payable. Notwithstanding any termination, this Agreement shall remain in full force and effect with respect to all transactions initiated prior to such termination.

#### 15. Limitation of Liability; Disclaimer of Warranties.

15.1 Customer acknowledges that Bank's fees and charges for the Services are very small in relation to the amounts of transfers initiated through the Services and, as a result, Bank's willingness to provide the Services is based on the limitations and allocations of liability contained in this Agreement. Unless expressly prohibited or otherwise restricted by applicable law, the liability of Bank in connection with the Services will be limited to actual damages sustained by Customer and only to the extent such damages are a direct result of Bank's gross negligence, willful misconduct, or bad faith. In no event shall Bank be liable for any consequential, special, incidental, indirect, punitive or similar loss or damage that Customer may suffer or incur in connection with the Services, including, without limitation, attorneys' fees, lost earnings or profits and loss or damage from subsequent wrongful dishonor resulting from Bank's acts, regardless of whether the likelihood of such loss or damage was known by Bank and regardless of the basis, theory or nature of the action on which a claim is asserted. Unless expressly prohibited by or otherwise restricted by applicable law, and without limiting the foregoing, Bank's aggregate liability to Customer for all losses, damages, and expenses incurred in connection with any single claim shall not exceed an amount equal to the monthly billing paid by, charged to or otherwise assessed against Customer for Services over the three (3) month-period immediately preceding the date on which the damage or injury giving rise to such claim is alleged to have occurred or such fewer number of preceding months as this Agreement has been in effect. Notwithstanding any of the foregoing, for transactions which are subject to Article 4A of the UCC, Bank shall be liable for such damages as may be required or provided under Article 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in this Agreement. This Agreement is only between Bank and Customer, and Bank shall have no liability hereunder to any third party.

15.2 Except as otherwise expressly provided in Section 8 of this Agreement, Bank shall not be liable for any loss, damage or injury caused by any act or omission of any third party; for any charges imposed by any third party; or for any loss, damage or injury caused by any failure of the hardware or software utilized by a third party to provide Services to Customer.

15.3 Bank shall not be liable or responsible for damages incurred as a result of data supplied by Customer that is inaccurate, incomplete, not current, or lost in transmission. It is understood that Bank assumes no liability or responsibility for the inaccuracy, incompleteness or incorrectness of data as a result of such data having been supplied to Customer through data transmission.

15.4 Bank is not liable for failing to act sooner than required by any Appendix or applicable law. Bank also has no liability for failing to take action if Bank had discretion not to act.

15.5 Bank shall not be responsible for Customer's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any entry, funds transfer order, or other instruction received from Customer) or the acts or omissions of any other person, including, without limitation, any Automated Clearing House processor, any Federal Reserve Bank, any financial institution or bank, any transmission or communication facility, any receiver or receiving depository financial institution, including, without limitation, the return of an entry or rejection of a funds transfer order by such receiver or receiving depository financial institutions, and no such person shall be deemed Bank's agent. Bank shall be excused from failing to transmit or delay in transmitting an entry or funds transfer order if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to Federal Reserve guidelines or otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In no event shall Bank be liable for any damages resulting from Bank's action or inaction which is consistent with regulations issued by the Board of Governors of the Federal Reserve System, operating circulars issued by a Federal Reserve Bank or general banking customs and usage. To the extent required by applicable laws, Bank will compensate Customer for loss of interest on funds as a direct result of Bank's failure to comply with such laws in executing electronic transfers of funds, if such failure was within Bank's control. Bank shall not be liable for Customer's attorney's fees in connection with any such claim.

15.6 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK, AND THE SERVICE IS PROVIDED "AS IS," AND BANK AND ITS SERVICE PROVIDERS AND 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 BANK AND ITS SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

15.7 The provisions of this Section 15 shall survive termination of this Agreement.

## 16. Indemnification.

16.1 Except as otherwise expressly prohibited or limited by law, Customer shall indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by Bank due to any claim or action by any person, entity or other third-party against Bank to the extent such claim or action relates to or arises out of:

(i) any claim of any person that (a) Bank is responsible for any act or omission of Customer or (b) a Customer payment order contravenes or compromises the rights, title or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order or other mandate or prohibition with the force or effect of law;

(ii) any failure by Customer to observe and perform properly all of its obligations hereunder or any wrongful act of Customer or any of its Affiliates;

(iii) any breach by Customer of any of its warranties, representations or agreements;

(iv) any action taken by Bank in reasonable reliance upon information provided to Bank by Customer or any Affiliate or subsidiary of Customer; and

(v) any legal action that Bank responds to or initiates, including any interpleader action Bank commences, involving Customer or Customer's Account(s), including without limitation, any state or federal legal process, writ of attachment, execution, garnishment, tax levy or subpoena.

16.2 The provisions of this Section 16 shall survive termination of this Agreement.

**17. Lawyer Trust Accounts.** This Section 17 applies to law firms that have established lawyer trust accounts, including but not limited to IOLTA, IOTA and IOLA Accounts (collectively, "Lawyer Trust Accounts"), in the State of New Jersey and as may be applicable under other States' laws. In the event that Customer is a law firm in the State of New Jersey or such other State(s) as may be applicable, and Customer's clients' funds are held in Lawyer Trust Account(s), Customer agrees and shall ensure that only lawyers that are Authorized Representatives of Customer may initiate debits from such Lawyer Trust Account(s). Such debit transfers may include, but are not limited to, wire, ACH and book transfers through the Bank Internet System or through such other Services as may be made available by Bank from time to time.

**18. Force Majeure.** Neither party shall bear responsibility for non-performance of this Agreement to the extent that such non-performance is caused by an event beyond that party's control, including, but not necessarily limited to, fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, lockout, strike, unavoidable accident, act of God, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents Bank or Customer from operating normally.

**19. Documentation.** The parties acknowledge and agree that all documents evidencing, relating to or arising from the parties' relationship may be scanned or otherwise imaged and electronically stored and the originals (including manually signed originals) destroyed. The parties agree to treat such imaged documents as original documents and further agree that such reproductions and copies may be used and introduced as evidence at any legal proceedings including, without limitation, trials and arbitrations, relating to or arising under this Agreement.

**20. Entire Agreement.** Bank and Customer acknowledge and agree that this Agreement and any amendments hereto, all other documents incorporated by reference therein, and Appendices constitute the complete and exclusive statement of the agreement between them with respect to the Services, and supersede any prior oral or written understandings, representations, and agreements between the parties relating to the Services.

**21. Amendments.** Bank may, at any time, amend this Agreement, the Services or Appendices in its sole discretion and from time to time. Except as expressly provided otherwise in this Agreement, any such changes generally will be effective immediately upon notice to Customer as described below. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Services after the date on which the change becomes effective. Customer will remain obligated under this Agreement and any Appendices, including without limitation, being obligated to pay all amounts owing

thereunder, even if Bank amends this Agreement or any Appendices. Notwithstanding anything to the contrary in this Agreement or in any Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Customer.

**22. Severability.** If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable as written, that provision shall be interpreted so as to achieve, to the extent permitted by applicable law, the purposes intended by the original provision, and the remaining provisions of this Agreement shall continue intact. In the event that any statute, regulation or government policy to which Bank is subject and that governs or affects the transactions contemplated by this Agreement, would invalidate or modify any portion of this Agreement, then this Agreement or any part thereof shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Customer as a result of Bank's compliance with such statute, regulation or policy.

**23. Assignment and Delegation.** Bank may assign any of its rights or delegate any of its responsibilities in whole or in part without notice to or consent from Customer. Customer may not assign, delegate or otherwise transfer its rights or responsibilities under this Agreement without Bank's prior written consent, which consent Bank may grant or withhold in its sole discretion.

**24. Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

**25. Non-Waiver.** No deviation from any of the terms and conditions set forth or incorporated in this Agreement shall constitute a waiver of any right or duty of either party, and the failure of either party to exercise any of its rights hereunder on any occasion shall not be deemed to be a waiver of such rights on any future occasion.

**26. Governing Law.** Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with federal law and, to the extent not preempted or inconsistent therewith, by the laws of the State of New Jersey.

**27. Notices.**

27.1 Except as otherwise expressly provided in this Agreement, all notices that are required or permitted to be given by Customer (including all documents incorporated herein by reference) shall be sent by first class mail, postage prepaid, and addressed to Bank at the address provided to Customer in writing for that purpose. All such notices shall be effective upon receipt.

27.2 Customer authorizes Bank to, and Customer agrees that Bank may, send any notice or communication that Bank is required or permitted to give

to Customer under this Agreement, including but not limited to notice of any change to the Services, this Agreement or any Appendix, to Customer's business mailing address or Customer's business e-mail address as it appears on Bank's records, or electronically by posting the notice on Bank's website, on an Account statement or via facsimile, and that any such notice or communication will be effective and deemed delivered when provided to Customer in such a manner. Customer agrees to notify Bank promptly about any change in Customer's business mailing or Customer's business e-mail address and acknowledges and agrees that no such change will be effective until Bank has had a reasonable opportunity to act upon such notice. Customer agrees that Bank 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.

**28. Jury Trial Waiver.** BANK AND CUSTOMER EACH AGREE THAT NEITHER BANK NOR CUSTOMER SHALL (I) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY ACCOUNT OR THE DEALINGS OF THE RELATIONSHIP BETWEEN BANK AND CUSTOMER, OR (II) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANOTHER IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER BANK NOR CUSTOMER HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. BANK AND CUSTOMER EACH

ACKNOWLEDGE THAT THIS WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE. The provisions of this Section 28 shall survive termination of this Agreement.

**29. Beneficiaries.** This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

**30. Recording of Communications.** Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be recorded and retained by either party by use of any reasonable means.

**31. Facsimile Signature.** The parties acknowledge and agree that this Agreement and any Appendix or Amended Appendices may be executed and delivered by facsimile, and that a facsimile signature shall be treated as and have the same force and effect as an original signature. Notwithstanding the foregoing, Bank may, in its sole and exclusive discretion, also require Customer to deliver this Agreement and any Appendix or Amended Appendices with an original signature for its records.

**32. Relationship.** Customer and Bank are not, and Customer and Bank's licensors are not, partners, joint venturers or agents of each other as a result of this Agreement.

**33. Section Headings.** The section headings used in this Agreement are only meant to organize this Agreement, and do not in any way limit or define Customer's or Bank's rights or obligations.

IN WITNESS WHEREOF, Customer has duly caused this Agreement, including all applicable Appendices, to be executed by its Authorized Representative.

**TOWN OF ANDOVER, MA TIN: 04-6001069**

(Customer)

36 Bartlett Street  
Andover, MA 01810

(Address)

By: David J. Reilly  
(Signature of Authorized Representative)

Print Name: David J. Reilly

Title: Treasurer

Governmental



## EXHIBIT TO CASH MANAGEMENT MASTER AGREEMENT:

### GOVERNMENTAL ENTITY SERVICES

This Exhibit is incorporated by reference into the parties' Cash Management Master Agreement (the "Agreement") and applies to all Cash Management Services made available by Bank to Customer, as a governmental entity. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Bank and Customer agree that, notwithstanding anything to the contrary contained in the Agreement, the following terms and provisions shall apply to the Agreement:

#### TERMS AND CONDITIONS

1. Section 26, "Governing Law," of the Agreement is hereby deleted in its entirety and replaced with the following:

**26. Governing Law.** Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with the laws of the jurisdiction pursuant to which Customer was incorporated or otherwise organized, except where applicable federal law is controlling. In the event of a conflict between the provisions of this Agreement and any applicable law or regulation, this Agreement shall be deemed modified to the extent necessary to comply with such law or regulation.

2. The following new Section 34 is hereby added immediately after Section 33:

**34. Additional Representations and Warranties.** For purposes of this Section, "Governmental Unit" means (A) any town, city, school district or school administrative unit of any nature, water district, sewer district, sanitary district, housing authority, hospital district, municipal electric district, county or other political subdivision, government agency, bureau, department or other instrumentality, or quasi-governmental corporation or entity defined by applicable law, and (B) any state government or any agency, department, bureau, office or other instrumentality thereof.

(a) If Customer is a Governmental Unit of the type included in (A) above, Customer and the individual signing below represent, warrant and agree: (i) that this Agreement has been duly executed by the Treasurer, Finance Director, or other financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements; (ii) that this Agreement has been

duly authorized by a vote of the governing body of Customer that was duly called and noticed, at which the necessary majority voted to authorize this Agreement, as evidenced by the certification of the Secretary of the governing body and provided with this Agreement; (iii) that only persons authorized to disburse municipal funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; (iv) that if this Agreement remains in effect for more than one budget year, upon request of Bank, Customer will ratify and provide evidence of the renewal of this Agreement in subsequent years; and (v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(b) If Customer is a Governmental Unit of the type included in (B) above, Customer and the individual signing below represent, warrant and agree: (i) that this Agreement has been duly executed by a financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements on behalf of Customer; (ii) that this Agreement has been duly authorized by a senior officer of Customer; (iii) that Customer has complied with all state laws and regulations, including any regulations or policies adopted by Customer with respect to electronic commerce in entering into and performing this Agreement and any related ACH or wire transfer agreement; (iv) that only persons authorized to disburse Customer funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; and (v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(c) For a Customer of the type included in either (A) or (B) above, Customer and the individual signing below further represent, warrant and agree: (i) that upon Bank's request, Customer shall provide

evidence of those persons authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) above; (ii) that upon Bank's request, Customer will certify its compliance with (a) or (b), as applicable, on an annual basis; and (iii) that Customer will provide notice to Bank if any person authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) is no longer so authorized or his/her position of such authority is terminated for any reason.

**3. Effectiveness.** Customer agrees to all the terms and conditions of this Exhibit. The liability of Bank under this Exhibit shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Exhibit shall remain in full force and effect until such time as a different or amended Exhibit is accepted in writing by Bank or the Cash Management Master Agreement is terminated.

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## APPENDIX I

### TD eTREASURY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and governs Customer's use of the Bank Internet System (or "eTreasury"). All capitalized terms used herein without definition shall have the meanings given to them in the parties' Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

##### 1. Definitions.

"Account(s)" means a checking, regular statement savings, money market deposit, certificate of deposit, investment or commercial loan or line of credit account(s) Customer maintains with Bank for business or non-consumer purposes that is designated by Customer for use with the Services, as described below.

"Account Agreement" means any and all agreements between Customer and Bank which govern Customer Accounts (as defined above) and which were provided to Customer when Customer opened its Account(s), or any other documents governing Customer's Account(s), each as may be amended from time to time.

"Administrator" or "Account Administrator" means Customer's employee(s) or other person(s) that Customer (or any Administrator designated by Customer) designates on the Services' Setup Form(s) (or by on-line changes to such designations as described below) as being its Authorized Representative, or as authorized to act on Customer's behalf, with respect to the Services.

"Appendix" means this eTreasury Services Appendix, including all procedures, Setup Form(s), exhibits, schedules, documents and agreements referenced herein, each as may be amended from time to time.

"Authorized User" means any person Customer's Administrator designates as being authorized to access or use any of the Services on Customer's behalf.

"Login ID" means the electronic identification, in letters and numerals, assigned to Customer by Bank or to any additional Authorized Users designated by Customer's Account Administrator.

"Payment" means a transfer of funds to or from Account(s).

##### 2. Services.

2.1 This Appendix describes the terms and conditions under which Bank will provide Customer with access to and use of any of the electronic information delivery and transaction initiation services that Bank makes available using the Bank Internet System.

2.2 By accessing the Services with the Access Devices, Customer may perform any or all of the Services described in this Appendix and selected for use in the Services' Setup Form(s) and that Bank has approved for Customer's use. Bank reserves the right to reject Customer's Services' Setup Form(s), schedules and other required documents and to refuse Customer access to or use of the Services for any reason and in Bank's sole discretion. Bank may, in its sole and exclusive discretion, introduce new features of the Services from time to time but is not required to notify Customer of the availability of any such new features.

2.3 By subscribing to the Services, Customer will have access to the Services' basic features, which include but may not be limited to, in Bank's sole and exclusive discretion, the following:

**2.3.1 Previous-Day Balance Reporting.** Previous-Day Balance Reporting allows Customer to review the balances and transaction history in Customer's checking, savings, money market deposit and loan Account(s) for such period of time as described in the Services' Setup Form(s). Customer may also view images of deposit tickets, deposit items, paid checks, return deposited items and expired stopped items through this feature. This information may be viewed upon implementation of the Services, and the scope of the time periods for which transactional history and check images may be viewed (including pre-implementation periods) may vary and depend upon various factors such as when Account(s) were opened and when the Services were first implemented and set-up.

**2.3.2 Real-Time Balance Reporting.** Real-Time Balance Reporting allows

Customer to review current Account balance(s) and transaction activity in real-time.

**2.3.3 Book Transfers.** Book Transfers allows Customer to make intra-bank fund transfers between Customer's checking, savings and loan Accounts. Transfers may be made as one-time or recurring, same-day or in the future. Book Transfers may also be initiated from (i) one-Account-to-one-Account, (ii) one-Account-to-many-Accounts, or (iii) from many-Accounts-to-one-Account. Recurring transfers may utilize one of several repeating frequency options (weekly, monthly, etc.), as set forth in the Services. Book Transfer templates may be created and saved for frequently executed transfers. Pending transfers and templates may be edited or deleted (cancelled) through the Services by Authorized Users at any time prior to the Business Day on which the associated transfer is scheduled to occur. Transfer amounts and the order in which such transfers occur are limited to the available balance in the Account(s) on the effective date of the transfer. For same-day transactions, Customer will need to have sufficient available funds in the Account from which funds are to be transferred to cover the amount of the transfer. For future or recurring transactions, Customer will need to have sufficient available funds on the day the transaction is to occur. The number of transfers from interest bearing checking and savings Accounts are subject to the terms of the Account Agreement and federal regulations. Transfers that Customer transmits by Bank's cut-off time as set forth on the Services' designated website or the Services' Setup Form(s) on a Business Day will be posted to the Account as of that Business Day; however, a request (whether a same-day funds transfer or a future-dated transfer) may not result in an immediate transfer of funds or immediate availability because of the time required to process the transaction. Customer is solely responsible for the review of the previous day's transaction report and the status of the transfer request within the Services to ensure that the transaction was processed. Only Book Transfers initiated through the Services will be displayed on the Services' Transfer reports tab. All transfers are subject to the Account Agreement.

**2.3.3.1 Future-Dated Book Transfer.** In conjunction with Book Transfers, a request to transfer funds between Customer's Accounts may be initiated and approved for a future date. The future transfer date may be scheduled for such date in advance as may be permitted from time to time by Bank and as set forth within the Bank Internet System. Future-dated transfers may be scheduled as a one-time request or a recurring request in a pre-determined amount, based on the instructions entered by Customer with the request. Future-dated transfers will be initiated on the Business Day requested by Customer, not on the date Customer entered the transaction using the Services.

**2.3.4 Stop Payment.** Stop payments of checks drawn on Customer's Account(s) are subject to the terms and conditions of the Account Agreement. Notwithstanding anything in the Account Agreement to the contrary, Customer may use the Services to initiate stop payment orders for an individual check or a

range of checks. Bank shall have no responsibility for losses resulting from any delay in Bank's receipt of stop payment orders transmitted by means of the Bank Internet System or for Customer not taking additional actions when a response message from the Bank Internet System indicates a response other than a successful confirmation. Customer must provide Bank with the **EXACT CHECK NUMBER OR RANGE OF CHECK NUMBERS**. When known, Customer should also provide the **EXACT AMOUNT OF THE CHECK**. If the check number is incorrect in any way or the amount of the check is inaccurate by one cent or more in the stop payment order, payment will not be stopped and Bank will not be responsible for resulting losses. All other information must be reasonably accurate. Requests entered on the current day may not be effective until one (1) Business Day after receipt, and after Bank has had a reasonable time to act on the request. Requests made on a non-Business Day or on Saturday, Sunday or federal holidays are entered on the next Business Day but may not be effective until the second (2<sup>nd</sup>) Business Day after receipt. Stop payments using the Bank Internet System are effective for three hundred sixty-five (365) Calendar Days unless renewed before the end of the 365-day period. Customer is solely responsible for confirming the status of a stop payment order. Except as otherwise provided by Compliance Laws, Customer shall not have the right to stop payment on or recall any payment order or transfer request given hereunder after it has been transmitted to Bank. Only stop payment orders initiated or recalled through the Bank Internet System will be displayed on the Bank Internet System's Stop Payments screen. Stop payment orders that are not initiated through the Bank Internet System may also be cancelled through the Bank Internet System.

**2.3.5 E-Learning.** E-Learning is a self-paced, interactive educational tool available via the Services that Customer may use to learn more about the various features or modules related to the Services, as well as how to use them.

**2.3.6 Customizable Dashboard.** Using this feature, Customer can configure and save Account balance views, as well as command one-click access to detailed information, balance and payment reports, and high-use transaction initiation features. It is Customer's responsibility to view the "Dashboard" for Bank notices when designating another section of the Bank Internet System as the desired landing page.

**2.4** In addition to the Services as described in this Appendix and/or in the Services' Setup Form(s), additional features or modules related to the Services may be offered from time to time by Bank, in its sole and exclusive discretion, including but not limited to the following:

**2.4.1 Wire Transfers.** Wire transfers and wire drawdowns are subject to the terms and conditions of the Wire Transfer Services Appendix. Once approved by Bank for use by Customer, this Service allows Customer to transfer funds electronically, typically from Customer's Account(s) to other account(s) with Bank or to

account(s) at other banks. Except for future-dated transfers, domestic or foreign wire transfers entered through the Services will be processed on the Business Day they are received, and at currency exchange rates disclosed within the Services, as applicable, provided that they are received in accordance with Bank's cut-off time(s) for foreign wires and for domestic wires, as set forth in the Wire Transfer Services Appendix.

**2.4.2 ACH Originations.** ACH originations are subject to the terms and conditions of the Automated Clearing House (ACH) Origination Appendix, the Third-Party Sender Services Appendix or the ACH Third Party Service Provider Agreement, as applicable. Once approved by Bank for use by Customer, this Service allows Customer to initiate and approve ACH transactions that Customer desires Bank to enter into the ACH network on Customer's behalf. Except for future-dated transactions, ACH transactions entered through the Services will be processed (but not settled) on the Business Day they are received, provided that they are received in accordance with Bank's cut-off time, as set forth in the Automated Clearing House (ACH) Origination Appendix or the Third-Party Sender Services Appendix, as applicable.

**2.4.3 File Transfers.** File transfers is a method for Customer and Bank to send and receive reports and files (including, but not limited to, ACH, Reconciliation, Lockbox, and BAI files) to each other through the Internet and are subject to the terms and conditions of applicable Appendices. Such reports and files may also be auto-generated and auto-delivered.

**3. Hours of Access.** Customer generally may access the Services 24 hours a day, seven (7) days a week. Customer may not be able to access the Services, however, during any special or other scheduled maintenance periods or interruption or delay due to causes beyond Bank's control. These hours of access are subject to change without notice.

#### **4. Account Designation.**

**4.1** Customer may designate any of Customer's Accounts maintained with Bank for business or non-consumer purposes for use with the Services. Generally, the taxpayer identification number for each Account must be the same, and each Account is subject to the other conditions set forth in this Appendix, except as Bank, in its sole discretion, may otherwise permit. Bank reserves the right to deny any Account designation for use with the Services in its sole discretion.

**4.2** Customer may at any time add or delete any Account that Customer has designated for use with any of the Services, or change the Services associated with any Account, by notifying Bank in writing.

#### **5. Administrator(s) and Authorized Users.**

**5.1** Customer shall designate Administrator(s) with Bank as set forth in the Services'

Setup Form(s). Customer is solely responsible for designating its Administrator(s).

**5.2** The Administrator(s) may designate other Administrators and/or Authorized Users. Customer accepts as its sole responsibility the Administrator's designation of other Administrators and Authorized Users. Customer understands that the Administrator(s) will control, and Customer authorizes the Administrator(s) to control, access by other Administrators and Authorized Users of the Services through the issuance of Access Devices. The Administrator(s) may add, change or terminate Customer's Authorized User(s) from time to time and in his/her sole discretion. Bank does not control access by any of Customer's Authorized Users to any of the Services. Bank recommends that Customer manage its use of the Services and its Administrators by requiring dual control to set up new Authorized Users. Bank also recommends that Customer review and assign limits for Authorized Users that create and/or approve wire transfers and ACH transactions, as established on the Services' Setup Form(s). In the event that Bank, in its sole and exclusive discretion, assists Customer in any way with the establishment, addition or general set-up of Authorized Users, Customer understands and agrees that the Administrator(s) shall remain responsible for verifying the accuracy thereof and shall otherwise control access by any of Customer's Authorized Users to any of the Services.

**5.3** Customer will require each Administrator and each Authorized User to comply with all provisions of this Appendix and all other applicable agreements. Customer acknowledges and agrees that it is fully responsible for the failure of any Administrator or any Authorized User to so comply. Customer is responsible for any Payment, transfer and other Services and charges incurred by any Administrator and any Authorized User, even if such Administrator or Authorized User exceeds his/her authorization. Bank recommends that Customer require its Administrator(s) to review all entitlement reports available through the Services with respect to Customer's Authorized User(s).

**5.4** Whenever any Authorized User leaves Customer's employ or Customer otherwise revokes the authority of any Authorized User to access or use the Services, the Administrator(s) are solely responsible for deactivating such Authorized User's Access Devices. Customer shall notify Bank in writing whenever a sole Customer Administrator leaves Customer's employ or Customer otherwise revokes a sole Administrator's authority to access or use the Services.

#### **6. Access Devices; Security Procedures.**

**6.1** Upon successful enrollment, Customer can access the Services from Bank's designated website by using Customer's Computer or, as may be permitted by Bank from time to time in its sole discretion and in accordance with Bank's terms and conditions for such access, using mobile or other Internet-enabled system(s) or device(s), along with the Services' security procedures as described from time to time. A company ID assigned to

Customer by Bank, a unique Login ID and an individual password will be used for log-in by Customer's Administrator(s) and Authorized User(s). Bank will provide the Administrator(s) initially designated by Customer with an initial individual password to gain access to the Services. The Administrator(s) and Authorized User(s) must change his or her individual password from time to time for security purposes, as prompted by the Bank Internet System or more frequently.

6.2 Customer acknowledges that the Administrator(s) will, and Customer authorizes the Administrator(s) to, select other Administrators and Authorized Users by issuing to any person a unique Login ID and password. Customer further acknowledges that the Administrator(s) may, and Customer authorizes the Administrator(s) to, change or de-activate the unique Login ID and/or password from time to time and in his or her sole discretion.

6.3 Customer acknowledges that, in addition to the above individual passwords, access to the Services includes, as part of the Access Devices, a risk-based authentication security procedure at log-in for Customer, including Customer's Administrator and Authorized Users. This additional security procedure involves an additional credential for each user that is in addition to Login IDs and individual password security (hereinafter "Enhanced Log-in Security"). With Enhanced Log-in Security, additional information regarding each Authorized User's computer and method of website access will be collected and validated automatically with the set-up process. An electronic access identity will be created for each Authorized User by combining a number of key identification points, such as IP address, Internet service provider, PC and browser settings, time of day and geographic location. These access identities are used by Bank to authenticate Authorized Users. Further authentication may occur automatically due to the detection of unusual source occurrences in relation to that access identity. An additional security procedure incorporates use of a physical security device or token ("Token") for certain transactional functionality associated with ACH transactions and wire transfers. A Token will be issued to any Authorized User(s), for example, for use in initiating and/or approving ACH transactions and wire transfers. Notwithstanding the foregoing, Bank reserves the right to incorporate the use of Tokens for certain other functionality from time to time, in its sole discretion, including by way of example only and not by way of limitation, the use of Tokens with certain administrative functionality and for the creation of ACH and wire templates. Physical security of each Token is Customer's sole responsibility. With the Token, each Authorized User will receive a PIN number that the Authorized User must keep in a secure place. When an Authorized User leaves Customer's employ, his or her Login ID must be deleted and, if a Token had been issued to such Authorized User, Bank must be promptly notified so that Bank may deactivate such Authorized User's Token. Any additional Authorized User requiring a Token must be authorized, in writing by Customer to Bank, for Token creation or re-creation and deployment. If applicable, fees may be assessed for additional Tokens.

6.4 Customer further acknowledges and agrees that all wire transfers and ACH transactions initiated through the Services incorporate "dual control" or separation of duties. With this additional security feature, one Authorized User will be permitted to create, edit, cancel, delete and restore ACH batches or wire transfer orders under his/her unique Login ID, password and Token; a second *different* Authorized User with his/her own unique Login ID, password and Token will be required to approve, release or delete ACH batches or wire transfer orders.

6.5 Customer accepts as its sole responsibility the selection, use, protection and maintenance of confidentiality of, and access to, the Access Devices. Customer agrees to take reasonable precautions to safeguard the Access Devices and keep them confidential. Customer agrees not to reveal the Access Devices to any unauthorized person. Customer further agrees to notify Cash Management Customer Care immediately at 1-866-475-7262 if Customer believes that the confidentiality of the Access Devices has been compromised in any manner.

6.6 The Access Devices identify and authenticate Customer (including the Administrator and Authorized Users) to Bank when Customer accesses or uses the Services. Customer authorizes Bank to rely on the Access Devices to identify Customer when Customer accesses or uses any of the Services, and as signature authorization for any Payment, transfer or other use of the Services. Customer acknowledges and agrees that Bank is authorized to act on any and all communications or instructions received using the Access Devices, regardless of whether the communications or instructions are authorized. Bank owns the Access Devices, and Customer may not transfer them to any other person or entity.

6.7 Customer acknowledges and agrees that the Access Devices and other security procedures applicable to Customer's use of the Services and set forth in this Appendix, as well as such security best practices as described by Bank from time to time and made available on the Bank Internet System, are a commercially reasonable method for the purpose of verifying whether any Payment, transfer or other use of the Services was initiated by Customer. Customer also agrees that any election Customer may make to change or waive any optional security procedures recommended by Bank is at Customer's risk and that any loss resulting in whole or in part from such change or waiver will be Customer's responsibility. Customer further acknowledges and agrees that the Access Devices are not intended, and that it is commercially reasonable that the Access Devices are not intended, to detect any errors relating to or arising out of a Payment, transfer or any other use of the Services.

6.8 If Customer has reason to believe that any Access Devices have been lost, stolen or used (or may be used) or that a Payment or other use of the Services has been or may be made with any Access Devices without Customer's permission, Customer must contact its Administrator and Bank. In no event will Bank be liable

for any unauthorized transaction(s) that occurs with any Access Devices.

6.9 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

**7. Debiting Customer's Account(s).** Customer authorizes Bank to charge and automatically deduct the amount of any Payment from Customer's Account(s) (or any other Account Customer maintains with Bank, if necessary), in accordance with the Cash Management Master Agreement and the Account Agreement.

## **8. Electronic Statements.**

8.1 As an eTreasury user, and subject to Bank's approval and applicable set-up and enrollment requirements, Customer may elect to stop or resume the mailing of paper statements for eligible Accounts by requesting this feature from Bank.

8.2 Only Accounts accessible via the Services may be enrolled for electronic statement delivery. Eligible Accounts are displayed on the "Statements" page of the Services. If Customer currently receives a consolidated periodic statement that includes multiple Accounts and Customer selects electronic statement delivery, all Accounts shown on the consolidated statement will be automatically enrolled for electronic statement delivery. For joint Accounts, only one Account owner need enroll for electronic statement delivery.

8.3 Customer's electronic statement will generally be available within 24 hours after the statement cut-off date. The statement cut-off date for Customer's electronic statement is the same as Customer's paper statement. Once made available as described herein, the information contained in Customer's electronic statement shall be deemed to have been delivered to Customer personally, whether actually received or not. Customer may view, print and download current statements and such period of statement history as set forth on the Bank Internet System. To view or print an electronic statement, Customer must have an appropriate version of Adobe Acrobat software installed on Customer's Computer sufficient to support access to a PDF file.

8.4 At Customer's request, Bank will send Customer a paper copy of Customer's electronic statement previously delivered through the Services at any time. Bank's standard fee then in effect and charged for paper delivery of copies of Account statements will apply. A request for a paper copy does not cause a termination of the electronic statement feature. A paper copy can be obtained until the copy is no longer required to be maintained by

Bank as a record for the designated Account under applicable law or regulation.

8.5 Customer may revoke consent for the electronic statement feature for Customer's Accounts at any time by contacting Customer's Relationship Manager. Electronic posting of Customer's electronic statement on the Services' site and transmission of related email notices will continue until: (i) termination of the electronic statement feature; (ii) termination of Customer's designated Accounts with Bank; or (iii) termination of this Agreement or Customer's use of the Services.

8.6 Bank may discontinue the electronic statements feature at any time in Bank's discretion and resume mailing paper statements to Customer. Bank may also add, modify or delete any feature of the electronic statements feature in Bank's discretion. Bank will provide Customer with notice of any change or termination in the electronic statement feature in accordance with this Appendix.

## **9. Alerts.**

9.1 The Services allow Customer to voluntarily choose alert messages regarding Customer's Account(s), including but not limited to messages to alert Customer about high or low Account balance thresholds, about debit or credit transactions cleared, and payment status for ACH and wire transactions. Bank may add new alerts from time to time, or cancel existing alerts. If Customer has opted to receive an alert that is being canceled, Bank will notify Customer in accordance with the terms of this Appendix. Each alert has different options available, and Customer will be asked to select from among these options upon activation of Customer's alerts service.

### **9.2 Voluntary Alerts.**

9.2.1 Electronic alerts will be sent to the email address Customer has provided as Customer's primary email address for the Services or via the Services' secure messaging service. If Customer's email address changes, Customer is responsible for informing Bank of the change. Customer can also choose to have alerts sent to a secondary email address. Changes to Customer's primary and secondary email addresses will apply to all of Customer's alerts.

9.2.2 Customer understands and agrees that Customer's alerts may be delayed or prevented by a variety of factors. Bank will use commercially reasonable efforts to provide alerts in a timely manner with accurate information. Bank neither guarantees the delivery nor the accuracy of the contents of any alert. Customer also agrees that Bank shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by Customer or any third party in reliance on an alert. Customer agrees that Bank is not responsible for any costs or fees incurred as a result of alerts sent to email addresses or phone numbers connected with mobile or similar devices.

9.2.3 Alerts are not encrypted and will never include Customer's Access Devices or full Account number(s). However, alerts may include Customer's name and some information about Customer's Accounts, depending upon which alert(s) Customer selects. Anyone with access to Customer's email address will be able to view the contents of these alerts.

9.2.4 Customer may, at its option, customize the subject line of Customer's alerts for easier identification by Customer. Customer acknowledges and agrees that Customer should not include full Account number(s) or other sensitive Customer or Account information in any customized subject line.

**10. Use of Financial Management (FM) Software.** Use of the Services may be supplemented by use of certain FM software. Compatibility and functionality of the FM software with the Services may vary depending upon the FM software Customer is using, and Bank makes no representations or guarantees regarding use of the Services with Customer's FM software. Bank will provide Customer with reasonable assistance, when requested, to enable Customer's use of the Services with FM software. Bank is not responsible for any problems related to the FM software itself, Customer's Computer or Customer's ability to connect using the FM software as described in this Appendix. Customer acknowledges and agrees that the FM software versions supported by Bank for purposes of use with the Services shall be in accordance with the sunset policy of the FM software provider.

**11. Security.** Customer agrees not to disclose any proprietary information regarding the Services to any third party (except to Customer's Administrator(s) and Authorized User(s)). Customer also agrees to comply with any operating, security and recognition procedures Bank may establish from time to time with respect to the Services. Customer will be denied access to the Services if Customer fails to comply with any of these procedures. Customer acknowledges that there can be no guarantee of secure transmissions over the Internet and that the Services' security procedures are reasonable. Customer is responsible for reviewing the transaction reports Bank provides on-line and in Customer's monthly statements to detect unauthorized or suspicious transactions. In addition to any other provision hereof regarding authorization of

transactions using the Services, all transactions will be deemed to be authorized by Customer and to be correctly executed thirty (30) Calendar Days after Bank first provides Customer with a statement or online transaction report showing that transaction, unless Customer has provided written notice that the transaction was unauthorized or erroneously executed within that period. In order to minimize risk of loss, Customer agrees to cause its Administrator or designated Authorized User(s) to review the transaction audit log available with the Services to detect unauthorized or erroneous transactions not less frequently than once every five (5) Calendar Days.

## **12. Terminating this Appendix; Liability.**

12.1 This Appendix may be terminated in accordance with the terms and conditions of the Cash Management Master Agreement.

12.2 The provisions of this Appendix relating to Customer's and Bank's liability and the disclaimer of warranties set forth in the Cash Management Master Agreement and incorporated herein by reference shall survive the termination of this Appendix.

**13. Changes to the Services and this Appendix.** Bank may change the Services and this Appendix (including any amendments hereto) in accordance with the terms and conditions of the Cash Management Master Agreement.

**14. Notices.** Notices required by this Appendix shall be provided in accordance with the terms and conditions of the Cash Management Master Agreement.

**15. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.



## APPENDIX II

### TD ACH ORIGINATION SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and the parties' Bank Internet System Agreement, as applicable. This Appendix applies to all automated clearing house ("ACH") Services made available to Customer, in Customer's capacity as an Originator, by Bank, as an Originating Depository Financial Institution ("ODFI"). All capitalized terms used herein without definition shall have the meanings given to them in either the Cash Management Master Agreement or the *NACHA Rules* (as defined below), as applicable. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

1. **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*").

#### 2. Customer Obligations.

2.1 Customer will comply and shall cause its employees, officers, directors, agents and its Authorized Representative(s) and Administrator(s) 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 Bank, NACHA or any federal or state regulatory authorities. The duties of Customer set forth in this Appendix in no way limit the requirement that Customer comply with the *NACHA Rules*. Customer specifically adopts and makes to Bank all representations and warranties of an Originator under the *NACHA Rules*, including that Customer will not initiate Entries in violation of the laws of the United States. Customer has access to a copy of the *NACHA Rules* and acknowledges receipt of a copy. (The *NACHA Rules* may be obtained at NACHA's website at [www.NACHA.org](http://www.NACHA.org) or by contacting NACHA directly at 703-561-1100.) Customer agrees to subscribe to receive revisions to the *NACHA Rules* directly from NACHA.

2.2 Customer will maintain a checking Account ("Settlement Account") at Bank with available balances as of the Effective Entry Date sufficient to offset any Entries submitted and against which any rejected or returned Entries may be credited or debited. Bank reserves the right, in its sole and exclusive discretion and at any time, to require ACH pre-funding of credit Entries requested by Customer, in accordance with the terms and conditions of any agreement between Bank and Customer relating to pre-funding of such Entries, including as otherwise set forth in this Appendix. Bank also reserves the right, in its sole and exclusive

discretion and at any time, to delayed settlement of debit Entries requested by Customer, in accordance with the terms and conditions of any agreement between Bank and Customer relating thereto.

2.3 Customer agrees from time to time, upon Bank's request and in accordance with this Appendix and the parties' Cash Management Master Agreement, to promptly provide Bank with information pertaining to Customer's financial condition as Bank may request, including without limitation, the name(s) of other financial institutions that Customer is using to originate Entries.

2.4 Nothing in this Appendix or any course of dealing between Customer and Bank (i) constitutes a commitment or obligation of Bank to lend money to Customer, (ii) obligates Bank to extend any credit to Customer, to make a loan to Customer or otherwise to advance funds to Customer to pay for any payment order contrary to Bank's published availability schedules and the settlement timing as reflected herein, and in such other documents and materials as may be provided to Customer by Bank with regard to the Services from time to time, (iii) constitutes a modification of this Appendix, the *NACHA Rules*, or the Security Procedures, or (iv) otherwise constitutes an agreement between Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

2.5 Customer is responsible for all tariffs, duties or taxes (excluding U.S. federal, state and local taxation of the income of Bank) that may be imposed by any government or governmental agency in connection with any payment order executed pursuant to this Appendix, including without limitation any international tariffs, duties or taxes related to international ACH Entries as further described in Section 6 below.

2.6 Customer shall be liable for all fines including without limitation any international fines related to international ACH Entries as further described in Section 6 below, that may be incurred by Bank that are attributable to Customer's failure to comply with (i) the *NACHA Rules*, or (ii) the laws, regulations and orders administered by the U.S., including without limitation, the U.S. Department of

the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

### 3. Risk Exposure Limits.

3.1 Bank will establish for Customer, in Bank's sole and exclusive discretion, a transactional "Credit Exposure Limit" and a "Debit Exposure Limit" ("Exposure Limit(s)"). Each Exposure Limit will be established as an aggregate limit over multiple Settlement Dates with other not-yet-settled transactions issued by Customer through any ACH application with Bank. The Exposure Limits are based on Customer's financial condition and anticipated or historical level(s) of Entry instructions with Bank. Bank will notify Customer of Customer's Exposure Limits prior to implementation of the Services.

3.2 Customer shall promptly notify Bank if Customer anticipates a significant increase or decrease in the dollar amount of any of its ACH transactions. Bank may, from time to time, in its sole discretion, change the amount of Customer's Exposure Limits. Bank may, on an annual or more frequent basis, in Bank's sole discretion, review Customer's Exposure Limits and make any adjustments to Customer's Exposure Limits that Bank may deem appropriate.

3.3 Bank monitors all Exposure Limits for every customer that originates ACH transactions. Bank may suspend or reject processing of any Entry instructions if such Entry exceeds Customer's Exposure Limit(s). Bank may, in its sole and exclusive discretion, but shall have no obligation, to elect to process occasional Entry instructions that would exceed Customer's Exposure Limit(s). If Customer's Entry instructions exceed its Exposure Limit(s), Bank may elect to process such instructions subject to there being sufficient available funds in the Settlement Account, or in any other Customer Account(s) authorized by Bank for ACH transaction purposes, for the total amount of all credit Entries submitted to Bank for processing. In such event, Bank may elect to reduce available funds in the Settlement Account, as well as place a hold on available funds in any other Customer Account(s) authorized by Bank for ACH transaction purposes to the extent necessary to cover the total amount of the ACH credit Entries, on the Business Day that Bank begins processing Customer's ACH file. Customer's Settlement Account will be debited on the effective Settlement Date of the file, simultaneously with removal of the hold on funds in the other Customer Account(s). Alternatively, if Customer's Entry instructions exceed Customer's Exposure Limit(s), Bank may elect to process such instructions and release a file against insufficient collected funds, subject to Customer promptly depositing collected funds in the Settlement Account in the form of a cash deposit, wire transfer, intra-bank fund transfer or loan advance to cover Customer's funding obligation.

### 4. File Transmission Methods; Addenda.

4.1 Customer may elect, in accordance with the Services' Setup Form(s), to transmit a NACHA-formatted file to Bank via the following methods, or via such other methods as Bank may permit from time to time in its sole and exclusive discretion:

**4.1.1 Bank Internet System Transmission.** Customer may transmit a NACHA-formatted file to Bank via the service described in the Bank Internet System Appendix. Customer agrees to the terms of the Bank Internet System Appendix and its related security procedures when initiating Entries as described therein.

**4.1.2 Direct Electronic Transmission.** Customer may transmit a NACHA-formatted file directly to Bank, as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services. Connectivity between Bank and Customer must be established and successfully tested prior to live transactions.

**4.2 Electronic Data Interchange ("EDI").** EDI consists of the electronic movement of data between Customer and Bank in a structured, computer-retrievable data format that permits information to be transferred between a computer program at Customer's location and a computer program at Bank's location without re-keying. Customer and Bank may transmit between each other an ACH file that contains ACH Addenda which conform to the *NACHA Rules* via EDI, and as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services. Bank will process and forward Addenda information along with financial transactions through the ACH network. Bank will, upon Customer's request, forward Addenda information to Customer within two (2) Business Days of Bank's receipt of such information.

### 5. Transmittal of Entries by Customer.

5.1 Customer will send file(s) of credit and debit Entries to Bank (i) with computer readable information; (ii) with an ACH file and format consistent with current NACHA file and Bank specifications; and (iii) on the medium as agreed by the parties and in accordance with the security procedures associated with that transmission medium. Customer agrees to initiate Entries described herein in accordance with the requirements of, and in compliance with its responsibilities, representations and warranties as an Originator under, the *NACHA Rules*.

5.2 With respect to any credit and debit Entries initiated and transmitted by Customer that involve consumers, Customer 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.

5.3 Customer acknowledges 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 Receiving Depository Financial Institution ("RDFI") in accordance with the *NACHA Rules* (i.e., a Written Statement of Unauthorized Debit), and where such notification is received in time and in a manner that reasonably allows the RDFI to meet the deadline for transmitting a Return Entry as provided in the *NACHA Rules*. Customer 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 RDFI within two (2) Business Days following the Settlement Date of the original Entry. Customer indemnifies Bank against any such claim for a refund by any Receiver.

5.4 In accordance with this Appendix, Customer may use the Services to initiate and transmit credit and debit Entries with certain Standard Entry Class ("SEC") Codes. Authorized SEC Codes include PPD, PPD+, CCD, CCD+ and CTX. All other SEC Codes may be used with proper designation on the Services' Setup Form(s) and in accordance with additional instructions from and requirements by Bank, as applicable. Bank may also suspend or terminate Customer's use of one or more SEC Codes at any time in Bank's sole and exclusive discretion.

## 6. International ACH Transactions ("IAT Entries").

6.1 An IAT Entry is a debit or credit Entry that is part of a payment transaction involving a Financial Agency located outside of the territorial borders of the United States, which is processed through the domestic ACH network, pursuant to the *NACHA Rules*, including the rules pertaining to International ACH Transactions. IAT Entries also include those that are funded directly by an incoming international wire or similar funding source. The *NACHA Rules* establish SEC Code "IAT" for all International ACH Transactions. Customer agrees to be bound by the *NACHA Rules* and all other statutes and regulations pertaining to IAT Entries, including all applicable OFAC and FinCEN rules and regulations associated with IAT Entries. Customer acknowledges that IAT Entries require additional mandatory information, according to special formatting requirements, in the computer record for such Entries within an ACH batch file. Customer expressly agrees to identify and properly initiate all IAT Entries. Bank will facilitate IAT Entries to Receivers located in foreign countries approved by Bank and facilitated by the ACH or the Gateway Operator (hereinafter in this Section, collectively, "ACH Operator"). Bank will process each IAT Entry in accordance with (a) the laws and payment system rules and requirements of the receiving foreign country ("Foreign Country Rules"), (b) any agreement governing IAT Entries between Bank and the ACH Operator through which Bank processes the IAT Entry, the terms of which Bank communicates to Customer

prior to Customer's use of the Services or from to time thereafter, and (c) the *NACHA Rules*.

6.2 Customer acknowledges and agrees that IAT Entries may be subject to laws, regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Before initiating an IAT Entry, Customer agrees to understand and accept the Foreign Country Rules. An IAT Entry must be authorized by the Receiver. The form and content of the Receiver's authorization, including whether such authorization is oral, electronic or written, is governed by Foreign Country Rules. Customer assumes the risk of rejection of its Entries according to Foreign Country Rules, Bank and the ACH Operator. Customer expressly acknowledges and agrees that Outbound IAT Entries, once transmitted, are irrevocable and are subject to the Foreign Country Rules; furthermore, the time frames for return of an Entry are determined by the Foreign Country Rules and may exceed the sixty (60) day return window for consumer Entries defined by the U.S. ACH system and the *NACHA Rules*, as well as the return window for non-consumer Entries. Customer also agrees that IAT Entries may not be dishonored, reversed or settled upon a specific date, and that pre-notifications are not permitted with respect to IAT Entries involving certain foreign countries. To the extent not otherwise prohibited by law, in connection with IAT Entries, (1) Customer assumes the risk of all fluctuations in foreign exchange rates or availability, and (2) Customer assumes the risk of loss for creating any and all erroneous IAT Entries. Customer acknowledges and agrees that the processing, settlement and/or availability of such Entries may be delayed or suspended in the event that Bank determines that enhanced scrutiny or verification of such Entries is necessary under the *NACHA Rules* and/or applicable U.S. law. The ACH Operator through which Bank processes the IAT Entry, in its sole discretion, may also refuse to handle IAT Entries. Customer acknowledges that Bank shall have no liability for such delay or refusal.

6.3 In addition to the provisions of Section 22 of this Appendix, Customer makes the following additional representations and warranties with respect to any IAT Entry submitted by Customer or on Customer's behalf:

6.3.1 Customer is in compliance with U.S. law, including, but not limited to, Customer's obligations under programs administered by OFAC and FinCEN; and

6.3.2 The origination of an Outbound IAT Entry is in compliance with the Foreign Country Rules, including any requirements regarding authorization with respect to an IAT Entry.

6.4 Bank will not be liable for (a) any failure or delay by the ACH Operator, any intermediary financial institution, or the financial institution designated to receive the IAT Entry in the receiving country in processing or failing to process any IAT Entry that is transmitted to the receiving country, or (b) the acts or omissions by a third party, including without limitation, the delay or failure of any third party to process, credit or debit any IAT Entry. Bank is also not responsible for the transmission or

settlement of IAT Entries on foreign holidays or other days on which foreign countries may not process Entries.

6.5 With respect to credit IAT Entries that Customer wishes to originate in the currency of a designated foreign government or intergovernmental organization ("Foreign Currency"), Bank will originate the IAT Entries in U.S. dollars ("USD") only. Once the Entry is transmitted by Bank to the ACH Operator, the ACH Operator will convert the amount to be transferred from USD to the Foreign Currency. If the financial institution designated to receive the funds does not pay the Receiver specified in the Entry, or if the Entry is subsequently determined to be erroneous, the ACH Operator will convert the amount to be returned from the Foreign Currency to USD. Bank will not be liable for any difference in the amount of the original Entry after it has been converted from the Foreign Currency to USD. Further, if Customer designates the currency to arrive at the receiving financial institution in Foreign Currency, and the designated Receiver account at the receiving financial institution is a USD account, Customer acknowledges that the receiving financial institution may: (1) elect to convert the currency back to USD and post the transfer to the Receiver's account accordingly, or (2) return the Entry, in which case the amount transferred is converted from Foreign Currency back to USD to post back to Customer's account. Customer assumes all foreign exchange risk associated with any of the foregoing.

## 7. Security Procedures.

7.1 Customer and Bank shall comply with the security procedures set forth or incorporated by reference in this Appendix, the Cash Management Master Agreement, the Bank Internet System Appendix, Data Transmission Services Appendix and/or associated documents provided by Bank, including without limitation the Services' Setup Form(s) (collectively the "Security Procedures"), with respect to Entries transmitted by Customer to Bank. Customer acknowledges and agrees the Security Procedures are a commercially reasonable method for the purpose of verifying the authenticity of Entries (or any request for cancellation or amendment thereof). Customer further acknowledges that the purpose of the Security Procedures is not to detect an error in the transmission or content of an Entry. No security procedures have been agreed upon between Bank and Customer for the detection of any such error.

7.2 Customer is strictly responsible for establishing, implementing, maintaining and (as appropriate) updating its own security procedures (a) to safeguard against unauthorized transmissions, and (b) relating to the initiation, processing and storage of Entries. As required by the *NACHA Rules* with respect to the protection of ACH information (non-public information, including financial information of Receivers and Customer's customers, used to create, or contained within, an ACH Entry and any related addenda record), Customer shall ensure that its security policies, procedures and systems:

- Protect the confidentiality and integrity of the protected information,
- Protect against anticipated threats or hazards to the security or integrity of protected information until its destruction, and
- Protect against unauthorized use of protected information that could result in substantial harm to the Receiver/customer.

Customer warrants to Bank that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and Customer agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions Bank provides in connection with the Security Procedures. If Customer believes or suspects that any such information or instructions have been known or accessed by an unauthorized person, Customer agrees to notify Bank immediately by calling 1-866-475-7262, followed by written confirmation to TD Bank, N.A., Attn: Treasury Management Services Support, 6000 Atrium Way, Mt. Laurel, New Jersey, 08054. The occurrence of unauthorized access will not affect any transfers Bank makes in good faith prior to, and within a reasonable time period after, its receipt of such notification.

7.3 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

## 8. Compliance with Security Procedures.

8.1 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Customer, it will be deemed effective as Customer's Entry (or request), and Customer shall be obligated to pay Bank the amount of such Entry (or request) even though the Entry (or request) was not authorized by Customer, provided Bank acted in compliance with the Security Procedures. To the extent that signature comparison is to be used as part of any applicable Security Procedures, Bank shall be deemed to have complied with that part of such Security Procedures if it compares the signature accompanying a file of Entries (or request) with the signature of an Authorized Representative of Customer and, on the basis of such comparison, believes the signature to be that of such Authorized Representative.

8.2 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Customer, Customer shall be obligated to pay the amount of the Entry as provided herein, whether or not Bank complied with the Security Procedures and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with the Security Procedures.

**9. Recording and Use of Communications.**

Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Appendix may be electronically recorded and retained by either party by use of any reasonable means.

**10. Processing, Transmittal and Settlement of Entries by Bank.**

10.1 Bank will process, transmit and settle for credit and debit Entries initiated by Customer as provided in the *NACHA Rules* as in effect from time to time, and pursuant to this Appendix. Exclusive of "Same Day ACH Entries," which are described in Section 23 below, Bank will transmit such Entries as an ODFI to the ACH Operator by the deadline of the ACH Operator, provided such Entries are received by Bank prior to 8:00 p.m. Eastern Time ("ET") and the ACH Operator is open for business on such Business Day. Entries received after 8:00 p.m. ET will be deemed received the following Business Day. If the Effective Entry Date falls on a non-Business Day, final settlement will occur on the next Business Day. Customer may submit a NACHA-formatted file up to the time limit in advance of the Effective Entry Date as the Services permit, or as may otherwise be permitted by Bank under the terms of this Appendix. Customer will hold Bank harmless from all charges and liabilities that may be incurred as a result of the delivery of late Entries.

10.2 If the file of Entries is received other than in specified NACHA and Bank format, Customer will be required to provide Bank with a corrected file. If a corrected file of Entries is received later than 8:00 p.m. ET on the delivery date with an intended Effective Entry Date of next-Business Day, Customer will hold Bank harmless from all charges and liabilities that may be incurred as a result of the processing of late Entries.

10.3 For purposes of this Appendix, Entries shall be deemed received by Bank, in the case of electronic file transmission, when the transmission is completed as set forth in Bank's Appendix for Data Transmission Services and/or the Services' Setup Form(s).

10.4 If any of the requirements of this Section 10 (or of Section 23 with respect to Same Day ACH Entries) are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline on which the ACH Operator is open for business.

**11. On-Us Entries.** Except as otherwise provided herein, in the case of an Entry received for credit or debit to an account maintained by Bank (an "On-Us Entry"), Bank will credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date, provided the requirements set forth herein are otherwise met. If those requirements are not met, by reason of stale or same-day Effective Entry Dates on such Entries, Bank will credit or debit the Receiver's account in the amount of such Entry on the date the Entry was received by Bank, or if the Entry was received on a non-Business Day, Bank will credit or

debit the Receiver's account in the amount of such Entry on the next Banking Day following the date the Entry was received by Bank. Bank will have the right to reject an On-Us Entry as described in Section 12, *Returned or Rejected Entries*. In the case of an On-Us Entry, Bank will have all rights of an RDFI including, without limitation, the rights set forth in *NACHA Rules*.

**12. Returned or Rejected Entries.**

12.1 In the event any Entry is returned or rejected by the ACH Operator or any RDFI or Intermediary Depository Financial Institution for any reason whatsoever, it shall be the responsibility of Customer to remake and resubmit such Entry or otherwise resolve the returned Entry in accordance with the *NACHA Rules*.

12.2 Bank shall remake such Entry in any case where rejection by the ACH Operator was due to mishandling of such Entry by Bank and sufficient data is available to Bank to permit it to remake such Entry. In all other instances, Bank's responsibility will be to receive rejected or returned Entries from the ACH Operator, perform necessary processing, control and settlement functions, and to forward such Entries to Customer. Except for an Entry retransmitted by Customer in accordance with the requirements of Section 5, *Transmittal of Entries by Customer*, Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Appendix with respect to the original Entry.

12.3 Bank may reject any Entry which does not comply with the requirements of Section 5, *Transmittal of Entries by Customer*, or Section 7, *Security Procedures*. Bank may also reject any Entry which contains a future Settlement Date that exceeds the limits set forth within the Services. Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the *NACHA Rules*. Bank may reject any Entry or file if Customer has failed to comply with its Settlement Account balance obligations under Section 2, *Customer Obligations*, or Customer's Exposure Limit under Section 3, *Risk Exposure Limits*. Notices of rejection shall be effective when given. Bank shall have no liability to Customer by reasons 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. Bank may monitor Customer's rejected or returned Entries. Bank reserves the right, in its sole and exclusive discretion, to require Customer to establish a reserve Account in the event that an excessive number of Customer's debit Entries are rejected or returned.

12.4 In accordance with *NACHA Rules*, Bank may monitor returned Entries, and in its sole discretion, may: (1) require Customer to lower its return rates, (2) invoke premium penalty fees for unauthorized or excessive return rates, and/or (3) invoke termination or suspension of the Services and/or this Appendix in conjunction with Section 31 of this Appendix.

**13. Cancellation or Amendment by Customer.** Customer shall have no right to cancel or amend any Entry or file after its receipt by Bank. However, if such request complies with the Security Procedures applicable to the

cancellation of data, Bank shall use reasonable efforts to act on a request by Customer for cancellation of an Entry prior to transmitting it to the ACH Operator, or in the case of an On-Us Entry, prior to crediting or debiting a Receiver's account, but Bank shall have no liability if such cancellation is not effected. Customer shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

**14. Reversing Entries/Files.** If Customer discovers that any Entry or file Customer has initiated was in error, it may use the Services to correct the Entry or file by initiating a reversal or adjustment, or Customer may notify Bank of such error and Bank will utilize reasonable efforts on behalf of Customer, consistent with the *NACHA Rules*, to correct the Entry or file by initiating a reversal or adjustment of such Entry or file. In all such cases, it shall be the responsibility of Customer to notify the affected Receiver that an Entry or file has been made which is at variance with the authorization or is otherwise erroneous. Customer indemnifies Bank against any claim by any Receiver that a reversing Entry or file requested by Customer is wrongful. Customer understands and acknowledges that certain RDFIs may not or cannot comply with such reversal and that, in such an event, Bank will debit Customer's Settlement Account in the amount of the provisional credit applied to the Settlement Account for such Entry or file.

**15. Notice of Returned Entries.** Bank will use reasonable efforts to notify Customer by phone or electronic transmission of the receipt of a returned Entry from the ACH Operator no later than one (1) Business Day after the Business Day of such receipt. Except for an Entry re-transmitted by Customer in accordance with the requirements of Section 5, *Transmittal of Entries by Customer*, Bank shall have no obligation to re-transmit a returned Entry to the ACH Operator if Bank complied with the terms of this Appendix with respect to the original Entry.

**16. Notifications of Change.** Bank will use reasonable efforts to notify Customer of each Notification of Change ("NOC") or Corrected Notification of Change ("Corrected NOC") received by Bank related to Entries transmitted by Customer within two (2) Business Days after receipt thereof. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) Business Days of Customer's receipt of the NOC or Corrected NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

**17. Pre-Notification and Rejection of Pre-Notification.** Bank recommends that, as permitted by the *NACHA Rules* or applicable law, Customer send pre-notifications at least three (3) Business Days prior to initiating an authorized Entry to a particular account in a format and medium approved by the *NACHA Rules*. Customer 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 Customer receives

notice that any such pre-notification has been rejected by an RDFI, Customer will not initiate any related Entry until the cause for rejection is resolved as provided in the *NACHA Rules*. If Customer receives notice that an RDFI will not receive Entries without having first received a copy of the authorization signed by its customer, Customer 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*. Customer understands and acknowledges that once a pre-notification has been initiated using the Services, Customer will be restricted from initiating any Entry to such customer(s) for three (3) Business Days.

#### **18. Participant Authorization for Entries.**

**18.1** To the extent required by the *NACHA Rules* or applicable law, Customer will obtain all consents and written authorizations for all Entries in accordance therewith. Such authorizations and any related disclosures shall be in a form that complies with (i) all requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, as the same may be amended from time to time, including, without limitation, any applicable requirements of Regulation E, the Federal Electronic Funds Transfer Act, and sanctions enforced by OFAC. Customer 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](http://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 Customer after such authorization has been revoked or the arrangement between Customer and such Receiver or other party has terminated.

**18.2** Customer shall retain all consents and authorizations for the period required by the *NACHA Rules*. Customer will furnish to Receiver, or to Bank upon its 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 Bank shall be deemed to limit or waive Customer's obligations under this Section.

**19. Re-initiation of Entries.** Customer may not re-initiate Entries except as prescribed by the *NACHA Rules*.

#### **20. Payment by Customer for Entries; Payment by Bank for Entries.**

**20.1** Except as may otherwise be agreed by Bank in its sole and exclusive discretion, Customer shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Appendix at such time on the date of transmittal by Bank of such credit Entry as Bank, in its discretion, may determine.

**20.2** Customer shall promptly pay Bank the amount of each debit Entry returned by an RDFI pursuant to this Appendix.

20.3 Bank will pay Customer the amount of each debit Entry transmitted by Bank pursuant to this Appendix at such time on the Settlement Date with respect to such debit Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date as Bank, in its discretion, may determine.

20.4 Bank will use reasonable efforts to promptly pay Customer the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Appendix.

20.5 Customer acknowledges and agrees that any failure of Customer to make payment to Bank as described in this Section may constitute an event of default under any other agreement for credit that Customer or any of Customer's Affiliates has with Bank or any Affiliate of Bank. Customer further acknowledges and agrees to execute and deliver any further documents and instruments as Bank may require to effectuate the cross-default contemplated hereby.

#### 21. Third-Party Service Provider; Third-Party Sender Activities.

21.1 Subject to Bank's prior approval and in its sole and exclusive discretion, Customer may appoint a third party to act as Customer's agent to process Entries on Customer's behalf and for purposes of the services provided hereunder ("Third-Party Service Provider"), as set forth in the Services' Setup Form(s). All data received by Bank from Third-Party Service Provider, including Entries and instructions (and corrections or adjustments thereto), are hereby authorized by Customer. All acts and omissions of Third-Party Service Provider shall be the acts, omissions and responsibility of Customer and shall be governed by the provisions of this Appendix. Customer agrees, jointly and severally with Third-Party Service Provider, to indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by Bank relating to or arising out of the acts or omissions of Third-Party Service Provider on behalf of Customer. Customer and Third-Party Service Provider shall execute any such other agreement(s) or documents as deemed necessary or appropriate by Bank prior to the initiation or continuation by Third-Party Service Provider of any services on Customer's behalf, including without limitation Bank's Third-Party Service Provider Agreement, as the same may be modified by Bank from time to time. Notice of any termination of Third-Party Service Provider's authority to transmit data and instructions to Bank on Customer's behalf shall be given to Bank in writing. The effective date of such termination shall be ten (10) Business Days after Bank receives written notice of such termination. Customer agrees that Bank retains the right to reject any Third-Party Service Provider and any Entries initiated by Customer's Third-Party Service Provider in its sole discretion.

21.2 Customer may not use the services provided hereunder to process Entries on behalf of Customer's clients (defined as a "Third-Party Sender" under the *NACHA Rules*), except where Customer has formally requested to engage in such activity in advance and where Bank has provided its prior approval, which Bank may grant or withhold in its sole and exclusive discretion. In the event Bank approves of such use, Customer shall execute such other agreement(s) or documents as deemed necessary or appropriate by Bank prior to the initiation or continuation by Customer of any ACH services in the capacity of a Third-Party Sender. Customer agrees that Bank retains the right to reject any request by Customer to engage in Third-Party Sender activities as well as any Entries initiated by Customer in such capacity, in Bank's sole discretion.

**22. Customer Representations and Agreements; Indemnity.** In addition to Customer representations, agreements and warranties otherwise described in this Appendix, Customer further represents and warrants to Bank and agrees, with respect to each and every Entry transmitted by Customer or any Third-Party Service Provider on Customer's behalf, that:

(i) Each person shown as the Receiver of an Entry received by Bank from Customer 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) Such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein;

(iii) Entries transmitted to Bank by Customer are limited as set forth in Sections 3 and 5;

(iv) Customer shall perform its obligations under this Appendix in accordance with 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;

(v) Customer 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) Customer specifically acknowledges that it has 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 each International ACH Transaction ("IAT") that Customer may be permitted by Bank to initiate, Customer shall (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 Foreign Country Rules;

(viii) with respect to each Internet-initiated/mobile ("WEB") (as defined under the *NACHA Rules*) ACH Entry that Customer may be permitted by Bank to initiate, (a) Customer employs (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) a commercially reasonable level of encryption technology, and (b) where required by the *NACHA Rules* and/or Bank, Customer conducts 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, and will provide proof of such audits to Bank upon request;

(ix) with respect to each Telephone-Initiated ("TEL") Entry that Customer may be permitted by Bank to initiate, Customer has (a) employed commercially reasonable procedures to verify the identity of the Receiver, and (b) utilized commercially reasonable procedures to verify that routing numbers are valid;

(x) with respect to each Accounts Receivable ("ARC") Entry that Customer may be permitted by Bank to initiate, (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) Customer will retain a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each ARC Entry for two (2) years from the Settlement Date of the ARC Entry, (c) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, (d) Customer has established reasonable procedures under which the Receiver may notify Customer that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's account and that Customer will allow 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;

(xi) with respect to each Back Office Conversion ("BOC") Entry that Customer may be permitted by Bank to initiate, (a) Customer has employed commercially reasonable procedures to verify the identity

of the Receiver, (b) Customer has established and maintains 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) Customer will retain a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each BOC Entry for two (2) years from the Settlement Date of the BOC Entry, (e) Customer has employed 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;

(xii) with respect to each Point-of-Purchase ("POP") Entry that Customer may be permitted by Bank to initiate, the source document provided to Customer 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 Customer and (b) has not been provided to the Receiver for use in any prior POP Entry; and

(xiii) with respect to each Returned Check ("RCK") Entry that Customer may be permitted by Bank to initiate, (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.

Customer shall indemnify and hold Bank harmless from any loss, liability or expense (including reasonable attorneys' fees and costs) resulting from or arising out of any breach of the foregoing warranties, representations or agreements. Customer shall also indemnify and hold Bank harmless from any claim of any person that Bank is responsible for any acts or omissions of Customer regarding any Entry received from Customer, or those of any other person related thereto, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI.

**23. Same Day ACH ("SDA").** Upon the effective date of the changes to the *NACHA Rules* enabling the same-day processing of certain ACH payments (the "SDA Rule"), Customer may be permitted, in Bank's sole and exclusive discretion, to initiate SDA Entries. In the event Bank approves Customer's initiation of SDA Entries, either on a one time or other periodic basis, Customer agrees as follows:

23.1 Customer shall be solely responsible for transmitting its SDA Entries with the appropriate

intended Effective Entry Date to qualify as an SDA Entry under the *NACHA Rules*.

23.2 Customer shall only initiate individual Entries that comply with the \$25,000 or less transaction limit per SDA Entry, as large-dollar transactions (over \$25,000) are not eligible for same-day processing under the *NACHA Rules*.

23.3 Customer will not initiate an SDA Entry as an IAT, as IATs are not eligible for same-day processing under the *NACHA Rules*.

23.4 Customer will transmit its SDA Entries to Bank in accordance with Bank's SDA Entry processing deadlines, as established by Bank from time to time and disclosed to Customer.

23.5 Customer acknowledges and agrees that if Customer sends an Entry with a stale or invalid Effective Entry Date, such Entry may be deemed and processed by Bank as an SDA Entry if transmitted in accordance with Bank's SDA Entry processing deadlines.

23.6 Customer acknowledges and agrees that if any of the requirements of this Section 23 are not met, including without limitation a failure by Customer to meet Bank's or the ACH Operator's deadline for SDA, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next available processing deadline on which the ACH Operator is open for business.

23.7 Customer further acknowledges that Bank will not consider the content of the Company Descriptive Date indicator when determining Customer's intent for processing and settlement of SDA Entries.

23.8 Customer will not initiate SDA Entries that are otherwise ineligible for SDA Entry processing and settlement in accordance with the *NACHA Rules*.

23.9 Customer otherwise agrees to and will comply with all other requirements under the *NACHA Rules* and by Bank with respect to SDA Entries, including as the same may be amended from time to time.

23.10 Customer will indemnify and hold Bank harmless from any SDA Entry processing and settlement that is performed by Bank as described herein and in accordance with the *NACHA Rules*, notwithstanding Customer's intent.

23.11 Customer will indemnify and hold Bank harmless from any intended SDA Entry not meeting the ACH Operator deadline due to Customer delays, or due to Bank processing delays that are beyond Bank's reasonable control.

**24. Inconsistency of Name and Account Number.** Customer acknowledges and agrees 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 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) Customer's obligation to pay the amount of Entry to Bank 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 Customer shall be liable to pay that Entry.

**25. Banks Unable to Accept ACH Transactions.** If Customer submits an Entry to Bank relating to an RDFI which is not a participant in the ACH, then (i) Bank may reject such Entry and use reasonable efforts to notify Customer of such rejection or (ii) if Bank does not reject such Entry, upon receiving a return transaction related to the Entry from the ACH Operator, Bank may offset the Settlement Account and notify Customer of such transaction.

**26. Notices, Instructions, Etc.**

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

26.2 Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been provided in accordance with the provisions of the parties' Cash Management Master Agreement.

**27. Data Retention.** Customer shall retain data on file adequate to permit remaking of Entries for five (5) Business Days following the date of their transmittal by Bank as provided herein and shall provide such data to Bank upon request. Without limiting the generality of the foregoing provision, Customer specifically agrees 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, Customer's responsibilities to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*.

**28. Data Breaches.**

28.1 Customer agrees that it will adopt and implement 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.

28.2 Customer agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions.

28.3 Customer will provide timely and accurate notification to Bank by calling 1-866-475-7262

with regard to any Data Breaches when known or reasonably suspected by Customer, 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 Bank.

**29. Audit.** Bank has the right to periodically audit Customer's compliance with the *NACHA Rules*, U.S. law and Bank policies, including, but not limited to, this Appendix.

**30. Records.** All electronic or other files, Entries, Security Procedures and related records used by Bank for transactions contemplated by this Appendix shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Customer's request. Any expenses incurred by Bank in making such information available to Customer shall be paid by Customer.

**31. Termination.** The parties may terminate this Appendix in accordance with the terms and conditions of the parties' Cash Management Master Agreement. In addition, if Customer breaches the *NACHA Rules* or causes Bank to breach the *NACHA Rules*, this Appendix may be terminated or suspended by Bank upon ten (10) Business Days' notice, or such shorter period as may be provided in the parties' Cash Management Master Agreement. Any termination of this Appendix shall not affect any of Bank's rights and Customer's obligations with respect to Entries initiated by Customer prior to termination, the payment obligations of Customer with respect to services performed by Bank prior to termination, or any other obligations or

provisions that by the nature of their terms survive termination of this Appendix, including without limitation Sections 2, 5, 10, 12, 13, 14, 18, 20, 21, 22, 27, 32, 33 and 34.

**32. Cooperation in Loss Recovery Efforts.** In the event of any damages for which Customer or 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 Customer or Bank may be obligated to defend or elects to pursue against a third party.

**33. Governing Law.** In addition to the terms and conditions of the parties' Cash Management Master Agreement, the parties agree that if any payment order governed by this Appendix is part of a funds transfer subject to the federal Electronic Funds Transfer Act, then all actions and disputes as between Customer, or any Third-Party Service Provider acting on Customer's behalf, and Bank shall be governed by Article 4-A of the Uniform Commercial Code, as varied by this Appendix.

**34. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the services described herein and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.



## APPENDIX III

### TD WIRE TRANSFER SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement, and the parties' Bank Internet System Agreement, and applies to all TD Wire Transfer Services ("Services") made available to Customer by Bank via the Bank Internet System. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement or the Bank Internet System Agreement, as applicable. To the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, or with the terms and conditions of the Bank Internet System Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

##### 1. Description of the Services.

1.1 The Services described in this Appendix provide Customer with the capability to transfer funds from specific Account(s) to other accounts (the "Recipient Account(s)") as directed via the Bank Internet System. The Recipient Account(s) may be Customer accounts or third-party accounts, and may be with Bank or with domestic or foreign third-party financial institutions. Customer may use the Services to initiate one-time wire transfers, or to create templates for wire transfers made on a repetitive basis which involve the same Customer Account and Recipient Account ("Repetitive Transfer(s)"). All wire transfers must be initiated by an Authorized Representative of Customer.

1.2 Prior to Customer's use of the Services, Customer must first agree to and transmit all instructions in accordance with all of the terms, conditions and security procedures associated with the Bank Internet System, as further set forth in the Cash Management Master Agreement.

##### 2. Execution of Wire Transfers.

2.1 By submitting a wire transfer, Customer authorizes Bank to withdraw the amount of any requested wire transfer which Customer may authorize and instruct via the Bank Internet System, plus any applicable fees and charges, from Customer's designated Account. Subject to the terms of this Appendix, Bank will accept and execute a wire transfer received from Customer that has been authenticated by Bank and that is in conformity with the Security Procedure (as further described below), cut-off times and other requirements as described in this Appendix and associated Bank setup form(s) and other documentation.

2.2 All wire transfers to accounts at other depository institutions are transmitted using the Fedwire funds transfer system owned and operated by the Federal Reserve Bank, or a similar wire transfer system used primarily for funds transfers between financial institutions. Notwithstanding the foregoing or anything to the contrary in this Appendix, Bank may use any means of transmission, funds transfer system, clearing house, intermediary or

correspondent bank that Bank reasonably selects to transfer funds from time to time.

2.3 Each wire transfer must include the following information in addition to any information which Bank may require for proper identification and security purposes: (i) account number from which the funds are to be withdrawn, (ii) amount to be transferred, (iii) Customer's address, (iv) name and ABA routing number of the payee's bank, and (v) account name, address and account number of the payee. In the event a wire transfer describes an account number for the payee that is in a name other than the designated payee, Bank may execute the wire transfer to the account number so designated notwithstanding such inconsistency.

2.4 Templates created by Customer for Repetitive Transfers are the sole and exclusive responsibility of Customer. Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed a Repetitive Transfer, including without limitation, any loss due to Customer error in creating the Repetitive Transfer template.

##### 3. Time of Execution.

3.1 Bank will execute each authenticated wire transfer that is in conformity with all security procedures, cut-off times and other requirements set forth herein. Bank may require additional authentication of any wire transfer request. Bank reserves the right to reject a wire transfer request that cannot be properly authenticated. Cut-off times may be established and changed by Bank from time to time. Instructions for wire transfers received after such cut-off times may be treated by Bank for all purposes as having been received on the following Business Day.

3.2 Except for future-dated wire transfers, domestic wire transfers (U.S.-based receivers) initiated and approved by Bank's cut-off time on a Business Day will be processed that same day if that day is also a Business Day for Bank's correspondent facility and the recipient bank; wire transfers initiated and approved after Bank's cut-off time for domestic wire transfers will be processed the next Business Day if that day is also a Business Day for Bank's correspondent facility and the recipient bank. Future-dated domestic wire transfers will be initiated on the effective

date requested by Customer, not on the date Customer entered the transaction using the Services.

3.3 Bank may handle wire transfers received from Customer in any order convenient to Bank, regardless of the order in which they are received.

#### 4. International Wires.

4.1 International wire transfers (non-U.S. receivers) of foreign currency initiated and approved by Bank's cut-off time for international wire transfers of foreign currency on a Business Day, and an international wire transfer of U.S. currency initiated and approved by Bank's cut-off time for international wire transfers of U.S. currency on a Business Day will be processed within the industry standard delivery time (in most, but not all cases, two (2) Business Days). Foreign wire transfers may be subject to delays based on time-zone issues; the remote location of the recipient bank; cultural differences with respect to holidays and times of observation, etc.; and incorrect or incomplete information being supplied by Customer.

4.2 Bank shall send Customer's authorized and authenticated wire transfers to foreign banks through any bank which is a member of Bank's correspondent network. Neither Bank nor any of Bank's correspondents shall be liable for any errors, delays or defaults in the transfer of any messages in connection with such a foreign wire transfer by any means of transmission. If the wire transfer is of currency other than that of the country to which it is being transferred, it shall be payable in the currency of the country of the recipient financial institution, unless the payee arranges otherwise. If the wire transfer is received by Bank prior to any cut-off time established from time to time, the currency exchange shall be made at the rate quoted by Bank at the time of the wire transfer.

4.3 Bank makes no guarantee or representation as to the availability of funds at the foreign destination. Bank makes no express or implied warranty as to the time or date the wire transfer will arrive at the receiving bank, the amount of any fees to be charged by the receiving bank or the time or date the beneficiary will receive credit for funds.

4.4 Customer understands and acknowledges that if the named beneficiary does not match the account at the receiving bank, there is a risk the beneficiary may not receive the wired funds. If the transfer is not received or credited in a timely manner, Bank will follow normal and customary procedures to complete the wire transfer, determine the location of the wired funds and/or return the funds to Customer. If Bank is unable to determine that the funds have been credited to the beneficiary's account or have the funds returned, Customer assumes all financial liability or risk of loss for the amount of the wire transfer.

4.5 International wire transfers are subject to any and all applicable regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Bank has no obligation to accept any international wire transfer(s) directed to or through persons,

entities or countries restricted by government regulation or prior Bank experience with particular countries. To the extent not otherwise prohibited by law, in connection with any international wire transfer(s) involving a transfer to or from any country outside of the U.S., Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed the international wire transfer(s), including without limitation, any loss due to failure of a foreign bank or intermediary to deliver the funds to a beneficiary.

5. **Cancellation and Amendment of a Wire.** An Authorized Representative may request that Bank attempt to cancel or amend a wire transfer previously received from Customer. If a cancellation or amendment request is received by Bank before the wire transfer is executed and with sufficient time to afford Bank an opportunity to act upon Customer's request, Bank may, on its own initiative but without obligation, make a good faith effort to act upon such request. In the event Customer's cancellation or amendment request is received after execution of Customer's wire transfer request, Bank will attempt to have the wire transfer returned. Notwithstanding the foregoing, Bank shall have no liability for the failure to effect a cancellation or amendment, and Bank makes no representation or warranty regarding Bank's ability to amend or cancel a wire transfer. Customer agrees to indemnify Bank against any loss, liability or expense which Bank incurs as a result of the request to cancel or amend a wire transfer and the actions Bank takes pursuant to such request.

6. **Notice of Rejection or Return.** Bank shall have no liability for wire transfers sent by Bank as directed by Customer which cannot be completed or which are returned due to incorrect information furnished by Customer. Customer is required to fully complete beneficiary name, and address, as beneficiary bank may elect to return an otherwise valid wire transfer for incomplete beneficiary information. Bank may reject or impose conditions that must be satisfied before it will accept Customer's instructions for any wire transfer, in its sole discretion, including without limitation Customer's violation of this Appendix, Customer's failure to maintain a sufficient Account balance, or Bank's belief that the wire transfer may not have in fact been authorized. A wire transfer may also be rejected by an intermediary or beneficiary bank other than Bank, or by operation of law. If a wire transfer is rejected by Bank, Bank will notify Customer by telephone, by electronic means, by facsimile or by mail, depending on the method of origination. Upon rejection or return, Bank shall have no further obligation to act upon a wire transfer, nor shall Bank have any liability to Customer due to rejection by another person in the wire transfer process, or the fact that notice was not given or was not given at an earlier time, or within any specified time of receipt, acceptance, execution or payment of any wire transfer.

#### 7. Security Procedure.

7.1 Customer agrees that the security procedures used by Customer and set forth or incorporated by reference in this Appendix and/or associated documents, including but not limited to the Bank Internet System Appendix, are a commercially reasonable method of

providing security against unauthorized wire transfers and for all other instructions from Customer to Bank (hereinafter the "Security Procedure"). Any wire transfer by Customer shall bind Customer, whether or not authorized, if transmitted in Customer's name and accepted by Bank in compliance with the Security Procedure. Customer also agrees that any election Customer may make to change or refuse the Security Procedure is at Customer's risk and that any loss resulting in whole or in part from such change or refusal will be Customer's responsibility.

7.2 Bank may, from time to time, modify the Security Procedure. Except as expressly provided otherwise in this Appendix or in the parties' Cash Management Master Agreement, any such changes generally will be effective immediately upon notice to Customer as described in the parties' Cash Management Master Agreement. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Services after the date on which the change becomes effective.

7.3 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

7.4 Customer hereby acknowledges that the Security Procedure is neither designed nor intended to detect errors in the content or verify the contents of a wire transfer by Customer. Accordingly, any errors contained in wire transfers from Customer shall be Customer's responsibility, and Customer shall be obligated to pay or repay (as the case may be) the amount of any such wire transfer. No security procedure for the detection of any such Customer error has been agreed upon between Bank and Customer.

7.5 Customer is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized wire transfers. Customer covenants that no employee or other individual will be allowed to initiate wire transfers in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedure and any Access Devices and related instructions provided by Bank in connection with any Security Procedure utilized by Bank and/or Customer. If Customer believes or suspects that any such Access Devices, Security Procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately by calling 1-866-475-7262, followed by written confirmation to TD Bank, N.A., Attn: Cash Management Customer Care, 6000 Atrium Way, Mt. Laurel, New Jersey, 08054. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period thereafter.

**8. Inconsistency of Receiving Beneficiary Name and Account Number.** Customer acknowledges and

agrees that, in accordance with Article 4A of the Uniform Commercial Code, Bank shall be entitled to rely upon the numbers supplied by Customer to identify banks, beneficiaries and other parties to the wire transfer, even if those numbers disagree or are inconsistent with the names of those parties as provided by Customer.

**9. Payment; Authorization to Charge Account.** Customer agrees to pay Bank the amount of each wire transfer received from Customer on the Business Day Bank executes said wire transfer or at such other time as Bank may determine. Bank will validate that sufficient funds are available in Customer's Account prior to a wire transfer being executed. Generally, if sufficient funds are not available in Customer's Account, the wire transfer will not be executed by Bank. Bank may, without prior notice or demand, obtain payment of the amount of each wire transfer by debiting the Account designated. In the event there are not sufficient funds available in the Account, Bank also reserves the right to debit any other Account that Customer maintains with Bank.

**10. Wire Confirmation; Account Reconciliation.** Customer may confirm the execution of a wire transfer via the Bank Internet System. Completed wire transfers will also be reflected in Customer's periodic Account statement. Customer acknowledges and agrees that Bank is not obligated to provide Customer with a separate advice or notice for each completed wire transfer. If Customer requests that Bank provide a special notice and Bank agrees to do so, Bank reserves the right to impose a Service Fee for such notice in accordance with the Cash Management Master Agreement.

**11. Service Providers.** Bank may use a service provider to perform, as Bank's agent, all or any portion of Bank's obligations under this Appendix. Customer may be required to direct wire transfers and other requests to said provider.

**12. Bank Reliance; Authentication.**

12.1 Bank shall be entitled to rely in good faith on communications it receives as being given or sent by an Authorized Representative and as being genuine and correct. Bank shall not be liable to Customer for the consequences of such reliance.

12.2 **BANK MAY TAKE SUCH ADDITIONAL STEPS AND IMPLEMENT SUCH PROCEDURES AS IT MAY DEEM APPROPRIATE TO VERIFY THE AUTHENTICITY OF ANY WIRE TRANSFER. BANK MAY DELAY THE EXECUTION OF ANY WIRE TRANSFER PENDING COMPLETION OF A CALL-BACK, OR RECEIPT OF ANOTHER FORM OF VERIFICATION WHICH IS SATISFACTORY TO BANK. IF BANK IS UNABLE TO OBTAIN SATISFACTORY VERIFICATION, BANK, IN ITS SOLE DISCRETION, MAY REFUSE TO EXECUTE ANY WIRE TRANSFER.** In no event shall Bank be liable for any delay in executing a wire transfer or for failure to execute a wire transfer due to the absence of satisfactory verification.

12.3 Bank may electronically record any telephone conversations between Bank personnel and Customer.

12.4 Wire transfer transactions are subject to all the foregoing and all regulations governing electronic transactions, including but not limited to Article 4A of the Uniform Commercial Code.

13. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank

under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.



## APPENDIX V

### TD POSITIVE PAY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Positive Pay Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict. In the event of inconsistency between a provision of this Appendix and the Uniform Commercial Code ("U.C.C."), the parties intend to modify the effect of the applicable U.C.C. provisions to the maximum extent permitted by law.

#### TERMS AND CONDITIONS

##### 1. Definitions.

**1.1 Statutory Definitions.** Unless otherwise defined in this Appendix, words or phrases shall have the meanings set forth in the U.C.C. in effect from time to time under the laws of the State specified in the governing law provision of the parties' Cash Management Master Agreement.

##### 1.2 Definitions.

"*Authorized Account*" means the Account(s) of Customer, maintained at Bank, to which the positive pay services described herein and rendered by Bank will apply.

"*Available Funds*" means funds on deposit in an Authorized Account and available for withdrawal pursuant to Federal Reserve Board Regulation CC and Bank's applicable funds availability schedule and policies.

"*Check Issue File*" means a record describing checks drawn by Customer on an Authorized Account and provided by Customer to Bank in accordance with Section 2.2.

"*Exception Check*" means a Presented Check or a Systematic Override Check that does not match data included in a Check Issue File.

"*Exception Check Report*" means a record describing Exception Checks which is provided by Bank to Customer in accordance with Section 2.3.

"*Pay Decision(s)*" means the instructions of Customer to Bank instructing Bank to pay an Exception Check.

"*Presented Check*" means a check, substitute check, or electronically-presented check drawn on an Authorized Account and presented to Bank for payment through the check collection system or over-the-counter at one of Bank's branch teller stations.

"*Return Decision(s)*" means the instructions of Customer to Bank instructing Bank not to pay an Exception Check.

"*U.C.C.*" means the Uniform Commercial Code as in effect under the laws of the State specified in the parties' Cash Management Master Agreement, as it may be amended from time to time.

##### 2. Services.

**2.1 Description.** The positive pay service described in this Appendix will provide Customer with a means to either affirmatively approve the payment of a particular check upon presentment or to object to its payment. Customer acknowledges that positive pay is a service that has been identified by Bank as reducing the risk of fraudulent items being paid against Customer's Account(s) when such Service is adopted and properly utilized by Customer. By conforming to the terms and conditions of this Appendix, Customer agrees and acknowledges that it may significantly reduce the chance that fraudulent items will post to Customer's Account(s).

##### 2.2 Check Issue File.

**2.2.1** Customer shall submit a Check Issue File to Bank. The Check Issue File shall accurately state the check number and the exact amount of each check drawn on each Authorized Account since the last Check Issue File was submitted (and the payee name, if Customer elects to receive payee verification services). Each Check Issue File shall also identify any checks that have been cancelled by Customer prior to issuance.

**2.2.2** If Customer elects to receive payee verification services, the following additional terms shall also apply. Bank's payee verification services require the payee name to match against Customer's Check Issue File at a minimum threshold or matching score. The payee name in the Check Issue File will be electronically compared to the payee name on Presented Checks. Other information related to the payee name may also be electronically compared as part of the automated verification process to establish a matching score. Such comparisons that result in a minimum threshold or matching score will be deemed to be a matching check.

Customer is responsible for complying with the payee verification services' check specifications as specified by Bank from time to time in order to ensure the highest level of performance from the payee verification services. If Customer is unable or unwilling to comply with the payee verification services' check specifications as specified by Bank, Bank may, in its sole and exclusive discretion, (a) terminate or suspend Customer's use of the payee verification services as provided in the Cash Management Master Agreement, or (b) at Customer's request, re-configure the software associated with the payee verification services to systematically process Presented Checks in reliance solely on the payee name provided by Customer to Bank in the Check Issue File and without regard to any other information related to the payee name that may appear on the Presented Checks (hereinafter "Systematic Override Checks"). Any Presented Check or Systematic Override Check that does not result in a minimum threshold or matching score shall be deemed an Exception Check and reported as such in accordance with the terms of this Appendix. Except as may otherwise be provided in this Appendix and in the Cash Management Master Agreement, Bank shall have no liability for Systematic Override Checks.

2.2.3 Customer shall send the Check Issue File to Bank in the format and medium, by the deadline(s), at scheduled day(s), at the place(s) specified by Bank and agreed to by Customer, as set forth in Services' Setup Form(s). The deadline for transmissions of the Check Issue File to Bank shall be set forth in the Services' Setup Form(s).

**2.3 Payment of Presented Checks and Reporting of Exception Checks.** Bank shall compare each Presented Check by check number, check amount and payee name (if Customer elects to receive payee verification services) against each Check Issue File received by Bank. Bank may satisfy its obligation hereunder by comparing check number, amount and payee name (if applicable) set forth in Substitute Checks, checks presented over-the-counter at one of Bank's teller stations and/or electronic presentment of checks. On each Banking Day, Bank:

(a) may pay and charge to the Authorized Account each Presented Check that matches, by check number, amount and payee name (if applicable), a check shown in any Check Issue File;

(b) may pay and charge to the Authorized Account all Systematic Override Checks that match, by check number, amount and payee name (if applicable and as described herein), a check shown on any Check Issue File; and

(c) shall provide to Customer an Exception Check Report that indicates whether Bank has received any Exception Checks and, if so, provide the image of the Exception Check(s) by the deadline set forth in the Services' Setup Form(s) via the Bank Internet System. Customer must provide check payment approval or return instructions to Bank on each Exception Check reported by the deadline set forth in the Services' Setup Form(s) via the Bank Internet System ("Pay or Return Decisions").

**2.4 Payment and Dishonor of Exception Checks.** Except as provided in Section 2.4.4 below, Bank will pay or return Exception Checks in accordance with Customer's Pay or Return Decisions.

**2.4.1 Pay Decisions.** Bank shall finally pay and charge to the Authorized Account, to the extent there are sufficient Available Funds in the Authorized Account, any Exception Check that Customer directs Bank to pay.

**2.4.2 Return Requests.** Bank shall return to the depository bank any Exception Check drawn on an Authorized Account that Customer directs Bank to return.

**2.4.3 Default Options.** If Customer fails to provide Pay or Return Decisions to Bank in accordance with these requirements, Exception Checks will be handled in accordance with the default option as set forth in the Services' Setup Form(s) for each Authorized Account, in accordance with the following:

(a) **Return Default.** Where Customer has selected the return default option, Bank shall return to the depository bank any Exception Check drawn on that Authorized Account.

(b) **Pay Default.** Where Customer has selected the pay default option, Bank may finally pay and charge to the Authorized Account any Exception Check drawn on that Authorized Account.

**2.4.4 Checks Presented for Payment at Bank Teller Stations.** Notwithstanding anything in this Appendix to the contrary, Bank may, in its sole and absolute discretion, return to the person presenting a check drawn on an Authorized Account for payment over-the-counter at one of Bank's teller stations any such check that does not appear on a Check Issue File. Customer acknowledges and agrees that Bank shall have no obligation to inform Customer that any such check has been presented for payment at a Bank teller station. Bank shall have no liability to Customer for wrongful dishonor with respect to any such check.

**2.5 Customer and Bank Communications.**

**2.5.1** Customer or Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Appendix. The revised communication must (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent, (ii) identify the original communication, and (iii) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.

**2.5.2** Bank shall use only Check Issue Files that comply with Section 2.2 and have not been revoked in accordance with Section 2.5.1 in the preparation of Exception Check Reports under this Appendix.

2.5.3 Customer shall use only Exception Check Reports that comply with Section 2.3 and have not been revoked in accordance with Section 2.5.1 in the preparation of Pay Decisions and Return Decisions. Bank shall not be obligated to comply with any Pay Decision or Return Decision received in a format or medium, after a deadline, or at a place not permitted under this Appendix and Services' Setup Form(s), but may instead treat such a Pay Decision or Return Decision in accordance with the default option selected by Customer in the Services' Setup Form(s).

2.5.4 Bank is not responsible for detecting any Customer error contained in any Check Issue File, Pay Decision or Return Decision sent by Customer to Bank.

**2.6 Submission of Data Prior to Implementation of Services.** Customer shall submit to Bank a current, reconciled list of all outstanding checks issued on each Authorized Account one (1) week prior to the implementation of the Services hereunder. Depending on the frequency with which Customer issues checks, Bank reserves the right to require Customer to submit one or more additional such lists so that all outstanding, unpaid checks issued on any Authorized Account have been reported to Bank prior to the implementation of the Services.

### 3. Remedies.

**3.1 U.C.C. Liability.** To the extent applicable, the liability provisions of U.C.C. Articles 3 and 4 shall govern this Appendix, except as modified below. To the extent permitted by U.C.C. Articles 3 and 4, the liability of Bank under this Appendix shall in all cases be subject to the provisions of the parties' Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank.

**3.2 Wrongful Honor.** It shall constitute wrongful honor by Bank if Bank pays an Exception Check listed in a timely Exception Check Report unless: (i) Customer issued a Pay Decision, or (ii) Customer selected the pay default option and did not issue a Return Decision by the deadline set forth in the Services' Setup Form(s). In the event that there is wrongful honor, the following shall apply:

3.2.1 Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid Exception Check or Customer's actual damages resulting from Bank's payment of the Exception Check.

3.2.2 Bank expressly waives any right it may have to assert that Customer is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under U.C.C. Section 4-401.

3.2.3 Bank retains the right to assert Customer's failure to exercise reasonable care under U.C.C. Sections 3-406 and 4-406.

3.2.4 Bank retains the right to assert the defense that Customer has sustained no actual damages because Bank's honor of the Exception Check discharged for value an indebtedness of Customer.

**3.3 Wrongful Dishonor.** Except as provided below, it shall constitute wrongful dishonor by Bank if Bank dishonors an Exception Check: (i) that Bank has been ordered to pay pursuant to a Pay Decision, or (ii) for which Customer has not issued a Return Decision under the pay default option by the deadline set forth in the Services' Setup Form(s).

3.3.1 Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under U.C.C. Articles 3 and 4.

3.3.2 Notwithstanding Section 3.3.1, Bank shall have no liability to Customer for wrongful dishonor when Bank, acting in good faith, returns an Exception Check:

(a) that it reasonably believed was not properly payable; or

(b) if there are insufficient Available Funds on deposit in the Authorized Account; or

(c) if required to do so by the service of legal process on Bank or the instructions of regulatory or government authorities or courts.

**3.4 Rightful Payment and Dishonor.** Except as provided in Section 3.5, the following shall apply:

3.4.1 If Bank honors an Exception Check in accordance with the pay default option selected by Customer or in accordance with a Pay Decision issued by Customer, such honor shall be rightful, and Customer waives any right it may have to assert that the Exception Check was not properly payable under U.C.C. section 4-401.

3.4.2 If Bank dishonors an Exception Check in accordance with the return default option selected by Customer or in accordance with a Return Decision issued by Customer, the dishonor shall be rightful, and Customer waives any right it may have to assert that the dishonor was wrongful under the U.C.C. section 4-402.

3.4.3 Customer agrees that Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of this Appendix.

**3.5 Faulty Information.** Subject to the terms and conditions of the Cash Management Master Agreement, Bank shall be liable for losses, other than incidental or consequential damages, proximately caused by its honor of a check that was not properly payable, or its dishonor of a check that was properly payable, if the honor or dishonor occurred because Bank, in accordance with the provisions of Section 2 of this Appendix:

(a) should have shown the check on an Exception Check Report but failed to do so; or

(b) showed the check on an Exception Check Report but referenced the wrong check number, unless Bank provided Customer with timely information that disclosed the error.

**3.6 Assignment.** To the extent that Customer suffers a loss under this Appendix, Bank assigns to Customer any claim that Bank would have against a depository or collecting bank to recover the loss, including any claim of breach of warranty under U.C.C. Sections 4-207, 4-208, and 4-209.

**4. Governing Law.** Except where expressly required by contrary provisions of the U.C.C., any claim, controversy or dispute arising under or related to this

Appendix shall be governed by and interpreted in accordance with the governing law provision of the parties' Cash Management Master Agreement.

**5. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the parties' Cash Management Master Agreement is terminated. In the event of termination, all sums owed to Bank hereunder shall be immediately due and payable.



## APPENDIX IX

### TD ACCOUNT RECONCILEMENT SERVICES - FULL

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Account Reconciliation Services – Full (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

1. **Services.** The Services described in this Appendix will assist Customer in reconciling and managing the check and deposit activity in Customer's designated checking Account(s) ("Authorized Accounts"). Use of the Services does not affect any of Customer's obligations, which are described in Bank's Business Deposit Account Agreement, to discover and report unauthorized or missing signatures and endorsements, or alterations on checks drawn on Customer's Accounts.

#### 2. Submission of Data.

2.1 Customer shall have checks prepared in accordance with Bank specifications, and will supply Bank with twenty-five (25) voided checks to be used for testing. The checks will be tested to ensure the paper stock is of a minimum weight and is encoded with Bank's ABA (routing and transit) number, account number and check number to ensure the readability of the MICR line on Bank's equipment.

2.2 Customer shall send a file to Bank containing information regarding checks that have been issued by Customer ("Check Issue File") in the format and medium, by the scheduled day(s) and to the place(s) specified by Bank and agreed to by Customer as set forth in the Services' Setup Form(s). The Check Issue File shall include check issue date, check issue amount, payee, stop payments, and voided or cancelled checks, if applicable.

2.3 Prior to implementation of the Services, Customer shall submit to Bank a current, reconciled list of all outstanding checks issued on each Authorized Account one (1) week prior to the implementation of the Services hereunder. Depending on the frequency with which Customer issues checks, Bank reserves the right to require Customer to submit one or more additional lists so that all outstanding, unpaid checks issued on any Authorized Account have been reported to Bank prior to the implementation of the Services hereunder.

2.4 Customer will send to Bank a test file in the format and medium as identified in the Services' Setup Form(s) to ensure the readability of the Check Issue File on Bank's equipment.

2.5 Customer agrees to receive its paid check data ("Paid Check Data") from Bank in the specified format and medium, on the scheduled day(s) and at the place(s) specified by Bank and as set forth in the Services' Setup Form(s).

2.6 Prior to receiving a file from Bank containing Customer's Paid Check Data, Customer will be provided a test file by Bank to ensure the readability of the Paid Check Data, on Customer's equipment. Customer agrees to report any test file failures.

2.7 Bank shall compare each of Customer's paid checks by check number and amount against each Check Issue File received by Bank. Bank does not, and shall not be obligated to, compare any other data (such as payee names) on a presented check with a Check Issue File, even if a Check Issue File contains such other data. Bank may satisfy its obligation hereunder by comparing check numbers and amounts received in substitute checks and/or electronic presentation of checks.

3. **Statement of Transactions.** Within five (5) Business Days following the scheduled date for reconciliation, as set forth in the Services' Setup Form(s), or receipt of the final Check Issue File for the current reconciliation period as set forth in the Services' Setup Form(s), Bank will forward to the address provided by Customer a fully reconciled report including a listing in check number sequence of all outstanding paid, issued, voided, stopped and cancelled items from the statement schedule. Customer shall review the listing and report any errors as set forth in the Cash Management Master Agreement between Bank and Customer.

4. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. Bank's liability under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Full

Reconciliation Services Appendix is accepted in writing by \_\_\_\_\_ terminated.  
Bank or the Cash Management Master Agreement is

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## APPENDIX XXI TD DATA TRANSMISSION SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to TD Data Transmission Services made available to Customer by Bank or Bank's third-party service provider. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

### TERMS AND CONDITIONS

**1. Services.** The Data Transmission Services (the "Services") provide Customer with the ability to exchange information files with Bank's (or its third-party service provider's) information systems for a variety of needs and functions. This Service allows Customer to send and/or receive its Bank files using File Transfer Protocol ("FTP"), Hypertext Transfer Protocol Secure ("Secure Web"), Secure File Transfer Protocol ("SFTP"), SWIFT Transmission, or via such other method as the parties may agree upon from time to time, as may be set forth in a Services' Setup Form(s), and as further described below.

#### **2. FTP Transmission.**

2.1 This method of data transmission permits Customer to deliver and/or receive encrypted files to a Bank-maintained FTP server. Bank will create a drop-box directory on the server where Customer may upload and deliver data files. To send data to Bank, Customer will either push the data files to Bank's directory, or Customer will give Bank a unique user name, password and Customer service address, and Bank will deliver the file. For data Bank sends Customer, Customer will pull the data files from its outbound directory on the server.

2.2 The technical requirements for FTP over the Internet include an Internet connection, FTP client capabilities, and Pretty Good Privacy ("PGP") or equivalent software for file encryption and decryption.

2.3 Files for transmission by FTP must be encrypted using PGP Version 4.0 or higher. PGP provides encryption technology including encryption, decryption, key management, encrypted email, digital signatures, key generation, certified keys and key revocation. Bank will generate a public key/private key pair for Customer. The public part of the key will be sent to Customer via Customer's assigned mailbox on Bank's transmission platform. The private part of the key will be securely kept within Bank. Customer will also generate a key pair for files that it sends to Bank. The public part of this key pair will be sent to Bank, also via the mailbox, while only Customer will know the private key.

2.4 To begin transmission by FTP, Bank will establish Customer's access to Bank's FTP server.

Bank will provide Customer with the domain name required for the FTP connection. Customer will be provided a User ID and password that is unique to Customer and will be required each time Customer wishes to connect to Bank's transmission platform to send or receive files. PGP public keys for encryption will be exchanged. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing on transmitted files prior to Customer's use of the Service via FTP transmission.

#### **3. Secure Web Transmission.**

3.1 This method of data transmission permits Customer to deliver and/or receive files using an Internet connection, User ID and password. Bank will provide Customer with the domain name of a website that will display a web page with Customer's root directory. Customer can upload data files to this directory by clicking the Browse button and selecting the file from Customer's local network. Data files sent by Bank will be displayed in Customer's outbound directory and may be downloaded by Customer to its local network.

3.2 The technical requirements for Secure Web include an Internet connection and browser supporting 128-bit Secure Sockets Layer ("SSL") encryption.

3.3 Files for transmission through Secure Web are encrypted using SSL. SSL is an open protocol for securing data communication across computer networks that provides a secure channel for data transmission through its encryption capabilities. SSL allows for the transfer of digitally-signed certificates for authentication procedures and provides message integrity to protect against data being altered en route. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing on transmitted files prior to Customer's use of the Service via Secure Web.

#### **4. Secure FTP (SFTP) Transmission.**

4.1 This method of data transmission permits Customer to deliver to and/or receive files from a Bank-maintained SFTP server. Files transfers through SFTP communications are encrypted using Secure Shell

("SSH"). SSH is an open protocol for securing data communication across computer networks providing a secure channel for data transmission. The encryption used by SSH is intended to provide confidentiality and integrity of data over an unsecured network, such as the Internet. SSH uses public-key cryptography to authenticate the remote computer and allow the remote computer to authenticate the user, if necessary.

4.2 Customer has the option to push files to Bank's SFTP server or have Bank pull Customer's files. For Customer push, Bank will create a drop-box directory on the SFTP server and provide Customer with a user name, password, and URL/domain name. Customer must provide an external IP address of the location sending files so that Customer's IP address can be added to access control lists within Bank's firewalls. For Bank to pull Customer's files, Bank will need a user name, password, URL/domain name, and directory from Customer so that Bank can pull files from Customer's SFTP servers. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms prior to Customer's use of the Services.

4.3 Customer also has the option for Bank to push Customer files (recommended by Bank) or Customer can pull the files from Bank's SFTP server. For Bank to push Customer's file, Bank needs Customer's URL/domain name, unique user name, password, and directory. For Customer to pull files from Bank's SFTP server, Customer must provide the external IP address of the location pulling the files so that Customer's IP address can be added to access control lists within Bank's firewalls. If Customer chooses to pull files from Bank's SFTP server, then files must be PGP encrypted, since files will reside on an SFTP server within Bank's DMZ. Bank will need Customer's public PGP key so that Bank can encrypt files. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing (if necessary) on transmitted files prior to Customer's use of the Services.

4.4 Customer will need an FTP client capable of using the SSH (Secure Shell) Protocol. If Customer decides to pull files from Bank, Customer will need an application/utility capable of creating a PGP key pair and decrypting PGP files.

## 5. SWIFT Transmission.

5.1 This method of transmission provides Customer with the ability to use Society of Worldwide Interbank Financial Telecommunications operating as S.W.I.F.T. SCRL, Limited Liability Cooperative Society ("SWIFT") as described in this Section to (1) transmit SWIFT messages and documents to Bank and to receive SWIFT messages and documents from Bank and other financial institutions, including via SWIFTNET FileAct, which is a file transfer service that allows the transmission of messages and documents over the SWIFT network, and (2) transmit and receive SWIFT Instructions (as further described below) from Bank and other financial institutions in connection with certain Cash Management Services as

agreed by the parties from time to time (hereinafter collectively the "SWIFT Services"). Bank is a participating depository financial institution in SWIFT.

5.2 SWIFT Rules. The "SWIFT Rules" are the documents and other publications as amended by SWIFT from time to time that Customer may access at [www.swift.com](http://www.swift.com), whether in paper or electronic format, providing specific terms and conditions and other details relating to the provision and use of the SWIFT Services, including without limitation the SWIFT Contractual Arrangements; the SWIFT General Terms and Conditions; the SWIFT Service Bureau Policy and the SWIFT Data Retrieval Policy; the SWIFT MA-CUG, SCORE and TRCO Service Descriptions and any other SWIFT Service Descriptions applicable to the SWIFT Services; and the SWIFT On-line Support Service information. This Appendix, the SWIFT Services provided hereunder and the rights and obligations of the parties hereto shall be subject to the SWIFT Rules, as they may be amended from time to time. The parties agree to comply with the SWIFT Rules and to be aware of and comply with changes or updates to the SWIFT Rules.

5.3 SWIFT Instructions. Bank may honor and act upon any authenticated SWIFT message, communication or instruction, including any Payment Order (hereinafter a "SWIFT Instruction") received in Customer's name or under any SWIFT BIC code associated with Customer, which BIC code(s) shall be identified in the Services' Setup Form(s). SWIFT Instructions made in accordance with this Appendix and the SWIFT Rules shall be deemed to have been given by an individual authorized to act on behalf of Customer. Bank will act in reliance on the accuracy and completeness of the SWIFT Instruction received by Bank in Customer's name or via the SWIFT BIC code associated with Customer.

## 5.4 Secure Communications Channel.

5.4.1 SWIFT offers SWIFT messaging services as a secure communications channel. SWIFT has established procedures and requirements for controlling access to SWIFT messaging services (each, an "Access Control") that may include, without limitation, access codes, message authentication codes, secure card readers, digital signatures, and hardware security modules. In addition, SWIFT authenticates certain messages based on SWIFT message type prior to accepting them for routing as SWIFT Instructions (each, an "Authenticated Message"). This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys ("BKE"), entered into a relationship management application ("RMA") agreement, or taken other steps to secure the transmission of SWIFT Instructions between them as SWIFT requires from time to time (each, an "Authentication Procedure"). Collectively, the Access Controls and Authentication Procedures shall be referred to herein as the "SWIFT Security Procedures."

5.4.2 Bank and Customer rely on SWIFT's Access Controls and, in the case of an Authenticated Message, the Authentication Procedures, if

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any, that SWIFT requires to secure the transmission of Customer's SWIFT Instructions. Bank does not undertake and will have no obligation to Customer to separately authenticate any SWIFT Instruction that Bank receives in Customer's name or under Customer's SWIFT BIC code, whether or not the Customer actually issued the SWIFT Instruction. Bank may, at Bank's sole election and option, contact Customer with respect to any SWIFT Instruction that Bank receives in Customer's name or under Customer's SWIFT BIC code, but Bank's election to contact Customer with respect to one or more SWIFT Instruction will not obligate Bank to contact Customer with respect to subsequent SWIFT Instructions that Bank receives in Customer's name or under Customer's SWIFT BIC code.

**5.5 Customer Representations and Warranties.** Customer represents and warrants with respect to itself and the BIC Code(s) identified in the Services' Setup Form(s) that it:

- is registered with SWIFT as either a "Member Administered Closed User Group" and/or "Closed User Group" and/or "SCORE (Standardized Corporate Environment)" member;
- is in compliance with applicable SWIFT Rules;
- is not in violation of any federal, state or local laws with respect to the SWIFT Services;
- is a duly incorporated and validly existing legal entity;
- is in good standing financially and in compliance with all laws and regulations applicable to Customer; and
- is subject to regular audits in accordance with internationally recognized accounting standards by independent auditors.

**5.6 Customer Direction and Indemnity.**

5.6.1 In the event that the BIC Code(s) identified by Customer in the Services' Setup Form(s) are owned by a parent company or other affiliate of Customer (collectively the "Customer's SWIFT Addresses"), Bank is prepared to act on a SWIFT Instruction from Customer's SWIFT Addresses only upon receipt of the indemnity provided in this Section 5. This indemnity shall be in addition to and not in lieu of an additional indemnity provided by Customer in the Cash Management Master Agreement.

5.6.2 Bank is authorized to accept and honor any files and/or SWIFT Instructions sent from any of the SWIFT Addresses without making any inquiry as to the validity or sufficiency of the SWIFT Instructions and to consider the SWIFT Instructions of like force and effect as written orders made in accordance with the

signing authorities held by Bank from time to time for the operation of Customer's Account(s) with Bank.

5.6.3 Without limiting the scope of Section 5.6.2, Bank is authorized to disclose information about Customer, its Accounts and banking relationship with Bank, including any changes to such information, in response to and as directed in the SWIFT Instructions as required to process the same.

5.6.4 Bank shall not be liable for any loss or damage incurred by Customer, or any third party arising from or in any way related to Bank acting upon or refusing to act upon any SWIFT Instructions, unless due to the gross negligence or willful misconduct of Bank. Notwithstanding the foregoing, in no event shall Bank be liable for any indirect, special or inconsequential damages incurred by Customer or any third party arising from or in any way related to Bank acting upon or refusing to act upon any SWIFT Instructions.

5.6.5 Customer hereby agrees to indemnify and hold Bank harmless from and against any losses, liabilities, claims, damages, fees, or expenses whatsoever that Bank may suffer, incur or be under or that may be brought against Bank, pursuant to, in connection with, or in any way related to Bank acting upon, delaying in acting upon or refusing to act upon any SWIFT Instructions.

**5.7 Termination of SWIFT Services.** In addition to but not in lieu of the provisions of the Cash Management Master Agreement, the SWIFT Services shall terminate automatically in the event that either party loses user status as defined in the SWIFT General Terms and Conditions of the By-laws.

**6. Security Procedures.**

6.1 Customer agrees that the security procedures set forth or incorporated by reference in this Appendix (including without limitation the SWIFT Security Procedures), the Cash Management Master Agreement and/or associated documents provided by Bank, including without limitation the Services' Setup Form(s), are a commercially reasonable method of providing security against unauthorized access to or interception of transmissions between Customer and Bank (hereinafter collectively the "Security Procedures"). Any transmission by Customer shall be deemed authorized if transmitted in accordance with the Security Procedures. Bank may, from time to time, modify the Security Procedures. Such modifications shall become effective upon receipt of notice by Customer or such later date as may be stated in the Bank's notice to Customer. If Customer fails to object to such change, it shall be deemed to agree to such change.

6.2 With respect to SWIFT in particular, Customer further acknowledges that the SWIFT Security Procedures are the only security procedures offered for SWIFT Instructions that Customer transmits through the SWIFT Services. Customer has solely determined that the SWIFT Security Procedures best meet Customer's requirements with regard to the size, type and frequency of

the SWIFT Instructions issued by Customer to Bank using the SWIFT Services and that the SWIFT Security Procedures are a commercially reasonable method of providing security against unauthorized access to or interception of transmissions between Customer and Bank. Customer acknowledges that it is bound by the terms and conditions of each SWIFT Instruction, including any request to cancel or amend a SWIFT Instruction, whether or not authorized by Customer, that Bank receives in Customer's name or under Customer's SWIFT BIC code through the Services and in accordance with the SWIFT Security Procedures.

6.3 Nothing in this Appendix shall be deemed a representation or warranty by Bank that FTP, Secure Web, SFTP or SWIFT communications are secure. Rather, after review of the alternatives, Customer has selected a communication method that it believes best suits its needs.

6.4 Bank and/or SWIFT (as applicable) may, from time to time, propose different, additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank and/or SWIFT believes immediate action is required for the security of Bank, SWIFT or Customer funds or data, Bank and/or SWIFT may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

6.5 Customer hereby acknowledges that the Security Procedures are neither designed nor intended to detect errors in the content or verify the contents of a transmission between the parties. Accordingly, any errors contained in a transmission from Customer shall be Customer's responsibility. Except as otherwise expressly provided in the parties' Cash Management Master Agreement or other Appendix between the parties, no security procedure

for the detection of any such Customer error has been agreed upon between Bank and Customer.

6.6 Customer is strictly responsible for establishing and maintaining procedures to safeguard against, detect and mitigate unauthorized access to or interception of transmissions. Customer covenants that no employee or other individual under Customer's control will be allowed to initiate transmissions in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions provided by Bank in connection with any Security Procedure utilized by Bank, SWIFT and/or Customer. If Customer believes or suspects that any such password, code, security device, Security Procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately followed by written confirmation as provided in the Services' Setup Form(s).

6.7 Customer shall retain data files for five (5) Business Days following the date of their transmittal by Customer as provided herein, and shall provide such data files to Bank upon request.

7. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to Data Transmission Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the parties' Cash Management Master Agreement is terminated.



## APPENDIX XXII

### TD ACH POSITIVE PAY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Automated Clearing House ("ACH") Positive Pay Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement or the *NACHA Rules* (as defined below). Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

##### 1. Definitions.

"*Authorized Account*" means the Account(s) of Customer, maintained at Bank, to which the Services will apply.

"*ACH Entry*" means an order or request for the transfer of money to an Authorized Account (a "Debit Entry"), and/or an order or request for the withdrawal of money from an Authorized Account (a "Credit Entry").

"*ACH Authorizations*" means Customer's written instructions and authorization criteria provided to Bank in conjunction with the set-up and implementation of the Services, including via a separate ACH block and filter agreement with Bank (hereinafter the "Filter Agreement"), and/or otherwise in accordance with the Services as described in this Appendix, which either prohibits all ACH Entries or permits only the posting of specified ACH Entries to an Authorized Account.

"*Exception Entry*" means an ACH Entry (excluding an ARC, BOC, POP, RCK, or XCK SEC Codes) that does not meet Customer's ACH Authorizations previously provided to Bank (and is referred to within the Services as a "Rejected" Entry), and that is therefore scheduled to be returned to the Originator of the ACH Entry.

"*NACHA Rules*" means the National Automated Clearing House Association's ("NACHA") *Operating Rules and Operating Guidelines*, which govern the ACH system.

"*Pay Decision(s)*" means Customer's instruction to Bank to pay/post an Exception Entry.

"*Return Decision(s)*" means Customer's confirmation instruction to Bank to not pay/post an Exception Entry but to instead return the ACH Entry to the Originator.

"*Return Default Disposition*" means the automatic default disposition of all ACH Entries that do not

meet Customer's ACH Authorizations, whereby all such ACH Entries are scheduled to be returned to the Originator of the ACH Entry.

##### 2. Services.

###### 2.1 Description.

2.1.1 The Services described in this Appendix will provide Customer with a means to review ACH Entries received on a particular Customer Account that are scheduled to be returned to the Originator as an Exception Entry in accordance with Customer's ACH Authorizations and to confirm the return of the Exception Entry through a Return Decision, or to override the Return Default Disposition and instruct Bank to pay/post the Exception Entry to Customer's Account through a Pay Decision.

2.1.2 Customer acknowledges that the Services have been identified by Bank as a service that can reduce the risk of fraudulent ACH Entries being posted against Customer's Account(s) when such Services are adopted and properly utilized by Customer. By conforming to the terms and conditions of this Appendix, Customer acknowledges and agrees that it may significantly reduce the chance that fraudulent ACH Entries will post to Customer's Account(s) by electronically matching incoming ACH transactions to ACH Authorizations.

###### 2.2 Customer Authorizations.

2.2.1 Customer will designate Authorized Account(s) to be used with the Services via the Services' Setup Form.

2.2.2 As applicable, Customer shall begin the Services with either (a) any ACH Authorizations initially submitted by Customer to Bank and then established by Bank on Customer's behalf in conjunction with the set-up and implementation of the Services, or (b) any existing ACH Authorizations on Customer's Authorized Account(s) that have been established via a Filter Agreement. Customer may add to or modify those initial or existing ACH Authorizations from time to time as set forth herein. Customer shall be responsible for the accuracy and completeness of all information provided to

Bank both through the use of the Services and via the Services' Setup Form.

2.2.3 Customer may submit additional ACH Authorizations, make changes to initial or existing ACH Authorizations, or delete initial or existing ACH Authorizations related to the Authorized Account(s) online via the Services. Such changes shall become effective on the next Business Day following the day on which the changes were made by Customer. Each Business Day, Bank will provide an updated list of successfully processed ACH Authorizations to Customer via the Services. In the event Customer submits a change or addition to the ACH Authorizations that is incomplete, contains an error or that cannot otherwise be processed by Bank, Bank will use commercially reasonable efforts to notify Customer on the next Business Day that the associated ACH Authorization(s) has been rejected. Until such time as Customer reviews and corrects it, the rejected ACH Authorization(s) will not appear on the updated list of successfully processed ACH Authorizations that Customer receives.

2.2.4 Should Customer fail to fully and accurately populate or complete all requested fields associated with the ACH Authorizations, the following will also apply:

(a) If Customer does not insert a specified maximum dollar amount, then no maximum dollar amount shall apply with respect to the applicable ACH Entry(ies) or transaction subject to the ACH Authorization(s).

(b) If Customer does not insert a specified expiration date, then no expiration date shall apply to the applicable ACH Entry(ies) or transaction subject to the ACH Authorization(s).

**2.3 Processing of ACH Entries and Reporting of Exception Entries.** Bank shall electronically compare each ACH Entry presented to Bank for settlement against Customer's Authorized Account(s) on a Business Day (including those presented by other depository institutions, ACH Operators or by Bank) with Customer's ACH Authorizations. On each Business Day, Bank:

(a) will allow incoming ACH Entries that match Customer's ACH Authorizations to post to Customer's Authorized Account(s); and

(b) will treat as Exception Entries all incoming ACH Entries that do match Customer's ACH Authorizations and will provide to Customer, through the Bank Internet System, a listing of all Exception Entries that are otherwise scheduled for Return Default Disposition. Customer must monitor, review and issue a Post Decision or Return Decision on each Exception Entry reported through the Bank Internet System by the pre-established deadline set forth within the Services. Customer may also set up alerts to be sent to Customer by a pre-established time each Business Day advising Customer whether or not there are any Exception Entries to be reviewed that Business Day.

## **2.4 Payment and Dishonor of Exception Entries.**

2.4.1 Customer may choose to confirm the Return Default Disposition of individual Exception Entries presented via the Services by providing a Return Decision to Bank by the pre-established deadline set forth within the Services, in which case such Exception Entries will be automatically returned to the Originator.

2.4.2 Customer may choose to override the Return Default Disposition of individual Exception Entries presented via the Services by providing a Pay Decision to Bank by the pre-established deadline set forth within the Services, in which case such Exception Entries will be paid/posted to Customer's Authorized Account(s) at the end of the current Business Day.

2.4.3 Customer may choose not to or may otherwise fail to review and provide a Post Decision or a Return Decision for any Exception Entries by the pre-established deadline, in which case the Return Default Disposition will apply and all such Exception Entries will be automatically returned to the Originator.

## **2.8 Customer and Bank Communications.**

2.8.1 Customer shall use the Services' module of the Bank Internet System to report all Pay Decisions or Return Decisions. Bank shall not be obligated to comply with any Pay Decision or Return Decision received in a format or medium, after a pre-established deadline, or at a place not permitted under this Appendix or the Services' Setup Form(s), and may instead treat any such Pay Decision as a Return Decision or otherwise apply the Return Default Disposition to such Pay Decision.

2.8.2 Bank is not responsible for detecting any Customer error contained in any ACH Entries presented, decisioned, returned or processed, or in any Pay Decision or Return Decision by Customer.

2.8.3 In the event that Bank is unable to provide Customer with a listing of Exception Entries through the Bank Internet System for Customer's Pay Decision or Return Decision as described in Section 2.3, the Return Default Disposition shall apply in accordance with Customer's previously established ACH Authorizations.

2.8.4 Bank shall be bound only to exercise ordinary care in attempting to post or return ACH Entries as described in this Appendix.

## **3. Remedies.**

3.1 **Bank Liability.** To the extent permitted by applicable law, the liability of Bank under this Appendix shall in all cases be subject to the provisions of the parties' Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank.

3.2 **Wrongful Payment/Posting.** It shall constitute wrongful payment/posting by Bank if Bank pays/posts an Exception Entry for which Customer has provided a Return Decision by the pre-established deadline set forth within the Services. In the event that there is wrongful payment/posting, Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid/posted Exception Entry or Customer's actual damages resulting from Bank's posting of the Exception Entry, subject to the terms of the parties' Cash Management Master Agreement.

### 3.3 **Rightful Payment and Return.**

3.3.1 If Bank honors an Exception Entry in accordance with a Pay Decision by Customer as described in Section 2.4.2, such payment/posting shall be rightful, and Customer waives any right it may have to assert otherwise.

3.3.2 If Bank returns an Exception Entry in accordance with a Return Decision by Customer as described in Section 2.4.1, or otherwise pursuant to a Return Default Disposition as described in this Appendix, the return shall be rightful, and Customer waives any right it may have to assert otherwise.

3.3.3 Customer agrees that Bank exercises ordinary care whenever it rightfully pays/posts or returns an Exception Entry consistent with the provisions of this Appendix.

## 4. **Other Terms of the Services.**

4.1 Customer acknowledges that the Services do not preclude Bank's standard ACH processing procedures, which may cause an ACH Entry to be dishonored even if Customer's instructions do not otherwise require Bank to return such ACH Entry.

4.2 Customer acknowledges that the Services do not apply to transactions between Customer and Bank, including any Bank affiliates and subsidiaries, such as loan or credit card payments ("Bank-Related Entries"). Bank is permitted to pay Bank-Related Entries whether or not Customer has included these in Customer's ACH Authorizations as reflected in this Appendix and until such time as Customer's authorization with respect to the underlying Bank-Related Entries is revoked or otherwise terminated.

4.3 Customer acknowledges that the Services are intended to be used to identify and return ACH

Entries which Customer suspects in good faith are fraudulent or otherwise unwarranted. The Services are NOT intended to be a substitute for authorization instructions or to delay Customer's decision on ACH Entries, including but not limited to stop payment orders on ACH Entries which are not suspected in good faith to be unauthorized. If Bank suspects or deems, in Bank's sole discretion, that Customer is using the Services contrary to those intentions, Bank may require Customer to provide evidence that ACH Entries that Bank returns pursuant to Customer's instructions were in fact unauthorized. In addition, Bank may hold Customer liable for losses that Bank sustains on ACH Entries which Bank is requested to return under the Services and which Customer does not reasonably establish as unauthorized ACH Entries, including as under the *NACHA Rules*.

5. **Governing Law.** Any claim, controversy or dispute arising under or related to this Appendix shall be governed by and interpreted in accordance with the governing law provision of the parties' Cash Management Master Agreement.

## 6. **Effectiveness.**

6.1 Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services, except for any existing ACH Authorizations currently on record with regard to the Authorized Account(s) as of the date of this Appendix.

6.2 This Appendix and the associated Services shall remain in full force and effect until such time as the Appendix or the Services are terminated, or a different or amended Appendix is implemented by Bank. This Appendix and the associated Services shall automatically terminate in the event the underlying Authorized Account(s) are closed or Customer's ACH Authorizations are otherwise terminated. In the event of termination of this Appendix and the associated Services, Customer's ACH Authorizations in effect as of the date of termination will remain in effect with respect to Customer's Authorized Accounts, and all ACH Entries will thereafter be processed in accordance with such ACH Authorizations. Also, upon termination of the Services, all sums owed to Bank hereunder shall be immediately due and payable.

