

## BUSINESS ONLINE BANKING AGREEMENT AND DISCLOSURE

This Business Online Banking Agreement and Disclosure ("Agreement") describes Customer's rights and obligations as a user of the Business Online Banking service, which may also include Bill Pay service, ACH Origination service and Wire Transfer service and other services available hereunder. This Agreement also describes the rights and obligations of Cross County Savings Bank. Please read this Agreement carefully. By requesting and using each of the Services, Customer agrees to comply with all applicable terms and conditions of this Agreement.

This Agreement amends and becomes a part of the following agreements and/or account disclosures provided by the Bank to Customer: (i) All About Your Account(s) Terms & Disclosures and (ii) the Business Account Disclosures, as applicable (collectively the "Depository Agreements"). If there is a conflict between this Agreement and the Depository Agreements, the terms of this Agreement shall govern with respect to the Services described herein.

*(Please read this Agreement and retain it for your records)*

### I. ONLINE BANKING SERVICES

#### 1. Consent to Terms and Conditions of Agreement

Customer agrees to be bound by this Agreement and, further, to comply with the requirements of all other agreements, rules, regulations, policies and practices of the Bank applicable to each of Customer's Online Accounts, products and services, including, but not limited to, Customer's agreement to the terms and conditions for Bill Pay, ACH Origination and Wire Transfer services.

By electronically signing this Agreement and/or each time Customer uses the Business Online Banking services, Customer accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which the Bank will provide Customer with the Services outlined herein. Customer's initial sign-on and, if applicable, Customer's later enrollment in Bill Pay, ACH Origination and/or Wire Transfer services, each constitute Customer's Electronic Signature and will be binding upon Customer as its legal signature. Each time Customer uses its User ID and Password, it shall also constitute its binding legal signature and agreement to the terms and conditions of this Agreement.

By Customer's use of the Services, Customer also acknowledges and represents that Customer has been given a full and fair opportunity to review this Agreement with an attorney of its choice, and that to the extent, if any, that it desired, Customer availed itself of this right. Customer further acknowledges and agrees that Customer has carefully read and fully understands all of the provisions of this Agreement and that Customer is hereby voluntarily and knowingly entering into this Agreement, which terms and provisions Customer finds to be reasonable and enforceable.

#### 2. Definitions

The following definitions shall have the following meaning in this Agreement:

**ACH Origination:** A Service through Business Online Banking for processing debit and credit ACH origination entries initiated by a qualified business customer. ACH Origination service requires the submission of an application and bank approval.

**Authorized User:** A person with authority with respect to Customer's Online Account(s). The Authorized User is authorized to access Business Online Banking with a User ID and Password. For the purposes of this Agreement, the term Authorized User shall also include the Primary Administrator.

**Bank, We, Us or Our:** Cross County Savings Bank, which offers the Services and which holds the Online Account(s) accessed by the Services.

**Bill Pay:** A Service through Online Banking and utilizing the FIS™ Metavante payment service, or other third-party payment service, that enables the scheduling of bill payments using an Internet-Enabled Device.

**Business Day:** Any day when the Bank is open to conduct substantially all of its services, but shall not include Saturday, Sunday or federal holidays, and shall also not include any holiday observed by the Bank, except as may otherwise be expressly provided in this Agreement.

**Business Online Banking:** The internet-based service provided by the Bank that allows Customer access to its Online Account(s).

**Business Premium Overdraft:** A discretionary service offered by the Bank to pay an item when Customer does not have enough money in its Online Account(s) to cover a transaction.

**Customer, You or Your:** refers to the owner(s) of the Online Account(s) and/or the Authorized User(s) of the owner.

**Cutoff Time:** refers to the time by which the Bank must receive instructions, including, without limitation, Wire Transfer Requests or ACH Entries in order to have them considered received by the Bank on that particular Business Day. Except as otherwise specifically set forth in this Agreement, any instruction received after the Cutoff Time will be executed by the Bank on the next Business Day.

**Due Date:** The date reflected on Customer's Payee statement when the payment is due. It is not the late date or grace period.

**Internet-Enabled Device:** A personal computer, iPad, Tablet, mobile phone or other internet-enabled device which enables Customer, with an ISP, to access Customer's Online Account(s) and/or the Services.

**Internet Service Provider:** Customer's Internet Service Provider.

**Multi-TIN Transfers:** A feature of Online Banking that permits the transfer of funds between linked Online Account(s) that are owned by separate Customers that share a common principal owner. The Bank may, but is under no obligation to, verify legal ownership of all Online Account(s) before Multi-TIN Transfer capabilities are permitted.

**Online Account:** Each business account maintained at the Bank from which Customer will be able to conduct transactions using a Service.

**Password:** The customer-generated code selected by Customer for use during the initial sign on, and the codes Customer selects after initial sign on that establishes Customer's connection to the Services.

**Payment Account:** The business checking account Customer designates through Bill Pay from which Customer's bill payments and all fees for Bill Pay will be automatically debited.

**Payment Instruction:** The information provided by Customer to the Provider for a bill payment to be made to the Payee (such as, but not limited to, Payee name, Payee account number, and Scheduled Payment Date).

**Payee:** The person or entity to whom Customer wishes a bill payment to be directed or the person or entity from which Customer receives electronic bills, as the case may be.

**Primary Administrator:** The primary user of the Business Online Banking service who has rights to all of the Online Accounts and services. The Primary Administrator is responsible for creating Authorized Users (if desired) and assigning users' rights.

**Provider:** Cross County Savings Bank through FIS™ Metavante payment services, or other third-party payment service.

**Scheduled Payment:** A payment that has been scheduled through the Bill Pay but has not begun processing.

**Scheduled Payment Date:** The day Customer wants its Scheduled Payment to be sent to its Payee and is also the day Customer's Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the next Business Day.

**Service(s):** The Business Online Banking service, which may also include the Bill Payment service, ACH Origination service, Wire Transfer service and other services made available by Cross County Savings Bank through the Business Online Banking service (each, a "Service" and, collectively, the "Services")

**User ID:** The identification code associated with Customer for its connection to the Services; and

**Wire Transfer:** A Service through Business Online Banking for the electronic transfer of funds by wire, for example through the Federal Reserve FedLine® Services, from an Online Account to the account of another financial institution. Wire Transfer service requires the submission of an application and bank approval.

### 3. Use of Services

During the Term of this Agreement, the Bank hereby grants Customer a revocable sublicense to use the Services on an Internet-Enabled Device subject to the terms and conditions of this Agreement. Customer acknowledges and agrees that the Services and related documentation is valuable, confidential and proprietary property and agrees not to transfer, distribute, copy, reverse engineer, compile, modify or alter the Services and/or related documentation. Customer agrees not to sublicense, assign or transfer this license or the Services.

### 4. Access to Services

Customer may gain access to its Online Account(s) through the Business Online Banking portal, which can be accessed through its Internet-Enabled Device, Internet Service Provider, User ID and Password. Customer may access its Online Account(s) twenty-four (24) hours a day, seven (7) days a week, provided, however, that the Services may be unavailable for brief periods of time for purposes of maintenance, updating and revising the software, and for reasons beyond the Bank's control. Customer will be guided by the user guides provided by the Bank to Customer and/or online help/support screens on how to use the Services.

### 5. Account Access

5.1. At initial registration, Customer can designate all of the Online Accounts to be added to its profile on the Business Online Banking application. The accounts can be checking, savings, certificates of deposit or loan accounts. Customer may also request to have Online Accounts added or removed from its profile through the Business Online Banking service. All accounts with the Bank that Customer enrolls in the Business Online Banking service must share at least one common principal and will be linked regardless of the tax identification number associated with the account(s). By enrolling such accounts, Customer represents and warrants to the Bank that the owners of the Online Accounts share at least one common principal. The Bank may, but is under no obligation to, verify legal ownership of any Online Account(s). The linked Online Account(s) may be accessed through Customer's profile and will appear once Customer has selected the owner associated with the Online Account through the Business Online Banking service. For example, if an Authorized User of a linked account accesses Business Online Banking, that Authorized User will be able to view and access any linked Online Account(s) associated with that profile.

5.2. Customer is responsible to immediately notify the Bank to remove the linking of Online Account(s) in the event of an ownership change. Customer agrees that the Bank will not incur any liability if the Online Account(s) do not share a common principal and Customer agrees to indemnify, defend and hold harmless the Bank, its parents, subsidiaries and affiliates, and all of its officers, trustees, directors, shareholders, principals, employees, agents and servants and their respective predecessors, successors and assigns (collectively "Affiliates") from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and attorneys' fees, arising out of any breach of any of Customer's representations or warranties contained herein.

### 6. Types of Available Transfers and Services

Customer may use Business Online Banking services to do the following:

6.1. **Balance Inquiries.** Inquire as to the balance in Customer's Online Account(s) and obtain account activity information for its Online Account(s).

6.2. **Transfer Funds.**

- **Single TIN Transfers.** Customer may use Business Online Banking to transfer funds between its linked Online Account(s) that are

owned by the same individual or entity.

- **Multi-TIN Transfers.** Customer may use Business Online Banking to transfer funds between linked Online Account(s) that are owned by separate individuals or entities that share a common principal. By enrolling the Online Account(s), Customer represents and warrants to the Bank that the owners of the Online Accounts have authorized Multi-TIN Transfer capabilities and that such authorization will remain in effect until Customer notifies the Bank, in writing, of such revocation and the Bank has a reasonable opportunity to act upon such written revocation.

Customer may make one-time transfers or schedule future or recurring transfers such as transfers to make loan payments. Customer may also transfer funds between its checking and savings accounts, and, upon prior approval from the Bank, transfer funds from the unused credit line of its HELOC loan account(s) to its checking and/or savings account. Customer may not transfer funds from its passbook account(s) to its other Online Account(s).

Once Customer completes a transfer between linked Online Account(s), including, but not limited to, a Multi-TIN Transfer, Customer cannot reverse the transfer, even if Customer has made an error in the amount or the account to which Customer made the transfer. Customer may, however, initiate a new transfer from the Online Account that received the funds for credit to the sending Online Account in order to transfer funds back to the sending Online Account.

Customer is allowed a total of six (6) transfers and withdrawals by online banking, Bill Pay, mobile device, telephone or preauthorized transfers, or automatic overdraft, per calendar month (or statement cycle of at least four weeks) from Customer's savings or money market accounts under the same account. Customer may transfer any available balance, unless limited under another agreement. These transfer and withdrawal limitations do not apply to transactions conducted at ATMs, in person, or by mail. Also, internal transfers to make payments to Customer's loans at the Bank are excluded from this limitation. The Bank may refuse any withdrawal request that is greater in number than the frequency permitted, or which is for an amount greater than any withdrawal limitations. If these limits are exceeded three (3) consecutive times within a twelve (12) month period, the Bank will, in its sole discretion: restrict Customer's account access; or, transfer the funds in Customer's account into another account Customer maintains (or that the Bank opens for Customer) that is not subject to these transaction limits, as will be further described in the notice that the Bank will send concerning such excessive transaction activity; or, close Customer's account and mail Customer a check for your balance, if any.

**6.3. Bill Pay services.** Customer may direct payments using the Bill Pay service to eligible third parties that Customer wishes to pay. Please refer to Bill Pay service section of this Agreement for additional terms and conditions that apply to Bill Pay services.

**6.4. ACH Origination and/or Wire Transfer services.** Customer may initiate ACH Origination services and/or Wire Transfer services only upon submission of a Business Online Banking application and approval by the Bank. Please refer to applicable section of this Agreement for additional terms and conditions that apply to ACH Origination and/or Wire Transfer services.

**6.5. E-Statements.** If Customer is enrolled in the Bank's E-Statement Services, Customer will continue to receive its regular account statement by mail with imaged checks, either monthly or quarterly, depending on the type of account and/or the nature of the account activity, unless Customer specifically designates otherwise in the Bank's E-Statement Services.

**6.6. Additional Services.** New Services may be introduced for Business Online Banking from time to time. The Bank will notify Customer of the existence of these new Services. By using these Services when they become available, Customer agrees to be bound by the terms, conditions and rules that will apply to these Services.

## **7. Qualification**

Customer approval for use of the Services may be subject to qualification criteria established by the Bank from time to time. If the Bank requires application of qualification criteria for Customer approval for use of the Services, the Bank will communicate to Customer the nature and content of that criteria and the information Customer will be required to provide to the Bank. Customer agrees to provide the Bank such financial, business and operating information as the Bank may reasonably request in connection with the Bank's qualification and approval process.

## **8. Payment for Services**

**8.1. Fees and Charges.** Customer agrees to pay Bank the charges, if any, for the Services as set forth on the Business Online Banking portal, the Bank's Fee Schedule, and/or any separate fee schedule for a specific Service, all as may be changed from time to time and at any time. Customer agrees to pay the Bank for all other fees and/or service charges applicable to the Bank's standard deposit accounts as set forth on the Bank's Fee Schedule. The Bank reserves the right to change its fee schedule for the Services at any time and will make Customer aware of this change to the extent required by law. Customer acknowledges and agrees that Customer's use of the Services may result in additional charges being assessed by Customer's Internet Service Provider and/or wireless carrier. Customer is responsible for any fees and/or other charges that its Internet Service Provider may charge for any related data or message services. Please refer to the fees disclosed on the Business Online Banking portal or the Bank's Fee Schedule for more information regarding fees that may apply to Customer's account(s) with the Bank.

**8.2. Payment.** Customer authorizes Bank to charge Customer's billing account designated on Customer's Business Online Banking application or as otherwise designated in writing by Customer (the "Billing Account") to obtain payment for the Services by debiting the Billing Account. Bank will notify Customer of any debit made pursuant to this Agreement either as part of the regular account statement issued for the Billing Account for the period in which the payment amount was debited or by separate written notice. In the event the Billing Account does not contain sufficient funds to cover the payment of the fees and/or charges for the Services, Customer authorizes the Bank to obtain payment for the Services by debiting any of the Online Account(s) selected by Bank, at its sole and absolute discretion, or by set off against any account held by Customer at the Bank.

## **9. Overdraft**

Customer agrees that Customer shall not initiate any transaction using the Services in amount greater than the available balance in the Online Account(s) that Customer has designated as the source of funds. The Bank shall have no duty to execute a transaction if the requested amount exceeds the available balance in such Online Account(s) or to look to funds in Customer's other accounts to satisfy such request. However, should a request be executed that results in an overdraft in the Online Account(s), Customer agrees to pay the Bank the overdraft amount and any fees resulting therefrom promptly upon demand. Customer further agrees to pay the Bank such fees as are listed on the Depository Agreements or the Bank's Fee Schedule, which the Bank may change from time to time and at any time. Customer agrees to pay to the Bank reasonable attorneys' fees and other costs of collection in the event the Bank retains counsel to collect any overdraft amounts not promptly paid by Customer. Customer also agrees that the Bank may set off any sums due hereunder against any of Customer's accounts at the Bank.

## **10. Set-off**

Customer expressly authorizes Bank to setoff/debit any Online Account(s) maintained by Customer with the Bank (including, without limitation, the Billing Account) and/or any other account(s) maintained by Customer at the Bank in order to obtain payment of Customer's obligations under this Agreement.

## **11. Minimization of Risk**

If and to the extent Bank permits Customer to have and use funds for which Customer has not received final, nonavoidable payment in collected funds, the use of such funds will constitute an accommodation to Customer, which Bank may terminate at any time. Bank has the absolute right to delay the availability of funds for the Billing Account or any other Online Account(s) involved in the provision of the Services, without regard to any availability schedule designated by Bank or any practice or pattern of practices by Customer. If Bank deems, in its sole and absolute discretion, that its risk exposure as provider of the Services under this Agreement has become too great, Bank may act to minimize this exposure by: (a) requiring Customer (i) to provide satisfactory collateral for each transfer, prior to the time such transfer is initiated or to (ii) prefund each transfer; or (b) placing holds on any of Customer's Online Account(s) (including, without limitation, the Billing Account) for each transfer. The provisions of this paragraph may be limited only by the requirements of federal and state banking laws and regulations.

## **12. Security Procedures**

12.1. Customer agrees that the Security Procedures (each a "Security Procedure" and collectively, the "Security Procedures") contained in this Agreement shall govern all Services initiated by Customer hereunder, including the verification of the authenticity of such requests. The Bank shall not be liable to Customer for any such occurrence except as expressly provided herein or as required under applicable federal or state law. Customer agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for the Bank to execute such transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Customer's deposit account maintained with the Bank, and Customer agrees and intends that the submission of transaction orders and instructions using the Security Procedures shall be considered the same as Customer's written signature in authorizing the Bank to execute such transaction. Customer agrees that the Security Procedures are each commercially reasonable, and Customer represents and agrees that Customer shall perform all of Customer's obligations under this Agreement. Customer's agreement and acknowledgement of the commercial reasonableness of the Security Procedures is evidenced by Customer's electronic execution of this Agreement and/or Customer's use of the Services

12.2. The Bank requires the following minimum levels of network and computer security for all Customers:

- Reliable, current and fully patched Security Suites including, at minimum, anti-virus, anti-malware, anti-botnet, and anti-spyware.
- Hardware and/or software Firewalls.
- Hardware and/or VPN Encryption.
- Dedicated computer with static IP Address for file initiation.
- Process to patch systems timely.
- Written security policy and procedures designed to protect Customer's network from unauthorized access (i.e. data breach) and avoid disclosing Protected Information (i.e. account numbers, social security numbers, etc.).
- Regular employee training.

12.3. The Bank requires the following account security:

- Files must be initiated and transmitted under Dual Authorization.
- One-Time Use PIN/Token technology, if available.
- Out of Band Authentication (indicate type: Call Backs, Email Verification, IP Address Authentication, SMS Code, etc.).
- Customer will not process files using Primary Administrator credentials.
- New or altered credentials will require authorization before becoming active.
- Virtual Platform/Virtual Session Technology, if available

## **13. Physical and Electronic Security**

13.1. Customer is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Customer's possession or under Customer's control. The Bank is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or Business Online Banking or the Services. Any material downloaded or otherwise obtained is obtained at Customer's own discretion and risk, and the Bank is not responsible for any damage to Customer's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise. Customer is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Customer's operating systems, and for protecting, securing, and backing up any data and information stored in or on Customer's operating systems. Bank is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Customer's operating systems or accessed through an Internet connection.

13.2. Customer acknowledges and agrees that it is Customer's responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). Customer agrees to educate Authorized User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. Customer acknowledges that the Bank will never contact Customer by e-mail in order to ask for or to verify account numbers, Passwords, or any sensitive or confidential information. In the event Customer receives an e-mail or other electronic communication that Customer believes, or has reason to believe, is fraudulent, Customer agrees that neither Customer nor its Authorized User(s), agents, and employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. Customer agrees that the Bank is not responsible for any losses, injuries, or harm incurred by Customer as a result of any electronic, e-mail, or Internet fraud.

13.3. Customer is responsible for keeping its Password and Online Account information confidential. In order to protect itself against fraud, Customer should adhere to the following guidelines:

- Do not give out Online Account information, Password, or User ID;
- Do not leave Internet-Enabled Device unattended while Customer is logged into the Business Online Banking portal (for Customer's protection, Customer may be automatically signed off after a period of inactivity as determined by the Bank);
- Never leave Online Account information within the range of others;

- Do not send privileged Online Account information, Password or User ID in any public or general e-mail system; and
- For security purposes, it is recommended that Customer periodically change its Password

13.4. In the event of a compromise of the Business Online Banking service or any one or more of the Services, Customer agrees to assist the Bank in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing the Bank or its agent access to Customer's hard drive, storage media and devices, systems and any other equipment or device that was used in the breach. Customer further agrees to provide to the Bank any analysis of such equipment, device, or software or any report of such analysis performed by Customer, Customer's agents, law enforcement agencies, or any other third party. Failure of Customer to assist the Bank shall be an admission by Customer that the breach was caused by a person who obtained access to transmitting facilities of Customer or who obtained information facilitating the breach from Customer and not from a source controlled by the Bank.

#### 14. Secure Log-in

14.1. The Bank shall arrange for Customer to establish a User ID and Password (the "Secure Log-in") that shall be required in order to request Services. All data transmissions that take place between Customer and the Bank in this connection are automatically encrypted to prevent unauthorized use.

14.2. Customer shall provide a Password to any Authorized User who Customer wishes to utilize the Services. The Secure Log-in will be Customer's sole responsibility and will not be maintained or controlled by the Bank. The Bank requires that Customer and each Authorized User change the Password(s) frequently in order to ensure the security of the Password. The Bank may, in its sole discretion, alter the frequency of the change in the Password(s) from time to time.

14.3. Customer shall at all times maintain the security of Customer's Secure Log-in utilized, as part of the Security Procedures required in this Agreement, and will make certain that such Secure Log-in is known only to Authorized Users. Customer shall immediately notify the Bank by telephone and in writing of any compromise of security or unauthorized disclosure or use of Customer's Secure Log-in. If Customer believes its Password has been compromised, Customer must immediately change its Password within the Business Online Banking portal. Except as expressly prohibited under applicable state or federal law, Customer shall be responsible for any liability, loss or damage resulting from any breach of security or unauthorized disclosure or use of Customer's Secure Log-in. Customer understands and agrees that the Bank shall be entitled to treat any person in possession of Customer's Secure Log-in as an Authorized User without incurring any liability whatsoever, unless and until Bank is notified by Customer that such person is not an Authorized User.

14.4. Upon a predetermined number of unsuccessful attempts to use Customer's Password, as determined by the Bank in its sole discretion, Customer's access to the Services will be revoked. To re-establish its Password to use the Services, Customer must access the Business Online Banking home page and request that its Password be reset. The Bank may, from time to time, at its discretion, change the number of unsuccessful attempts to use a Password that will result in the Services being revoked.

#### 15. Dual Authorization Procedure

Customer acknowledges and agrees that the Bank has offered a security procedure which, among other things, would require two Authorized Users to approve and authorize the Services, amendments or cancellations before such Services can be processed by the Bank (the "Dual Authorization Procedure"). The Bank believes the Dual Authorization Procedure to be a commercially reasonable procedure to verify the authenticity of Service request transmitted to the Bank by Customer. If Customer elects not to use the Dual Authorization Procedure and allows the Services to be approved and authorized by only one person, Customer agrees that: (i) such waiver creates an increased risk of fraudulent execution of the Services made without Customer's authorization; (ii) the additional risk is assumed by Customer; and (iii) any resulting damages shall be borne solely by Customer. In such event, Customer hereby agrees to be bound by any such Service request, whether or not authorized, issued in Customer's name and executed by the Bank.

#### 16. Cooperation in Loss Recovery Efforts

In the event of any damages for which the Bank or Customer may be liable to each other or to a third party pursuant to the services provided under this Agreement, the Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

#### 17. Customer Status

Customer expressly warrants that Customer is not a "Consumer" as defined in section 1005.2(e) of Regulation E of the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et seq., and that Customer expressly acknowledges and agrees that Customer will use each Service solely for business, and not personal, family or household purposes.

#### 18. Electronic Mail (E-mail)

If Customer sends the Bank an e-mail message to the Bank, the Bank will be deemed to have received it on the following Business Day. Customer should not rely on an e-mail message if Customer needs to report an unauthorized transaction from one of its Online Account(s) or if Customer needs to stop a payment that is scheduled to occur.

**E-mail transmissions are not secure. The Bank strongly advises Customer not to send the Bank or ask for sensitive information such as account numbers, Password, account information, etc. via any general or public e-mail system.**

#### 19. Prohibited Transactions

Customer agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Customer is bound, (c) to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, or (d) to engage in any transaction or activity that is not specifically authorized and permitted by this Agreement. Customer acknowledges and agrees that the Bank has no obligation to monitor Customer's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that the Bank reserves the right to decline to execute any transaction or activity that the Bank believes violates the terms of this Agreement.

#### 20. Term, Suspension and Termination

20.1. **Term.** This Agreement will become effective upon Customer's initial sign-on to the Services or when Customer signs this Agreement, whichever is earlier, and shall remain in full force and effect until termination in accordance with this Agreement.

20.2. Suspension. The Bank may suspend, delay or interrupt all or any part of the Services without prior notice to Customer, at any time and without incurring any liability. The Bank may take such action for any reason including, but not limited to, the following circumstances: (i) the Bank determines that the Services are being used in violation of this Agreement or applicable law; (ii) the Bank determines that there has been an occurrence or potential for occurrence of illegal or wrongful activity, or fraudulent use or attempted fraudulent activity by Customer or an Authorized User; (iii) maintenance, updating and revising of the Services is required; or (iv) for reasons of natural disasters, political unrest, strikes, or other *force majeure* events beyond the Bank's control. After suspension, the Services may be reinstated, at the discretion of the Bank, once the condition identified by the Bank is corrected or has ended. A suspension of Services may result in a termination of Services if the reason for such suspension was caused by Customer's actions or inactions and Customer fails to timely correct such condition to the Bank's sole satisfaction.

20.3. Termination for Cause or Without Cause by Bank. The Bank may terminate this Agreement, with or without cause, and Customer's use of Business Online Banking in whole or in part at any time without prior notice, at the sole discretion of the Bank. If Business Online Banking is terminated then the related Services will terminate concurrently with the termination of this Agreement. The Bank may take such action for any reason including, but not limited to, the following circumstances:

- (a) Customer does not comply with this Agreement or the Depository Agreements governing Customer's deposit or loan accounts, or Customer's accounts are not maintained in good standing; or
- (b) due to inactivity for a 180-day period or more, including, without limitation, if Customer does not sign on to the Service(s) through Business Online Banking portal or have any transactions scheduled through the Service(s) during any consecutive 180-day period.

20.4. Termination for Convenience by Customer. To terminate this Agreement, Customer must notify the Bank and provide its name, address, and the termination date. If Business Online Banking is terminated then the related Services will terminate concurrently with its termination of this Agreement. This Agreement shall remain in effect until the Bank receives Customer's notice of termination and has been afforded a reasonable opportunity to act on such notice.

Customer may notify the Bank by one of the following methods:

- By sending an e-mail to [ebanking@crosscounty.com](mailto:ebanking@crosscounty.com);
- By calling the Bank's Business Online Banking Department at 718-326-6300, Monday to Friday: 8:30 a.m. Eastern Time to 4:30 p.m. Eastern Time, excluding federal holidays and any other day the Bank is not open to conduct substantially all of its services; and/or,
- By writing a letter and either:
  - sending it to the following address (please note that such termination is not effective until the Bank has had sufficient time to receive and process the letter):

Attention: Business Online Banking Department  
Cross County Savings Bank  
79-21 Metropolitan Avenue  
Middle Village, NY 11379

or giving it to a customer service representative at any of the Bank's branches.

If Customer's Service(s) are terminated, Customer must complete the registration process to have the Service(s) re-activated.

## 21. Liability for Authorized User

The Primary Administrator is responsible for creating Authorized Users (if desired) and assigning users' rights to use the Services. The Primary Administrator is required to obtain Bank approval prior to adding any additional Authorized Users. The Bank shall be entitled to rely on the designations made by the Primary Administrator and shall not be responsible for matching the names of the Authorized Users designated by the Primary Administrator to names or titles listed in Customer's banking resolutions. Failure to obtain Bank approval may result in the suspension of the Authorized User(s) rights to access the Online Account(s) or the suspension of all or any part of the Services. Customer understands and agrees that the Bank will have no liability for any actions taken by the Authorized User(s) with regards to the Services and that any actions by the Authorized User(s) will be deemed authorized by Customer.

## 22. Liability for Third Parties

The Bank is not liable for any loss or liability resulting from any failure of Customer's Internet-Enabled Device, equipment or software, or by an Internet Service Provider, or that of an internet browser provider such as Google Chrome, Safari, Firefox, or Microsoft (Microsoft Explorer browser).

## 23. EXCLUSIONS OF WARRANTIES

**THE SERVICES AND THEIR RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY PROPRIETARY RIGHTS. IN NO EVENT SHALL THE BANK BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR THE INSTALLATION, USE, OR MAINTENANCE OF THE SERVICES OR RESULTING FROM CUSTOMER'S ACCESS TO OR FAILURE TO ACCESS BUSINESS ONLINE BANKING OR THE SERVICES OR FOR ANY CLAIM BY ANOTHER THIRD PARTY. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES. THE BANK MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICES (i) WILL MEET CUSTOMER'S REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICES WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED.**

**THE BANK MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO CUSTOMER OR TO ANY OTHER PERSON AS TO ANY COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH THE SERVICE, INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S INTERNET-ENABLED DEVICE OR RELATED EQUIPMENT, ITS COMPUTER SYSTEMS OR RELATED EQUIPMENT, CUSTOMER'S SOFTWARE, OR ITS INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF THE BANK'S SOFTWARE, INTERNET DELIVERED SERVICE,**

**EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT CUSTOMER USES, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICES WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**CUSTOMER AGREES THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR THE SERVICE TO BE PERFORMED PURSUANT HERETO. CUSTOMER ALSO ACCEPTS RESPONSIBILITY FOR USING ITS INTERNET-ENABLED DEVICE AND AGREES THAT THE BANK WILL NOT BE LIABLE TO CUSTOMER FOR ANY LOSSES CAUSED BY ITS FAILURE TO PROPERLY USE THE SERVICES ON ITS INTERNET-ENABLED DEVICE.**

**24. Limitation of Liability**

24.1. Except as specifically provided in this Agreement or where applicable law requires a different standard, Customer agrees that the Bank, its Affiliates and/or any third-party service provider engaged by the Bank to perform any of the services related to the Services, shall not be responsible for any damages or losses of any kind whatsoever, whether related to property or bodily injury, incurred as a result of Customer using or attempting to use the Services, whether caused by equipment, software, Internet Service Providers, browser software or any agent or subcontractor of any of the foregoing. Without limiting the foregoing, Bank will not be liable for delays or mistakes which happen because of reasons beyond its control, including without limitation, acts of civil, military or banking authorities, national emergencies, insurrection, war, riots, acts of terrorism, failure of transportation, communication or power supply, or malfunction or unavoidable difficulties with the Bank's equipment. Customer also agrees that the Bank, its Affiliates or any third-party service provider that the Bank engages with, will not be responsible for any direct, punitive, special or consequential, economic or other damages arising in any way out of the installation, use or maintenance of the equipment, software, the Services or internet browser or access software, or from the unavailability of the Services or for any errors in information provided through the Services. If a court finds that the Bank is liable to Customer because of what the Bank did (or did not do, as the case may be) under or in connection with this Agreement, the Customer may recover from the Bank only the actual damages, in an amount not to exceed the total fees and charges paid by Customer to the Bank for the Services under and in connection with this Agreement during the six (6) month period immediately preceding the event giving rise to the Bank's liability. Customer agrees that the dollar limitation described in the preceding sentence is reasonable, to the extent permitted by applicable law.

24.2. The Customer shall be solely responsible for protecting against unauthorized access to the Services through the use of physical security, Secure-Login and other Security Procedures. Customer agrees to indemnify, defend and hold harmless the Bank and its Affiliates from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and attorneys' fees, arising out of the processing of any request received from the Customer.

**25. Indemnification**

Customer agrees to indemnify, defend and hold the Bank and its Affiliates harmless against any third-party claim, demand, suit, action or other proceeding and any expenses relating to the Services.

**26. Recording and Use of Communications**

Customer and the Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. The Bank shall not be obligated to make such recordings.

**27. Disclosure of Information**

The Bank will only disclose information to third parties about Customer's Online Account(s) or transfers Customer makes under the following circumstances:

- where it is necessary for the provision of the Services and for completing transfers;
- in order to verify the existence and condition of Customer's Online Account(s) for a third party, such as a credit bureau or merchant;
- in order to comply with regulatory, government or court orders, demands or request, and/or other reporting requirements;
- if Customer gives the Bank its permission;
- to Bank affiliated companies; and/or,
- as otherwise provided in the Bank's Privacy Disclosure provided to Customer.

**28. Cellular Phone Contact**

By providing the Bank with a telephone number for a cellular phone or other wireless device, including a number that is later converted to a cellular number, Customer is expressly consenting to receiving communications – including but not limited to pre-recorded or artificial voice message calls, text messages and calls made by an automatic telephone dialing system from the Bank and its Affiliates and agents at that number. This express consent applies to each such telephone number that Customer provides to the Bank now or in the future, it being expressly understood and agreed, that by providing such number(s) Customer is consenting to such calls for non-marketing purposes. Calls and messages may incur access fees from Customer's cellular provider. Customer may elect not to receive these notifications by providing the Bank with prior advance written notice of such election at the address stated in this Agreement and the Bank will cease such notifications within a reasonable time after its receipt of Customer's written notice.

**29. Contact Information**

It is Customer's sole responsibility to ensure that the contact information in Customer's user profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and email addresses. Changes can be made either within the Business Online Banking portal or by contacting the Bank's Business Online Banking Department. Any changes in Customer's primary account/payment account should also be made in accordance with the Bank's procedures. The Bank is not responsible for any payment processing errors or fees incurred if Customer does not provide accurate primary account/payment account or contact information.

**30. Entire Agreement**

This Agreement (including the Schedules attached) together with the Depository Agreements, is the complete and exclusive statement of the agreement between the Bank and Customer with respect to the subject matter hereof and supersedes any prior agreement(s) between the Bank with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Depository Agreements, the terms of this Agreement shall govern with respect to the Services described herein. In the event performance of the Services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent

necessary to comply with such statute, regulation or policy, and the Bank shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between the Bank and Customer will constitute a modification of this Agreement, the Rules, or the Security Procedures, or constitute an agreement between the Bank and Customer regardless of whatever practices and procedures the Bank and Customer may use.

**31. Binding Agreement; Benefit**

Customer expressly acknowledges and represents that Customer has been given a full and fair opportunity to review this Agreement with an attorney of its choice, and that to the extent, if any, that it desired, Customer availed itself of this right. Customer further acknowledges and agrees that Customer has carefully read and fully understands all of the provisions of this Agreement and that Customer is hereby voluntarily and knowingly entering into this Agreement, which terms and provisions Customer finds to be reasonable and enforceable. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Bank or Customer hereunder.

**32. Changes and Modifications**

The Bank may modify the terms and conditions and fees and service charges applicable to the Services from time to time and at any time. The Bank may send any notice to Customer either by first-class mail and/or via e-mail. Customer will be deemed to have received any notice sent to Customer by first class mail three Business Days after it is sent, and any notice sent to Customer by e-mail on the following Business Day. Any use of the Services after the Bank provides Customer a notice of change will constitute Customer's agreement to such change(s). The revised terms and conditions shall be effective at the earliest date allowed by applicable law. Further, the Bank may, from time to time and at any time, revise or update the applications, Services, and/or related material, which may render all such prior versions obsolete. Consequently, the Bank reserves the right to terminate this Agreement as to all such prior versions of the applications, Services, and/or related material and limit access to only the more recent revisions and updates.

**33. Assignment**

Customer may not assign this Agreement to any other party. The Bank may assign this Agreement to an affiliate of the Bank or any successor in interest in the event of a merger, reorganization, change of control, acquisition or sale of all or substantially all assets of the business to which this Agreement is related without Customer's prior written consent. The Bank may also assign or delegate certain of its rights and responsibilities under this Agreement to independent contractors or other third parties. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

**34. Notices**

Unless otherwise required by applicable law, any notice or written communication given pursuant to this Agreement may be sent to Customer by first class mail and/or electronically, at the Bank's discretion. Customer hereby expressly authorizes the Bank to send any and all notices or communications under this Agreement for Business Online Banking and the Services to Customer electronically and Customer will keep its email address(es) with the Bank up-to-date. Customer will be deemed to have received any notice sent to Customer by first class mail three Business Days after it is sent, and any notice sent to Customer by e-mail on the following Business Day. The Bank is entitled to rely on any written notice or communication believed in good faith to be genuine and to have been signed by Customer or an Authorized User.

**35. Survival**

Upon termination of this Agreement, the obligations of a continuing nature under this Agreement shall survive termination or expiration of this Agreement and continue to be binding and in full force and effect, including, without limitation, all representations, warranties, restrictive covenants, confidentiality agreements, indemnities, covenants relating to intellectual property rights, and provisions relating to Customer and the Bank's liability and limitations thereof.

**36. Severability/Enforceability**

In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**37. No Waiver**

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

**38. Captions**

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

**39. Disputes**

In the event of a dispute regarding the Services, Customer and the Bank agree to resolve the dispute by looking to this Agreement. Customer agrees that this Agreement is the complete and exclusive statement of the agreement between Customer and the Bank which supersedes any proposal or prior agreement, oral or written, and any other communications between Customer and the Bank relating to Services. If there is a conflict between what an employee of the Bank says and the terms of this Agreement, the terms of this Agreement will prevail.

**40. Dispute Resolution**

Before initiating legal action against the other party relating to a dispute herein, the parties agree to work in good faith to resolve disputes and claims arising out of this Agreement. To this end, either party may request that each party designate an officer or other management employee with authority to bind such party to meet to resolve the dispute or claim. If the dispute is not resolved within 30 days of the commencement of informal efforts under this paragraph, either party may pursue formal legal action. This paragraph will not apply if expiration of the applicable time for bringing an action is imminent and will not prohibit a party from pursuing injunctive or other equitable relief to which it may be entitled.

**41. Governing Law**

This Agreement is governed by and construed in accordance with the laws of the State of New York and applicable federal law, without regard to its conflicts of law provisions.

**42. Jurisdiction**

Customer hereby consents to the personal jurisdiction of any Federal or State Court in New York that has jurisdiction over the subject matter of any proceeding arising from or relating to the Services.



**43. Waiver of Trial by Jury**

**CUSTOMER HEREBY WAIVES TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT, OR THE VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR HEREUNDER, OR ANY OTHER CLAIM OR DISPUTE HOWSOEVER ARISING BETWEEN CUSTOMER AND THE BANK.**

**II. BILL PAY SERVICE**

The terms and conditions contained in this section supplement the covenants contained in this Agreement and apply to the use of Bill Pay Transfer services. By executing this Agreement and/or each time Customer uses Bill Pay services, Customer accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which the Bank will provide to Customer the Bill Pay services outlined herein.

**1. Bill Pay Description of Service**

Bill Pay permits Customer to use its Internet-Enabled Device to direct payments from its designated Payment Account to eligible third parties Customer wishes to pay. Through Bill Pay, Customer can pay bills from Customer's Payment Account to businesses or individuals.

All payments Customer makes will be deducted from the Payment Account. Any payments Customer wishes to make through Bill Pay must be payable in U.S. dollars to a Payee located within the United States.

Provider reserves the right to restrict types of payees to whom payments may be made using Bill Pay from time to time. Tax payments and court ordered payments may be scheduled through Bill Pay; however, such payments are discouraged and must be scheduled at Customer's own risk.

**2. Bill Pay Limits**

Customer can arrange, at its option, for the payment of its current, future and recurring bills from a designated Payment Account up to the threshold limit(s) approved by the Bank as set forth in the Business Online Banking application or as otherwise communicated by the Bank to the Customer. These amounts are subject to change at the discretion of the Bank from time to time and at any time.

**3. Payment Methods**

The Provider reserves the right to select the method in which to remit funds on Customer's behalf to its Payee. These payment methods may include, but are not be limited to, an electronic payment, an electronic to check payment, or a paper draft payment. If the Payee does not permit and accept electronic payment, then those funds will be remitted to the Payee through the use of a paper check issued by the Provider and payable to the Payee. Such paper check will state that it represents a payment from Customer and indicate the account number of Customer's account with the Payee.

**4. Payment Scheduling**

Bill Pay transactions will be processed and completed on Customer's selected Scheduled Payment Date, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be processed on the next Business Day. It is understood by Customer that the time required for the Payee to receive the remitted funds will depend upon the payment method selected by the Provider and Customer must allow sufficient time for the Payee to receive and process the Bill Pay transactions to ensure that the payment posts by the Due Date. Scheduled Payment Dates occurring on non-Business Days and/or circumstances beyond the control of Provider, particularly delays by the Payee and the Payee's banks or agents in the handling and posting of these bill payments, may result in the Payee taking longer to post the remitted funds to Customer's account at the Payee. For this reason, Provider recommends that Customer select a Scheduled Payment Date that is no later than the actual Due Date reflected on Customer's Payee statement, unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, Customer must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates should be at least seven (7) Business Days prior to any late date or grace period. Customer agrees that Provider will not be responsible for any payment that is received or posted by the Payee after the grace period or results in a late charge or penalty being assessed by the Payee if Customer did not follow this recommendation. In such event, Customer agrees that Customer shall have the sole risk of incurring and the sole responsibility for paying any and all late charges or penalties assessed by the Payee.

**5. Payment Authorization and Payment Remittance**

By providing the Provider with names and account information of Payees to whom Customer wishes to direct payments, Customer authorizes the Provider to follow the Payment Instructions that it receives through Bill Pay. In order to process payments more efficiently and effectively, the Provider may edit or alter payment data or data formats in accordance with Payee directives.

When the Provider receives a Payment Instruction, Customer authorizes the Provider to debit Customer's Payment Account and remit funds on Customer's behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by Customer. Customer also authorizes the Provider to credit Customer's Payment Account for payments returned to the Provider by the United States Postal Service or Payee, or payments remitted to Customer on behalf of another authorized user of Bill Pay.

The Provider will use its commercially reasonable efforts to make all Customer's payments properly. However, Provider shall incur no liability and any Payment Guarantee shall be void if the Provider is unable to complete any payments initiated by Customer because of the existence of any one or more of the following circumstances:

- If, through no fault of the Provider, Customer's Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed the limit of Customer's Business Premium Overdraft, if applicable;
- The payment processing center is not working properly and Customer knows or has been advised by the Provider about the malfunction before Customer executes the transaction;
- Customer has not provided the Provider with the correct Payment Account information, or the correct name, address, phone number, or account information for the Payee;
- Circumstances beyond control of the Provider (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and the Provider has taken reasonable precautions to avoid those circumstances;
- The funds in Customer's Payment Account are unavailable;
- The funds in Customer's Payment Account are subject to legal process or court order;
- Customer hasn't properly followed the Bank's instructions;
- Customer don't authorize a Bill Pay transaction within the time frame required for it to reach the Payee by its Due Date;
- Customer's Password has been reported lost or stolen;

- Customer's Bill Pay service privileges have been suspended;
- The Bank has reason to believe that the Bill Pay transaction requested is unauthorized; and/or,
- The Bill Pay transaction would exceed the monetary limitations on the use of the Bill Pay service.

Provided none of the foregoing exceptions are applicable, if the Provider causes an incorrect amount of funds to be removed from Customer's Payment Account or causes funds from Customer's Payment Account to be directed to a Payee which does not comply with Customer's Payment Instructions, the Provider shall only be responsible for returning the improperly transferred funds to Customer's Payment Account, and for directing to the proper Payee any previously misdirected transactions, except as otherwise required by law.

#### **6. Payment Guarantee**

If a properly scheduled Bill Pay payment is not received and posted on time by the Payee, the Bank will attempt to have any late payment related charges removed by the Payee. If the Payee is unwilling or unable to remove them, upon submission of the required documentation to the Bank, Provider will bear responsibility for any late payment related charges up to \$50.00 should a payment post after its late date or grace period date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in this Agreement and Customer has complied with all other requirements contained in this Agreement.

#### **7. Payment Cancellation Requests**

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

#### **8. Stop Payment Requests**

The Provider's ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. The Provider may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If Customer desires to stop any payment that has already been processed, Customer must contact the Business Online Banking Department at the Bank at 718-326-6300 between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays and any other day the Bank is not open to conduct substantially all of its services. Although the Provider will make every effort to accommodate Customer's request, the Provider will have no liability for failing to do so. The Provider may also require that Customer present its request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for stop payments as set out in the applicable Fee Schedule provided by the Bank. Please refer to the Bank's Fee Schedule for more information regarding fees that may apply to Customer's accounts with the Bank.

#### **9. Prohibited Payments**

Payments to Payees outside of the United States or its territories are prohibited through Bill Pay.

Customer agrees not to use the Bill Pay service to make any tax payment or any court-directed or court-ordered payments or to make a payment to a Payee that has a mailing address outside the U.S. or its territories. Customer agrees not to make any payments to settle securities transactions. Customer agrees that if Customer attempts to make such payments, the Bank, the Provider and its respective Agents will not be responsible for that payment.

The Provider reserves the right to refuse to pay any Payee to whom the Customer may direct a payment. The Provider will notify Customer promptly if Provider decides to refuse to pay a Payee designated by Customer, notification will not be required if Customer attempts to make a payment prohibited under this section.

#### **10. Exception Payments**

Tax payments and court ordered payments ("Exception Payments") may be scheduled through Bill Pay, however such Exception Payments are discouraged and must be scheduled at Customer's own risk. In no event shall the Bank be liable for any claims or damages resulting from the Exception Payments. The Payment Guarantee as it applies to any late payment related charges is void when Exception Payments are scheduled and/or processed by the Provider. The Provider has no obligation to research or resolve any claim resulting from an Exception Payment. All research and resolution for any misapplied, mis-posted or misdirected Exception Payments will be the sole responsibility of Customer and not of the Provider.

#### **11. Bill Delivery and Presentment**

Bill delivery and presentment involves the presentment of electronic bills only and it is Customer's sole responsibility to contact its Payees directly if Customer does not receive its statements. In addition, if Customer elects to activate one of Bill Pay's electronic bill options, Customer also agree to the following:

11.1. Information provided to the Payee - The Provider is unable to update or change Customer's personal information such as, but not limited to, name, address, phone numbers and e-mail addresses, with the electronic Payee. Any changes will need to be made by contacting the Payee directly. Additionally, it is Customer's responsibility to maintain all usernames and passwords for all electronic Payee sites. Customer also agrees not to use someone else's information to gain unauthorized access to another person's bill;

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

11.3. Notification - The Provider will use its commercially reasonable efforts to present all of Customer's electronic bills promptly. In addition to notification within Bill Pay, the Provider may send an e-mail notification to the e-mail address, or a text to Customer's Internet-Enabled Device listed for Customer's Payment Account. It is Customer's sole responsibility to ensure that this information is accurate. In the event Customer does not receive notification, it is Customer's responsibility to periodically logon to Bill Pay and check on the delivery of new electronic bills. The time for notification may vary from Payee to Payee. Customer is responsible for ensuring timely payment of all bills;

11.4. Cancellation of electronic bill notification - The electronic Payee reserves the right to cancel the presentment of electronic bills at any time. Customer may cancel electronic bill presentment at any time. The timeframe for cancellation of Customer's electronic bill presentment may vary from Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. The Provider will notify Customer's electronic

Payee(s) as to the change in status of Customer's account and it is Customer's sole responsibility to make arrangements for an alternative form of bill delivery. The Provider will not be responsible for presenting any electronic bills that are already in process at the time of cancellation;

11.5. **Non-Delivery of electronic bill(s)**- Customer agrees to hold the Provider and their affiliate companies, trustees, directors, officers, employees and agents harmless should the Payee fail to deliver Customer's statement(s). Customer is responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Payee directly; and,

11.6. **Accuracy and dispute of electronic bill** – The Provider is not responsible for the accuracy of Customer's electronic bill(s). The Provider is only responsible for presenting the information the Provider receives from the Payee. Any discrepancies or disputes regarding the accuracy of Customer's electronic bill summary or detail must be addressed with the Payee directly. This Bill Pay Agreement does not alter Customer's liability or obligations that currently exist between Customer and its Payees.

## 12. Password and Security

Customer agrees not to give or make its Password or other means to access its Payment Account available to any unauthorized individuals. Customer is responsible for all payments it authorizes using Bill Pay. If Customer permits other persons to use Bill Pay or its Password or other means to access its Payment Account, Customer is responsible for any transactions they authorize. If Customer believes that its Password or other means to access Customer's Payment Account has been lost or stolen or that someone may attempt to use Bill Pay without Customer's consent or has transferred money without Customer's permission, Customer must notify the Business Online Banking Department at once by calling at 718-326-6300 between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays and any other day the Bank is not open to conduct substantially all of its services.

## 13. Questions

In case of questions about Bill Pay, Customer may also contact Metavante directly via one of the following:

13.1. Telephone the appropriate department at Metavante during customer service hours at:

For Questions Related to:  
Payment Research: (866) 400-6972  
Collections: (800) 873-5869 or (800) 741-1969

13.2. Contact Metavante by using the application's e-messaging feature; and/or,

13.3. Write to Metavante at:

FIS  
601 Riverside Avenue  
Jacksonville, FL 32204

## 14. Disclosure of Account Information to Third Parties

It is Provider's general policy to treat Customer's Payment Account information as confidential. However, Provider will disclose information to third parties about Customer's Payment Account or Bill Pay transactions Customer makes in the following situations:

- Where it is necessary for completing Bill Pay transactions;
- Where it is necessary for activating additional services for Bill Pay;
- In order to verify the existence and condition of Customer's Payment Account to a third party, such as a credit bureau or Payee;
- To a consumer reporting agency for research purposes only;
- In order to comply with a governmental agency or court orders;
- If Customer gives Provider its written permission; or,
- as provided in the Bank's Privacy Policy provided to Customer.

## 15. Service Fees and Additional Charges

Any applicable fees will be charged regardless of whether Bill Pay was used during the billing cycle. There may be a charge for additional transactions and other optional services for Bill Pay. Customer agrees to pay such charges and authorize the Provider to deduct the calculated amount from Customer's designated Payment Account for these amounts and any additional charges that may be incurred by Customer. Any Bank fees and service charges associated with Customer's standard deposit accounts will continue to apply. Customer is responsible for any and all telephone access fees and/or internet service fees that may be assessed by its telephone and/or Internet Service Provider. Please refer to the Bank's Fee Schedule for more information regarding fees that may apply to Customer's accounts with the Bank.

## 16. Failed or Returned Transactions

In using Bill Pay, Customer is requesting the Provider to make payments for Customer from its Payment Account. If the Bank is unable to complete the transaction for any reason associated with Customer's Payment Account (for example, there are insufficient funds in Customer's Payment Account to cover the transaction), the transaction will not be completed. The Bank may, however, elect at its sole discretion to complete the transaction notwithstanding any issues associated with Customer's Payment Account (for example, there are insufficient funds in Customer's Payment Account to cover the transaction). If the Bank elects to do so, Customer will receive a return notice from the Provider. In such case, Customer agrees that:

- Customer will reimburse the Provider immediately, upon demand, the transaction amount that has been returned to the Provider;
- For any amount not reimbursed to the Provider within fifteen (15) days of the initial notification, a late charge equal to 1% monthly interest or the legal maximum interest rate allowed by law, whichever rate is lower, for any unpaid amounts may be imposed and Customer hereby authorizes Provider to debit any and all late charges from the Payment Account;
- Customer will reimburse Metavante for any fees it imposes through Provider as a result of the return;
- Customer will reimburse Provider for any service charges applicable to the Payment Account as a result of the return;
- Customer will reimburse the Provider for any fees it incurs in attempting to collect the amount of the return from Customer; and,
- The Provider is authorized to report the facts concerning the return to any credit reporting agency.

## 17. Payee Limitation

The Provider reserves the right to refuse to pay any Payee to whom Customer may direct a payment. The Provider will notify Customer promptly if it decides to refuse to pay a Payee designated by Customer. This notification is not required if Customer attempts to make a prohibited payment or an Exception Payment under this Agreement.

## 18. Returned Payments

In using Bill Pay, Customer understands that Payees and/or the United States Postal Service may return payments to the Provider for various reasons such as, but not limited to, Payee's forwarding address expired; Payee account number is not valid; Payee is unable to locate account; or Payee account is paid in full. The Provider will use commercially reasonable efforts to research and correct the returned payment and return it to Customer's Payee, or void the payment and credit Customer's Payment Account. Customer may receive notification from the Provider.

## 19. Information Authorization

Customer's enrollment in Bill Pay may not be fulfilled if the Provider cannot verify Customer's identity or other necessary information. If Customer's account was added online the Provider may issue offsetting debits and credits to the Payment Account(s), and require confirmation of such from Customer in order to verify ownership of the Payment Account(s). Through Customer's enrollment in Bill Pay, Customer agrees that the Provider reserves the right to request a review of Customer's credit rating at its own expense through an authorized bureau. In addition, Customer agrees that the Provider reserves the right to obtain financial information regarding Customer's account from a Payee or Customer's financial institution (for example, to resolve payment posting problems or for verification).

## 20. EXCLUSIONS OF WARRANTIES

**BILL PAY AND ITS RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE PROVIDER BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, AND/OR BILL PAY. THIS PROVISION IS INTENDED TO SUPPLEMENT ANY OTHER SIMILAR PROVISION CONTAINED IN THIS AGREEMENT.**

## 21. Bill Pay Termination, Cancellation, or Suspension

Bill Pay service may be canceled or suspended at any time by the Provider without prior notice to Customer for any reason, including due to insufficient funds in one of Customer's Payment Accounts. After cancellation, Bill Pay services may be reinstated at the discretion of the Provider once sufficient funds are available in Customer's Payment Account(s) to cover any fees and other pending transfers or debits. In order to request reinstatement of Customer's Bill Pay services, Customer must call Cross County Savings Bank's Business Online Banking Department at 718-326-6300. Additionally, if Customer does not schedule or process a Bill Pay transaction for any one hundred and eighty (180) day period, the Bank reserves the right to disconnect Customer's Bill Pay service. Please note that it is possible that Customer's Payee Information may be lost if Customer is disconnected.

If Customer wishes to cancel Bill Pay, Customer may have the ability to do so through Cross County Savings Bank's Business Online Banking portal, or Customer may contact Cross County Savings Bank via one of the following:

- Telephone Cross County Savings Bank at 718-326-6300 during customer service hours; and/or,
- Write Cross County Savings Bank (please note that such termination, cancellation or suspension is not effective until the Bank has had sufficient time to receive and process the letter request) at: Cross County Savings Bank Business Online Banking Department 79-21 Metropolitan Avenue, Middle Village, NY 11379

Any payment(s) the Provider has already processed before the requested cancellation date will be completed by the Provider. All Scheduled Payments including recurring payments will be deleted once Bill Pay is cancelled. However, the Bank strongly suggests that Customer cancel all future Bill Pay transactions at the same time that Customer cancels Bill Pay service by deleting those payments using the Bill Pay service. This will ensure that future Bill Pay transactions made by Customer will not be duplicated.

Neither termination nor suspension shall affect Customer's liability or obligations under this Agreement. If Bill Pay is terminated, any future, prescheduled bill payments made through Bill Pay will also be terminated. Customer will, however, continue to maintain its Payment Account(s) until Customer notifies the Bank otherwise.

## III. Wire Transfer Services

Customer desires to use the services of the Bank to transfer funds by wire from Customer's Online Account(s) maintained at the Bank to accounts at another financial institution upon a wire transfer request communicated to the Bank by Customer (a "Wire Transfer Request"). The terms and conditions contained in this section supplement the covenants contained in this Agreement and apply to the use of Wire Transfer services. By executing this Agreement and/or each time Customer uses Wire Transfer services, Customer accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which the Bank will provide to Customer the Wire Transfer services outlined herein.

### 1. Authority

Customer hereby authorizes and directs the Bank, upon the Bank's receipt of a Wire Transfer Request made through the Business Online Banking service or by other means, to debit the Online Account or Accounts as specified in such Wire Transfer Request and to execute the requested Wire Transfer. As used in this Agreement, the term "Wire Transfer" shall have the meaning ascribed to such term in the New York State Uniform Commercial Code Article 4A ("UCC Article 4A") and the Federal Reserve Board Regulation J ("Regulation J") and shall be deemed to include a Wire Transfer of funds by means of the Federal Reserve FedLine® Services, computer terminal, or other means.

### 2. Authorized User

Customer represents and warrants to the Bank that all of the persons designated by the Primary Administrator as Authorized Users are authorized by Customer to give Wire Transfer instructions to the Bank and matters related to the Wire Transfer with respect to Customer's Online Account(s) at the Bank. **THE BANK SHALL BE ENTITLED TO RELY UPON THE AUTHORITY OF EACH AUTHORIZED USER UNTIL SUCH TIME AS BANK RECEIVES WRITTEN NOTICE FROM CUSTOMER OF THE REVOCATION OF SUCH AUTHORITY AND BANK HAS HAD A REASONABLE OPPORTUNITY TO ACT UPON SUCH INSTRUCTIONS.**

**3. Wire Transfers initiated via the Business Online Banking**

All electronic requests for Wire Transfers shall be initiated by Wire Transfer Request through the Business Online Banking service. In order to request a Wire Transfer, Customer or an Authorized User are required to complete all fields contained on the online Wire Transfer Request form, follow all instructions and submit the request upon verification of all data. Customer must review the Business Online Banking service to confirm that the Wire Transfer Request has been received by Bank and approved. The Bank shall not be liable for any failed transmission or for the Bank's non-receipt of any Wire Transfer Request instructions.

**4. Wire Transfer Limits**

Customer may initiate Wire Transfer Requests up to the threshold limit(s) approved by the Bank as set forth in the Business Online Banking application or as otherwise communicated by the Bank to the Customer. These amounts are subject to change at the discretion of the Bank from time to time and at any time.

**5. Approval & Execution of Wire Transfers**

5.1. Nothing contained herein shall obligate the Bank to accept and execute any Wire Transfer Request initiated by Customer and the Bank shall only be deemed to have accepted a Wire Transfer Request upon execution thereof. Customer understands that the Bank has no obligation to accept or execute any Wire Transfer Request if: (i) the Bank believes the Wire Transfer Request has been transmitted by someone other than an Authorized User; (ii) the Online Account from which it is to be made contains insufficient available funds; (iii) the Wire Transfer Request does not comply with Security Procedures or applicable state or federal law; (iv) Customer fails or refuses to provide all information the Bank is required to obtain to comply with all state and federal laws, including, without limitation, the Bank Secrecy Act; (v) any dollar limits established by the Bank would be exceeded; (vi) the Wire Transfer Request is for an international Wire Transfer, which is not permitted; or (vi) the Bank, acting in good faith, has reasonable cause for rejecting the Wire Transfer Request.

5.2. Upon the Bank's approval of a Wire Transfer Request, the Bank agrees to debit the Online Account or Accounts specified by Customer and to execute the Wire Transfer, subject to the terms and conditions of this Agreement, including, without limitation, the verification of the instructions by the Bank pursuant to the applicable Security Procedure(s).

5.3. Customer agrees that the Bank may use any means, intermediaries, or Wire Transfer systems to affect a Wire Transfer as the Bank in its sole discretion, shall decide. Customer understands and agrees that the Bank will not be responsible to seek clarification from Customer in the event any Wire Transfer Request is incomplete or unclear, and the Bank shall not be liable to Customer for any delay, failure to process or the inaccurate execution of any Wire Transfer Request due to circumstances beyond its reasonable control.

5.4. If a Wire Transfer Request received and accepted by the Bank purports to have been transmitted or authorized by Customer or one of the Authorized Users, except as otherwise provided by applicable law, it will be deemed effective as Customer's Wire Transfer Request and Customer shall be obligated to pay the Bank the amount of the Wire Transfer Request as provided herein whether or not the Wire Transfer Request was authorized by Customer or one of the Authorized Users, provided the Bank acted in compliance with the applicable Security Procedure(s).

**6. Prohibited Wire Transfers**

Customer agrees not to initiate a Wire Transfer Request through the Business Online Banking service to a person or entity that has a mailing address outside of the U.S. or its territories. The Bank reserves the right to refuse to make any Wire Transfer to a person or entity to whom the Customer may direct a Wire Transfer. The Bank will notify Customer, by oral, written, or electronic notice, if the Bank decides to refuse to make a Wire Transfer to a beneficiary designated by Customer. Notification will not be required if the Customer attempts to make a Wire Transfer Request that is prohibited under this Agreement.

**7. Rejection of Wire Transfer Requests**

If a Wire Transfer Request is not approved by the Bank, the Bank will use commercially reasonable efforts to provide oral, written, or electronic notice to Customer of the rejection of a Wire Transfer Request on the designated execution date of the Wire Transfer Request.

**8. Wire Security Procedures**

Customer agrees that the Security Procedures contained in this Agreement shall govern all Wire Transfers initiated by Customer hereunder, including the verification of the authenticity of such requests. The Security Procedures are not intended to detect whether any Wire Transfer Request: (i) instructs payment to or collection from a person not intended by Customer; (ii) instructs payment or collection in any amount greater than the amount intended by Customer; or (iii) is a duplicate of a transfer request previously sent by Customer. The Bank shall not be liable to Customer for any such occurrence except as expressly provided herein or as required under applicable federal or state law. Customer agrees that the Security Procedures are each commercially reasonable, and Customer represents and agrees that Customer shall perform all of Customer's obligations under this Agreement. Customer's agreement and acknowledgement of the commercial reasonableness of the Security Procedures is evidenced by Customer's electronic execution of this Agreement and/or Customer's use of the Wire Transfer services.

**9. Call Back Verification Method & Waiver**

9.1. As part of the Bank's Security Procedure governing Wire Transfers, the Bank, using varying criteria, may verify Wire Transfer Requests (and amendments or cancellations of Wire Transfer Requests) by calling Customer and/or one or more Authorized User(s) to authenticate transfer requests ("Call Back Verification"). The Bank shall determine, in its sole discretion, when to perform Call Back Verification pursuant to these Security Procedures. The Bank will use varying criteria to determine when to perform Call Back Verification, which criteria shall include, without limitation: (i) Wire Transfers that exceed a threshold dollar amount (which threshold may be changed by the Bank from time to time and at any time without notice to Customer); (ii) the frequency of Wire Transfers by Customer; and (iii) suspected security violation(s).

9.2. The Bank shall have no responsibility to verify Customer's identity or that of any Authorized User other than to verify that the name given by such person corresponds to one of the names previously specified to the Bank as an Authorized User. If the Bank attempts to verify authorization and for any reason is not satisfied that the Wire Transfer Request was initiated or verified by the Customer or an Authorized User, the Bank may refuse to execute the Wire Transfer Request. The Bank believes the Call Back Verification is a commercially reasonable procedure to verify the authenticity of Wire Transfer Requests made to the Bank in the name of the Customer.

**10. Use of Identifying Numbers**

Customer acknowledges and agrees that, if a Wire Transfer Request describes inconsistently by name and account number the beneficiary of a Wire Transfer payment, the bank where the beneficiary's account is maintained (the "Beneficiary Bank") may decide which beneficiary account to credit based upon the account number identified by Customer even if that number identifies a person or entity different from the intended and named

beneficiary on Customer's Wire Transfer Request, and that Customer's obligation to pay the amount of the Wire Transfer to the Bank is not excused in such circumstance. Customer further acknowledges and agrees that a Wire Transfer Request issued by Customer identifying both a name and identification number of a Beneficiary Bank or an intermediary bank through which funds would be transferred may be paid solely on the basis of the identifying number, and that Customer's obligation to pay the amount of the Wire Transfer to the Bank is not excused in such circumstance. **CUSTOMER IS CAUTIONED TO VERIFY THAT THE IDENTIFYING NAME AND ACCOUNT NUMBER OF THE BENEFICIARY AND THE IDENTIFYING NAMES AND NUMBERS OF THE BENEFICIARY BANK AND INTERMEDIARY BANK, IF ANY, ARE CORRECT BEFORE SUBMITTING A WIRE TRANSFER REQUEST.**

#### **11. Customer Safeguards**

Customer further covenants and agrees that no individual will be allowed to initiate Wire Transfers on Customer's behalf in the absence of proper supervision by Customer, and Customer shall implement and maintain at all times adequate safeguards to prevent unauthorized Wire Transfer Requests from being made on Customer's behalf. The Bank reserves the right to change its Security Procedures, as Bank deems necessary in its sole discretion at any time.

#### **12. Confidentiality of Security Procedures**

The Security Procedures are strictly confidential and should not be disclosed by Customer or any of the Authorized Users to anyone else except persons Customer deems to have a legitimate need to know. Customer agrees to establish and maintain procedures to prevent disclosure of the Security Procedures. If Customer believes or has reason to believe that the confidentiality of such procedures has been compromised, notice of that fact shall be given to Bank in writing immediately, but in no event later than one Business Day from the date of discovery.

#### **13. Recurring Wire Transfers**

In order to effect repeated Wire Transfers, Customer shall furnish the Bank with a Wire Transfer Request through the Business Online Banking service properly completed and verified by Customer or an Authorized User (the "Recurring Wire Transfer Request"), to transfer funds based upon pre-determined criteria described in such Recurring Wire Transfer Request, subject to the requirements set forth in the Security Procedures. Upon receipt of such Recurring Wire Transfer Request, the Bank shall be authorized to make recurring Wire Transfer(s) (the "Recurring Wire Transfers") from the Online Account(s) as designated in the instructions, without any further direction, request or authorization from Customer, upon the occurrence of circumstances or conditions which, in the Bank's reasonable judgement, meet the criteria established in such Recurring Wire Transfer Request. All amendments and cancellations of Recurring Wire Transfers must be in writing and must be received prior to the Cutoff Time one (1) Business Day prior to the effective date of such amendment or cancellation. For purposes of Wire Transfer Services, the term "Business Day" shall mean any day when the Bank is open to conduct substantially all of its services, but shall not include Saturday, Sunday or federal holidays, and shall also not include any holiday observed by the bank designated to receive a particular Wire Transfer and any holiday observed by the Wire Transfer system used for such transfer.

#### **14. Deadlines**

14.1. Wire Transfer Requests, and amendments and cancellations thereof, must be received by the Cutoff Time set forth in Schedule A for Wire Transfer Request to be deemed received on that Business Day. The Bank shall not be obligated to honor a Wire Transfer Request, amendment or cancellation on the date received unless such Wire Transfer Request, amendment or cancellation is received by the Bank prior to the Cutoff Time. The Bank shall use commercially reasonable efforts to effect Wire Transfer Requests received after the Cutoff Time on the date of receipt; however, the Bank shall incur no liability in failing or refusing to process any Wire Transfer Request received after the Cutoff Time on the date of receipt. Subject to the foregoing, any Wire Transfer Request received after the Cutoff Time will be executed by the Bank on the next Business Day.

14.2. The Bank may, in its discretion, change or waive the Cutoff Time from time to time and at any time. Any waiver by the Bank of any Cutoff Time for the receipt of a Wire Transfer Request shall apply only to that Wire Transfer Request and shall not apply to any future Wire Transfer Request. The Bank is under no obligation to affect a Wire Transfer Request received after the Cutoff Time on the date received; however, the Bank shall use commercially reasonable efforts to do so. Customer should not submit a Wire Transfer Request at any time on any Business Day unless Customer has sufficient funds to pay such Wire Transfer Request on such Business Day.

#### **15. Cancellation/Amendment of Wire Transfer Requests**

Customer shall have no right to cancel or amend a Wire Transfer Request after it is received by the Bank, except for cancellations or amendments of Recurring Wire Transfer Requests pursuant to the terms of this Agreement and the Security Procedures. The Bank will use commercially reasonable efforts to cancel such Wire Transfer Requests pursuant to Customer's instructions, provided that the Wire Transfer Request is: (i) received by the Bank before the Cutoff Time; (ii) received by the Bank before such Wire Transfer Request has been transmitted; and (iii) verified pursuant to the Security Procedure. However, the Bank shall not be liable for its failure or inability to affect any such cancellation or amendment for any reason, and Customer shall continue to be obligated to pay the Bank the amount of the Wire Transfer Request and any charges and fees in connection therewith. The Bank may cancel Customer's Wire Transfer Request if: (i) there are insufficient funds in the account designated by Customer to pay such Wire Transfer Request; (ii) if such Wire Transfer Request is found by the Bank, in its sole discretion, to be unclear or incomplete; or (iii) if the Bank is unable to process any Wire Transfer Request for any other reason.

#### **16. Confirmation**

The Bank agrees that it will furnish Customer an advice of debit for each Wire Transfer made from the Online Account(s) (each, a "Debit Advice"). Customer agrees to carefully examine each Debit Advice immediately upon receipt and to promptly report any error or exception to the Bank. Customer agrees to notify the Bank of any error or exception not later than thirty (30) days from the date of receipt of the Debit Advice or account statement. Customer understands that the Bank shall not be obligated to pay interest on any amount refundable to Customer for: (i) errors not solely the result of the Bank's unreasonable act or omission except as provided by this Agreement; and (ii) the period prior to the date Customer notifies the Bank of such execution error.

#### **17. Fees**

Customer agrees to pay all for Wire Transfer fees due the Bank in accordance with the Bank's Fee Schedule and/or the fees disclosed in the Business Online Banking service, which may be changed at any time. Customer further agrees to reimburse the Bank for any and all actual expenses Bank may incur to execute, cancel or amend any Wire Transfer Request or perform any related act at Customer's request. Customer acknowledges that other and additional fees may be charged by the Beneficiary Bank to the recipient of the Wire Transfer.

#### **18. Overdraft**

Customer agrees that Customer shall not request a Wire Transfer in amount greater than the available balance in the Online Account(s) that Customer has designated as the source of funds. The Bank shall have no duty to execute a Wire Transfer Request if the requested amount exceeds the

available balance in such Online Account(s) or to look to funds in Customer's other accounts to satisfy such Wire Transfer Request. However, should a Wire Transfer be executed that results in an overdraft in the Online Account(s), Customer agrees to pay the Bank the overdraft amount and any fees resulting therefrom promptly upon demand. Customer further agrees to pay the Bank such fees as are listed on the Depository Agreements or the Bank's Fee Schedule, which the Bank may change from time to time and at any time. Customer agrees to pay to the Bank reasonable attorneys' fees and other costs of collection in the event the Bank retains counsel to collect any overdraft amounts not promptly paid by Customer. Customer also agrees that the Bank may set off any sums due hereunder against any of Customer's accounts at the Bank.

#### **19. EXCLUSIONS OF WARRANTIES**

**WIRE TRANSFER SERVICES AND ITS RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY PROPRIETARY RIGHTS. IN NO EVENT SHALL THE BANK BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) RESULTING FROM IN CONNECTION WITH THE BANK'S EXECUTION, REJECTION OR FAILURE TO PROCESS ANY WIRE TRANSFER ON CUSTOMER'S BEHALF, WHETHER CUSTOMER ACTS AS A SENDER OR BENEFICIARY, EXCEPT AS EXPRESSLY PROVIDED IN STATE OR FEDERAL LAW. THIS PROVISION IS INTENDED TO SUPPLEMENT ANY OTHER SIMILAR PROVISION CONTAINED IN THIS AGREEMENT.**

#### **20. Limitation of Liability**

**THE CUSTOMER (1) UNDERSTANDS AND AGREES THAT ANY CLAIM AGAINST THE BANK SHALL BE LIMITED TO CLAIMS FOR WHICH A REMEDY IS PROVIDED EITHER BY ARTICLE 4A OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN NEW YORK OR BY THIS AGREEMENT; AND (2) WAIVES THE RIGHT TO BRING ANY CLAIM ON ANY OTHER LEGAL THEORY WHATSOEVER, WHETHER IN CONTRACT OR IN TORT IRRESPECTIVE OF WHETHER OR NOT UNDER SUCH THEORY OR THEORIES THE ASSERTED BANK DUTIES OR OBLIGATIONS ARE DEEMED TO BE IN ADDITION TO OR INCONSISTENT WITH THOSE SET FORTH HEREIN OR IN ARTICLE 4A OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN NEW YORK. THE BANK HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OR COVENANTS APPLICABLE TO CONTRACTS GENERALLY ARISING UNDER OR RECOGNIZED BY NEW YORK LAW. CUSTOMER AGREES THAT THE BANK WILL NOT BE LIABLE FOR ATTORNEY FEES OR FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THE BANK'S PROCESSING OF ANY WIRE TRANSFER ON CUSTOMER'S BEHALF, WHETHER CUSTOMER ACTS AS A SENDER OR BENEFICIARY, EXCEPT AS EXPRESSLY PROVIDED IN STATE OR FEDERAL LAW. SHOULD CUSTOMER FAIL TO NOTIFY THE BANK OF ANY UNAUTHORIZED WIRE TRANSFER MADE FROM CUSTOMER'S ACCOUNT WITHIN THIRTY (30) DAYS OF THE DATE THEREOF, THE BANK WILL NOT OWE CUSTOMER ANY INTEREST FOR ANY PERIOD BEYOND SUCH THIRTY (30) DAYS. THIS PROVISION IS INTENDED TO SUPPLEMENT ANY OTHER SIMILAR PROVISION CONTAINED IN THIS AGREEMENT.**

#### **21. Indemnification**

Customer represents and agrees that Customer shall perform all of Customer's obligations under this Agreement in accordance with all applicable state and federal laws and regulations including, without limitation, UCC Article 4A, Regulation J, and the Bank Secrecy Act. Customer represents and agrees to indemnify and hold the Bank and its Affiliates harmless from and against any loss, liability or expense arising out of any breach of any of Customer's representations or warranties contained herein. Customer agrees to indemnify and hold the Bank and its Affiliates harmless from and against all third party claims for damages or expenses of any kind and nature, including attorneys' fees and costs, arising from or relating to the Bank's action in the processing of any part of a Wire Transfer Request initiated by any of the Authorized Users, unless and until the Bank has received written notice from Customer that the authorization of such Authorized User has been terminated by Customer and the Bank has had a reasonable opportunity to act upon such instructions.

#### **22. Wire Transfer Law and Wire Transfer System Rules**

22.1. Wire Transfer Requests accepted by the Bank will be executed through a Wire Transfer system operated by the Federal Reserve Bank or another financial institution selected by the Bank. Federal Reserve Board Regulation J, 12CFR Part 210, Subpart B including appendices and all applicable operating circulars of the Federal Reserve Bank of New York shall govern all Wire Transfer Requests. Unless otherwise defined herein, the terms used herein shall have the meaning set forth in UCC Article 4A and Federal Reserve Board Regulation J. Customer agrees that all Wire Transfers will be subject to the terms and conditions of any system through which the funds may be transmitted. The Bank shall not be liable or responsible to Customer in any manner for any delay or failure to transfer any amount hereunder due to rules or the aggregate amount the Bank can transfer from time to time during any Business Day, provided, however, that the Bank notifies Customer as soon as is practicable if the Wire Transfer Request is not executed on the requested execution date and that the Bank executes the Wire Transfer Request as soon as it is reasonably possible thereafter. Wire Transfers executed by the Bank are subject to state and federal law, including without limitation the Bank Secrecy Act and Regulation J. In executing any transaction, the Bank will transmit Customer's name, address, and account number when effecting Wire Transfers at Customer's request. Customer agrees to provide any and all information at any time that Bank might require in order to comply with all such laws, to assist Bank in such compliance, and to hold Bank harmless from any liability in connection with Bank's compliance with applicable law.

22.2. It shall be Customer's responsibility to ensure that Wire Transfer Requests, initiated by Customer, comply with U.S. law, including, but not limited to, sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It shall further be Customer's responsibility to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's home page site at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac)). Customer agrees that the performance of any action by the Bank to process a Wire Transfer is excused from the performance of such action to the extent that the action is inconsistent with United States law, including the obligations of the Bank under OFAC or any program administered by the United States Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). Customer agrees generally and warrants to the Bank that all actions by Customer contemplated by this Agreement, including the preparation, transmittal, and settlement of Wire Transfer Requests, shall comply in all material respects with all local, state and United States laws, regulations, regulatory guidelines and guidance, and official commentaries, including without limitation all such regulations, guidelines, and commentaries issued by the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Federal Financial Institutions Examination Council ("FFIEC") and the New York State Department of Financial Services. All penalties imposed by OFAC to the Bank for any violation will be passed on to the Customer. Customer agrees that it will indemnify, defend and hold the Bank and its Affiliates harmless against any loss or cost arising from the Customer's failure to screen its Wire Transfer Requests.

#### **23. Termination**

The Bank may terminate or suspend Wire Transfer services at any time without prior notice to Customer for any reason, including due to insufficient funds in one of Customer's Online Accounts. Unless terminated by the Bank, this Agreement shall remain in effect until the Bank receives Customer's written notice of termination and the Bank has been afforded a reasonable opportunity to act on such notice.

#### IV. ACH Origination Services

Customer wishes to initiate credit and/or debit Entries through Business Online Banking to accounts maintained at the Bank and in other depository financial institutions ("ACH Origination Service(s)") by means of the Automated Clearing House Network ("ACH") pursuant to the terms of this Agreement, the rules of the National Automated Clearing House Association ("NACHA") and the operating rules and procedures for electronic entries promulgated by the, including any exhibits or appendices thereto now in effect, or as may be amended from time to time (collectively the "Rules"). By executing this Agreement and/or each time Customer uses an ACH Origination Service, Customer accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which the Bank will provide Customer with the ACH Origination Services outlined herein.

##### 1. Compliance with Rules and Laws

Customer agrees to comply with and be subject to the Rules of NACHA in existence at the date of this Agreement, and any amendments to these Rules made from time to time. Customer acknowledges that Customer has a copy or has access to a copy of the Rules. The Rules may also be purchased online at [www.nacha.org](http://www.nacha.org). It shall be Customer's responsibility to ensure that the origination of ACH transactions complies with U.S. law, including but not limited to sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It shall further be Customer's responsibility to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's home page site at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac)). Customer agrees that the performance of any action by the Bank to debit or credit an account or transfer funds otherwise required by the Rules is excused from the performance of such action to the extent that the action is inconsistent with United States law, including the obligations of the Bank under OFAC or any program administered by the United States Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). Customer agrees generally and warrants to the Bank that all actions by Customer contemplated by this Agreement, including the preparation, transmittal, and settlement of Entries and payment orders, shall comply in all material respects with all local, state and United States laws, regulations, regulatory guidelines and guidance, and official commentaries, including without limitation all such regulations, guidelines, and commentaries issued by the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Federal Financial Institutions Examination Council ("FFIEC") and the New York State Department of Financial Services. All penalties imposed by OFAC to the Bank for any violation will be passed charged to the Customer and Customer shall promptly pay and/or reimburse the Bank for such charges. Customer agrees that it will indemnify, defend and hold the Bank and its Affiliates harmless against any loss or cost arising from the Customer's failure to screen the person(s) and/or entities involved in an ACH Entry. The duties of Customer provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking and in no way limit the requirement of complying with the Rules.

##### 2. Qualification

Customer approval for use of ACH Origination Services may be subject to qualification criteria established by the Bank from time to time and at any time. If the Bank requires application of qualification criteria for Customer approval for use of ACH Origination Services, the Bank will communicate to Customer the nature and content of that criteria and the information Customer will be required to provide to the Bank. Customer agrees to provide the Bank such financial, business and operating information as the Bank may reasonably request in connection with the Bank's qualification and approval process.

##### 3. Security Interest

To secure the payment and performance of Customer's obligations set forth herein, Customer grants to the Bank a security interest in and pledges and assigns to the Bank all of Customer's right, title, and interest in the following described property, whether now owned or hereafter existing or acquired and wherever located: (a) all monies, instruments, savings, checking and other accounts of Customer (excluding IRA, Keogh, trust accounts and other accounts subject to tax penalties if so assigned) that are now or in the future in the Bank's custody or control; (b) any other collateral described in any security instrument securing the obligations of Customer to the Bank under this Agreement or any other obligation of Customer to the Bank; and (c) all proceeds and products of the property as well as any replacements, accessions, substitutions, and additions to any of the above.

##### 4. Designation of Primary Administrator

In order to originate ACH Entries, Customer must designate a Primary Administrator. The Primary Administrator shall be responsible for designating Authorized Users who Customer authorizes to issue Entries on its behalf. For the purposes of this Agreement, the term Authorized User shall also include the Primary Administrator. The Bank shall be entitled to rely on the designations made by the Primary Administrator and shall not be responsible for matching the names of the Authorized Users designated by the Primary Administrator to names or titles listed in Customer's banking resolutions. Customer agrees that any Entries made by an Authorized User shall comply with the Bank's Security Procedures, which are subject to change without notice to Customer. Although the Bank is only required to act upon the instructions of the Authorized User(s), the Bank may, in its sole discretion, execute debit or credit Entries initiated by any individuals authorized by Customer to sign checks on Customer's accounts. The signature cards establishing the authorized signatories for Customer deposit accounts are hereby incorporated by reference and made a part hereof.

##### 5. Transmission of Entries by Customer

Authorized User(s) may only initiate debit or credit ACH Entries on behalf of Customer for the approved Standard Entry Class (SEC) codes designated in the Business Online Banking application or as otherwise communicated by the Bank to the Customer, and/or such other SEC Codes that may be approved in writing by the Bank. The Bank shall be entitled to deem any person having knowledge of any Security Procedure, required to initiate Entries under this Agreement, to be an Authorized User. Authorized User(s) shall transmit Entries to the Bank in computer readable form in compliance with the formatting and other requirements set forth in the NACHA file specifications or as otherwise specified by the Bank. Entries shall be transmitted to the Bank no later than the time and the number of days prior to the Effective Entry Date specified in the Processing Schedule attached hereto and made a part hereof as **Schedule A**. For the purposes of ACH Origination Services, the "Settlement Date" with respect to any Entry shall be the Business Day when such Entry is debited or credited in accordance with the Rules. Entries received after the Cutoff time shall be deemed to have been received on the next Business Day. The total dollar amount of Entries transmitted by Customer to the Bank on any one Business Day shall not exceed the lesser of the amount of collected funds in Customer's account or the amount set forth in the Business Online Banking application or as otherwise communicated by the Bank to the Customer ("ACH Processing Limit"). The ACH Processing Limit is subject to change at the discretion of the Bank from time to time and at any time. Customer may not reinitiate entries except as prescribed by the Rules.

*"Entry Settlement Limit"* means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Customer by the Bank in writing from time to time.

*"In-Process Entries"* means the aggregate dollar amount of all credit or debit Entries initiated by Customer and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.

*"Overlimit Entry"* means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit. Customer agrees that the Bank will not process an Overlimit Entry. The Bank will suspend any Overlimit Entry submitted by Customer and may, following its receipt of an Overlimit Entry; suspend all In-Process Entries. Customer acknowledges that any Overlimit Entry or other In-Process



Entries suspended by the Bank will not settle on their scheduled Settlement Date. If Customer wishes to initiate an Entry that would cause the amount of In-Process Entries to exceed the Entry Settlement Limit, Customer may submit to the Bank its request to initiate an Entry that otherwise would be an Overlimit Entry. Customer must submit its request at least 2 Business Days prior to the date on which Customer wishes to initiate the Entry that otherwise would be an Overlimit Entry. The Bank may require from Customer financial or other information in connection with the Bank's consideration of the request. The Bank may grant or deny Customer's request at its sole discretion. In addition to the foregoing, the Bank generally reserves the right to limit the nature and amount of the preauthorized debit/credit Entries processed under this Agreement or to refuse to process any debit/credit Entries under this Agreement if, in the Bank's sole judgment (i) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (ii) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (iii) a preauthorized credit Entry or the return of a preauthorized debit Entry would create an overdraft of Customer's account(s). If any of the foregoing actions are taken by the Bank with respect to a particular preauthorized debit/credit Entry, the Bank will notify Customer as promptly as practicable, but in no event later than 2 Business Days after its decision. Customer may not reinitiate entries except as prescribed by the Rules.

## 6. Third-Party Service Providers

Customer may be using special equipment, services or software provided by a third party to assist it in processing Files hereunder ("Service Provider"). Customer agrees not to use a Service Provider to transmit files to the Bank without first entering into the Bank's Third-Party Service Provider Agreement. If Customer uses a Service Provider to transmit Files to the Bank and Customer and Service Provider have not entered into a Third-Party Service Provider Agreement, Customer (a) agrees that Service Provider is acting as Customer's agent in the delivery of Files to the Bank, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with the local, state and/or federal laws of the United States, the Rules and this Agreement. The Bank will not be liable for any losses or additional costs incurred by Customer as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Customer is solely responsible for maintaining compliance with the requirements of Service Provider, including obtaining any software updates. The Bank's sole responsibility shall be to transmit Bank approved transactions to the ACH Operator and the Bank shall not have any responsibility for any File handled by the Service Provider until that point in time when the Bank accepts and approves a File from such Service Provider for processing. If the Bank authorizes Customer to use a Service Provider, the terms and conditions governing the relationship between Customer and the Service Provider shall be governed by a separate agreement between Customer and Service Provider ("Service Provider Agreement"). All of Customer's obligations and responsibilities under this Agreement will apply to the Service Provider, and Customer's separate agreement with the Service Provider must so provide. At the Bank's request, Customer will provide to the Bank a true and exact copy of such agreement. Customer shall designate the Service Provider as an Authorized User and the Service Provider must also enter into a Service Provider Agreement before the Service Provider sends Files to the Bank. Notwithstanding the foregoing, Customer hereby authorizes the Bank to accept any File submitted by the Service Provider even if the Service Provider has not been designated as an Authorized User or if the Third-Party Service Provider has not executed the Service Provider agreement. Customer hereby indemnifies and holds the Bank harmless for any losses, damages, fines, assessments, costs and expenses incurred or suffered by the Bank or any other person as a result of or arising from Customer's use of the Service Provider, including fines or assessments incurred under or pursuant to the Rules and attorneys' fees.

## 7. ACH Origination Security Procedures

7.1. Customer agrees that the Security Procedures contained in this Agreement shall govern the ACH Origination Services initiated by Customer hereunder, and Customer acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification number, user identification technology, token, certificate, or other element, means, or method of authentication or identification used in connection with a Security Procedure ("Security Devices") used in connection therewith, constitute commercially reasonable security procedures under applicable law for the initiation of ACH entries. Customer understands and agrees that ACH Files or Entries transmitted to the Bank shall conform to the following Security Procedures:

- The Bank will anticipate the receipt of an ACH File transmission from Customer on each scheduled processing date identified by Customer in writing and agreed to by the Bank. Customer is responsible for ensuring that the Bank receives the ACH File transmission on each processing date indicated in the processing schedule. Customer will notify the Bank if an ACH File transmission will not take place on the prearranged scheduled processing date. Customer will promptly notify the Bank of any ACH File transmission that has not been identified by Customer on the processing schedule prior to initiating the transmission of the ACH File.
- Transmission totals will be provided to the Bank for File verification. In the event of a discrepancy, the Bank will contact an Authorized User. If an Authorized User is unavailable for notification, the ACH File will not be processed until such time as an Authorized User can be contacted.
- Customer is solely responsible for the accurate creation, modification, and deletion of the account information maintained on Customer's personal computer. Customer is solely responsible for access to ACH protected information maintained by Customer.

7.2. ACH File transmissions made over an unsecured electronic network (the internet) must use at least the minimum level of encryption required by the Rules. Authorized Users will access the ACH secure File Delivery, Online Banking and/or Encrypted E-mail method by utilizing prearranged log-on procedures and additional verification processes, including, but not limited to, use of security questions and answers, internet browser "cookies," and one-time password devices (e.g. tokens).

7.3. Limiting access and securely storing ACH data used in the routing and settlement of ACH transactions is a critical data security precaution. Customer's ability to limit access to production data can be done through commercially available software products. Access can be limited to specific programs, User IDs, or read-only or read-and-edit-only access functionality. Files can also be transmitted between ACH participants using the following data protection methods: encryption and authentication.

- **Encryption** is a process of scrambling data content through hardware or software in order to protect the confidentiality of a file's contents. This information should remain encrypted between all parties in the ACH Network using commercially reasonable procedures and must be transmitted using security technology as provided in the Rules.
- **Authentication** is a process of ensuring that files and data content have not been altered between the Originator and receiving points. Like encryption, this can be done using hardware or software to ensure data integrity.

7.4. Customer authorizes the Bank to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until Customer has notified the Bank, according to notification procedures prescribed by the Bank, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than Authorized User(s) and until the Bank has had a reasonable

opportunity to act upon such notice. Customer acknowledges and agrees that Customer shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by Authorized User(s), to the fullest extent allowed by law. Customer further acknowledges and agrees that the Security Procedures are not designed to detect error in the transmission or content of communications or Entries initiated by Customer and that Customer bears the sole responsibility for detecting and preventing such error.

7.5. Customer agrees to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to Authorized User(s). Customer agrees to instruct each Authorized User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. The Bank shall distribute Security Devices to the Primary Administrator and the Bank shall otherwise communicate with the Primary Administrator regarding Security Procedures. Customer's Primary Administrator shall have responsibility to distribute Security Devices to Authorized User(s) and to ensure the proper implementation and use of the Security Procedures by Authorized User(s). Where Customer has the ability to change or modify a Security Device from time to time (e.g., a password or PIN), Customer agrees to change Security Devices frequently in order to ensure the security of the Security Device. Customer agrees to notify the Bank immediately, according to notification procedures prescribed by the Bank, if Customer believes that any Security Procedures or Security Device has been stolen, compromised, or otherwise become known to persons other than Authorized User(s) or if Customer believes that any ACH transaction or activity is unauthorized or in error. In the event of any actual or threatened breach of security, the Bank may issue Customer a new Security Device or establish new Security Procedures as soon as reasonably practicable, but the Bank shall not be liable to Customer or any third party for any delay in taking such actions.

7.6. Customer agrees to notify the Bank immediately, according to notification procedures prescribed by the Bank, if the authority of the Primary Administrator shall change or be revoked. Customer shall recover and return to the Bank any Security Devices in the possession of any Authorized User(s) whose authority to have the Security Device has been revoked.

7.7. The Bank reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in the Bank's discretion. The Bank will endeavor to give Customer reasonable notice of any change in Security Procedures; provided that the Bank may make any change in Security Procedures without advance notice to Customer if the Bank, in its judgment and discretion, believes such change to be necessary or desirable to protect the security of the Bank's systems and assets. Customer's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Customer's agreement to the change and Customer's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

**8. Physical and Electronic Security**

Customer is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Customer's possession or under Customer's control. Without limiting the generality of the foregoing, Customer specifically acknowledges and agrees that as part of the foregoing obligation Customer shall comply with the provisions of Section 1.6 of the Rules, entitled "Security Requirements," for the safeguarding of Protected Information, as that term is defined in the Rules.

**9. Credit and Debit Entries; Records Retention**

Customer shall obtain an authorization ("Authorization Agreement") as required by the Rules from the person or entity whose account will be debited or credited as the result of a debit or credit Entry initiated by Customer and Customer shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Upon request, Customer shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules.

The following table shows the proper SEC Codes to use depending on how Customer obtains the authorization to debit/credit an individual or company's account:

<b>SEC Code</b>	<b>Debit / Credit</b>	<b>Authorization Method</b>
PPD	Debit or Credit	Document signed by individual or similarly authenticated
CCD, CTX	Debit or Credit	Document signed or similarly authenticated by Customer*
WEB	Debit or Credit	Via the Internet for Debit
TEL	Debit Only	Verbal authorization via the telephone. (Phone line must be recorded line or notice sent)
POP	Debit Only	Check converted to electronic transaction at the Point-of-Purchase. Signature is required on authorization form
BOC	Debit Only	In-person presented check converted to electronic transaction during back office processing. Notice provided at point of check being tendered and purchaser takes it.
ARC	Debit Only	Check received via mail/courier and converted to electronic transaction. Notice on statement for each transaction
RCK	Debit Only	Notice equals authorization

\* All transactions from a business account must be CCD or CTX. Please see the CCD and CTX definition in Schedule A or refer to the NACHA Rules for a detailed explanation.

**10. International Ach Transactions ("IAT")**

Customer shall **not** initiate any IAT Entries without the Bank's prior written approval. If approved by the Bank, the following provisions apply to IAT Entries originated by Customer:

- IAT Entries are transmitted by the Bank in U.S. dollars and converted to the local currency for receipt in the foreign country at the exchange rate determined by the Bank's processor on the date determined by the Bank's processor. All risk of fluctuation in the applicable exchange rate is borne by Customer and Customer agrees and acknowledges that the Bank shall not be liable to Customer for any loss or charge incurred by Customer as the result of the application of any foreign currency exchange criteria imposed by any institution or agency located outside the United States.
- In the event of a returned IAT Entry, consumer payments will be credited to Customer at the originated U.S. dollar amount; corporate payments will be credited to Customer at the exchange rate determined by the Bank's processor at the time of return.
- In the event of an error in an Entry or duplicate entries, Customer acknowledges and agrees that Customer shall be liable for any and all losses caused by and a direct or indirect result from the error or duplicate Entry.
- Customer shall originate all International ACH Transactions, as that term is defined in the Rules, with an IAT SEC code and Customer hereby agrees to abide by all of the Rules related to IAT Entries.
- Customer agrees that in the case of a non-Consumer Account, Customer shall enter into an agreement with the Receiver whereby the Receiver agrees to abide by the Rules in effect from time to time.
- Customer acknowledges that it has reviewed and understands provisions of the Rules dealing with exceptions for outbound IAT Entries and Customer understands and agrees that laws, regulations, and rules of the country in which the Receiver is located shall govern the matters listed within that subsection. Customer further acknowledges that Customer understands how such laws, regulations and rules differ from the Rules.
- Customer agrees and acknowledges that any assistance by the Bank does not in any manner obligate the Bank for the accuracy or enforceability of the Entry in any country outside the United States.
- Customer bears the risk of any loss caused by any delay, tax, cost, tariff, fee, or other charge incurred on account of the Entry in any country outside the United States.
- If the settlement of any IAT Entry involves clearing of the Entry in more than one country outside the United States, the Bank shall be permitted to rely upon any advice or instruction received by the Bank from the financial institution or financial agency located in the first country outside the United States to which the Entry is directed.
- IAT Entries must be authorized as provided in the Rules. The form and content of the authorization, including whether such authorization may be oral, electronic, or written, shall be governed by the laws and payment system rules of the receiving country.
- Customer hereby indemnifies the Bank from and against any and all resulting claims, demands, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from Customer's origination of an IAT Entry.

#### **11. Recording and Use of Communications**

Customer and the Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. The Bank shall not be obligated to make such recordings.

#### **12. Processing, Transmittal, and Settlement by the Bank**

Except as otherwise provided for in this Agreement and if the Bank elects to accept Entries, the Bank shall:

12.1. (i) use commercially reasonable efforts to comply with the instructions of Customer, (ii) process Entries received from Customer to conform with the file specifications set forth in the Rules, (iii) transmit such Entries as an ODFI to the "ACH" processor selected by the Bank, (iv) settle for such Entries as provided in the Rules, and (v) in the case of a credit Entry received for credit to an account with the Bank ("On-Us Entry"), the Bank shall credit the Receiver's account in the amount of such credit Entry on the Effective Entry Date contained in such credit Entry provided such credit Entry is received by the Bank at the time and in the form prescribed by the Bank in this Agreement.

12.2. transmit such Entries to the ACH processor by the deposit deadline of the ACH processor, provided: (i) such Entries are completely received by the Bank's Cutoff time at the location specified by the Bank to Customer from time to time; (ii) the Effective Entry Date satisfies the criteria provided by the Bank to Customer; and (iii) the ACH processor is open for business on such Business Day. Customer agrees that the ACH processor selected by the Bank shall be considered to have been selected by and designated by Customer. Customer will receive immediately available funds for any electronic debit entry initiated by it on the Settlement Date applicable thereto in accordance with the Rules.

#### **13. Payment for Credit Entries and Returned Debit Entries**

Customer agrees to pay for all credit Entries issued by Customer, Authorized User(s), or credit Entries otherwise made effective against Customer. Customer shall make payment to the Bank on the date as determined by the Bank in its sole discretion ("Payment Date"). Customer shall pay the Bank for the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") or debit Entry dishonored by the Bank. Payment shall be made by Customer to the Bank in any manner specified by the Bank. Notwithstanding the foregoing, the Bank is hereby authorized to charge the account(s) ("Authorized Account(s)") designated by Customer, as payment for all payments due the Bank under this Agreement. Customer shall maintain sufficient collected funds in the Authorized Account(s) to pay for all payments due the Bank under this Agreement on the Payment Date. In the event the Authorized Account or any other Customer bank account does not have collected funds sufficient on the Payment Date to cover the total amount of all Entries to be paid on such Payment Date, the Bank may take any of the following actions:

- Refuse to process all Entries, whereupon the Bank shall have no liability to Customer or to any third party as a result thereof; or
- Process that portion of the credit Entries as Customer has sufficient available funds in the Authorized Account(s) to cover, in whatever order the Bank in its sole discretion shall elect to process, in which event the Bank shall return the data relating to such credit Entries as are not processed to Customer, whereupon the Bank shall have no liability to Customer or any third party as a result thereof; or
- Process all credit Entries. In the event the Bank elects to process credit Entries initiated by Customer and Customer has not maintained sufficient available funds in the Authorized Account with the Bank to cover them, the total amount of the insufficiency advanced by the Bank on behalf of Customer shall be immediately due and payable by Customer to the Bank without any further demand from the Bank. Customer agrees that the Bank may (when permitted by law) set off the total amount of the insufficiency advanced by the Bank against the funds in any account maintained by Customer at the Bank. If the Bank elects to pay Customer's Authorized Account in the overdraft on any one or more occasions, it shall not be considered a waiver of the Bank's rights to refuse to do so at any other time nor shall it be an agreement by the Bank to pay other items in the overdraft. If the Bank elects to pay Customer's Authorized Account in the overdraft, Customer will be assessed a Business Overdraft Protection fee as disclosed on the applicable Depository Agreement and/or the Bank's Fee Schedule.

#### 14. Account Hold or Pre-Funding

14.1. *Account Hold.* Customer shall ensure that the Account is adequately funded at the time an ACH credit Entry file is received from Customer. Customer understands that an amount equal to the total dollar amount of the ACH credit Entries may be placed on hold at the time the ACH credit Entry file is received. Funds will actually be charged against the Account on the Effective Entry Date of the ACH credit Entry file and the hold will then be released.

14.2. *Pre-Funding.* Alternatively, the Bank reserves the right to require Customer to pre-fund an Account maintained at the Bank prior to the Settlement Date of the ACH file. The Bank shall determine whether pre-funding is required based on criteria established from time to time by the Bank. The Bank will communicate directly to Customer if pre-funding is required and, if requested by Customer, will provide Customer with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, Customer will provide immediately available and collected funds sufficient to pay all Entries initiated by Customer (a) not later than **8:30 a.m.** local time **2 Business Days** before each Settlement Date, and (b) prior to initiating any Entries for which pre-funding is required. The Bank shall not be liable to pay interest to Customer on any amounts debited from the Customer's Account for pre-funding after such debit has been processed, except as otherwise required by law.

#### 15. On-Us Entries

Except as provided in the paragraph entitled "Rejection of Entries", or in the case of an Entry received for credit to an account maintained with the Bank (an "On-Us Entry"), the Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in paragraph 12.2 (i), (ii), and (iii) are met. If any of those requirements are not met, the Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

#### 16. Same Day Entries

A Credit or Debit Entry with an Effective Entry Date of the date of or a date prior to the date of the transmission of the Entry or File to the Bank and received by the Bank prior to the applicable Cutoff Time set forth in **Schedule A** shall be considered to be a Same Day Entry. The Bank does not provide Same Day ACH processing as a service. The Bank may, at its sole discretion, honor an exception processing request from Customer for Same Day ACH services under extenuating circumstances, including but not limited to handling emergency payrolls on a same-day basis. IAT and Entries above the amount stated in the current NACHA Rules are not eligible for Same Day ACH processing. In addition to any other fees that Customer is obligated to pay the Bank, Customer hereby agrees to pay the Bank the Same Day Entry fee established by the Bank from time to time and at any time for Same Day Entries transmitted to the Bank by Customer.

#### 17. Reserves

From time to time, the Bank shall evaluate Customer's transaction activity for the purpose of establishing averages for transaction frequency, amount, returns and adjustments. These evaluations will occur at least annually and may occur more frequently at the Bank's discretion. In connection with these evaluations, the Bank reserves the right to require Customer to establish reserves with the Bank calculated by the Bank to cover Customer's obligations to the Bank arising from ACH activities under this Agreement. Reserves may be expressed as a fixed dollar amount or as a "rolling reserve" calculated based on "rolling" averages determined by the Bank's periodic evaluations. The amount of reserves required by the Bank, if any, will be communicated directly to Customer from time to time. Customer agrees to establish reserves as required by the Bank within **2 Business Days** after receipt of a communication from the Bank setting forth the amount of required reserves and the basis of calculation used to determine the amount of reserves. The Bank may suspend ACH processing activity for Customer if Customer fails to establish the required amount of reserves within the time period specified by the Bank in its communication to Customer.

#### 18. Rejection of Entries

Customer agrees that the Bank has no obligation to accept Entries and therefore may reject any Entry issued by Customer. The Bank has no obligation to notify Customer of the rejection of an Entry but the Bank may do so at its option. The Bank shall have no liability to Customer for rejection of an Entry and shall not be liable to pay interest to Customer even if the amount of Customer's payment order is fully covered by a withdrawable credit balance in an Authorized Account of Customer or the Bank has otherwise received full payment from Customer.

#### 19. Cancellation or Amendment of Entry by Customer

Customer shall have no right to cancel or amend any Entry after its receipt by the Bank. However, the Bank may, at its option, accept a cancellation or amendment by Customer. If the Bank accepts a cancellation or amendment of an Entry, Customer must comply with the Security Procedures provided in this Agreement. If such a request is received by the Bank before the affected Entry has been transmitted to the ACH (or, in the case of an On-Us Entry, before the Receiver's account has been credited or debited), the bank will use reasonable efforts to cancel or amend the Entry as requested, but the Bank shall have no liability if the cancellation or amendment is not effected. If the Bank accepts a cancellation or amendment of an Entry, Customer hereby agrees to indemnify, defend all claims and hold the Bank and its Affiliates harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by the Bank as the result of its acceptance of the cancellation or amendment.

#### 20. Reversals of Entries.

20.1. *General Procedure.* Upon proper and timely request by Customer, the Bank will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; (ii) be made immediately, not to exceed 12 hours, upon discovery of the error; and (iii) be accompanied by a Reversal/Cancellation Request form and comply with all of the Rules. In addition, if Customer requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the Customer Account an amount equal to that Entry or File. Customer shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry.

20.2. *No Liability & Reimbursement to the Bank.* Under no circumstances shall the Bank be liable for interest or related losses if the requested reversal of an Entry is not affected. Customer shall reimburse the Bank for any expenses, losses or damages it incurs in effecting or attempting to effect Customer's request for reversal of an Entry.

#### 21. Error Detection

The Bank has no obligation to discover and shall not be liable to Customer for errors made by Customer, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. The Bank shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Customer. Notwithstanding the foregoing, if Customer discovers that any Entry it has initiated was in error, it shall notify the Bank of such error. If such notice is received no later than 12 hours prior to the ACH receiving deadline, the Bank will utilize reasonable efforts to initiate an adjusting Entry or stop payment of any "On-Us" credit Entry within the time limits provided by the Rules. In the event that Customer makes an error or issues a duplicate Entry, Customer shall indemnify, defend all claims, and hold the Bank

and its Affiliates harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by the Bank as result of the error or issuance of duplicate Entries.

## **22. Prenotification**

Customer, at its option, may send prenotification that it intends to initiate an Entry or Entries to a particular account within the time limits prescribed for such notice in the Rules. Such notice shall be provided to the Bank in the format and on the medium provided in the media format section of such Rules. If Customer receives notice that such prenotification has been rejected by an RDFI within the prescribed period, or 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 corresponding Entries to such accounts until the cause for rejection has been corrected or until providing the RDFI with such authorization within the time limits provided by the Rules.

## **23. Notice of Returned Entries and Notifications of Change**

The Bank shall notify Customer by e-mail, facsimile transmission, US mail, or other means of the receipt of a returned Entry from the ACH Operator. Except for an Entry retransmitted by Customer in accordance with the requirements contained in the paragraph of this Agreement entitled "Transmission of Entries by Customer", the Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if the Bank complied with the terms of this Agreement with respect to the original Entry. Customer shall notify the Receiver by phone or electronic transmission of receipt of each return Entry no later than one Business Day after the Business Day of receiving such notification from the Bank. The Bank shall provide Customer all information, as required by the Rules, with respect to each Notification of Change ("NOC") Entry or Corrected Notification of Change ("Corrected NOC") Entry received by the Bank relating to Entries transmitted by Customer. The Bank must provide such information to Customer within two (2) Business Days of the Settlement Date of each NOC or Corrected NOC Entry. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within three (3) Business Days of Customer's receipt of the NOC information from the Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

## **24. Account Reconciliation**

Customer agrees to notify the Bank promptly of any discrepancy between Customer's records and the information shown on any periodic statement. If Customer fails to notify the Bank within ten (10) calendar days of receipt of a periodic statement containing such information, Customer agrees that the Bank shall not be liable for any other losses resulting from Customer's failure to give such notice or any loss of interest or any interest equivalent with respect to any Entry shown on such periodic statement. If Customer fails to notify the Bank within thirty (30) calendar days of receipt of such periodic statement, Customer shall be precluded from asserting any discrepancy against the Bank.

## **25. Provisional Settlement**

Customer shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and Customer acknowledges that it has received notice of that Rule and or the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Customer shall not be deemed to have paid the Receiver the amount of the Entry.

## **26. Customer Representations and Warranties; Indemnity**

With respect to each and every Entry transmitted by Customer, Customer represents and warrants to the Bank and agrees that (a) each person or entity shown as the Receiver on an Entry received by the 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, (b) such authorization is operative at the time of transmittal or crediting or debiting by the Bank as provided herein, (c) Entries transmitted to the Bank by Customer are limited to those types of credit and debit Entries as set forth in the Business Online Banking application or as otherwise communicated by the Bank to the Customer, (d) Customer shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, (e) Customer shall be bound by and comply with the provision of the *Rules* (among other provisions of the *Rules*) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and (f) Customer shall ensure that any and all non-public personal information provided by Customer to the Bank shall be secure and will not be disclosed to any unauthorized person. 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 credited and Customer shall not be deemed to have paid the Receiver the amount of the Entry. Customer shall defend, indemnify, and hold harmless the Bank and its Affiliates from and against any and all actions, costs, claims, losses, damages, or expenses, including attorney's fees and expenses, resulting from or arising out of (aa) any breach of any of the agreements, representations or warranties of Customer contained in this Agreement; or (bb) any act or omission of Customer or any other person acting on Customer's behalf.

## **27. Additional Customer Warranties for Selected Standard Entry Classes**

NACHA, in its role of ensuring the safety, security, and viability of the ACH network, has determined that certain single-use or limited-use consumer authorizations have the potential to increase risk in the ACH system and compromise system effectiveness by increasing the incidence of returned Entries. Therefore, to qualify as an Originator of such Entries, Customer hereby warrants to the Bank that for each such ACH Entry submitted for processing, Customer has obtained all authorizations from the Receiver as required by the Rules, by Regulation E or other applicable law, and this Agreement. Customer also makes the additional warranties to Bank that Bank makes to each RDFI and ACH Operator under the Rules for the respective SEC codes for Entries originated by Customer. Customer hereby indemnifies and holds the Bank and its Affiliates harmless from any liability arising out of Customer's breach of these warranties.

## **28. Financial Information and Audit**

The Bank may from time to time request information from Customer in order to evaluate a continuation of the ACH Origination Services to be provided by the Bank hereunder and/or adjustment of any limits set by this Agreement. Customer agrees to provide the requested financial information immediately upon request by the Bank, in the form required by the Bank. Customer authorizes the Bank to investigate or reinvestigate at any time any information provided by Customer in connection with this Agreement or the ACH Origination Services. Upon request by the Bank, Customer hereby authorizes the Bank to enter Customer's business premises for the purpose of ensuring that Customer is in compliance with this Agreement and Customer specifically authorizes the Bank to perform an audit of Customer's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Customer hereby acknowledges and agrees that the Bank shall have the right to mandate specific internal controls at Customer's location(s) and Customer shall comply with any such mandate. In addition, Customer hereby agrees to allow the Bank to review available reports of independent audits performed at the Customer location related to information technology, the ACH Origination Services and any associated operational processes. Customer agrees that if requested by the Bank, Customer will complete a self-assessment of Customer's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by the Bank in an audit of Customer. If Customer refuses to provide the requested financial information, or if the Bank

concludes, in its sole discretion, that the risk of Customer is unacceptable, if Customer violates this Agreement or the Rules, or if Customer refuses to give the Bank access to Customer's premises, the Bank may terminate the ACH Origination Services and this Agreement according to the provisions hereof.

## **29. Limitation of Liability**

29.1. In the performance of the ACH Origination Services required by this Agreement, the Bank shall be entitled to rely solely on the information, representations, and warranties provided by Customer pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. The Bank shall be responsible only for performing the ACH Origination Services expressly provided for in this Agreement, and shall be liable only for its gross negligence or willful misconduct in performing those ACH Origination Services. The Bank shall not be responsible for Customer's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Customer) or those of any other person, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of any Entry by such Receiver or RDFI), and no such person shall be deemed the Bank's agent. Customer agrees to indemnify the Bank and its Affiliates against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any claim of any person that the Bank is responsible for any act or omission of Customer or any other person, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, or any receiver or RDFI.

29.2. The Bank shall be liable for Customer's actual damages due to claims arising solely from the Bank's GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; in no event shall the Bank be liable for any consequential, special, incidental, punitive or indirect loss or damage which Customer may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which Customer may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from the Bank's acts or omissions pursuant to this Agreement.

29.3. Without limiting the generality of the foregoing provisions, the Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond the Bank's control. In addition, the Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in the Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in the Bank's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

29.4. Subject to the foregoing limitations, the Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average federal funds rate (less allowable deductions) at the Federal Reserve Bank of New York for the period involved. At the Bank's option, payment of such interest may be made by crediting the Account.

## **30. Inconsistency of Name and Account Number**

Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by the Bank to the RDFI may be made by the RDFI (or by the Bank in the case of an On-Us Entry) on the basis of the account number supplied by Customer, even if it identifies a person different from the named Receiver, and that Customer's obligation to pay the amount of the Entry to the Bank is not excused in such circumstances. Customer is liable for and must settle with the Bank for any Entry initiated by Customer that identifies the Receiver by account or identifying number or by name and account or identifying number.

## **31. Payment for ACH Origination Services**

Customer shall pay the Bank the charges for the ACH Origination Services provided in connection with this Agreement as disclosed on the Business Online Banking portal and/or the Bank's Fee Schedule. All fees and services are subject to change upon thirty (30) days prior written notice from the Bank. Such charges do not include, and Customer shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Depository Agreement between the Bank and Customer with respect to the account.

## **32. Amendment**

The Bank may amend this Agreement from time to time and at any time upon written notice to Customer. In the event that performance of ACH Origination Services under this Agreement would result in a violation of any present or future statute, regulation or governmental policy to which the Bank is subject, then this Agreement shall be amended to the extent necessary to comply with such statute, regulation or policy. Alternatively, the Bank may terminate this Agreement if it deems such action necessary or appropriate under the circumstances. The Bank shall have no liability to Customer as a result of any such violation, amendment or termination. Any practices or course of dealings between the Bank and Customer, or any procedures or operational alterations used by them, shall not constitute a modification of this Agreement or the Rules, nor shall they be construed as an amendment to this Agreement or the Rules.

## **33. Notices, Instructions, Etc.**

33.1. Except as stated herein, the 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.

33.2. The 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 signed by an authorized representative of Customer, and any such communication shall be deemed to have been signed by such person. Such notice shall be effective on the second Business Day following the day received by the Bank.

33.3. The Bank will not be responsible for verifying the authenticity of any person claiming to be an Authorized User or the authenticity of any instruction, direction or information provided.

33.4. The Bank may, but is under no obligation to, hold suspicious files or files that do not adhere to established security, exceed exposure limits, violate the terms of this Agreement or the Rules, or for other reasons. Such files will require authorization by an Authorized User before transmission to the ACH Operator.

33.5. Unless otherwise required by applicable law, any notice or written communication given pursuant to this Agreement may be sent to Customer by first class mail and/or electronically, at the Bank's discretion. Customer hereby authorizes the Bank to send any and all notices or communications under this Agreement for Business Online Banking and the Services to Customer electronically and Customer will keep its email address(es) with the Bank up-to-date. Customer will be deemed to have received any notice sent to Customer by first class mail three Business Days after it is sent, and any notice sent to Customer by e-mail on the following Business Day.

**34. Data Retention**

Customer shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by the Bank as provided herein, and shall provide such data to the Bank upon its request.

**35. Data Media and Records**

All data media, Entries, security procedures and related records used by the Bank for transactions contemplated by this Agreement shall be and remain the Bank's property. The Bank may, at its sole discretion, make available such information upon Customer's request. Any expenses incurred by the Bank in making such information available to Customer shall be paid by Customer.

**36. Cooperation in Loss Recovery Efforts**

In the event of any damages for which the Bank or Customer may be liable to each other or to a third party pursuant to the ACH Origination Services provided under this Agreement, the Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

**37. Termination**

Any contrary provision notwithstanding, either party may terminate ACH Origination Services upon **30 calendar days** written notice to the other; provided however that the Bank may terminate or suspend this agreement immediately upon its determination that Customer is in violation of this Agreement, the ACH Rules or applicable laws or if Customer initiates any bankruptcy proceeding or is otherwise declared insolvent. Any termination of this Agreement shall not affect any of the Bank's rights or Customer's obligations with respect to any Entries initiated by Customer prior to such termination, or the payment obligations of Customer with respect to services performed by the Bank prior to termination, or any other obligations that survive termination of this Agreement. Customer's obligation with respect to any Entry shall survive termination of this Agreement until any applicable statute of limitation has elapsed.

**IN WITNESS WHEREOF, Customer does hereby agree as follows:**

**Agreement to Terms:**

By electronically signing this Agreement and/or each time Customer uses the Services, Customer accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which the Bank will provide Customer with the Services outlined herein. Customer's initial sign-on and, if applicable, Customer's later enrollment in one or more of the Services, constitutes Customer's Electronic Signature and will be binding upon Customer as its legal signature.

Each time Customer uses its Secure Log-in, it shall also constitute its binding legal signature and agreement to the terms and conditions of this Agreement. Customer does hereby acknowledge that: (i) the Authorized User is authorized to act on behalf of the Customer; (ii) this Agreement has been duly and validly authorized, executed and delivered by the Customer; and (iii) that this Agreement constitutes the legal, valid and binding obligation of the Customer, enforceable in accordance with its terms.

Customer expressly authorizes Multi-TIN transfer capabilities to and from each of the linked Online Account(s). Customer also expressly authorizes access to all Online Accounts from one main log-in account using the Business Online Banking service and understands and expressly agrees to the terms and conditions provided in this Agreement.

Customer expressly acknowledges and represents that Customer has been given a full and fair opportunity to review this Agreement with an attorney of its choice, and that to the extent, if any, that it desired, Customer availed itself of this right. Customer further acknowledges and agrees that Customer has carefully read and fully understands all of the provisions of this Agreement and that Customer is hereby voluntarily and knowingly entering into this Agreement, which terms and provisions Customer finds to be reasonable and enforceable.

## Schedule A Processing Schedule

### Wire Transfers

**Wire Transfer Request Cutoff Time** – until **3:00** p.m. **Eastern** Time (Standard or Daylight)

### ACH Entries

Processing/Cutoff Times for:

#### Credit Entries

Transmission of a File – until **3:00** p.m. **Eastern** Time (Standard or Daylight) two (2) business days prior to Effective Entry Date<sup>1</sup>

#### Debit Entries

Transmission of a File – until **3:00** p.m. **Eastern** Time (Standard or Daylight) one (1) business day prior to Effective Entry Date<sup>1</sup>

#### Same Day ACH Credit Entries Only<sup>2</sup>

Transmission of a File - until **10:30** a.m. **Eastern Time** (Standard or Daylight) on or after the Effective Entry Date.

#### Same Day ACH Debit Entries<sup>2</sup>

Transmission of a File - until **10:30** a.m. **Eastern Time** (Standard or Daylight) on or after the Effective Entry Date.

**Cross County Savings Bank reserves the right to amend the processing deadlines for processing Entries, at its sole discretion, including, without limitation, by adding, removing and/or altering the processing times, time zones, and for Entries. Cross County Savings Bank will provide reasonable advance notice to the Customer in the event of any change to the Processing Schedule.**

<sup>1</sup>“Effective Entry Date” must be a Business Day or the file will be processed on the first Business Day following the effective date.

<sup>2</sup>Credit or Debit Entries with an Effective Entry Date of the date of or a date prior to the date of the transmission of the File shall be considered to be a Same Day ACH Entry and shall be subject to the Same Day ACH fee. Entries above the amount stated in the current NACHA Rules and IATs and are not eligible for Same Day ACH processing.

