



## **AUTOMATED CLEARING HOUSE (ACH) THIRD PARTY SERVICE PROVIDER ADDENDUM TO THE BUSINESS ONLINE USER AND ACCESS AGREEMENT**

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

### **1. General Terms.**

1.1 This Automated Clearing House (“ACH”) Third Party Service Provider Addendum (the “Addendum”) to the Business Online Access and User Agreement sets forth the terms and conditions regarding your use of the Services (as defined below). This Addendum amends and becomes a part of the Bank’s Deposit Account Terms and Conditions Agreement and the Business Online Access and User Agreement (collectively, the “Initial Agreement”) between you, as a customer of the Bank and a third party service provider for other customers of the Bank (the “Service Provider”), and us. The terms of the Initial Agreement are hereby ratified, affirmed and incorporated herein and shall continue to apply in all respects, as amended hereby. As used herein, the term “Agreement” shall mean both the Initial Agreement and the Addendum, collectively. References in this Agreement to “you” shall be deemed to include your Authorized Representative (as defined below), except where expressly provided otherwise. Except as otherwise set forth herein, all capitalized terms used but not defined herein shall have the meaning given to them in the *NACHA Rules* (as defined below). By using the Services, you agree to the terms and conditions of this Agreement. Except as otherwise expressly provided in this Addendum, to the extent that this Addendum is inconsistent with the terms of the Initial Agreement, this Addendum and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

1.2 The ACH third party service provider services allows you to act as a third-party processor of ACH credit and/or debit Entries for your clients that generally are customers of the Bank (hereinafter “Customer(s)”) pursuant to a separate agreement between you and each such Customer (“Service Provider Agreement”) to utilize the ACH services (the “Services”) made available by us, as an Originating Depository Financial Institution (“ODFI”), pursuant to the terms of this Addendum and the *NACHA Rules*. You, on behalf of yourself, as well as on behalf of and as agent for your Customers, will generate and deliver to us, as ODFI, certain of your own and such Customers’ Entries in a NACHA formatted electronic transmission and Entry file for processing by us. You, as a customer of the Bank, on behalf of yourself, as well as on behalf of and as agent for your Customers, may also from time to time generate and deliver to Bank, as ODFI, a NACHA-formatted electronic transmission for the purpose of processing error corrections or adjustments by reversing the instructions contained in a prior Entry file. We are willing to act as an ODFI with respect to such Entries, so long as Entries that you transmit to us are in accordance with and as set forth in this Addendum.

2. **ACH Services.** The ACH network is a funds transfer system which provides for the interbank clearing of electronic credit and debit Entries for participating financial institutions. The ACH system is governed by the National Automated Clearing House Association’s (“NACHA”) *Operating Rules and Operating Guidelines* (collectively the “NACHA Rules”).

### **3. Customer Agreements and Accounts.**

3.1 Prior to the initiation by Service Provider of Entries via use of the Services on any Customer's behalf, (i) Service Provider will provide Bank with written notice of its execution of its Service Provider Agreement with the applicable Customer and the effective date of such agreement, and (ii) Service Provider shall confirm that such Customer and Bank have entered into (1) an ACH Origination Service Agreement and (2) any other agreements as Bank may require (collectively, the "Bank Agreements").

3.2 Each Customer will be required to maintain a checking account ("Settlement Account") at Bank with available balances sufficient to offset any Entries (and any service fees, as applicable) submitted by Service Provider on Customer's behalf and against which any rejected or returned Entries may be credited or debited. Bank shall be authorized, in its sole and exclusive discretion and at any time, to require ACH pre-funding of credit Entries requested by a Customer, in accordance with the terms and conditions of the Bank Agreements.

3.3 Service Provider will ensure that each Customer agrees in the applicable Service Provider Agreement that any Entry transmitted by Service Provider pursuant to this Agreement and the Bank Agreements shall be deemed to have been authorized and initiated by Customer. Notwithstanding the foregoing, if a file of Entries is received from Service Provider and processed by Bank, Service Provider is bound to this Agreement, whether or not a signed Agreement from Service Provider and signed Bank Agreements from Customer have been received by Bank.

3.4 Service Provider understands and agrees that all Customer inquiries regarding any debit or credit Entries or files transmitted by Service Provider on Customer's behalf or otherwise with respect to the Services shall be directed to Service Provider. Service Provider will ensure that each Customer agrees in the applicable Service Provider Agreement to direct all such inquiries to Service Provider.

### **4. Service Provider Obligations.**

4.1 Service Provider will comply and shall cause its employees, officers, directors, agents and its Authorized Representative(s) (as set forth in Business Online Application previously provided to the Bank) and user(s) of the Services to comply with (i) this Agreement, (ii) the *NACHA Rules* as amended from time to time and (iii) any specifications, advisories, interim policies, or instructions related to ACH transactions issued, from time to time, by Bank, NACHA or any federal or state regulatory authorities. The duties of Service Provider and/or Customer set forth in this Agreement or in the Bank Agreements in no way limit the requirement that Service Provider comply with the *NACHA Rules*.

4.2 Service Provider represents and warrants that (i) it will not transmit to Bank any Entries that violate the laws of the United States, and (ii) the Customer associated with each Entry transmitted to Bank (i.e., the Originator) has (a) agreed to assume the responsibilities of an Originator under the *NACHA Rules* and (b) acknowledged that the Customer may not initiate Entries that violate the laws of the United States. Service Provider has access to a copy of the *NACHA Rules* and agrees to obtain and review a copy. (The *NACHA Rules* may be obtained at NACHA's website at [www.NACHA.org](http://www.NACHA.org) or by contacting NACHA directly at 703-561-1100.) Service Provider also agrees to subscribe to receive revisions to the *NACHA Rules* directly from NACHA.

4.3 Service Provider represents and warrants that the Service Provider Agreements require each Customer to comply with (i) the *NACHA Rules* as amended from time to time and (ii) any specifications, advisories, interim policies, or instructions related to ACH transactions issued from time to time by Bank, NACHA, or any federal or state regulatory authorities.

4.4 Service Provider agrees from time to time, upon Bank's request and in accordance with this Agreement, to promptly provide Bank with such information pertaining to Service Provider's financial condition and business operations as Bank may reasonably request in order for Bank to assess various risks associated with its acceptance of ACH Entries and files from Service Provider as described herein, including without limitation, the name(s) of any other financial institutions that Service Provider is using to transmit Entries for Customer or to perform other similar services.

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

4.6 Service Provider shall be liable for all fines incurred by Bank that are attributable to Service Provider's failure to comply with (i) the *NACHA Rules*, or (ii) the laws, regulations and orders administered by the U.S., including without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

4.7 Service Provider, through its Authorized Representative, may use the Services solely in accordance with this Agreement. Service Provider is authorized to use the Services only for the purposes and in the manner contemplated by this Agreement. Service Provider agrees to cooperate with Bank, as Bank may reasonably request, in conjunction with the performance of the Services.

**5. Risk Exposure Limits.** Service Provider agrees that its ability to transmit Entries under this Agreement with respect to a Customer is subject to Customer risk exposure limits or pre-fund limits as set forth in the applicable Bank Agreements and in accordance with the *NACHA Rules*. Such limits may be modified from time to time by Bank at its sole discretion with notice to Customer and/or Service Provider. Bank may reject or suspend processing of any Entry instructions if such Entry exceeds the applicable Customer's exposure limits or Settlement Account balance for pre-fund Customers. Bank may further reject any Entry or file transmitted by Service Provider in the event Bank deems reasonably necessary in order to protect the safety and soundness of Bank, or if Bank reasonably suspects that the Entry or file includes fraudulent or unauthorized Entries, or if Bank has such other reasonable basis upon which to reject the transmission. Bank shall use commercially reasonable efforts to notify Service Provider and/or Customer of such rejection or suspension.

## 6. Types of Entries; File Transmission Methods.

6.1 Service Provider will only initiate those Entry types (Standard Entry Class or "SEC" Codes) that Bank has expressly authorized Service Provider to initiate on behalf of Customers. As of the date of this Agreement, authorized SEC Codes include PPD, CCD and CCD+. All other SEC Codes that Bank may subsequently permit in its sole discretion and from time to time with respect to the Services will require pre-approval by Bank and may only be used with proper designation on the set-up or enrollment form(s) associated with the Services and in accordance with additional instructions from and requirements by Bank, as applicable. Bank reserves the right to reject any Entry or group of Entries that includes an unauthorized SEC Code.

6.2 Service Provider may elect, in accordance with the Services' setup form(s), to transmit a NACHA-formatted file to Bank via the following method, or via such other methods as Bank may permit from time to time in its sole and exclusive discretion.

## 7. **Transmittal of Entries by Service Provider.**

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

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

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

7.4 Service Provider acknowledges and agrees that, with respect to any International ACH Transactions (IATs) that may occur in connection with the Services, the processing, settlement and/or availability of such Entries may be delayed or suspended in the event that Bank determines that enhanced scrutiny or verification of such Entries is necessary under the *NACHA Rules* and/or applicable U.S. law. Service Provider further acknowledges and agrees that IAT Entries may be subject to laws, regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Service Provider expressly acknowledges and agrees that for Outbound IAT Entries, the time frames for return of an Entry are determined by the payment system rules of the foreign country and may exceed the sixty (60) day return window defined by the U.S. ACH system and the *NACHA Rules*.

## 8. **Security Procedures.**

8.1 Service Provider and Bank shall comply with the security procedures set forth or incorporated by reference in this Agreement and/or associated documents provided by Bank, including, without limitation any Services' setup form(s). Service Provider acknowledges and agrees the security procedures are a commercially reasonable method of providing security against unauthorized payment orders, and that Bank shall be deemed to have acted in good faith when it complies with such security procedure requirements. Service Provider acknowledges that the purpose of such security procedures is to attempt to verify the authenticity of Entries transmitted by Service Provider and not to detect errors in the transmission or content of an Entry. No security practice or procedure for the detection of any such error has been agreed upon between Bank and Service Provider.

8.2 Pursuant to the NACHA Rules, Service Provider is strictly responsible for establishing, implementing, updating, and maintaining its own appropriate and commercially reasonable security procedures to safeguard against the unauthorized initiation, processing, transmission and storage of Entries to Bank and the resulting Protected Information (as defined below). Security policies, procedures, and systems related to the initiation, processing, and storage of Entries must: (1) protect the confidentiality and integrity of Protected Information; (2) protect against anticipated threats or hazards to the security or integrity of Protected Information; and (3) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person. The NACHA Rules define "Protected Information" as the non-public personal information, including financial information, of a natural person used to create, or contained within, an entry and any related addenda record. Service Provider shall prevent and safeguard against unauthorized transmissions, disclosures and access to security-related items, including information associated with the transmittal of Entries, such as security procedures, instructions, passwords and user identifications, and systems and equipment that interface with, connect to or allow access to Bank, its information, systems and equipment (hereinafter referred to collectively as "Security-Related Items"). Service Provider shall establish, maintain and enforce its own commercially reasonable security practices, techniques and procedures with respect to access to, storage and maintenance of Security-Related Items to safeguard against unauthorized transmissions and unauthorized access to Security-Related Items. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in this Agreement and in the *NACHA Rules*.

8.3 Service Provider warrants that no individual will be allowed to initiate transfers without proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security-Related Items and to restrict access thereto to Service Provider's employees trusted with the duty to transmit Entries to Bank. If Service Provider suspects, knows, believes or has reason to believe that any such information or instructions have been known or otherwise accessed by unauthorized persons, Service Provider agrees to immediately notify Bank by phone, followed by written confirmation. The occurrence of unauthorized access shall not affect any transfers made in good faith by Bank prior to receipt of such notice and within a reasonable time period after notice is received to allow sufficient time for Bank to respond to such notice.

8.4 Bank may, from time to time, propose additional or enhanced security procedures to Customer and Service Provider. Notwithstanding anything else contained in this Agreement, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Service Provider and/or Customer.

## 9. **Compliance with Security Procedures.**

9.1 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was transferred in accordance with the security procedures prescribed by the Bank and thereby purports to have been transmitted by Service Provider, it will be deemed effective as Service Provider's Entry (or request) on Customer's behalf, and Customer shall be obligated to pay Bank the amount of such Entry (or request) as provided in the Bank Agreements, even if the Entry (or request) was not transmitted by Service Provider or authorized by Customer, provided Bank acted in good faith and in compliance with the security procedures. If signature comparison is to be used as a part of a security procedure, Bank shall be deemed to have complied with that part of such procedures if it compares the signature received for a request for cancellation or amendment of an Entry with the signature of an authorized representative of Service Provider (an "Authorized Representative") as set forth in Business Online Application previously provided to the Bank and, on the basis of such comparison, believes the signature to be that of such Authorized Representative.

9.2 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was actually transmitted by Service Provider on Customer's behalf, Customer shall be obligated to pay the amount of the Entry as provided in the Bank Agreements, whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with the security procedures.

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

10.1 Except as provided in **Section 11** -- On-Us Entries and **Section 12** -- Rejection of Entries, Bank will process, transmit and settle for credit and debit Entries initiated by Service Provider as provided in the *NACHA Rules* as in effect from time to time and pursuant to this Agreement.

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

10.3 A "business day" shall mean a day on which Bank is open to the public for carrying on substantially all of its business, other than a Saturday, Sunday, or Federal holiday. Entries shall be deemed received by Bank, in the case of transmittal by electronic transmission, when the transmission (and compliance with any related security procedures provided for herein) is completed as set forth in **Schedules A and B**.

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

11. **On-Us Entries.** Except as otherwise provided in **Section 12** -- Rejection of Entries, in the case of an Entry received for credit or debit to an account maintained by Bank (an "On-Us Entry"), Bank will credit or debit the Receiver's account, as applicable, in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in **Section 7** -- Transmittal of Entries by Service Provider -- are otherwise met. If those requirements are not met, Bank shall use reasonable efforts to debit or credit the Receiver's account, as applicable, in the amount of such Entry no later than the next business day following such Effective Entry Date. In the case of an On-Us Entry, Bank will have all rights of an RDFI including, without limitation, the rights set forth in *NACHA Rules*.

12. **Rejection of Entries.** Bank may reject any Entry which does not comply with the requirements of **Section 7** -- Transmittal of Entries by Service Provider, or **Section 8** -- Security Procedures, or which contains an Effective Entry Date more than seven (7) days after the business day such Entry is received by Bank, unless otherwise agreed by Bank in its sole discretion. Bank may also reject an On-Us Entry for any reason for which an Entry may be rejected under the *NACHA Rules*. Bank may reject any Entry as set forth in Section 4 of this Agreement. Bank may also reject any Entry if Service Provider does not adhere to the required security procedures and may reject any Entry if Service Provider is not otherwise in compliance with

the terms of this Agreement or the *NACHA Rules*. If Service Provider transmits an ACH file on a Customer's behalf containing individual payment orders and the applicable Settlement Account has insufficient funds, or Customer has not fulfilled any pre-funding obligations, Bank reserves the right to reject the applicable Customer's file. Notices of rejection shall be effective when given. Bank shall have no liability to Customer or Service Provider by reasons of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

13. **Reversals; Re-Initiation of Entries.** Service Provider may reverse a file or Entry pursuant to the *NACHA Rules*. If Service Provider reverses an Entry or file, Service Provider (and Customer) shall indemnify Bank against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal by Service Provider on Customer's behalf. Service Provider may not re-initiate Entries except as prescribed by the *NACHA Rules*.

14. **Cancellation or Amendment by Service Provider.** As Customer's agent, Service Provider shall have no right to cancel or amend any Entry or file after its receipt by Bank. However, if such request complies with the security procedures applicable to the cancellation of data, Bank shall use reasonable efforts to act on a request by Service Provider, on behalf of Customer, for cancellation of an Entry prior to transmitting it to the ACH Operator, or in the case of an On-Us Entry, prior to crediting or debiting a Receiver's account, but Bank shall have no liability if such cancellation or amendment is not accomplished as requested. Service Provider (and Customer) shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect Service Provider's request for the cancellation or amendment of an Entry.

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

16. **Notifications of Change.** Bank will notify Service Provider of each Notification of Change (“NOC”) or Corrected Notification of Change (“Corrected NOC”) received by Bank related to Entries transmitted by Service Provider, in accordance with **Schedule A**, no later than one (1) business day after receipt thereof. Service Provider shall ensure that changes requested by the NOC or Corrected NOC are made by, or on behalf of, the Originator within six (6) business days of Service Provider's receipt of the NOC or Corrected NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

17. **Entries Returned as Unauthorized.** Service Provider and its Customers shall comply with all requirements in the *NACHA Rules*, including the duty to submit only those Entries that have been properly authorized. In the event that an Entry is returned as unauthorized or authorization revoked, Service Provider and/or its Customer(s) will contact the necessary parties and resolve any dispute. During this process Service Provider may ask Bank to request from the ODFI a copy of the “Written Statement Under Penalty of Perjury.” Bank will use reasonable efforts to obtain the statement and will deliver it to Service Provider and/or Customer when received. Service Provider agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer re-authorizes the Entry or Entry stream.

18. **Pre-Notification and Rejection of Pre-Notification.** Bank recommends that, as permitted by the *NACHA Rules* or applicable law, Service Provider send pre-notifications on Customers' behalf at least six (6) business days prior to initiating an authorized Entry to a particular account in a format and medium approved by the *NACHA Rules*. Service Provider may also initiate a new pre-notification (i) when any changes are made to an account number, financial institution, or individual identification number or (ii) as otherwise stated in the *NACHA Rules*. If Service Provider receives notice that any such pre-notification has been rejected by an RDFI, Service Provider will not initiate any related Entry until the cause for rejection is resolved as provided in the *NACHA Rules*. If Service Provider receives notice that an RDFI will not receive Entries without having first received a copy of the authorization signed by its customer, Service Provider will not initiate any Entry to such customer(s) until it has provided the RDFI with such authorization within the time limits provided in the *NACHA Rules*. Service Provider understands and acknowledges that once a pre-notification has been initiated using the Services, Service Provider will be restricted from initiating any Entry to such customer(s) for six (6) business days.

19. **Unauthorized Rate in Excess of 0.5%.** In the event the rate of unauthorized returns of Entries submitted by Service Provider on Customer's behalf exceeds 0.5% based on the calculations noted in the *NACHA Rules*, Bank will share the data with Service Provider and/or its Customer(s), and Service Provider will take immediate steps to revisit its or its Customers' authorization procedures to reduce the unauthorized return rate below 0.5% and shall further promptly prepare and submit a written plan and timeline to Bank noting Service Provider's intended plan to reduce unauthorized returns.

20. **Evidence of Participant Authorization for Entries.**

20.1 To the extent required by the *NACHA Rules* or applicable law, Service Provider will obtain, or ensure its Customer obtains, as applicable, all consents and written authorizations for all Entries in accordance therewith. Such authorizations and any related disclosures shall be in a form that complies with (i) all requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, as the same may be amended from time to time, including, without limitation, any applicable requirements of Regulation E, the Federal Electronic Funds Transfer Act, and sanctions enforced by OFAC. Service Provider shall obtain and maintain current information regarding OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC or by visiting the OFAC website at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac).) Each Entry will be made according to such authorization and shall comply with the *NACHA Rules*. No Entry will be initiated by Service Provider after such authorization has been revoked or the arrangement between Service Provider, or Customer, as applicable, and such Receiver or other party has terminated.

20.2 Service Provider shall retain, or ensure that its Customers retain, as applicable, all consents and authorizations for the period required by the *NACHA Rules*. Service Provider or Customers will furnish to Receiver, or to Bank upon its request, an original or a copy of an authorization as required under or for any purpose required by the *NACHA Rules*. No investigation or verification procedure undertaken by Bank shall be deemed to limit or waive Service Provider's obligations under this Section.

21. **Third-Party Agent.** Except as may otherwise be agreed by Bank in its sole and exclusive discretion, Service Provider may not appoint a third party to act as its agent to process Entries or otherwise for purposes of the Services ("Third-Party Agent"). Notwithstanding the foregoing, Service Provider agrees that Bank retains the right to reject any Third-Party Agent and any Entries initiated by Service Provider's Third-Party Agent in its sole discretion. Service Provider shall assume full liability for the acts and omissions of any Third-Party Agent used by Service Provider.

22. **Identification and Approval of Originators.** Service Provider will provide Bank with any information Bank deems necessary to identify each Customer / Originator for which Service Provider

transmits Entries, including as set forth in Business Online Application previously provided to the Bank. Service Provider shall notify Bank of each new Originator and obtain approval of each Originator from Bank prior to initiating Entries for such Originator. Service Provider shall not send any Entries with regard to an Originator until Bank provides approval of such Originator as provided herein.

### **23. General Service Provider Covenants, Representations and Warranties.**

23.1 Service Provider represents and warrants that the individual(s) executing this Agreement has/have been authorized by all necessary Service Provider action to sign such agreements and to issue such instructions as may be necessary to carry out the purposes and intent of this Agreement and to enable Service Provider to receive the Services. Each Authorized Representative whom Service Provider permits to access and use the Services is duly authorized by all necessary action on the part of Service Provider to use the Services.

23.2 Bank may unconditionally rely on the validity and accuracy of any communication or transaction made, or purported to be made, by an Authorized Representative and in accordance with the terms of this Agreement.

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

23.4 Service Provider shall take all reasonable measures and exercise reasonable precautions to ensure that Service Provider officers, employees and Authorized Representatives do not use the Services for personal, family or household purposes, or any other purpose not contemplated by this Agreement.

### **24. Additional Service Provider Representations and Agreements with Regard to Entries.** In addition to Service Provider’s obligations, representations, agreements and warranties otherwise described in this Agreement, Service Provider further represents and warrants to Bank and agrees, with respect to each and every Entry transmitted by Service Provider that:

(i) Each debit Entry transmitted by Service Provider has been authorized and all credit Entries settled outside Bank and debited to a third party are authorized to settle to the account being debited;

(ii) Each person shown as the Receiver of an Entry received by Bank from Service Provider 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;

(iii) Each authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein;

(iv) Entries transmitted to Bank by Service Provider are limited as set forth in Sections 4, 5 and 6;

(v) Service Provider shall perform its obligations under this Agreement in accordance with the *NACHA Rules*, the laws of the United States and all other applicable laws, regulations and orders, including, but not limited to, the transaction screening and sanctions laws, regulations and orders administered by OFAC; laws, regulations and orders administered by FinCEN; and any state laws, regulations or orders applicable to the providers of ACH payment services, including without limitation the Uniform Commercial Code;

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

(vii) Service Provider specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount of the Entry;

(viii) with regard to any data delivered to Bank which Service Provider produces, processes, transmits or otherwise provides on behalf of a Customer, and with regard to any error corrections, adjustments or instructions relative to data given to Bank by Service Provider, all Entries in the data error corrections, adjustments and instructions correctly reproduce information submitted to Service Provider by such Customer or its agents, or, if not so submitted, are otherwise authorized and correct;

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

(x) with respect to each IAT Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, Service Provider shall, and Customer shall, as applicable, (a) classify and format payments transmitted to or received from a financial agency outside the U.S. as an IAT in accordance with the *NACHA Rules*, (b) provide data necessary to accompany the transaction in compliance with the Bank Secrecy Act's "Travel Rule," (c) screen the IAT prior to transmitting any file(s) of Entries to the Bank in accordance with the requirements of OFAC and comply with OFAC sanctions, and (d) otherwise comply with and be subject to all other requirements of U.S. law, the *NACHA Rules*, OFAC and FinCEN, as well as the laws and payment system rules of a non-U.S. receiving destination;

(xi) with respect to each Internet-initiated (WEB) ACH Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, (a) Service Provider employs, and Customer employs, as applicable (1) commercially reasonable detection systems to minimize risk of fraud related to Internet-initiated payments, (2) commercially reasonable procedures to verify validity of routing numbers, (3) commercially reasonable methods of authentication to verify the identity of the Receiver, and (4) commercially reasonable security technology that at a minimum is equivalent to 128-bit encryption technology, and (b) where required by the *NACHA Rules* and/or Bank, Service Provider conducts, and Customer conducts, as applicable, annual audits as to its security practices and procedures that include, at a minimum, verification of adequate levels of (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use and (3) network security to ensure secure capture, storage, and distribution;

(xii) with respect to each Telephone-Initiated (TEL) Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, Service Provider has, and Customer has, as applicable (a) employed commercially reasonable procedures to verify the identity of the Receiver, and (b) utilized commercially reasonable procedures to verify that routing numbers are valid;

(xiii) with respect to each Accounts Receivable (ARC) Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, (a) the amount of the Entry, the routing number, the account number and the check serial number are in

accordance with the source document, (b) Service Provider will retain, and Customer will retain, as applicable, a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each ARC Entry for two (2) years from the Settlement Date of the ARC Entry, (c) Service Provider has employed, and Customer has employed, as applicable, commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, (d) Service Provider has established, and Customer has established, as applicable, reasonable procedures under which the Receiver may notify Service Provider or Customer that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's account and that Customer will allow the Receiver to opt-out of check conversion activity, and (e) the source document to which each ARC Entry relates may not be presented or returned such that any person will be required to make payment based on the source document unless the ARC Entry is returned;

(xiv) with respect to each Back Office Conversion (BOC) Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, (a) Service Provider has employed, and Customer has employed, as applicable, commercially reasonable procedures to verify the identity of the Receiver, (b) Service Provider has established and maintains, or Customer has established and maintain, a working telephone number for Receiver inquiries regarding the transaction that is answered during normal business hours and that such number is displayed on the notice required by the *NACHA Rules* for BOC Entries, (c) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (d) Service Provider will retain, and Customer will retain, as applicable, a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each BOC Entry for two (2) years from the Settlement Date of the BOC Entry, (e) Service Provider has employed, and Customer has employed, as applicable, commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to BOC Entries, and (f) the source document to which each BOC Entry relates will not be presented or returned such that any person will be required to make payment based on the source document unless the BOC Entry is returned;

(xv) with respect to each Point-of-Purchase (POP) Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, the source document provided to Service Provider for use in obtaining the Receiver's routing number, account number, and check serial number for the initiation of the POP Entry (a) is returned voided to the Receiver after use by Service Provider and (b) has not been provided to the Receiver for use in any prior POP Entry; and

(xvi) with respect to each Returned Check (RCK) Entry that Service Provider may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, (a) all signatures on the item are authentic and authorized, (b) the item has not been altered, (c) the item is not subject to a defense or claim, (d) the Entry accurately reflects the item, (e) the item will not be presented unless the related Entry has been returned by the RDFI, (f) the information encoded after issue in magnetic ink on the item is correct, and (g) any restrictive endorsement placed on the item is void or ineffective.

## 25. **Bank Responsibilities; Limitations on Liability; Disclaimer of Warranties.**

25.1 In the performance of the Services required by this Agreement, Bank shall be entitled to rely on the information, representations, and warranties provided by Service Provider pursuant to this Agreement and by Customer pursuant to the Bank Agreements, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the Services expressly provided for in this Agreement, and, subject to the disclaimers and limits on Bank's liability set forth herein, shall be liable only for and to the extent of its gross negligence or willful misconduct in

performing the Services. Bank shall not be responsible for Service Provider's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Service Provider) or those of any other person, including without limitation any Federal Reserve Financial Institution, Automated Clearing House or transmission or communications facility, any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Service Provider shall be responsible for any fines levied against Bank by NACHA, the ACH Rules Enforcement Panel, and any regulatory authority having jurisdiction over Bank arising from any violation or alleged violation of any applicable law, regulation, or the *NACHA Rules* directly resulting from Entries transmitted by Service Provider on behalf of its Customer(s). Service Provider shall also be responsible for any fees imposed upon Bank by NACHA for the return of an Entry initiated by Service Provider that did not comply with the *NACHA Rules* or the terms of this Agreement.

25.2 Bank shall be liable only for Service Provider's actual, direct damages. In no event shall Bank be liable for any consequential, special, incidental, punitive or indirect loss or damage that Service Provider may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by Bank and regardless of the legal or equitable theory of liability that Service Provider may assert, including, without limitation, loss or damage from loss of business, profits or subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Agreement. Except to the extent otherwise provided by law or this Agreement, Bank's aggregate liability to Service Provider for all losses, damages, and expenses incurred in connection with any single claim under this Agreement shall not exceed an amount equal to the monthly billing to the Customer(s) associated with the Services over the six (6) month-period immediately preceding the date on which the damage or injury giving rise to such claim is alleged to have occurred or such fewer number of preceding months as this Agreement has been in effect, up to an aggregate total limit of \$5,000.00 for any such claim, regardless of the number of Customer(s) directly associated with the claim. This Agreement is only between Bank and Service Provider, and Bank shall have no liability hereunder to any third party.

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

25.4 EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SERVICE PROVIDER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT SERVICE PROVIDER'S SOLE RISK, AND THE SERVICES ARE PROVIDED "AS IS," AND BANK AND ITS AGENTS DO NOT MAKE, AND EXPRESSLY DISCLAIM ANY, WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WITHOUT BREACHES OF SECURITY OR WITHOUT DELAYS. IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE LIABILITY OF BANK AND BANK'S SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

## 26. **Indemnification.**

26.1 Service Provider agrees to indemnify Customer and hold Customer harmless against any loss, liability or expense (including reasonable attorneys' fees and costs) resulting from any claim of any person (i) that the affected Customer(s) is responsible for any acts or omissions of Service Provider or those of any other person described in this Agreement or (ii) that a Service Provider payment order contravenes or compromises the rights, title or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order or other mandate or prohibition with the force or effect of law. Bank shall be entitled and permitted to enforce this indemnification against Service Provider on behalf of Customer.

26.2 Customer (under the Bank Agreements) and Service Provider hereunder each jointly and severally agree to indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by Bank relating to or arising out of the following events or circumstances:

26.2.1 Any claim of any person that (i) Bank is responsible for any acts or omissions of Customer(s), Service Provider or any other person related thereto, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI or (ii) a Service Provider payment order on a Customer's behalf contravenes or compromises the rights, title or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order or other mandate or prohibition with the force or effect of law;

26.2.2 Any claim asserting a breach of Bank's warranties as an ODFI under the *NACHA Rules* in connection with an Entry that was initiated by Service Provider;

26.2.3 Any failure by Service Provider to observe and perform properly all of its obligations hereunder or any wrongful act of Service Provider or any of its affiliates;

26.2.4 Any breach by Service Provider of the warranties, representations or agreements set forth in this Agreement; and

26.2.5 Any action taken by Bank in reasonable reliance upon information provided to Bank by Customer(s) or Service Provider.

27. **Inconsistency of Name and Account Number.** Service Provider acknowledges and agrees that if an Entry describes a Receiver inconsistently by name and account number, then (i) payment of such Entry transmitted to an RDFI may be made by the RDFI (or by Bank for an On-Us Entry) on the basis of the account number, even if it identifies a person different from the named Receiver and (ii) the applicable Customer's obligation to pay the amount of the Entry to Bank is not excused in such circumstances. Similarly, if an Entry describes an RDFI inconsistently by name and routing number, payment of such Entry may be made based on the routing number, and the applicable Customer shall be liable to pay that Entry.

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

29. **Notices, Instructions, Etc.**

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

29.2 Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative of Service Provider, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in Business Online Application previously provided to the Bank. Service Provider may add or remove any Authorized Representative by written notice to Bank signed by the officer of Service Provider that executes this Agreement or by at least two (2) Authorized Representatives other than the representative being added or removed. Such notice shall be effective on the second business day following the day of Bank's receipt thereof.

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

COMMUNITY BANK N.A.

Attention: Electronic Banking Department  
1 Tallman Road  
Canton, NY 13617  
Phone: 866-764-8638

29.4 Service Provider authorizes Bank to, and Service Provider agrees that Bank may, send any notice or communication that Bank is required or permitted to give under this Agreement, including but not limited to notice of any change to the Services or this Agreement, to Service Provider's business mailing address or Service Provider's business e-mail address as it appears on Bank's records, or via facsimile, and that any such notice or communication will be effective and deemed delivered when provided to Service Provider in such a manner. Service Provider agrees to notify Bank promptly about any change in Service Provider's business mailing or Service Provider's business e-mail address and acknowledges and agrees that no such change will be effective until Bank has had a reasonable opportunity to act upon such notice. Service Provider agrees that Bank may consider any such notice or communication as being given to all account owners when such notice or communication is given to any one account owner.

30. **Data Retention.** Service Provider shall retain data on file on behalf of Customers that is adequate to permit remaking of Entries for one (1) year following the date of their transmittal by Bank as provided herein and shall provide such data to Bank upon request. Without limiting the generality of the foregoing provision, Service Provider specifically agrees to be bound by and comply with all applicable provisions of the *NACHA*

*Rules* regarding the retention of documents or any record, including, without limitation, Service Provider's responsibilities to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*. Service Provider and 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.

**31. Data Breaches.**

31.1 Service Provider agrees that it will adopt and implement its own commercially reasonable policies, procedures and systems to provide security as to the information being transmitted and to receive, store, transmit and destroy data or information in a secure manner to prevent loss, theft, or unauthorized access to data or information ("Data Breaches"), including but not limited to, Consumer-Level ACH Data.

31.2 Service Provider agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions.

33.3 Service Provider will provide prompt and accurate notification to Bank by calling the Electronic Banking Department with regard to any Data Breaches when known or reasonably suspected by Service Provider, including but not limited to, Data Breaches to Consumer-Level ACH Data, and will take all reasonable measures, including, without limitation, retaining computer forensic experts, to determine the scope of any data or transactions affected by any Data Breaches, providing all such determinations to Bank.

32. **Right to Audit.** Bank has the right to periodically audit Service Provider's compliance and Customers' compliance, as applicable, with the *NACHA Rules*, U.S. law and this Agreement. Service Provider agrees and warrants, in its capacity as a Service Provider, that it will conduct all self-audits as may be required under the *NACHA Rules*.

33. **Records of Bank.** All electronic or other files, Entries, security procedures and related records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Service Provider's request. Any expenses incurred by Bank in making such information available to Service Provider shall be paid by Service Provider prior to Service Provider's receipt of such information.

34. **Payment for Services.** Bank reserves the right to charge Service Provider and/or Customer such charges for the Services as Bank may require from time to time. Bank will provide Service Provider and/or Customer with written notification of changes in fees and Services as may be required by law. Such charges do not include, and Service Provider and/or Customer shall be responsible for payment of, any sales, use, excise, value-added, utility or other similar taxes relating to the Services.

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

**36. Termination.**

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

36.2 Notwithstanding the foregoing, we may, without prior notice, terminate this Addendum and terminate or suspend any transaction or the Service (i) if Customer or the Bank closes any Account established in connection with the Services, (ii) if we determines that Service Provider or Customer have failed to maintain a financial condition deemed reasonably satisfactory to us to minimize any credit or other risks to us in providing the Service to you, including but in no way limited to the commencement of a voluntary or involuntary proceeding under the United States Bankruptcy Code or other statute or regulation relating to bankruptcy or relief of debtors, (iii) for security reasons or in the event of a material breach or default in the performance or observance of any term, or breach of any representation or warranty contained herein by Service Provider, (iv) in the event of material default by Customer or Service Provider, as applicable, in the payment of any sum owed to us hereunder or under any note or other agreement, (v) if there has been a seizure, attachment, or garnishment of your deposit accounts, assets or properties, or (vi) if we, in our sole discretion, believe that the continued provision of the Services in accordance with the terms of this Addendum would violate federal, state or local laws or regulations, or would subject us to unacceptable risk of loss.

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

36.4 Bank may also terminate or suspend the Services with regard to any particular Customer upon five (5) business days' notice. Notwithstanding the foregoing, Bank may, without notice, terminate or suspend the Services with regard to any particular Customer in the event that (i) Customer breaches the *NACHA Rules* or causes Bank to breach the *NACHA Rules*, (ii) Bank determines that Customer's financial or operating condition is unsatisfactory or otherwise presents unreasonable credit or other risks to Bank, or (iii) Bank reasonably believes that the continued provision of the Services in accordance with the terms of this Agreement would violate federal, state or local laws or regulations, Bank policies or procedures, or would subject Bank to unacceptable risk to its safety and soundness.

**37. Cooperation in Loss Recovery Efforts.** In the event of any damages for which Service Provider or Bank may be liable to the other, to Customer or to a third party relative to the Services, both parties shall undertake reasonable efforts to cooperate with the other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that Service Provider or Bank may be obligated to defend or elects to pursue against a third party. Service Provider represents and warrants that each Customer has agreed to undertake reasonable efforts to cooperate with Service Provider and with Bank, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that Bank may be obligated to defend or elects to pursue against a third party.

**38. Governing Law.** Any claim, controversy or dispute arising under or related to this Addendum shall be governed by and interpreted in accordance with federal law and, to the extent not preempted or inconsistent therewith, by the laws of the State of New York without regard to its choice of law provisions. In addition, the parties agree that if any payment order governed by this Addendum is part of a funds transfer

subject to the federal Electronic Funds Transfer Act, then all actions and disputes as between you and the Bank shall be governed by Article 4-A of the Uniform Commercial Code, as varied by this Addendum.

**39. Amendments.** From time to time we may amend the terms of this Addendum or **Schedules A and B** including without limitation, any cut-off time, any Business Day, and any part of schedules attached hereto. Except as expressly provided otherwise in this Addendum or applicable law, any such changes generally will be effective immediately upon notice to you as described in the Business Online User and Access Agreement. You will be deemed to accept any such changes if you access or use any of the Services after the date on which the change becomes effective. You will remain obligated under this Addendum, including without limitation, being obligated to pay all amounts owing hereunder, even if we amend this Addendum. Notwithstanding anything to the contrary in this Addendum, if we believe immediate action is required for our security or the security of your funds, we may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to you.

**40. Service Provider Statement of Purpose.** Prior to using the Services, Service Provider shall complete the ACH Service Provider Statement of Purpose. In the event there is any amendment or update to the information provided in the ACH Service Provider Statement of Purpose, you shall amend the statement.

## **SCHEDULE A** **TRANSMITTAL OF ENTRIES**

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

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

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

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

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

- **Debit transactions** must be received by the Bank no later than 4:30 p.m. ET on a business day, at least one (1) business day prior to the Effective Entry Date of the transactions contained in the submission. Transactions received after the cut-off time on a business day will be deemed to have been received on the following business day.
- **Credit transactions** must be received by the Bank no later than 4:30 p.m. ET on a business day, at least two (2) business days prior to the Effective Entry Date of the transactions contained in the submission. Transactions received after the cut-off time on a business day will be deemed to have been received on the following business day.
- **Same Day Transactions** must be received by the Bank no later than 1:00 p.m. ET on a business day which is the same day as the Effective Entry Date of the transactions contained in the submission. Transactions received after the cut-off time on a business day will be deemed to have been received on the following business day and will not qualify for **Same Day** processing.

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

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

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

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