

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

THOMAS JENKINS, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

TRUSTCO BANK,

Defendant.

Case No. 1:21-cv-238 (GLS/ATB)

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Thomas Jenkins (“Plaintiff”), by counsel, brings this Class Action Complaint against Defendant Trustco Bank (“Trustco” or “Defendant”), and alleges as follows:

INTRODUCTION

1. This is a civil action seeking monetary damages, restitution, and injunctive and declaratory relief from Defendant Trustco Bank, arising from its improper assessment and collection of multiple \$36 fees on an item.

2. Besides being deceptive, this practice breaches contract promises made in Trustco’s adhesion contracts, and unjustly enriches Trustco at its customers’ expense.

3. Plaintiff and other Trustco customers have been injured by Trustco’s practices. Plaintiff, individually and on behalf of the class of individuals preliminarily defined below, brings claims for Trustco’s breach of contract, including the duty of good faith and fair dealing, unjust enrichment, and violation of New York General Business Law § 349, *et seq.*

PARTIES

4. Plaintiff is a citizen of Kissimmee, Florida and has had a checking account with Trustco at all times material hereto.

5. Defendant Trustco Bank is a bank registered to do business in New York and with its principal place of business in Schenectady, New York. Thus, the bank is a citizen of New York. Trustco has over \$5.2 billion in assets and provides banking services to customers through more than 145 branches in New York, Florida, Massachusetts, New Jersey, and Vermont. Trustco is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Class.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this putative class action lawsuit pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d)(2) & (6), because the aggregate sum of the claims of the members of the putative Class exceeds \$5 million, exclusive of interest and costs, because Plaintiff brings this action on behalf of a proposed Class that is comprised of over one hundred members, and because Plaintiff and at least one of the members of the proposed Class are citizens of a different state than Trustco.

7. This Court has personal jurisdiction over Trustco because Trustco conducted business in and throughout the Northern District of New York at all times material hereto.

8. Trustco regularly and systematically conducts business and provides retail banking services in this state and provides retail banking services to customers in this state, including Plaintiff and members of the putative Class. As such, it is subject to the jurisdiction of this Court.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because Trustco is subject to personal jurisdiction in this District.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

I. Trustco Improperly Charges Two Or More Fees on an Item

10. Overdraft fees and insufficient funds fees (“NSF fees”) are among the primary fee generators for banks. According to a banking industry market research company, Moebs Services, in 2018 alone, banks generated an estimated \$34.5 billion from overdraft fees.

11. Unfortunately, the customers who are assessed these fees are the most vulnerable customers. Younger, lower-income, and non-white account holders are among those who were more likely to be assessed overdraft fees. *Overdrawn: Consumer Experiences with Overdraft*, Pew Charitable Trusts 8 (June 2014), <https://bit.ly/3ksKD0I>.

12. Trustco unlawfully maximizes its already profitable fees through its deceptive and contractually-prohibited practice of charging multiple NSF fees, or an NSF fee followed by an overdraft fee, on an item.

13. Unbeknownst to consumers, each time Trustco reprocesses an electronic payment item, ACH item, or check for payment after it was initially rejected for insufficient funds, Trustco chooses to treat it as a new and unique item that is subject to yet another fee. But Defendant’s contract never states that this counterintuitive and deceptive result could be possible and, in fact, promises the opposite.

14. Plaintiff has an Trustco checking account, which was governed by Trustco’s standardized “Trustco Bank Retail Online Banking, Bill Paying and Mobile Banking Agreement, and Electronic Fund Transfers Disclosure Agreement” (Ex. A) (“the Contract”).

15. The Contract allows Trustco to take certain steps when paying a check, electronic payment item, or ACH item when the accountholder does not have sufficient funds to cover it.

Specifically, Trustco may (a) pay the item and charge a \$36 fee; or (b) reject the item and charge a \$36 fee. Ex. A.

16. In contrast to the Contract, however, Trustco regularly assesses two or more \$36 fees on an item.

A. The Imposition of Multiple Fees on a Single Item Violates Trustco's Express Promises and Representations

17. The Contract provides the general terms of Plaintiff's relationship with Trustco, and therein Trustco makes explicit promises and representations regarding how an item will be processed, and how fees may be assessed.

18. The Contract promises that, at most, "a fee" (singular) may be assessed on "an item" (singular). Ex. A at 55 ("Bank may assess *a fee* to Customer's Account for processing *an item* that is presented for payment for which there are not funds, insufficient funds or available funds.").

19. Taken together, the Contract thus promises a fee will be assessed on an item, when in fact Trustco regularly charges two or more fees on the same item.

20. The same "item" on an account cannot conceivably become a new one each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit it.

21. There is zero indication anywhere in the Contract that the same "item" is eligible to incur multiple fees.

22. Even if Trustco reprocesses an instruction for payment, it is still the same "item." Its reprocessing is simply another attempt to effectuate an account holder's original order or instruction.

23. The Contract never discusses a circumstance where Trustco may assess multiple fees for a single check, electronic payment item, or ACH item that was returned for insufficient funds and later reprocessed one or more times and returned again.

24. In sum, Trustco promises that one \$36 fee will be assessed on an item, and this term must mean all iterations of the same instruction for payment. As such, Trustco breached its contract when it charged more than one fee per item.

25. Reasonable consumers understand any given authorization for payment to be one, singular “item,” as that term is used in the Contract.

26. Taken together, the representations and omissions identified above convey to customers that all submissions for payment of the same item will be treated as the same “item,” which Trustco will either authorize (resulting in an overdraft item) or reject (resulting in a returned item) when it decides there are insufficient funds in the account. Ex. A at 55. Nowhere do Trustco and its customers agree that Trustco will treat each reprocessing of a check, electronic payment item, or ACH item as a separate item, subject to additional fees.

27. Customers reasonably understand, based on the language of the Contract, that Trustco’s reprocessing of checks, electronic payment items, and ACH items are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger fees. In other words, it is always the same item.

28. Banks and credit unions like Trustco that employ this abusive practice require their accountholders to expressly agree to it—something Trustco here never did.

29. For example, First Citizens Bank, a major institution in the Carolinas, engages in the same abusive practice as Trustco, but at least expressly states:

Because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. All fees are

charged during evening posting. When we charge a fee for NSF items, the charge reduces the available balance in your account and may put your account into (or further into) overdraft.

Deposit Account Agreement, First Citizen's Bank (Oct. 2020), <https://bit.ly/2GJjSqq> (emphasis added).

30. Community Bank, NA, a bank in New York, engages in the same abusive practices as Trustco, but at least currently discloses it in its online banking agreement, in all capital letters, as follows:

We cannot dictate whether or not (or how many times) a merchant will submit a previously presented item. **You may be charged more than one Overdraft or NSF Fee if a merchant submits a single transaction multiple times after it has been rejected or returned.**

Overdraft and Unavailable Funds Practices Disclosure, Community Bank N.A. 5 (Nov. 12, 2019), <https://bit.ly/3uQafe7> (emphasis added).

31. Klein Bank similarly states in its online banking agreement:

[W]e will charge you an NSF/Overdraft Fee each time: (1) an item is submitted to us for payment from your Account when, at the time of posting, your Account is overdrawn or would be overdrawn if we paid the item (whether or not we in fact pay it); or (2) we return, reverse, or decline to pay an item for any other reason authorized by the Terms and Conditions of your account. For these purposes, an item includes a check, an ATM or debit card transaction, an ACH transaction, or other withdrawal, transfer or debit. Your account is overdrawn if your Available Balance is less than zero. **We will charge an NSF/Overdraft Fee as provided in this section regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.**

Online Access Agreement, Klein Bank 17 (Jan. 2013), <https://bit.ly/2Fevj8W> (emphasis added).

32. Community Bank, N.A. unambiguously contracts that "You may be charged more than one Overdraft or NSF Fee if a merchant submits a single transaction multiple times after it has been rejected or returned." *Overdraft and Unavailable Funds Practices Disclosure*, Community Bank 5 (Nov. 12, 2019), <https://bit.ly/2FLdRsC>.

33. The Contract provides no such authorization, and actually promises the opposite—Trustco may charge, at most, a *single* fee per item.

B. Plaintiff's Experience

34. In support of Plaintiff's claim, Plaintiff offers examples of fees that should not have been assessed against Plaintiff's checking account. As alleged below, Trustco: (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

35. On or around December 5, 2018, Plaintiff attempted an item to make a one time payment.

36. Trustco rejected payment of that item due to insufficient funds in Plaintiff's account and charged a \$36 fee for doing so.

37. Unbeknownst to Plaintiff and without Plaintiff's request to Trustco to reprocess the item, on or around December 11, 2018, Trustco processed the same item yet again and charged Plaintiff a *second* \$36 fee for doing so.

38. *In sum, Trustco charged Plaintiff \$72 in fees on an item.*

39. Plaintiff understood the payment to be a single item as is laid out in the Contract, capable of receiving, at most, a single fee if Trustco returned it, or a single fee if Trustco paid it.

40. The improper fees charged by Trustco were not errors, but rather intentional charges made by Trustco as part of its standard processing of items.

41. Plaintiff therefore had no duty to report the fees as errors.

42. Moreover, any such reporting would have been futile as Trustco had made a decision to charge the fees in this specific manner to maximize profits at the expense of customers.

C. The Imposition of Multiple Fees on a Single Item Breaches Trustco's Duty of Good Faith and Fair Dealing

43. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are invested with a discretionary power over the other party. This creates an implied promise to act in accordance with the parties' reasonable expectations and means that Trustco is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, Trustco has a duty to honor payment requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater penalties on the depositor. Here—in the adhesion agreements Trustco foisted on Plaintiff and its other customers—Trustco has provided itself numerous discretionary powers affecting customers' accounts. But instead of exercising that discretion in good faith and consistent with consumers' reasonable expectations, Trustco abuses that discretion to take money out of consumers' accounts without their permission and contrary to their reasonable expectations that they will not be charged multiple fees for the same item.

44. When Trustco charges multiple fees on an item, it uses its discretion to define the meaning of "item" in a way that violates common sense and reasonable consumer expectations. Trustco uses its contractual discretion to define that term to choose a meaning that directly causes more fees.

45. In addition, Trustco exercises its discretion in its own favor and to the prejudice of Plaintiff and its other customers when it reprocesses an item when it knows a customer's account lacks funds and then charges additional fees on the same item. Further, Trustco abuses the power it has over customers and their bank accounts and acts contrary to their reasonable expectations under the Contract. This is a breach of Trustco's duty to engage in fair dealing and to act in good faith.

46. It was bad faith and totally outside of Plaintiff's reasonable expectations for Trustco to use its discretion to assess two or more fees on an item.

47. Trustco abuses its discretion and acts in bad faith by defining contract terms in an unreasonable way that violates common sense and by charging multiple fees on the same item.

CLASS ALLEGATIONS

48. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

49. Plaintiff brings this action individually and as a class action on behalf of the following proposed Class:

All accountholders of Trustco Bank who, during the applicable statute of limitations, were charged multiple fees on an item by Trustco Bank.

50. Plaintiff reserves the right to modify or amend the definition of the Class as this litigation proceeds.

51. Excluded from the Class are Trustco, its parents, subsidiaries, affiliates, officers and directors, any entity in which Trustco has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

52. The Class consists of thousands of members, such that joinder of all Class members is impracticable.

53. There are questions of law and fact that are common to all members of the Class that relate to Trustco's practice of charging fees on multiple fees on an item.

54. The claims of Plaintiff are typical of the claims of the proposed Class because they are based on the same legal theories, and Plaintiff has no interests that are antagonistic to the interests of the members of the Class.

55. Plaintiff is an adequate representative of the Class and has retained competent legal counsel experienced in class actions and complex litigation.

56. The questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class, particularly because the focus of the litigation will be on Trustco's conduct. The predominant questions of law and fact in this litigation include, but are not limited to, whether Trustco:

- Imposed more than one fee on an item;
- Breached its contract with Plaintiff and members of the Class by assessing more than one fee on an item;
- Violated New York General Business Law § 349, *et seq.*;
- Breached the covenant of good faith and fair dealing imposed on it; and
- Was unjustly enriched when it collected multiple fees on an item.

57. Other questions of law and fact common to the Class include the proper method or methods by which to measure damages.

58. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would not be economically feasible for individual Class members, and certification as a class action will preserve judicial resources by allowing the common issues of the Class members to be adjudicated in a single forum, avoiding the need for duplicative hearings and discovery in individual actions that are based on an identical set of facts. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of

Trustco, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Trustco's misconduct will proceed without remedy. In addition, without a class action, it is likely that many members of the Class will remain unaware of Trustco's conduct and the claims they may possess.

59. It appears that other persons who fall within the definitions of the Class set forth above are not pursuing similar litigation, such that individual Class members do not wish to control the prosecution of separate actions.

60. This proposed class action does not present any unique management difficulties.

**FIRST CLAIM FOR RELIEF
(Breach of Contract including Breach of the Covenant of Good Faith and Fair Dealing)
(On Behalf of Plaintiff and the Class)**

61. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

62. Plaintiff and Trustco have contracted for bank account deposit, checking, ATM, and debit card services. *See* Ex. A.

63. Trustco mischaracterized in the Contract its true fee practices and breached the express terms of the Contract.

64. No contract provision authorizes Trustco to charge more than one fee on an item.

65. Under New York law, good faith is an element of every contract. Good faith is also mandated by the Uniform Commercial Code ("UCC"), which covers banking transactions. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely

the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

66. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

67. Trustco has breached the covenant of good faith and fair dealing through its fee policies and practices as alleged herein.

68. Trustco harms consumers by abusing its contractual discretion in a number of ways that no reasonable customer would anticipate.

69. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them by the Contract.

70. Plaintiff and members of the Class have sustained damages as a result of Trustco's breach of the Contract and breach of the covenant of good faith and fair dealing.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)
(On Behalf of Plaintiff and the Class)

71. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

72. Plaintiff, individually and on behalf of the Class, asserts a common law claim for unjust enrichment. This claim is brought solely in the alternative to Plaintiff's breach of contract

claim and applies only if the parties' contract is deemed unconscionable or otherwise unenforceable for any reason. In such circumstances, unjust enrichment will dictate that Trustco disgorge all improperly assessed fees.

73. By means of Trustco's wrongful conduct alleged herein, Trustco knowingly assessed fees upon Plaintiff and the members of the Class that are unfair, unconscionable, and oppressive.

74. Trustco knowingly received and retained wrongful benefits and funds from Plaintiff and the members of the Class. In so doing, Trustco acted with conscious disregard for the rights of Plaintiff and the members of the Class.

75. As a result of Trustco's wrongful conduct as alleged herein, Trustco has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and the members of the Class.

76. Trustco's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

77. Under the common law doctrine of unjust enrichment, it is inequitable for Trustco to retain the benefits it received, and is still receiving, without justification, from the imposition of multiple fees on Plaintiff and members of the Class in an unfair, unconscionable, and oppressive manner. Trustco's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

78. The financial benefits obtained by Trustco rightfully belong to Plaintiff and the members of the Class. Trustco should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds collected by Trustco. A constructive trust should be imposed upon all wrongful or inequitable sums received by Trustco traceable to Plaintiff and the members of the Class.

79. Plaintiff and the members of the Class have no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Violations of New York General Business Law § 349, *et seq.*)
(On Behalf of Plaintiff and the Class)

80. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

81. Trustco's practice of charging multiple fees on an item violates New York Business Law § 349 ("NYGBL § 349").

82. NYGBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state of New York.

83. Trustco is headquartered in New York and has multiple banking locations in New York. Accordingly, Trustco conducts business, trade, or commerce in New York State.

84. In the conduct of its business, trade, and commerce, and in furnishing services in New York State, Trustco's actions were directed at consumers.

85. In the conduct of its business, trade, and commerce, and in furnishing services in New York State, Trustco engaged in deceptive, unfair, and unlawful trade, acts or practices, in violation of NYGBL § 349(a), including but not limited to the following:

- a. Trustco misrepresented material facts pertaining to the sale and/or furnishing of banking services to Plaintiff and the Class by representing that it would not charge more than one fee on an item;
- b. Trustco omitted, suppressed, and concealed the material fact that it would charge more than one fee on an item;

86. Trustco systematically engaged in these deceptive, misleading, and unlawful acts and practices, to the detriment of Plaintiff and members of the Class.

87. Trustco willfully engaged in such acts and practices and knew that it violated NTGBL § 349 or showed reckless disregard for whether it violated NYGBL § 349.

88. As a direct and proximate result of Trustco's deceptive banking practices, Plaintiff and members of the Class suffered injury and/or damages, including the payment of deceptive fees, as described herein, and the loss of the benefit of their respective bargains with Trustco.

89. The unfair and deceptive practices by Trustco, as described herein, were immoral, unethical, oppressive, and unscrupulous. These acts cause substantial injury to consumers that these consumers could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

90. Further, Trustco's conduct was substantially injurious to Plaintiff and members of the putative Class in that they were forced to pay fees they were told they would not incur.

91. Trustco's actions in engaging in the above-described unfair practices and deceptive acts were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of the members of the Plaintiff and putative Class.

92. Had Plaintiff and members of the putative Class known they could be charged the above-described deceptive fees, they would have attempted to avoid incurring such fees.

93. As a result of Trustco's violations of NYGBL § 349, Plaintiff and members of the putative Class have paid and will continue to pay improper fees. Accordingly, Plaintiff and the putative Class have suffered and will continue to suffer actual damages.

94. Accordingly, Plaintiff and the members of the putative Class are entitled to relief under NYGBL § 349(h), including, but not limited to, actual damages, treble damages, statutory damages, injunctive relief, and/or attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class demand a jury trial on all claims so triable and judgment including the following:

- a. Certification for this matter to proceed as a class action;
- b. Designation of Plaintiff as Class Representative, and designation of the undersigned as Class Counsel;
- c. Restitution of all improper fees paid to Trustco by Plaintiff and the Class, because of the wrongs alleged herein in an amount to be determined at trial;
- d. Actual damages in an amount according to proof;
- e. Statutory damages and/or treble damages in accordance with New York Law;
- f. Pre- and post- judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law;
- h. Attorneys' fees under the common fund doctrine and all other applicable law;
- i. Injunctive and declaratory relief prohibiting Trustco from engaging in the practices outlined herein and declaring such practices unlawful; and
- j. Such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

Dated: March 1, 2021

BY: /s/ James J. Bilborrow
James J. Bilborrow (Bar Roll #519903)
WEITZ & LUXENBERG, P.C.
700 Broadway
New York, New York 10003
Telephone: (212) 558-5500
jbilborrow@weitzlux.com

Lynn A. Toops*
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: 317-636-6481
Facsimile: 317-636-2593
ltoops@cohenandmalad.com

J. Gerard Stranch, IV*
Martin F. Schubert*
BRANSTETTER, STRANCH
& JENNINGS, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
Telephone: (615) 254-8801
Facsimile: (615) 255-5419
gerards@bsjfirm.com
martys@bsjfirm.com

Christopher D. Jennings*
JOHNSON FIRM
610 President Clinton Avenue, Suite 300
Little Rock, Arkansas 72201
Telephone: (501) 372-1300
chris@yourattorney.com

*Attorneys for Plaintiff and the Putative
Class*

* To Seek Admission *Pro Hac Vice*

General Disclaimer

Trustco Bank Retail Online Banking, Bill Paying and Mobile Banking Agreement, and Electronic Fund Transfers Disclosure Agreement

This Trustco Bank Retail Online Banking, Bill Paying and Mobile Banking Agreement, and Electronic Fund Transfers Disclosure Agreement (collectively hereinafter the "Agreement"), which includes the Fee Schedule, is a contract which establishes the rules which cover your electronic access to your accounts at Trustco Bank in conjunction with Trustco Bank Retail Online Banking (hereafter referred to as "*Online Banking*"). By using *Online Banking*, you accept all the terms and conditions of this Agreement. **Please read it carefully and retain a copy for your records.** The terms and conditions of the deposit agreements and disclosures for each of your Trustco Bank deposit accounts (the Trustco Bank Rules and Regulations governing the Accounts, also referred to herein as the "Account Rules") as well as your other agreements with Trustco Bank such as those related to loans, are incorporated by reference herein and continue to apply notwithstanding anything to the contrary in this Agreement. If there is any conflict or inconsistency between those other agreements and this Agreement, the terms of this Agreement shall apply to the extent of the conflict.

This Agreement is also subject to applicable federal laws and the laws of the State of New York (except to the extent this Agreement can and does vary from such rules or laws). If any provision of this Agreement is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. You may not assign this Agreement. This Agreement is binding upon your heirs and Trustco Bank's successors and assigns. Certain of the obligations of the parties pursuant to this Agreement that by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive termination, cancellation or expiration of this Agreement. This Agreement, together with the applicable fee schedule(s), constitutes the entire agreement between you and Trustco Bank with respect to the subject matter hereof and there are no understandings or agreements relative hereto which are not fully expressed herein.

Acceptance. By clicking the box below titled "I Accept the Disclaimer" and by using *Online Banking*, including the bill paying or mobile banking services (together, the "Services"), you agree to the terms and conditions in this Agreement. You also agree that such terms and conditions (including any changes to them, after their effective date) shall apply to the use of these Services by you and any others whom you have permitted to use your access credentials (e.g., Log-on ID and Password) to access the Services. If you do not agree with these terms and conditions, you may not use the Services. By using these Services, you consent to the electronic transmission of your financial information as contemplated by the Services, and your consent will be considered effective for as long as you use the Services.

ONLINE BANKING TERMS

1. Definitions

As used in this Agreement:

"We," "our," "us" mean Trustco Bank.

"You" and "your" refers to the person(s) or entity authorized by Trustco Bank to use *Online Banking* under this Agreement and anyone else authorized by that account holder to exercise control over the account holder's funds through *Online Banking*. Unless otherwise specified in this Agreement, the provisions of Agreement apply both to Personal and Business Customers using *Online Banking* and any associated features or services. "Business Customer" refers to the owner of a business deposit Account or the borrower on a business credit Account that will not be used for personal, family or household purposes.

"Personal Customer" refers to the owner of a personal deposit Account or the borrower on a personal credit Account established primarily for personal, family or household purposes.

"Designated Account" means the transaction deposit account you designated when you applied for *Online Banking*, or that you subsequently designate by change and from which we will make payments on your behalf. In addition, the Designated Account will be used to pay *Online Banking* charges and fees for the use of *Online Banking*.

"Account(s)" means, unless otherwise specified herein, the Designated Account and any deposit, loan, or other accounts you have at Trustco Bank to which you have access through *Online Banking*.

"Electronic fund transfers" (or "EFT") as used in this Agreement is defined in the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and Consumer Financial Protection Bureau Regulation E (12 C.F.R. Part 1005), each as may be amended from time to time, and includes but is not limited to ATM withdrawals, preauthorized transactions, point-of-sale transactions, transfers to and from Trustco Bank deposit Accounts using *Online Banking*.

"Business Day" means any day except Saturday, Sunday and Federal holidays. The Trustco Bank *Online Banking* Business Day ends at 5:00 PM Eastern Standard Time (EST) unless otherwise posted. Any transaction made through *Online Banking* on or after 5:00 PM will be processed on the following Business Day.

2. Access Requirements

In order to enroll in *Online Banking*, you must have at least one transaction deposit Account at Trustco Bank, and an e-mail address. In order to use *Online Banking*, you will need: (1) a personal computer or similar Internet-enabled machine ("Computer"), and any software and required equipment that can support the Internet browsers recommended in this Section, or (2) for some features of the Services, a mobile or wireless Internet-enabled access device ("Mobile Device" or "Wireless Device"), and any software and required equipment that can support the Internet browsers recommended in this Section or in the Mobile Banking Terms section of this Agreement. You are responsible for the installation, maintenance, and operation of your Computer or Mobile Device and all related charges. You are responsible for installing and maintaining appropriate virus protection on your Computer or Mobile Device. We are not responsible for any errors or failures caused by any malfunction of your Computer or Mobile Device, or for any viruses, spyware, malware, worms, or related problems that may be associated with your Computer or Mobile Device.

In order to better protect your *Online Banking* activities, it is recommended that you use Microsoft Internet Explorer Vers. 8.0 (or higher) with 128-bit encryption or Mozilla Firefox Vers. 3.6 (or higher) with 128-bit encryption to access *Online Banking* at <http://www.trustcobank.com/> or such other Internet address as we may provide from time to time.

We are not responsible for monitoring transactions through *Online Banking* to determine whether they are made by or on the behalf of the account holder. We are also not responsible for any losses or delays in transmission of information that you provide to us or otherwise arising out of or incurred in connection with the use of any Internet or other service provider providing your connection to the Internet or any browser software. You are also responsible for all telephone, mobile remote access, and other similar data charges incurred in connecting to the Services and for charges by any Internet service providing connection to the Internet, including Short Message Services (SMS) or what is commonly referred to as text messaging.

3. Online Banking Basic Features

You can use Trustco Bank's *Online Banking* to check the balance in your Trustco Bank Account(s), view Trustco Bank Account histories, export Account histories including the use of financial management software, transfer funds between your Eligible Trustco Bank Accounts, change your address, reorder checks, submit stop payment requests on checks you have written, enroll in and access the bill paying

and mobile banking services, and sign up for Account alerts. An "Eligible Account" is an Account linked to *Online Banking* that does not have withdrawal restrictions, or that requires direct updating by us. Because of withdrawal restrictions, a certificate of deposit and a passbook savings account are not Eligible Accounts.

4. Your Log-on ID, Password, and Secure Login Information

Once we have verified your identity through online enrollment, you will be activated for use of Trustco Bank *Online Banking*. For security reasons and to maintain the confidentiality of your Log-on ID, Password(s), and Secure Login information, you will select your own Log-on ID, Password, and other "secure" factors authenticating and authorizing you to obtain access to *Online Banking*. Secure Login security incorporates a multi-part credential for each user of *Online Banking* that is in addition to Log-on IDs and Password security. It incorporates an additional factor(s) of identity authentication that may include, but is not limited to, additional log-in security features such as security cookies, device recognition and registration, and flash objects. Secure Login security will require each user of *Online Banking* to establish and utilize, in addition to individual Log-on IDs and Passwords, his/her own individual authentication through the use of personal identifying images and questions as part of a multi-part credential. You can change your Password (minimum of six (6) characters) on *Online Banking* at any time. **YOU SHOULD CHANGE YOUR PASSWORD PERIODICALLY.** You authorize us to follow any instructions entered through *Online Banking* using your Log-on ID, Password, and Secure Login information. Your access to *Online Banking* will be blocked in the event your Log-on ID or Password is entered incorrectly on three (3) consecutive access attempts. If this occurs, please call Trustco Bank *Online Banking* Support at 518-381-3615 or 1-800-670-3110.

Except as is more fully discussed in this Agreement, you understand and agree that you are responsible for all transfers and payments made through *Online Banking*. You also acknowledge and agree that if you permit another party(ies) to use your Log-on ID and Password to access *Online Banking*, or otherwise authorize them to use *Online Banking*, you are responsible for any and all transactions that party(ies) makes from your Account, even if it exceeds your authorization.

5. Adding, Changing and Removing Existing Accounts

You can add to, or disable from this Agreement, any of your Trustco Bank Accounts that Trustco Bank *Online Banking* supports, subject to verification by us. For other Accounts, you must notify us at least three (3) Business Days prior to the date on which you wish to have your Account(s) changed, added or disabled from Trustco Bank *Online Banking*. In most cases, requests to change, add or disable an Account(s) from *Online Banking* will be implemented as of the close of business of the following Business Day the request is received. If, however, due to extenuating circumstances, as determined by the Bank, we reserve the right, at any time, to take up to ten (10) Business Days to implement any of the aforementioned requested changes. Access to your Accounts through *Online Banking* will be based upon the identification of users and authority levels specified by you. We undertake no obligation to monitor transactions through *Online Banking* to determine that they are made on behalf of the account holder.

6. Security

You understand the importance of your role in preventing misuse of your Accounts through *Online Banking*, and you agree to promptly examine your statements for each of your Trustco Bank Accounts as soon as you receive them. You agree to protect the confidentiality of your Account and Account number, and your personal identification information, such as your driver's license number and social security number. You understand that personal identification information by itself, or together with information related to your Account, may allow unauthorized access to your Account(s). Data transferred via *Online Banking* is encrypted in an effort to provide transmission security, and *Online Banking* utilizes identification technology to verify that the sender and receiver of *Online Banking* transmissions can appropriately be identified by each other. Notwithstanding our efforts to ensure that the *Online Banking*

system is secure, you acknowledge that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing *Online Banking*, or e-mail transmitted to and from us, will not be monitored or read by others.

7. Fees and Charges

You agree to pay the fees and charges for your use of *Online Banking* as set forth in the current fee schedule below. You agree that all such fees and charges will be deducted from the Trustco Bank Account designated as the "Designated Account". If you close your Designated Account, you must contact us immediately to designate another Account as your Designated Account. You agree to pay any additional reasonable charges for other features/services available through *Online Banking* that you request which are not covered by this Agreement. You are also responsible for telephone and Internet connection fees you incur in connection with your use of *Online Banking*. The current fee schedule is as follows:

There is currently no charge to use *Online Banking*, including the use of transfers, inquiries, and bill paying services.

Telecommunications carrier charges may apply for SMS or text services.

8. Scheduling Transfers

By entering into this Agreement, you are authorizing us to honor your preauthorized transfers. Any attempted payment which exceeds the available balance in your Designated Account may be rejected. One-time transfers or the first in a recurring schedule of transfers, will occur on a Business Day. If a recurring transfer has been previously scheduled to take place and is scheduled to be debited from your Account on a date which is not a Business Day, the transfer will be deducted from the appropriate Account the previous Business Day.

Transfers may be made between Eligible Accounts. An "Eligible Account" is an Account linked to *Online Banking* that does not have withdrawal restrictions, or that requires direct updating by us. Because of withdrawal restrictions, a certificate of deposit and a passbook savings account are not Eligible Accounts. To schedule a transfer of funds between Eligible Accounts, you must provide the Eligible Accounts from and to which the transfer is to be made, the amount to be transferred, and the date or dates the transfer is to be made. Any attempted transfer which exceeds the available balance in the Eligible Account from which the funds are to be transferred will not be made.

Online Banking withdrawals from a savings or money market deposit Account are limited by law to six (6) per month. If the six (6) withdrawals per month limit is exceeded, a penalty fee may be imposed per transaction for those transactions in excess of those allowed by law. If you exceed this limit twice in a twelve (12) month period, your Account will be transferred to a checking Account product.

You acknowledge that *Online Banking* cannot identify or detect, and thus you are responsible for, duplicate payments or transfers that you may initiate. A duplicate payment or transfer is one that is scheduled to be made to the same payee on the same Business Day for the same amount.

At the end of each *Online Banking* session, you will receive an e-mail confirmation message of your requested transaction.

9. Initiation of Transfers

Although you can enter transaction instructions through *Online Banking* seven (7) days a week, 24 hours a day, payments and scheduled transfers can be "initiated" only on Business Days (See Section 1). The date on which a transaction is to be "initiated" is the date on which funds will be deducted from the appropriate Account.

10. Timing of Transfers

Same Day Payments and Transfers

You may schedule a transfer to be initiated on the same day you place your request on *Online Banking*, provided you send the information to us on a Business Day before 9:00 PM EST. Immediate transfers cannot be canceled after the instructions are sent to us. However, you may send a transfer to reverse a previously initiated transfer between Accounts.

Future Transfers

If you schedule a future transfer for a non-Business Day, your transaction will be initiated on the previous Business Day.

Recurring Transfers

You may schedule transfers that do not vary in amount to initiate automatically on a regular schedule of your choice. If you schedule a transfer for a day near the end of the month, and that day does not exist in a particular month, then the transfer will be initiated on the immediately preceding Business Day for that month. If the scheduled recurring transfer falls on a day which is not a Business Day in a particular month, the transaction will be initiated on the previous Business Day. For example, if you schedule a recurring transfer for the fifth (5th) of each month and the 5th of September falls on a Saturday, then your transaction will be initiated on the previous Business Day, Friday, the 4th of September. You may skip a recurring transfer or change the amount of the transaction or cancel the recurring transaction altogether provided this is done by 9:00 PM EST of the scheduled transaction date.

11. Canceling or Changing Transfers

You may use *Online Banking* to change both the amount and the initiation date of any scheduled transfer. A scheduled transfer for the same Business Day, including recurring transfers, may be canceled, changed or rescheduled in this manner any time prior to 9:00 PM EST on the scheduled initiation date. Transfers cannot be canceled after the instruction has been sent to Trustco Bank, as they are processed immediately. However, you may schedule a transfer to reverse the effect of a previously established transfer between Accounts.

12. Reviewing Transfers

Any scheduled future payments or transfers are stored on the Internet server for viewing, and past transfers may be downloaded as transaction history to your PC. You may download up to eighteen (18) months of transaction history to your PC, provided you have been a Trustco Bank *Online Banking* customer for at least that length of time.

13. Balance Inquiries and Account Histories

You may use *Online Banking* to check the balances and recent activity of your Accounts and to download / export Account histories for use with other systems such as QuickBooks® and Quicken®. In order to initiate an inquiry, you must first use your Log-on ID, Password, and Secure Login information to connect to *Online Banking*. Balance information displayed by *Online Banking* during your connection may include "Current Balance" and "Available Balance" information. "Current Balances" may not include pending transactions that will be posted to the system at end of day processing. "Available Balances" may reflect pending charges but may not include deposits in progress, outstanding checks, or other withdrawals, payments or charges, or other items in process. A message on *Online Banking* will indicate if access to Current Available Balance information is unavailable at the time your balance inquiry is made.

Use of *Online Banking* may be supplemented and/or enhanced by use of a one-way connection ("Web Connect") from *Online Banking* to certain FM software (e.g., Quicken® or QuickBooks®) which allows you

to automatically download transactions and match them with existing transactions from your FM software. If you choose to use FM software, you must purchase this software from the software manufacturer, or a retailer of your choice. You must agree to the terms and conditions of the software license agreement(s) during the installation of the FM software on your Computer (or Mobile Device as applicable). You are responsible for the correct set-up and installation of the FM software, as well as maintenance, updates and upgrades to the FM software and/or your Computer (or Mobile Device as applicable). We are not responsible for any problems related to the FM software itself, your Computer (or Mobile Device as applicable) or your ability to connect using the FM software as described in this Agreement.

14. Disclosure of Account Information and Transfers

You understand information about your Accounts or the transfers you make may automatically be disclosed to others, in accordance with applicable law. For example, tax laws require disclosure to the government of the amount of interest you earn, and some transactions, such as large currency and foreign transactions, must be reported to the government. We may also provide information about your Accounts to persons or companies we believe would use the information for reasonable purposes, such as when a prospective creditor seeks to verify information you may have given in a credit application or a merchant calls to verify a check you have written. In addition, we routinely inform credit bureaus when Accounts are closed because they were not handled properly. We may also seek information about you from others, such as the credit bureau, in connection with the opening or maintaining of your Account or in connection with approving your access to *Online Banking*. You agree and hereby authorize all of these transfers of information.

15. Documentation, Verification of Transfers and Periodic Statements

No printed receipts of transactions are issued by Trustco Bank *Online Banking*. Transfers made through Trustco Bank *Online Banking* will be shown on the "Funds Transfer History Screen" on your computer. All of your transfers made through Trustco Bank *Online Banking* will also appear on your printed statement(s) for the Accounts from which and to which transfers are made. You will receive an Account statement(s) at least monthly for any month in which an electronic transfer occurs. You will not receive a separate *Online Banking* statement.

16. Stop Payments

The stop payment feature within *Online Banking* allows you to submit a request to stop payment on *checks* you have written. The *Online Banking* stop payment feature cannot be used to cancel transfers between your Accounts with us or to stop electronic bill payments.

You may withdraw a stop payment order initiated via *Online Banking* only in writing or in person at one of our branch offices.

Your stop payment requests must follow the procedures and specifications established by the Bank. You must provide us with timely, complete and accurate information on the following:

- The number of the account against which the item is drawn
- The check number
- The exact amount (dollars and cents) of the item
- The name of the payee
- The reason for the stop payment

Complete accuracy is essential since stop payment orders are processed by computers operating on the basis of precise data. If any of the required information is incomplete or incorrect, your stop payment order may not be processed, and we will not be responsible for failing to complete the order. The Bank shall not be liable if, as a result of payment of the item subject to this request, other items drawn by you

are returned due to insufficient funds. You will notify us promptly of the issuance of a check or item that is a duplicate of the check or item subject to this stop payment order, or upon the return of the original check. The Bank shall not be liable for payment of any item subject to a stop payment order upon the expiration or withdrawal of such order, and the Bank may, in its discretion, refuse to honor any such item pending your instruction.

Stop payment requests that cover a range of checks that are missing or stolen may be processed by us without regard to the dollar amount. A stop payment order becomes effective when we confirm its receipt and have verified that the item has not been paid. We will not be able to verify this immediately for items paid more than 180 days prior to your request. Stop payment orders on checks are in effect for six (6) months and can be renewed after the six (6) month period upon your written request. Failure to renew the stop payment order may result in the item being paid. Periodically, our systems may be inoperable. If that occurs, you may transmit stop payment orders by telephone instruction. You are advised that under applicable state law, stopping payment on a check may not relieve you of your obligation to pay the check.

17. Alerts

This feature of *Online Banking* is designed to provide real time notification of important information related to your Trustco Bank Account(s), such as a low balance or the occurrence of certain transactions at certain thresholds as you determine. If you subscribe to this feature, you will be asked to select either email or text messaging (SMS) as a method of delivery. You are responsible for any telephone or data charges incurred in connecting to your ISP that gives you access to this alert feature including SMS services.

We do our best to provide alerts in a timely manner with accurate information, but alerts may be delayed or prevented by a variety of factors beyond our control, such as system failures or misdirected delivery. We do not guarantee the delivery or accuracy of alerts, and the contents of an alert may be outdated by the time the alert is sent or received, due to other Account activity or delays in sending data among various systems. You agree to keep your alert contact methods up to date and accurate and further agree that we are not liable for any delays, failure to deliver, or misdirected delivery of any alert, for any errors in the content of an alert or for any actions taken or not taken by you or a third party as the result of an alert. Trustco Bank reserves the right to terminate any request for any alert at any time.

You understand and accept that alerts are not encrypted and while we will never include your Password or full Account number in the alert, we may include limited information about your Account, and anyone with access to your alerts will be able to view the contents of these messages.

18. Change in Terms

We may change any term(s) of this Agreement at any time. If the change would result in increased fees for any *Online Banking* service, increased liability for you, fewer types of available Electronic Fund Transfers, or stricter limitations on the frequency or dollar amount of transfers, we agree to give you notice at least 30 days before the effective date of any such change, unless an immediate change is necessary to maintain the security of an Account or our electronic funds transfer system. We will post any required notice of the change in terms on the Trustco Bank *Online Banking* website or forward it to you by e-mail or by postal mail, or as otherwise required by law. If advance notice of the change is not required, and disclosure does not jeopardize the security of the Account or our electronic funds transfer system, we may notify you of the change in terms within 30 days after the change becomes effective. Your continued use of any or all of the subject *Online Banking* services indicates your acceptance of the change in terms. We reserve the right to waive, reduce or reverse charges or fees in individual situations. You acknowledge and agree that changes to fees applicable to specific Accounts are governed by the applicable Account Rules.

19. ELECTRONIC FUND TRANSFER TERMS AND CONDITIONS APPLICABLE TO PERSONAL CUSTOMERS

The terms and conditions in this Section 19 are only applicable to "Personal Customers," who are owners of "Personal Deposit Account(s)," which mean any checking account, money market account, savings account, certificate of deposit, individual retirement account, or other deposit Account that you have with us, that was established primarily for personal, family or household purposes. These terms apply to all Electronic Fund Transfer ("EFT") transactions initiated via *Online Banking*, including those initiated via services and features associated with *Online Banking* such as mobile banking, as applicable, unless expressly provided otherwise.

Documentation

You will receive the following types of documents regarding your Personal Deposit Accounts:

- a. Statements. You will get a monthly statement covering the Electronic Fund Transfer ("EFT") transactions that you conduct on your Personal Deposit Account (unless there are no EFT transactions in a particular month, in which case you may receive a statement at least quarterly). You agree to review your monthly statement promptly after you receive it in accordance with the terms of this Agreement and the Account Rules. You also agree to tell us promptly about any change in your address, so that we may send your monthly statements to your correct address.
- b. Copies Admissible as Evidence of Transfers. A copy of any documentation provided to you which indicates that an EFT transaction was made shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

Unauthorized EFTs from your Personal Deposit Account(s)

Tell us **AT ONCE** if you believe your access or Log-on ID and/or Password has been stolen or used without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Personal Deposit Account (plus your maximum overdraft line of credit, as available). If you tell us within 2 Business Days after you learn of the loss or theft of your access or Log-on ID and/or Password, you can lose no more than \$50 if someone used your access or Log-on ID and/or password without your permission.

If you do NOT tell us within 2 Business Days after you learn of the theft of your access or Log-on ID and/or Password, and we can prove we could have stopped someone from using your access or Log-on ID and/or Password without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows EFTs that you did not make, including those made using your access or Log-on ID and/or Password (or through other means), tell us at once. If you do not tell us within 60 days after the statement was delivered or otherwise made available to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Contact in Event of Unauthorized Online Banking, Bill Pay or Mobile Banking Transaction

If you believe your access or Log-on ID and/or Password has been lost or stolen or that someone has transferred or may transfer money from your Personal Deposit Account(s) without your permission, call us at 581-377-3311 or 800-670-3110 between the hours of 9:00 A.M. to 6:00 P.M., Monday through Friday, 9:00 A.M. to 1:00 P.M., Saturday, or write us at: Trustco Bank, Attn: Customer Service, P.O. Box 1082, Schenectady, NY 12301-1082.

You should also call the numbers, or write to us at the address, provided above if you believe a transfer has been made using the information from your check without your permission.

In Case of Errors or Questions about Your Electronic Funds Transfers Involving Your Personal Deposit Accounts

Contact us as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- Tell us your name and Personal Deposit Account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

Telephone us at (518) 381-3615 or 1-800-670-3110, Electronic Funds Transfer Desk, or write us at: Trustco Bank, Attn: Manager, Deposit Operations, P.O. Box 1082, Schenectady, NY 12301-1082.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 Business Days.

We will determine whether an error occurred within 10 Business Days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your Personal Deposit Account within 10 Business Days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

If we ask you to put your complaint or question in writing and we do not receive it within 10 Business Days, we may not credit your Personal Deposit Account.

For errors involving new Personal Deposit Accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new Personal Deposit Accounts, we may take up to 20 Business Days to credit your Personal Deposit Account for the amount you think is in error.

We will tell you the results within three Business Days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigations. If we have made a provisional credit, a corresponding debit will be made from your Personal Deposit Account.

Stop Payment of Preauthorized EFTs

If you have told us in advance to make regular, preauthorized EFTs from your Personal Deposit Account(s), you can stop any of these payments. Here's how: call us at (518) 381-3615 or (800) 670-3110 between the hours of 9:00 A.M. to 6:00 P.M., Monday through Friday, 9:00 A.M. to 1:00 P.M., Saturday, or write us at: Trustco Bank, Attn: Customer Service, P.O. Box 1082, Schenectady, NY 12301-1082. In order to stop payment on preauthorized EFTs, we must be notified at least 3 Business Days or more before the regularly scheduled EFT date. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. We will assess to you a fee of \$30.00 for each stop payment order you give.

Liability for Failure to Stop Payment of Preauthorized EFTs from Your Personal Deposit Accounts

If you order us to stop one of these payments from your Personal Deposit Account(s) 3 Business Days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages, subject to the limitations set forth in the Account Rules and elsewhere in this Agreement.

Notice of Varying Amounts of Preauthorized EFTs

If your Personal Deposit Account(s) will be debited by a third party by preauthorized EFTs that may vary in amount, the person (or organization) you are going to pay will tell you at least 10 days before each payment, when it will be made, and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

Direct Deposits

If you have arranged to have direct deposits made to your Personal Deposit Account at least once every 60 days from the same person or company, you can call us at (518) 381-3615 or (800) 670-3110 to find out whether the deposit has been made.

Our Liability for Failure to Make Certain EFTs To or From Your Personal Deposit Accounts

If we do not complete an EFT to or from your Personal Deposit Account on time or in the correct amount, according to our agreement with you, we will be liable only for your losses or damages. However, there are some exceptions to our liability to you. We will NOT be liable, for instance:

- If, through no fault of ours, you do not have enough money in your Personal Deposit Account to make the EFT.
- If a legal order directs us to prohibit withdrawals from the Personal Deposit Account.
- If your Personal Deposit Account is closed, or if it has been frozen.
- If the transfer would cause your balance to go over the credit limit of an established line of credit or the credit limit for any credit arrangement set up to cover overdrafts associated with your Personal Deposit Account.
- If we have reason to believe that you, or anyone authorized by you, is using *Online Banking* or associated services or features for fraudulent or illegal purposes.
- If any electronic terminal, telecommunication device, or any part of the *Online Banking* electronic funds transfer system is not working properly and you knew about the problem when you started the transfer.
- If circumstances beyond our control (such as fire, flood, or interruption in telephone, *Online Banking* or other communication lines) prevent the transfer, despite reasonable precautions that we have taken.

There may be other exceptions and limitations stated in this Agreement and in the Account Rules applicable to your Personal Deposit Accounts.

Disclosure of Deposit Account Information to Third Parties

We will disclose information to third parties about your Personal Deposit Account and/or the transactions you make using the services offered under this Agreement:

- a. Where it is necessary for the completion of a transaction or to resolve errors;
- b. For verification of the existence and condition of your Personal Deposit Account for a credit bureau or merchant;
- c. To comply with government agency, court order or lawful subpoena;
- d. By your written authorization; or
- e. In accordance with our privacy policy.

20. TERMS AND CONDITIONS APPLICABLE TO BUSINESS CUSTOMERS

The terms and conditions in this section of the Agreement are only applicable to Business Customers using *Online Banking* or associated services or features to initiate transactions to or from business deposit Accounts and business credit Accounts. As used in this section, the terms "you" and "your" refer to Business Customers only.

Representations and Warranties

You represent to us that:

- a. *Online Banking* and any associated services or features will be used to effect transactions exclusively for business purposes and not for personal, household or family use;
- b. You are duly organized, validly existing, in good standing and authorized to enter into this Agreement; and

- c. You have taken all necessary corporate actions or other internal approvals necessary to duly appoint all authorized representatives who are given access to *Online Banking* or associated services or features.

Limit on Liability

Trustco Bank's liability to you for any loss, damage and expense related to *Online Banking* and all associated services or features shall not exceed one (1) month's average billing with respect to *Online Banking* and all associated services or features.

Liability for Unauthorized Transactions

If you have reason to believe that your Computer or Wireless Device (as described in this Agreement), access or Log-on ID, Password or any other security code or software has been lost or stolen or that an unauthorized person has used or may attempt to use *Online Banking* or any associated services or features without your permission, you must notify Trustco Bank no later than the close of the following Business Day by calling 518-377-3311 or 800-670-3110 between the hours of 9:00 A.M. and 6:00 P.M., Monday through Friday. If Trustco Bank is not provided with notice as required by this section and we can prove that you could have avoided unauthorized access, you will be liable for the FULL AMOUNT OF THE UNAUTHORIZED TRANSACTION. You also agree to promptly review your Account statements and to report any alleged errors or unauthorized transactions within 60 calendar days.

Use of Services and Computer or Wireless Device in Compliance With These Terms

You agree that if you fail to use *Online Banking* or any associated services or features or your Computer or Wireless Device in compliance with the terms of this Agreement (all of which are considered to be commercially reasonable standards and security procedures), you will accept all liability for any transaction initiated using *Online Banking* or any associated services or features or your Computer or Wireless Device.

Additional Transaction Limits

In addition to the limits discussed elsewhere in this Agreement, you understand that we may limit overdrafts on your deposit Accounts or advances from your credit Accounts, or condition them upon the receipt of financial information or collateral, based upon our credit policies and the terms of our credit relationship with you. Business Customers must provide thirty (30) days notice of intent to terminate *Online Banking* or any associated services or features.

Additional Security Procedures

You agree that the following additional security procedures govern your use of *Online Banking* when accessing your Accounts with us:

- You are liable for all transactions that you or any person you authorize to use your Log-on ID and Password (herein, a "User") make or authorize, even if that person exceeds his/her authority. You will also be liable for all transactions by such a User. You are also liable for any and all unauthorized use that occurs before you have notified us that your Log-on ID, Password and/or Secure Login information, or other access means in your possession or control have been lost or stolen or used without your authority and before we have had a reasonable opportunity to act.
- Your use of *Online Banking* constitutes your agreement that our security procedures are commercially reasonable. You acknowledge and agree that the security procedures are not designed to detect errors in the content of instructions or transactions. You also understand and agree that the security procedures, even when properly implemented by us and by you, do not provide a guarantee against unauthorized access to information or unauthorized transactions. Accordingly, you agree to assume risks in connection with the establishment and/or use of *Online Banking*. Without limiting the generality of the foregoing, you agree that if Account information is accessed, or if an instruction is made (such as a transfer or payment order), by a person using your Log-on ID, Password and/or security information, we may treat that access request or

instruction as being authorized by you (regardless of whether or not it was actually authorized by you), and you agree to be bound by any transactions implemented through those instructions.

- You represent and warrant to us that you have taken all action necessary to access and use *Online Banking* and that any resolutions, certifications, authorizations or other documents submitted to us in connection with *Online Banking* are true, accurate, completed and will be kept up to date. You, and each person you allow to use *Online Banking* on your behalf, also represent and warrant to us that each person whose name is listed during the enrollment or on such other documents is duly authorized to bind the business in all transactions involving *Online Banking*. For any transaction involving *Online Banking*, we may act on the instructions of any persons we believe are authorized to act on your behalf.

YOU AGREE THAT ANY ELECTION YOU MAY MAKE TO WAIVE, CHANGE (WHERE PERMITTED BY US IN OUR SOLE AND EXCLUSIVE DISCRETION) OR DISREGARD THE SECURITY PROCEDURES ASSOCIATED WITH THE SERVICES ARE AT YOUR SOLE RISK. YOU FURTHER AGREE THAT ANY PAYMENT, TRANSFER OR OTHER REQUEST TRANSMITTED OR PURPORTED TO BE TRANSMITTED BY YOU BY WAIVING, CHANGING OR DISREGARDING THE SECURITY PROCEDURES SHALL BE TREATED AS AUTHORIZED, AND YOU SHALL BE RESPONSIBLE FOR ANY LOSS RESULTING IN WHOLE OR IN PART FROM SUCH WAIVER.

Additional Business / Non-Consumer Customer Responsibilities

You represent and warrant that you are not a "consumer" pursuant to the terms of the Electronic Funds Transfer Act and that you will not use *Online Banking* for personal, family or household purposes.

To the extent not prohibited by law, you agree to indemnify and hold the Bank harmless upon demand from any loss, cost, damages or expenses (including without limitation attorneys' fees and expenses at trial and through appellate action) caused by your mistake, omission, or failure to exercise reasonable care or to comply with this Agreement or the Account Rules. You will also indemnify and hold the Bank harmless upon demand for any loss, cost, damages, consequences or expenses suffered as a result of any action brought by any third party against the Bank (including without limitation attorneys' fees and expenses at trial and through appellate action) relating to any action taken or not taken by the Bank in connection with this Agreement, unless the Bank shall ultimately be held to have acted with gross negligence or willful misconduct.

If you, the customer, are a corporate entity, you hereby represent and warrant to the Bank that: (i) you have full corporate power to enter into this Agreement and to carry out your obligations hereunder, (ii) the execution and delivery of this Agreement has been duly and validly authorized by you, the customer; (iii) any authorized users have been duly and validly authorized by the customer to engage in the banking transactions and activities included in *Online Banking*; (iv) no other corporate acts or proceedings on the part of you, the customer, will be necessary to authorize the performance of this Agreement; and (v) subject to applicable bankruptcy, insolvency and moratorium laws as well as principles of equity, this Agreement constitutes a valid and legally binding obligation of you, the customer, enforceable against it in accordance with its terms.

Receipt and Inspection of Business Account Statements

You will continue to receive regular Account statements that describe all transactions for your Accounts with us, including the transactions that you have initiated through *Online Banking*. You are responsible for reviewing the transaction reports we provide on-line and your monthly statements to detect unauthorized or suspicious transactions. In addition to any other provision hereof regarding authorization of transactions using *Online Banking*, all transactions will be deemed to be authorized by you and to be correctly executed thirty (30) days after we sent or made available to you a statement or otherwise provided you with information showing that transaction, unless you have provided written notice that the transaction was unauthorized or erroneously executed within that period. You also agree to tell us promptly about any change in your address, so that we may send your monthly statements to your correct address.

To notify us, contact our Customer Service Department by telephone locally at 518-381-3615 or toll free at 1-800-670-3110. You may also write to Trustco Bank, Operations Manager, P.O. Box 1082, Schenectady, NY 12301-1082 or visit any of our branch locations.

A copy of any documentation provided to you that indicates that an electronic funds transfer was made shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

21. Disclaimer of Warranty and Limitation of Liability

We make no warranty of any kind, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, in connection with the *Online Banking* services provided to you under this Agreement. We do not and cannot warrant that *Online Banking* will operate without errors, or that any or all *Online Banking* services will be available and operational at all times. Except as specifically provided in this Agreement, or otherwise required by law, you agree that our officers, directors, employees, agents or contractors are not liable for any indirect, incidental, special or consequential damages under or by reason of any *Online Banking* or products provided under this Agreement or by reason of your use of or access to *Online Banking*, including loss of profits, revenue, data or use by you or any third party, whether in an action in contract or tort or based on a warranty. Further, in no event shall the liability of Trustco Bank and its affiliates exceed the amounts paid by you through *Online Banking*.

22. Termination

You may cancel your *Online Banking* service(s) with written notice at any time by writing to Trustco Bank, Operations Manager, at P.O. Box 1082, Schenectady, NY 12301-1082;

You must notify us at least ten (10) Business Days prior to the date on which you wish to have your participation in *Online Banking* terminated. If you have scheduled payments or transfers with an initiation date within the ten (10) day period, you also must separately cancel those payments and transfers.

We may have the right to terminate at any time your access to *Online Banking*, in whole or in part, without prior notice, unless otherwise required by applicable law. Termination will not affect your liability or obligations under this Agreement or other agreements, or for transactions we have processed on your behalf. Termination of this Agreement does not terminate your Account(s) with Trustco Bank. Closing the Account(s) that you access with *Online Banking* will simultaneously terminate this Agreement.

23. Communications between Trustco Bank and You

Unless this Agreement provides otherwise, you can communicate with us in any one of the following ways:

- Telephone: 518-381-3615 or 1-800-670-3110
- Write to Trustco Bank, Operations Manager, P.O. Box 1082, Schenectady, NY 12301-1082
- In Person - You may visit us at any one of our banking locations during banking hours.

If you believe an unauthorized transfer of funds has been or may be made, please notify us immediately by any of the above methods (also see Section 22).

24. Consent to Electronic Delivery of Notices

Subject to applicable law, you agree that any notice or other type of communication provided to you pursuant to the terms of this Agreement, and any future disclosures required by law, including Electronic Funds Transfers disclosures, may be made electronically by posting the notice on the Trustco Bank

Online Banking website or by e-mail. In addition, where required by law, a paper copy of any required disclosure or notice of change will be mailed or delivered to you. You agree to notify us immediately of any change in your e-mail or mailing address.

25. Inactivity

If you do not use *Online Banking* (either account access or bill payment) for an extended period, we reserve the right to terminate your access to *Online Banking* and request that you re-register for *Online Banking* to reactivate the services.

26. Electronic Communications

Internet email communication is not considered to be a secure form of communication. For Bank account inquiries, you agree to contact us electronically using only the secure messaging feature within *Online Banking*.

27. Third-Party Services

As an additional service, *Online Banking* may occasionally provide links to web pages provided by third parties. When you access those web pages provided by third parties, you are leaving the Bank's secure website. Some of those pages may not be secure. Each of those websites will operate under its own privacy policy. You are solely responsible for reviewing the privacy policy on each website and providing only that information you believe is appropriate to share with the provider of that website.

Our site may include promotional materials via links to web pages provided by third parties from whom you may purchase certain goods or services. You understand that we do not operate or control the products or services. The party providing each product or service is responsible for all aspects of order processing, fulfillment, billing and customer service. We are not a party to the transactions entered into between you and those third parties. You agree that your use of any such service is AT YOUR SOLE RISK AND IS WITHOUT WARRANTIES OF ANY KIND BY TRUSTCO BANK, EXPRESSED, IMPLIED OR OTHERWISE INCLUDING WARRANTIES OF TITLE, FITNESS FOR PURPOSE, AND MERCHANTABILITY OR NONINFRINGEMENT. UNDER NO CIRCUMSTANCES ARE WE LIABLE FOR ANY DAMAGES ARISING FROM THE TRANSACTIONS BETWEEN YOU AND OTHER SITES LINKED TO OUR SITE.

28. Information Provided by You

You represent and warrant that all information you provide to us is accurate, complete, and current information for eligibility, application, registration, payment and all other purposes. If, at any time, any information you have provided us becomes inaccurate, you agree to promptly provide us the additional information necessary to make the information you previously provided true and complete in all material respects. You are responsible for all statements made and acts that occur through the use of your Log-on ID and Password, and for all instructions entered through and under your Log-on ID and Password, including those submitted on your behalf by Users, as applicable.

29. Compliance

You and we agree to comply with (i) the Account Rules, and (ii) all applicable laws, regulations, rules and orders, including without limitation all applicable National Automated Clearing House Association ("NACHA") rules, regulations, and policies, the Uniform Commercial Code ("UCC"), the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") requirements, and all applicable laws, regulations and orders administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

30. Customer Identification Program

You agree to provide to us, before we begin providing any part of *Online Banking* to you, any and all information required to comply with applicable law and our policies and procedures relating to customer identification. If you are a non-consumer customer, such information may include, without limitation, official certificates of your existence, copies of your formation agreements and business resolutions or equivalent documents in a form acceptable to us, authorizing you to enter into this Agreement, to receive the *Online Banking* services from us pursuant hereto and to designate certain individuals as authorized to act on your behalf.

31. Amendment

We have the right to modify or amend this Agreement from time to time, subject to applicable law. Any modifications or amendments by Trustco Bank shall be effective thirty (30) days after Trustco Bank sends notice of the amendments to you.

32. Internet Gambling

You agree not to process transactions that are restricted under the Unlawful Internet Gambling Enforcement Act (UIGEA). Internet gambling transactions are prohibited and should not be processed through any accounts.

33. Force Majeure

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

34. Non-Waiver

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

BILL PAYING TERMS

This section describes the terms that apply to your use of Trustco Bank's bill paying service, available through *Online Banking*. You may use Trustco Bank's bill paying service to direct Trustco Bank to make payments from your designated checking Account to the Payees you choose in accordance with this section. The terms and conditions of this section are in addition to the other terms of the Agreement, as applicable, and the Account Rules.

"You" or "your" in this section means each person who is authorized to use the bill paying service.

"Payee" means anyone, including Trustco Bank, that you designate and that Trustco Bank accepts as a payee.

There are no fees for use of Trustco Bank's bill paying service by Personal Customers, or by Business Customers with "Basic Business Banking Services" (contact us for further information regarding our "Basic Business Banking Services").

HOW TO SET UP PAYEES/PAYMENTS

You must complete a bill paying enrollment form. IF YOU WANT TO ADD A NEW PAYEE, USE "SETUPACCOUNTS/PAYEE" ON THE INTERNET OR SPEAK TO A SERVICE REPRESENTATIVE. You may add a new fixed payment to a Payee, only if the Payee is on your authorized list of Payees, and by accessing the bill paying service and entering the appropriate information. Most other additions, deletions, or changes can be made in writing or by using the bill paying service. Trustco Bank reserves the right to refuse the designation of a Payee for any reason. Each Payee accepted by Trustco Bank will be assigned a Payee code. You may pay any Payee you wish that is located in the United States. Trustco Bank is not responsible if a bill payment cannot be made due to incomplete, incorrect, or outdated information provided by you regarding a Payee or if you attempt to pay a Payee that is not on your authorized Payee list.

THE BILL PAYING PROCESS

Single Payments

A single payment will be processed on the Business Day (any day except Saturday, Sunday and Federal holidays) that you designate as the payment's process date, provided the payment is submitted prior to the daily cut-off time on that date. The daily cut-off time is currently 3:00 PM. A single payment submitted after the cut-off time on the designated process date will be processed on the following Business Day. If you designate a non-Business Day (generally weekends and certain holidays) as the payment's process date, the payment will be processed on the first Business Day following the designated process date.

Recurring Payments

When a recurring payment is processed, it is automatically rescheduled by the system. Based upon your selected frequency settings for the payment, a process date is calculated for the next occurrence of the payment. If the calculated process date is a non-Business Day (generally weekends and certain holidays), it is adjusted based upon the following rules:

If the recurring payment's "Pay Backward" option is selected, the process date for the new occurrence of the payment is adjusted to the first Business Day prior to the calculated process date. If the recurring payment's "Pay Backward" option is not selected (or if the "Pay Backward" option is not available), the process date for the new occurrence of the payment is adjusted to the first Business Day after the calculated process date.

Note: If your frequency settings for the recurring payment specify the 29th, 30th, or 31st as a particular day of the month for processing and that day does not exist in the month of the calculated process date, then the last calendar day of that month is used as the calculated process date.

For single and recurring payments, YOU MUST ALLOW AT LEAST FIVE (5) BUSINESS DAYS, PRIOR TO THE DUE DATE, for each bill payment to reach the Payee. (For mid-west subscribers, allow 7 days, and for west-coast subscribers, allow 8 days.) Any bill payment can be changed or canceled, provided you access the bill paying service prior to the cut-off time on the Business Day prior to the Business Day the bill payment is going to be initiated.

You agree to have available and collected funds on deposit in the Account you designate in amounts sufficient to pay for all bill payments requested, as well as any other payment obligations you have to Trustco Bank. Trustco Bank reserves the right, without liability, to reject or reverse a bill payment if you fail to comply with this requirement or any other terms of this section. If you do not have sufficient funds in the Account and Trustco Bank has not exercised its right to reverse or reject a bill payment, you agree to pay for such payment obligations on demand. You further agree that Trustco Bank, at its option, may charge any of your Accounts with Trustco Bank to cover such payment obligations.

Trustco Bank reserves the right to change the cut-off time. You will receive notice of such changes.

LIABILITY

You are solely responsible for controlling the safekeeping of and access to your Personal Identification Number (PIN) or Password. You are liable for all transactions you make or that you authorize another person to make even if that person exceeds his or her authority. If you want to terminate another person's

authority, you must notify Trustco Bank and arrange to change your PIN. You will be responsible for any bill payment request you make that contains an error or is a duplicate of another bill payment. Trustco Bank is not responsible for a bill payment that is not made if you did not properly follow the instructions for making a bill payment. Trustco Bank is not liable for any failure to make a bill payment if you fail to promptly notify Trustco Bank after you learn that you have not received credit from a Payee for a bill payment. Trustco Bank is not responsible for your acts or omissions or those of any other person, including, without limitation, any transmission or communications facility, and no such party shall be deemed to be Trustco Bank's agent. In any event, Trustco Bank will not be liable for any special, consequential, incidental, or punitive losses, damages, or expenses in connection with these terms, the Agreement or the bill paying service, even if Trustco Bank has knowledge of the possibility of them. Trustco Bank is not liable for any act, failure to act or delay in acting if it is caused, in whole or in part, by any cause beyond Trustco Bank's reasonable control.

Amendment and Termination

Trustco Bank has the right to change these terms at any time by notice mailed to you at the last address shown for the Account on the Bank's records, by posting notice in branches of Trustco Bank, or as otherwise permitted by law.

Trustco Bank has the right to terminate the Agreement or these terms at any time. You may terminate this Agreement or terms by written notice to Trustco Bank. Trustco Bank is not responsible for any fixed payment made before Trustco Bank has a reasonable opportunity to act on your termination notice. You remain obligated for any payments made by Trustco Bank on your behalf.

Additional Charges for Customer requested Services and Other Items

These charges will only be assessed if you request one or more of the services listed here. There will be NO charge for any item if it is a result of an error by Trustco Bank.

Stopped Check Request: \$30.00

Trustco Bank reserves the right to charge you for research time involving payments no longer available in your screen history. You will be informed of any such charges before they are incurred.

Some bill payments are processed by EFT. Please see the Electronic Fund Transfers Disclosure Statement included in this Agreement, or, received when you opened your Account, which discloses important information concerning your rights and obligations.

MOBILE BANKING TERMS

This section sets forth additional terms and conditions that will apply to your use of Trustco Bank's mobile banking service (or "Mobile Banking" or the "Service" in this section). When you use Mobile Banking, you will remain subject to all of the terms and conditions of all of your existing agreements with us, our affiliates and/or any unaffiliated service providers, including, but not limited to, all terms and conditions applicable to Trustco Bank's *Online Banking*, and the terms and conditions applicable to the associated bill paying service (referred to here as the "Bill Pay Terms"), except where modified or supplemented by this section. Capitalized terms defined in those agreements that are not defined in this section have the same meaning here. You understand that those agreements may include fees, limitations and restrictions which may impact your use of Mobile Banking. If there is a conflict between the terms for *Online Banking* or the Bill Pay Terms and this section, these terms will govern your use of Mobile Banking to the extent of the conflict.

Definitions

In addition to other definitions provided elsewhere in this section and the Agreement, the following defined terms shall apply:

Mobile Banking. Mobile Banking refers to the use of a smartphone or other eligible mobile device to perform certain electronic banking tasks while away from your home computer, such as monitoring certain

account balances, transferring funds between certain accounts, paying bills and locating an ATM or branch location.

Mobile Apps. Mobile Apps is a downloadable application designed to run on smartphones, tablet computers and other mobile devices, through which the Service may then be accessed.

Mobile Web. Mobile Web is defined as the mobile-optimized version of the authenticated portions of the designated Trustco Bank website through which the Service may be accessed from any web-enabled Mobile Device.

Short Message Service (SMS) "text messaging" is a text messaging service component of Mobile Banking that uses standardized communication protocols to allow fixed line or Mobile Devices to exchange short text messages regarding your Mobile Banking Accounts.

"Account(s)" means any Personal Deposit Account(s), Personal Credit Account(s), Business Deposit Account(s) or Business Credit Account(s). An "Eligible Account" is an Account linked to *Online Banking* that does not have withdrawal restrictions, or that requires direct updating by us. Because of withdrawal restrictions, a certificate of deposit and a passbook savings account are not Eligible Accounts.

"Business Credit Account(s)" means any business-purpose loan, line of credit, or other credit facility that you have with us. You understand and agree that your Business Credit Account(s) will not be used for personal, family or household purposes.

"Business Deposit Account(s)" means any business-purpose checking account, money market account, savings account, certificate of deposit, or other deposit account that you have with us. You understand and agree that your Business Deposit Account(s) will not be used for personal, family or household purposes.

The words **"Electronic Fund Transfer"** (or **"EFT"**) are used in these Mobile Banking Terms as defined in the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and Consumer Financial Protection Bureau Regulation E (12 C.F.R. Part 1005), each as may be amended from time to time, to mean a transfer of funds initiated by a computer or Wireless Device to or from your Personal Deposit Account(s) with us.

"Personal Credit Account(s)" means any home equity line of credit, home equity loan, installment loan, line of credit, or mortgage that you maintain with us that was established primarily for personal, family or household purposes.

"Personal Deposit Account(s)" means any checking account, money market account, savings account, certificate of deposit, individual retirement account, or other deposit account that you have with us, that was established primarily for personal, family or household purposes.

"Wireless Device" means (a) a web-enabled cell phone, tablet or other handheld mobile device whose network allows secure SSL traffic using the software that supports Mobile Banking, and (b) that you register with Trustco Bank for use with the Service.

System Requirements

Below are the system and device requirements for Mobile Banking:

1. An iPhone running iOS or later or Android device running Android 1.6 or later is required in order to download the native applications (the Mobile Apps) available in the Apple App Store and Google Play Store.
2. Any Mobile Device with an Internet connection can access the Service through the Mobile Web version at <http://www.trustcobank.com/>.

ENROLLING IN MOBILE BANKING

Eligibility

The Service is available for Personal and Business Customers of Trustco Bank.

Enrollment

In order to use Mobile Banking, you must: (a) be enrolled in Trustco Bank's *Online Banking*, (b) have a Wireless Device and (c) register while logged in to Trustco Bank's *Online Banking*. Although the Service is phone device agnostic and will work with most Wireless Devices, the enrollment process may require you to provide information about the Wireless Device that you will use for the Service, as well as the telephone number for your Wireless Device, the telecommunications carrier that provides service to your Wireless Device, and your email address. Enrollment requires identification of your banking relationship with Trustco Bank as well as verification of your Wireless Device. The Wireless Device verification is completed by you receiving an SMS message with a verification code on your Wireless Device that you will have to enter on the *Online Banking* website. If you use a handheld mobile device other than your Wireless Device to access Mobile Banking, all SMS text messages originating from the Service will be sent to the Wireless Device you entered and verified when registering for the Service. ***It is your responsibility to provide us with accurate, complete and current information about you and your Wireless Device (including its telephone number, and your email address), and to notify us immediately if any of this information changes or if service to your Wireless Device is terminated.*** We reserve the right to refuse or cancel your registration for Mobile Banking if we cannot verify information about you and/or your Wireless Device.

Standard Data and Text Messaging Rates Apply

You understand that the standard data and text messaging rates charged by the telecommunications carrier providing service for your Wireless Device apply when you use your Wireless Device to enroll in and use the Service.

Representations, Warranties and Covenants

When you use Mobile Banking to access Accounts you designate during the enrollment process (each Account so designated being a "Mobile Banking Account"), you agree to the following:

(a) Representations and Warranties. When enrolling in and using the Service, you represent and warrant that:

- i. You are the legal owner of the Mobile Banking Accounts and other financial information that may be accessed via the Service; and
- ii. All information you provide to us in connection with the Service is accurate, current and complete, and that you have the right to provide such information.

(b) Covenants and Agreements. When enrolling in and using Mobile Banking, you covenant and agree that:

- i. You will not misrepresent your identity or your Account information;
- ii. You will keep your Account information up-to-date and accurate;
- iii. We and our service providers may send you, by Short Message Service ("SMS") text message, email, and other methods, communications relating to the Service (with an opportunity to opt-out where required by applicable law), including without limitation welcome messages, information and requests for information relating to use of Mobile Banking, *Online Banking* and other ancillary services;
- iv. You will use the Service carefully, keep your access or Log-on ID, Password and other credentials required to log-in to the Service confidential and secure and not share that information with others;
- v. You will check your statements and transactions regularly, report any errors to us promptly by visiting your local Trustco Bank branch or calling us at 1-800-670-3110 between the hours of 9:00 A.M. to 6:00 P.M., Monday through Friday, 9:00 A.M. to 1:00 P.M., Saturday, and cancel immediately your participation in the Service if you observe any material errors in the Service; and
- vi. If you use any location-based feature for Mobile Banking, you agree that your geographic location and other personal information may be accessed and disclosed through the Service. If you wish to revoke access to such information, you may cease using location-based features of Mobile Banking.

Proper Use of Mobile Banking

Mobile Banking will not work unless you use it properly. You accept responsibility for making sure that you understand how to use your Wireless Device and the Service and applicable associated software / application (the "Software") before using it, and that you always use it in accordance with any online instructions that may be delivered to you. From time to time we may change, upgrade, or add new features to Mobile Banking. In the event of such changes, you are responsible for making sure that you understand how to use the updated or changed version of the Service and/or Software. We will not be liable to you for any losses caused by your failure to properly use Mobile Banking or your Wireless Device. You agree to exercise caution when utilizing Mobile Banking and to use good judgment and discretion when obtaining or transmitting information.

Relationship of these Mobile Banking Terms to Other Agreements

You agree that when you use Mobile Banking, you remain subject to the terms and conditions of the *Online Banking* service and the Bill Pay Terms, the agreements associated with your Personal and Business Deposit Accounts (the "Deposit Account Agreement(s)") and your Personal and Business Credit Accounts (the "Credit Account Agreement(s)") and any and all other existing agreements with us and our affiliates. You also agree that you will continue to be subject to the terms and conditions of your existing agreements with any unaffiliated service providers, including, but not limited to, the telecommunications carrier for your Wireless Device, and you understand that your use of Mobile Banking and these terms do not amend or supersede any of the agreements with these telecommunications carriers (such agreements being your "Wireless Device Agreements"). You understand that your Wireless Device Agreements may provide for fees, limitations and restrictions which might impact your use of Mobile Banking (for example, they may impose data usage or text message charges for your use of or interaction with the Service, including while downloading the Software, receiving or sending Mobile Banking text messages and alerts, or other use of your Wireless Device when using the Software or other products and services provided by Mobile Banking). You agree to be solely responsible for all such fees, limitations and restrictions. You agree that only your mobile service carrier or provider is responsible for its products and services, and that your mobile service carrier is not the provider of the Service. Accordingly, you agree to resolve any problems with your carrier or provider directly with your carrier or provider without involving us. You also agree that if you have any problems with Mobile Banking, you will contact us directly.

MOBILE BANKING TRANSACTIONS

You may use Mobile Banking to initiate the following types of transactions to or from your Mobile Banking Accounts through your Wireless Device (each, a "Mobile Banking Transaction"):

1. View Limited Transaction History: To view balances and recent transactions for your Mobile Banking Accounts.
2. Make One-Time Transfers Between Your Mobile Banking Accounts: To make immediate, one-time transfers of funds between your Mobile Banking Accounts (each such transfer a "Mobile Transfer"). You may transfer any amount of your available balance (as defined in your Deposit Account Agreement) per Mobile Transfer as long as the transaction does not cause your available balance in the Mobile Banking Account to be debited to be less than zero. Mobile Transfers received by 9:00 P.M. will be effective on the current Business Day. Mobile Transfers made after this cut-off time or any time on a Saturday, Sunday or federal holiday will be effective the following Business Day. You are not able to schedule future or recurring transfers with the Service, or to make two or more transfers from one Mobile Banking Account to a second Mobile Banking Account in exactly the same amount between the cut-off hour on one Business Day and the cut-off hour on the next Business Day. If you attempt to make two such identical transfers, only the first transfer will be transmitted.
3. Initiate Mobile Bill Pay Transactions: If you are enrolled in the Trustco Bank bill paying service ("Bill Pay Service"), you may use Mobile Banking to pay a bill from the Mobile Banking Account that you have designated as your payment Account under the terms of our Bill Pay Terms (which are incorporated into and made a part of these Mobile Banking terms). Each Bill Pay Service transaction that you initiate through your Wireless Device will be considered a "Mobile Bill Pay Transaction. You may also use Mobile Banking to view, edit and delete pending Mobile Bill Pay Transactions. You must maintain your payment

Account in good standing with us in order to perform Mobile Bill Pay Transactions. If your payment Account is closed for any reason, we will suspend or terminate your right to initiate Mobile Bill Pay Transactions. You may initiate Mobile Bill Pay Transactions in amounts up to the available balance (as defined in the Deposit Account Agreement) in your payment Account. For security reasons, we may limit the frequency and dollar amount of Mobile Bill Pay Transactions from your payment Account. You may not set-up or initiate Mobile Bill Pay Transactions to any new Payees that are not currently on your Payee list as established pursuant to our Bill Pay Terms. You may not establish (or delete or edit any pending) recurring Mobile Bill Pay Transactions through Mobile Banking.

4. **Text Message Alerts:** Trustco Bank also offers its Personal and Business Customers access to certain Account information (e.g., for checking balances and last transactions) through SMS text messages, as well as the option to set up alerts for certain Accounts (e.g., low balance alerts). Additionally, Personal and Business Customers may select the type of alerts and other preferences which will determine, together with their account data, the frequency of alerts delivered to them. **Standard messaging charges apply if you enroll to receive such alerts, and you will be allowed to opt out of this program at any time.** To stop the messages from coming to your Wireless Device, you can opt out by sending a text that says "STOP" to this number: 469228. You'll receive a one-time opt-out confirmation text message. After that, you will not receive any future messages.

LIMITATIONS ON MOBILE BANKING TRANSACTIONS

Regulatory Limits

Because regulations require Trustco Bank to limit certain types of transfers from your savings Accounts, the following limitations apply:

(a) **Statement Savings Accounts.** You can make no more than six (6) transfers per statement period by preauthorized or automatic transfer or by telephone or through Mobile Banking from a statement savings Account (transfers to such an Account are unlimited).

(b) **Money Market Accounts.** You can make no more than six (6) transfers per statement period by preauthorized or automatic transfer or by telephone or through Mobile Banking from a money market Account.

Dollar and Frequency Limitations on Transfers

Funds can be transferred immediately or on a future date between your Personal Deposit Accounts, or between your Business Deposit Accounts, where they are Mobile Banking Accounts. We reserve the right to limit the frequency and dollar amount of transfers for security reasons. You may transfer any amount of your available balance (as defined in the Deposit Account Agreement) per transaction, as long as the transaction does not cause the available balance in your Personal or Business Deposit Account to be less than zero.

Wireless Device Limitations

The Service and some Mobile Banking Transactions may not be available on all types of Wireless Devices. You also understand and agree that Mobile Banking may not be accessible or may have limited utility over some mobile networks, such as while roaming.

Changes to Mobile Banking

We reserve the right to modify the scope of the Service at any time. We reserve the right to refuse to make any Mobile Banking Transaction you request.

Availability

You can use your Wireless Device to access Mobile Banking 24 hours a day, 7 days a week. However, your access to *Online Banking* and Mobile Banking may be restricted during regular maintenance periods and any special maintenance periods. We may process requests for Mobile Transactions only on Business Days. The cut-off times for your Mobile Transactions are disclosed above. Any requests for a Mobile Transaction received after these cut-off times will be processed on the next Business Day.

MOBILE BANKING SOFTWARE LICENSE AGREEMENT

License

Subject to your compliance with these Mobile Banking terms, you are hereby granted a personal, limited, non-transferable, non-exclusive, non-sub licensable and non-assignable license ("License") to download, install and use the applicable Software on your Wireless Device within the United States and its territories. In the event that you obtain a new or different Wireless Device, you may be required to download and install the Software to that new or different Wireless Device.

License Restrictions / Revocation

This License shall be revoked immediately upon any of the following events:

- a. Your termination of Mobile Banking;
- b. Your deletion of the Software from your Wireless Device;
- c. Your noncompliance with these Mobile Banking terms; or
- d. Our written notice to you at any time, with or without cause, terminating your License and right to use the Software.

In the event this License is revoked for any of the foregoing reasons, you agree to promptly delete the Software from your Wireless Device and/or discontinue use. We and our service providers (which includes, without limitation, any provider of the Software) reserve all rights not granted to you in these Mobile Banking terms.

Scope of License / Limits on Your Use of Software

The Software shall be used solely in connection with Mobile Banking and may not be used by you for any other reason. You may not grant any sublicenses to the Software. You agree that you will not:

- a. Modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Software;
- b. Copy or reproduce all or any part of the technology or Software,
- c. Resell or make commercial use of the Software; or
- d. Interfere, or attempt to interfere with the technology or Software.

The Software does not include various third party operating systems and applications that will be required to use the Software. You will be solely responsible for such third party software.

Confidentiality of Software

You acknowledge that the Software contains trade secrets and other proprietary and confidential information, whether or not the Software contains any copyright or other proprietary notice. You agree to take commercially reasonable precautions to protect the confidentiality of the Software. You agree that you will:

- a. Not print, copy, or duplicate any portion of the Software;
- b. Not alter any copyright notices on the Software;
- c. Not make the Software available in any form to anyone except your agents for purposes specifically related to your authorized use;
- d. Take appropriate action with any persons permitted access to the Software to inform them of the confidential nature thereof and to obtain their compliance with the terms of this part of these Mobile Banking terms;
- e. Only use the Software for your personal use and not for the benefit of any other person or entity; and
- f. Comply with all of our procedures and requirements for use of the Software.

The provisions of this part of these Mobile Banking terms will survive termination of these Mobile Banking terms and the Service.

General Conduct in Use of Mobile Banking

You agree not to use Mobile Banking or the content or information delivered through Mobile Banking in any way that would:

- a. Infringe any third-party copyright, patents, trademark, trade secret, or other proprietary rights or rights of publicity or privacy, including any rights in the Software;
- b. Be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of Mobile Banking to impersonate another person or entity;
- c. Violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising);
- d. Be false, misleading or inaccurate;
- e. Create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers;
- f. Be defamatory, trade libelous, unlawfully threatening or unlawfully harassing;
- g. Potentially be perceived as illegal, offensive or objectionable;
- h. Interfere with or disrupt computer networks connected to Mobile Banking;
- i. Interfere with or disrupt the use of Mobile Banking by any other user; or
- j. Constitute and attempt to gain unauthorized entry or access to the computer systems of others.

Export Control

You acknowledge that the Software is subject to the United States (U.S.) government export control laws and regulations, which may restrict or prohibit the use, export, re-export, or transfer of the Software. You agree that you will not directly or indirectly use, export, re-export, or transfer the Software except in compliance with applicable U.S. export laws and regulations. Without limitation, you agree that you will not use Mobile Banking in any embargoed or sanctioned country.

CHARGES FOR MOBILE BANKING

You agree to pay for the Service in accordance with our current fee schedule or list of charges, as amended from time to time. We will advise you of any fee changes prior to implementing them, as required by applicable law. You authorize us to automatically charge your primary checking Account for all such fees incurred in connection with Mobile Banking. In the future, we may add to or enhance the features of Mobile Banking. By using such added or enhanced features, you agree to pay for them in accordance with our fee schedule.

MISCELLANEOUS

Use of Aggregate Data

We and our service providers will use information you provide for purposes of providing the Service and to prepare analyses and compilations of aggregate customer data that does not identify you individually (such as the number of customers who signed up for Mobile Banking in a month).

Third Party Disclosure of Account Information

Neither we, nor any of our service providers, assume responsibility for any disclosure of Account information by third parties (such as the telecommunications carrier for your Wireless Device) or for the timeliness, deletion, misdelivery or failure to store any user data, communications, or personalization settings in connection with your use of your Wireless Device or the Service.

Wireless Device Functionality

Neither we, nor any of our service providers, assume responsibility for the operation, security, functionality or availability of any Wireless Device or mobile network that you utilize to access Mobile Banking.

Synchronization of Mobile Banking and Online Banking Service

Information about activity on your Accounts is synchronized between the Software and Trustco Bank's *Online Banking*. Information about your Accounts and transactions that is made available through the Software may differ from the information that is available through *Online Banking* or other customer service options available to you. Information available through *Online Banking* or other customer service options may not be available via the Software, may be described using different terminology, or may be more current than the information available via the Software (including but not limited to Account balance information). The method of entering instructions to use Mobile Banking may differ from the method of entering instructions to use *Online Banking*. We are not responsible for such differences, whether or not attributable to your use of the Software. Additionally, you agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions you may take in reliance thereon.

Cancellation

You may cancel your participation in Mobile Banking by texting us at 469228 or by calling us at (518)381-3615 or (800)670-3110 between the hours of 9:00 A.M. to 6:00 P.M., Monday through Friday, 9:00 A.M - 1:00 P.M, Saturday. We reserve the right to change or cancel the Service at any time without notice. We may also suspend your access to Mobile Banking at any time without notice and for any reason including but not limited to, your non-use of the Service. You agree that we will not be liable to you or any third party for any modification or discontinuance of the Service.

Changing These Mobile Banking Terms or the Service

We may make changes to these Mobile Banking terms and the Service made available under these Mobile Banking terms at any time. We will provide you with notice of any such amendments as may be required by applicable law. Your continued use of Mobile Banking following the effective date of a change signifies your acceptance of the change.

Changes to Your Contact Information

It is solely your responsibility to ensure that the contact information you have provided to us is current and accurate. This includes not only the telephone number and telecommunications carrier for your Wireless Device, but also your name, address, other phone numbers and email address(es).

Third Party Beneficiary

You agree that our service providers may rely upon your agreements and representations in these Mobile Banking terms, and such service providers are third party beneficiaries of these Mobile Banking terms, with the power to enforce its provisions against you.

Indemnification

You agree to indemnify, defend, and hold us and our affiliates and service providers harmless from and against any and all third party claims, liability, damages, expenses and costs (including, but not limited to, reasonable attorneys' fees) caused by or arising from your use of Mobile Banking, your violation of these Mobile Banking terms, your violation of applicable law, or your infringement (or infringement by any other user of your account) of any intellectual property or other right of anyone.

Limitations and Warranty Disclaimers

We and our service providers disclaim all warranties relating to the Service or otherwise in connection with these Mobile Banking terms, whether oral or written, express, implied or statutory, including, without limitation, the implied warranties of merchantability, fitness for particular purpose and non-infringement. Neither we nor our service providers will be liable to you or any third party for any indirect, incidental, exemplary, special, punitive or consequential damages of any kind, or for any loss of profits, business, or data, whether based in statute, contract, tort or otherwise, even if we or our service providers, as applicable, have been advised or, or have reason to know of, the possibility of such damages. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

MOBILE DEPOSIT TERMS

This section sets forth additional terms and conditions that apply to your use of Trustco Bank's mobile deposit service ("Mobile Deposit"). When you use Mobile Deposit, you will remain subject to the terms and conditions of all of your existing agreements with us, our affiliates and/or any unaffiliated service providers, including, but not limited to, all terms and conditions applicable to Trustco Bank's Online Banking and Mobile Banking, except where modified or supplemented by this section. Capitalized terms defined in those agreements that are not defined in this section have the same meaning here. You understand that those agreements may include fees, limitations and restrictions that may not impact your use of Mobile Deposit. If there is a conflict between the terms for Online Banking or Mobile Banking and this section, these terms will govern your use of Mobile Deposit to the extent of the conflict.

Mobile Deposit Service. Mobile Deposit is designed to allow you to make deposits of paper checks ("Original Checks") to the Personal Deposit Account(s) (or such other deposit account(s) as we may permit from time to time) that you designate during the enrollment process ("Mobile Deposit Account(s)") from home or other remote locations using your eligible camera-enabled Wireless Device to capture images of the Original Checks and then transmit the digital images and associated deposit information ("Images") to us or our processor with your Wireless Device. Mobile Deposit is accessed via the Mobile Apps (as defined and described above under "Mobile Banking Terms.")

Eligibility & Enrollment. In order to use Mobile Deposit, you must: (a) be enrolled in Online Banking and Mobile Banking; and (b) have an eligible Wireless Device. Only certain camera-enabled Wireless Devices may be used with Mobile Deposit, as specified by us from time to time. **It is your responsibility to provide us with accurate, complete and current information about you and your Wireless Device (including your telephone number, the telecommunications carrier, and your email address), and to notify us immediately if any of this information changes or if service to your Wireless Device is terminated.** We reserve the right to refuse or cancel your registration for Mobile Deposit if we cannot verify information about you and/or your Wireless Device and accordingly you agree to all of the terms and conditions set forth in this section with respect to Mobile Deposit.

Acceptance of Terms. By using or continuing to use Mobile Deposit, you agree to the terms of this section, and any changes to such terms and conditions that apply to your use of Mobile Deposit, as of the effective date of such changes or amendments. If you do not agree with these terms (as may be amended from time to time), you may not use Mobile Deposit. Your agreement will be deemed effective for as long as you use Mobile Deposit.

Charges for Mobile Deposit. You agree to pay for any charges we may assess for Mobile Deposit in accordance with our current Fee Schedule, as may be amended from time to time, or you may elect to terminate use of Mobile Deposit. We will advise you of any fee changes prior to implementing them to the extent and as required by applicable law. You authorize us to automatically charge the Mobile Deposit Account into which the deposit was made for all such fees incurred in connection with Mobile Deposit. In the future, we may add to or enhance the features of Mobile Deposit. By using such added or enhanced features, you agree to pay for them in accordance with our Fee Schedule.

Deposit Limits. We may establish or change daily and/or monthly limits on the dollar amount and/or number of items or deposits made into each Personal Deposit Account from time to time in our sole discretion. Currently, Mobile Deposit is limited as follows:

Per Day: 10 deposits totaling no more than \$2,500.00

Per Calendar Month: 25 deposits totaling no more than \$10,000.00

Any requests for increases in the applicable limits will be reviewed by us on a case-by-case basis and are subject to approval in our sole and exclusive discretion

Eligible Items. You hereby agree that you will only scan and deposit a check(s) as that term is defined in Federal Reserve Board Regulation CC ("Reg CC"). You agree that the Image of the check that is transmitted to the Bank (each such check and other item is referred to in this Addendum as a "Check" and, if more than one, "Checks") shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code (1990 Official Text). You also acknowledge and agree that deposits that you make using Mobile Deposit are not "Electronic Fund Transfers" as that term is defined in Consumer Financial Protection Bureau's Regulation E. You further agree that you will not use Mobile Deposit to deposit any Checks or other items (considered ineligible or "Prohibited Checks") that:

- are payable to any person or entity other than yourself or otherwise to the owner of the Mobile Deposit Account that the item is being deposited into (i.e., a third-party check);
- are prohibited by our then-current procedures pertaining to Mobile Deposit or are in violation of any law, rule or regulation;
- you know or suspect, or should know or suspect, are altered on the front of the item, fraudulent or otherwise not authorized by the owner of the account on which the Checks are drawn;
- have been previously endorsed by a bank and are either "substitute checks" (as defined in Reg CC or other applicable federal law or regulation) or "image replacement documents" that purport to be substitute checks unless we expressly agree otherwise;
- are drawn on financial institutions that are located outside of the United States or Territories of the United States;
- are payable jointly, unless deposited into a deposit account in the name of all payees;
- are remotely created checks, as defined in Reg CC, or are remotely created payment orders;
- are not payable in United States currency;
- are dated more than six (6) months prior to the date of deposit or contain a date in the future;
- have any endorsement on the back other than that specified in this section;
- have previously been submitted through Mobile Deposit or through a remote deposit service offered at any other financial institution; and
- are not acceptable to us for deposit into a deposit account as provided in the Account Rules.

If you deposit a Prohibited Check, as described above, you agree to indemnify and reimburse us for, and hold us harmless from and against, any and all losses, costs and expenses (including reasonable attorney's fees) that we may incur associated with any warrant, indemnity or other claim related thereto.

Requirements. You understand that you must, and hereby agree, at your sole cost and expense, to use a Wireless Device that meets all technical requirements for the proper delivery of Mobile Deposit and that fulfills your obligation to obtain and maintain secure access to the Internet. You understand and agree you may also incur, and shall pay, any and all expenses related to the use of Mobile Deposit, including, but not limited to, telephone service or Internet service charges. You are solely responsible for the payment of any and all costs and expenses associated with meeting and maintaining all technical requirements and additional items necessary for the proper use of Mobile Deposit. You understand and agree that you are solely responsible for the operation, maintenance and updating of all equipment, software and services used in connection with Mobile Deposit and the cost thereof, and you hereby agree that you will perform, or cause to be performed, all vendor recommended maintenance, repairs, upgrades and replacements. We are not responsible for, and you hereby release us from, any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using electronic mail or the Internet. We are not responsible for, and you hereby release us from, any and all claims or damages resulting from, or related to, defects in or malfunctions of your Wireless Device and/or any associated hardware or software, or failures of or interruptions in any electrical, telephone or Internet services. We hereby advise you, and you hereby agree to scan your Wireless Device and/or any associated hardware or software on a regular basis using a reliable virus detection product in order to detect and remove viruses.

Each Image must provide all information on the front and back of the Original Check at the time presented to you by the drawer, including, but not limited to, information about the drawer and the paying bank that is preprinted on the Original Check, MICR information, signature(s), any required identification written on the front of the Original Check and any endorsements applied to the back of the Original Check. The image quality must meet the standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association. Not all Wireless Devices that are camera enabled will produce satisfactory images for Mobile Deposit. If the image produced by your Wireless Device is not satisfactory, the Image for remote deposit may be rejected as described below under "Receipt of Deposits."

Endorsements must be made on the back of the Check and must include your signature and must include **"FOR MOBILE DEPOSIT ONLY,"** or as otherwise specified by us from time to time. Any loss we incur

from a delay, processing error or any other action resulting from an irregular endorsement or other markings by you will be your responsibility.

A Check payable to two payees must be endorsed by both payees. If the Check is payable to you or your joint owner, either of you can endorse it. If the Check is made payable to you and your joint owner, both of you must endorse the Check and it must be deposited into a Mobile Deposit Account owned by both of you.

Receipt of Deposit. All Images processed for remote deposit through Mobile Deposit will be treated as "deposits" under the Account Rules and the terms of Online Banking. Once submitted, you will receive an email indicating that your remote deposit was received. After processing, you will receive another email that will indicate if the deposit was REJECTED. You may also check on the status of a deposit made through Mobile Deposit by selecting "View Deposit History" on the "Deposit a Check" tab within Mobile Deposit. Notwithstanding the fact that we have accepted a Mobile Deposit for processing, any credit made to your Mobile Deposit Account shall be provisional as further described under "Returned Deposits" below, and you shall remain liable to us for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against us.

We shall have no liability to you for the rejection of a deposit through Mobile Deposit or the Images or other information contained therein or for our failure to notify you of such rejection. We are not responsible for any Image that we do not receive.

Following receipt, we may process the Image by preparing a "substitute check" or clearing the item as an Image.

We reserve the right, at our sole and absolute discretion, to reject any Image for remote deposit into your Mobile Deposit Account. We will use commercially reasonable efforts to notify you of rejected Images by phone, email or other means.

Retention of Original Checks. You must securely store the Original Check for thirty (30) Calendar Days after transmission to us and make the Original Check accessible to us at our request. Upon our request from time to time, you will deliver to us within two (2) Business Days, at your expense, the requested Original Check in your possession. If not provided in a timely manner, such amount will be reversed from your Mobile Deposit Account. Promptly after such period expires, you must destroy the Original Check by first marking it "VOID" and then destroying it by cross-cut shredding or another commercially acceptable means of destruction. After destruction of an Original Check, the Image will be the sole evidence of the Original Check.

You agree that you will never deposit the Original Check or present the Original Check to us or anyone else for payment. You understand that you are responsible if anyone is asked to make a payment based on an Original Check that has already been paid.

Returned Deposits. Any credit to your Mobile Deposit Account for Checks deposited using Mobile Deposit is Provisional. As used herein, "Provisional" means that the credit for the deposit is made to your Mobile Deposit Account subject to final payment of the Checks and subject to the terms of the Account Rules. If Original Checks deposited through Mobile Deposit are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are rejected or returned by a clearing agent or collecting bank, for any reason, including, but not limited to, issues relating to the quality of the Image, you agree that an Original Check will not be returned to you, but that we may charge back the amount of the Original Check and provide you with an Image of the Original Check, a paper reproduction of the Original Check or a substitute check. You will reimburse us for all loss, cost, damage or expense caused by or relating to the processing of the returned item. Without our approval, you shall not attempt to deposit or otherwise negotiate an Original Check if it has been charged back to you.

We may set-off against any of your Personal Deposit Accounts to obtain payment for any item that has been rejected or returned, for any adjustment related to such item or for any warranty claim related to such item, whether or not the rejection, return, adjustment or warranty claim was made timely.

Your Warranties. You make the following warranties and representations with respect to each Image:

- Each Image is a true and accurate rendition of the front and back of the Original Check, without any alteration, and the drawer of the Check has no defense against payment of the Check.
- The amount, payee(s), signature(s), and endorsement(s) on the Image and on the Original Check are legible, genuine, and accurate.
- You will not deposit or otherwise endorse to a third party the Original Check and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the Original Check or a paper or electronic representation of the Original Check such that the person will be asked to make payment based on an item that has already been paid.
- There are no other duplicate Images of the Original Check.
- The Original Check was authorized by the drawer in the amount stated on the Original Check and to the payee(s) stated on the Original Check.
- You are authorized to enforce and obtain payment of the Original Check.
- You have possession of the Original Check and no party will submit the Original Check for payment.
- All files and Images transmitted to us will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.

Compliance with Law. You will use Mobile Deposit for lawful purposes and in compliance with all applicable laws, rules and regulations. You agree to comply with all existing and future operating procedures used by us for processing of transactions. You further agree to comply with, and be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting Checks and items, including, but not limited to, all rules and procedural guidelines established by the Board of Governors of the Federal Reserve and any clearinghouse or other organization in which we are a member or to which rules we have agreed to be bound. These procedures, rules, and regulations (collectively the "Rules") and laws are incorporated herein by reference. In the event of conflict between the terms of this Addendum and the Rules, the Rules will control.

Mobile Deposit Unavailability. Mobile Deposit may be unavailable temporarily due to system maintenance or technical difficulties, including those of the Internet service provider, cellular service provider and Internet software. In the event that Mobile Deposit is unavailable, you may deposit Original Checks at our branches or through our ATMs or by mailing the Original Check to: Trustco Bank, Attn: Operations Manager, P.O. Box 1082, Schenectady, NY 12301-1082. You hereby acknowledge and agree that we shall not be liable to you for any loss or damage of any nature you sustain as the result of your inability to use Mobile Deposit.

Funds Availability. The cut-off time applicable to deposits made through Mobile Deposit is Monday through Friday at 3 P.M. Eastern Time (ET). Deposits submitted using Mobile Deposit before 3 P.M. ET on Monday through Friday will be considered deposited on that day. Deposits submitted using Mobile Deposit after 3 P.M. ET and deposits received on a Saturday, Sunday or holiday at any time will be considered deposited on the next Business Day as defined in Bank's funds availability disclosure within the Account Disclosure Notice. Funds from deposits made using Mobile Deposit before the applicable cut-off time will be available on the Second Business Day after we receive the deposit. Funds from deposits made through Mobile Deposit will be available in accordance with the initial Account Opening Disclosure.

Mobile Deposit Security. You should complete each deposit promptly. If you are unable to complete your deposit promptly, you will ensure that your Wireless Device remains securely in your possession until the deposit has been completed. It is your responsibility to establish and maintain procedures to safeguard against unauthorized deposits. By using Mobile Deposit, you accept the risk that an item deposited through Mobile Deposit will be intercepted or misdirected during transmission. We bear no liability to you or others for any such intercepted or misdirected items or information disclosed through such transmission errors. You will notify us immediately by telephone at 518-381-3615 or 800-670-3110 if you learn of any loss or theft of Original Checks. You will ensure the safety and integrity of Original Checks from the time of receipt until the time of destruction. If warranted in our reasonable judgment, we may audit and monitor you, and you agree to cooperate with us to permit such monitoring, to confirm that you have satisfied your obligations under this section.

Your Responsibility. You are solely responsible for the quality, completeness, accuracy, validity and integrity of the Image. You are solely responsible if you, intentionally or unintentionally, submit a fraudulent, incorrect or illegible Image(s) to us or if Mobile Deposit is used, by authorized or unauthorized persons, to submit fraudulent, unauthorized, inaccurate, incorrect or otherwise improper or unusable Images to us.

You agree to notify us of any suspected errors regarding items deposited through Mobile Deposit right away, and in no event later than thirty (30) days after the applicable Account statement is sent or otherwise made available. Unless you notify us within thirty (30) days, such statement regarding all deposits made through Mobile Deposit shall be deemed correct, and you are precluded from bringing a claim against us for such alleged error. You can contact us by calling 518-381-3615 or 800-670-3110 or by visiting one of our branches.

Your Indemnification Obligation. You understand and agree that you are required to indemnify us and hold us harmless, including our affiliates, officers, employees and agents against any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses arising from your use of Mobile Deposit and/or breach of this Disclaimer. You understand and agree that this paragraph shall survive the termination of this Disclaimer.

You also understand and agree that you are required to indemnify and hold harmless our processor and/or service provider / technology partners, their affiliates, officers, employees and agents, from and against any third party claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney's fees and expenses, arising from such claims, to the extent such claim is related to us or your use of Mobile Deposit, our processor and/or service provider / technology partner applications, unless such claim directly results from an action or omission made by our processor and/or service provider / technology partners in bad faith. You understand and agree that this paragraph shall survive the termination of this section.

Cooperation with Investigation. You agree to cooperate with us in the investigation of unusual transactions, poor quality transmissions, and resolution of customer claims, including by providing, upon request and without further cost, any originals or copies of items deposited through Mobile Deposit in your possession and your records relating to such items and transmissions.

Ownership and License. You agree that we and/or our processor and/or service provider(s) / technology partner(s) retain all ownership and proprietary rights in Mobile Deposit, associated content, technology and website(s). Your use of Mobile Deposit is subject to and conditioned upon your complete compliance with this section. Without limiting the effect of the foregoing, your breach of this section immediately terminates your right to use Mobile Deposit. Without limiting the restriction of the foregoing, you agree that you will not modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Mobile Deposit, copy or reproduce all or any part of the technology or Mobile Deposit; or interfere, or attempt to interfere, with the technology or Mobile Deposit. We and our processor and/or service provider(s) / technology partners retain all rights, title and interests in and to Mobile Deposit, software and developments made available to you.

DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOUR USE OF MOBILE DEPOSIT AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE MAKE NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE SERVICE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF A THIRD PARTY OR PROPRIETARY RIGHTS UNLESS DISCLAIMING SUCH WARRANTIES IS PROHIBITED BY APPLICABLE LAW. WE MAKE NO WARRANTY THAT MOBILE DEPOSIT WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN MOBILE DEPOSIT OR TECHNOLOGY WILL BE CORRECTED.

LIMITATION OF LIABILITY. YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT

LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF MOBILE DEPOSIT, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE REQUIRED BY APPLICABLE LAW. ANY PROVISION IN THIS ADDENDUM, ANY OTHER AGREEMENT OR RULES TO THE CONTRARY NOTWITHSTANDING, WE SHALL ONLY BE LIABLE FOR DIRECT DAMAGES SOLELY AND PROXIMATELY CAUSED BY OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EXCEPT AS OTHERWISE REQUIRED BY APPLICABLE LAW.

Amendments. We may amend these terms at any time, in our sole discretion, by giving notice to you if and as provided in this section, the terms for Online Banking or the applicable Account Rules. If so required, or required by applicable law, notice will be given for the applicable required number of days in advance of each such amendment. Your continued use of Mobile Deposit shall constitute your agreement to such amendments. No amendments requested by you shall be effective unless received, and agreed to in writing, by us.

Suspension and Termination. In addition to any other provision in this section, the terms of Online Banking or the Account Rules on the subject, we may, in our sole discretion and without prior notice to you unless otherwise required by applicable law, elect to suspend or terminate your use of Mobile Deposit (i) if you or we close the Personal Deposit Account(s) established in connection with Mobile Deposit, (ii) if we reasonably suspect that you have engaged in fraud or other abuse with regard to Mobile Deposit, (iii) in the event of a material breach in the performance or observance of any term, or breach of any representation or warranty, by you, (iv) if we believe immediate action is required for the security of your or our funds, or (v) if we reasonably believe that the continued provision of Mobile Deposit would violate federal, state or local laws or regulations, or would subject us to unacceptable risk of loss. Notwithstanding any termination, this section shall remain in full force and effect with respect to all transactions initiated prior to such termination.

Trustco Bank Business Online Banking Services Agreement

THIS BUSINESS ONLINE BANKING SERVICES AGREEMENT (this “**Agreement**”) is by and between TRUSTCO BANK (“**Bank**”) and the above-named corporation, partnership, sole proprietorship or other commercial entity, or government or other public entity (“**Customer**”). If Customer enrolls, Bank agrees to provide to Customer certain Business Online Banking Services (as defined below) offered by Bank in accordance with the terms of this Agreement and the rules and procedures applicable to each of the associated Services (collectively, the “**Rules**”). This Agreement shall be effective when signed by both parties, and such date shall be as reflected above.

PART I: ALL SERVICES

This Part applies to all Business Online Banking Services.

TERMS AND CONDITIONS

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

“*Access Devices*” means collectively any and all security, identification and authentication mechanisms, including, without limitation, security codes or PINs, electronic identities or signatures, encryption keys and/or individual passwords, as may be associated with or necessary for Customer’s access to and use of any Business Online Banking Service(s) from time to time.

“*Account(s)*” means any Deposit Account(s) and/or Credit Account(s), as further defined herein, used in connection with any Business Online Banking Service(s).

“*Account Agreement(s)*” means the terms and conditions of any Deposit Account Agreement(s), Credit Account Agreement(s), Fee Schedule, and any other agreements, disclosures and other documents issued by Bank and governing Customer’s deposit or credit relationship with Bank, as the same may be amended from time to time.

“*Account Disclosure Notice*” means the terms and conditions, Fee Schedule, and any other documents, disclosures or agreements that Customer executes or otherwise agrees to that establish Customer’s rights and responsibilities under and otherwise provide the terms and conditions of Customer’s Deposit Accounts with Bank, each as amended from time to time.

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

“*Authorized Representative*” means a person designated by Customer (including Customer when Customer is a sole proprietorship) as an individual authorized to act on behalf of Customer and/or authorized to access and use the Services, as evidenced by certified copies of resolutions from Customer’s board of directors or other governing body, if any, or other certificate or evidence of authority satisfactory to Bank.

“*Business Day*” means any day except Saturday, Sunday and Federal holidays. In the absence of specific reference to Business Days, any reference to “days” in this Agreement shall mean Calendar Days.

“*Business Online Banking Services*” means, collectively, the various electronic business banking and/or associated cash management services provided by Bank (and/or Bank’s third-party service providers) to Customer from time to time pursuant to this Agreement, the associated exhibits, set-up form(s) and any service guides or manuals made available to Customer by Bank.

“*Credit Account(s)*” means any line of credit, term loan or commercial or investment mortgage that Customer maintains with Bank that was established primarily for business or non-consumer purposes.

“*Credit Account Agreement(s)*” means the promissory notes, credit agreements, mortgages and any other documents, disclosures or agreements that Customer executes or otherwise agrees to that establish Customer’s rights and responsibilities under and otherwise provide the terms and conditions of Customer’s Credit Accounts with Bank, each as may be amended from time to time.

“*Deposit Account(s)*” means any checking, money market or savings Account, certificate of deposit or other deposit account that Customer may have with Bank that was established primarily for business or non-consumer purposes.

“*Fee Schedule*” means, at any given time, Bank’s then current schedule of customer fees and charges applicable to the Deposit Account(s) opened by Customer and maintained with Bank, as well as those applicable to the Business Online Banking Services as reflected in **Schedule C**, attached to this Agreement.

“*Online Banking*” means Bank’s Internet-based electronic banking information delivery and transaction initiation system, as may be offered by Bank to its business or non-consumer customers from time to time and as further described in Part II of this Agreement.

“*Primary Account*” means the Account designated by Customer to which any direct Service Fees (as defined below) due Bank may be charged in accordance with this Agreement. Unless otherwise agreed upon in writing by Bank, the address for Customer associated with the Primary Account shall be the address to which all notices and other communications concerning the Services may be sent by Bank.

2. Services.

2.1 Bank shall provide to Customer, subject to this Agreement, the Business Online Banking Services that Customer may request and Bank approves from time to time.

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

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

2.4 Access to Online Banking will be denied if invalid Access Devices are used or if the user exceeds the number of invalid attempts allowed by Bank.

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

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

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

2.8 A number of Bank's Business Online Banking Services are subject to processing cut-off times on a Business Day. Customer can obtain information on Bank's current cut-off time(s) for Business Online Banking Service(s) by reviewing the relevant section of this Agreement or by calling Bank's Deposit Operations Manager as set forth in **Section 26** of this Agreement. Instructions received after a cut-off time or on a day other than a Business Day may be deemed received as of the next Business Day.

2.9 Bank may make changes to this Agreement at any time by providing notice to Customer in accordance with the terms of this Agreement or as may be required by applicable law. Notwithstanding anything to the contrary in this Agreement, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may immediately initiate changes to any security and related procedures and provide prompt subsequent notice of the change to Customer.

3. Covenants, Representations and Warranties.

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

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

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

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

3.5 Customer shall use the Business Online Banking Services only for its own lawful business or other Bank-approved purposes. Customer shall not use the Business Online Banking Services for or on behalf of any third party, except as may otherwise be approved by Bank in its sole and exclusive discretion. Customer shall take all reasonable measures and exercise reasonable precautions to ensure that Customer's officers, employees and Authorized Representative(s) do not use the Business Online Banking Services for personal, family or household purposes, or any other purpose not contemplated by this Agreement or otherwise approved by Bank.

3.6 Customer agrees to use the Account(s) only for lawful purposes, and will not use the Account(s) for any unlawful or illegal purposes including, but not limited to, unlawful Internet gambling transactions of any sort (online gambling) as defined in the Unlawful Gambling Act of 2006 and Regulation GG, and any betting transaction including the unlawful purchase of lottery tickets, casino chips, or off-track betting and wagering. Bank reserves the right to block all such transactions. However, in the event that such a transaction is approved and processed, Customer will still be liable for any associated fee or charge.

3.7 Customer and Bank shall comply with: (i) the Account Agreements, and (ii) all applicable laws, regulations, rules and orders, including without limitation, all applicable National Automated Clearing House Association ("NACHA") operating rules and guidelines, the Uniform Commercial Code ("UCC"), the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") requirements, and all applicable laws, regulations and orders administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") (the "Compliance Laws").

4. Account Disclosure Notice; Service Fees.

4.1 Bank and Customer agree that any Account established by Customer in connection with the Business Online Banking Services offered by Bank shall be governed by the Account Disclosure Notice. If there is any conflict between the terms and provisions of this Agreement and the Account Disclosure Notice, the terms and provisions of this Agreement shall govern, but only to the extent reasonably necessary to resolve such conflict.

4.2 Customer agrees to compensate Bank for all Business Online Banking Services that Bank provides pursuant to this Agreement in accordance with the applicable Fee Schedule(s) (attached hereto as **Schedule C**) between Bank and Customer in effect from time to time that may apply to the Business Online Banking Services (the "Service Fees"). By and upon entering into this Agreement, Customer acknowledges receipt of the Account Disclosure Notice and acceptance of the Service Fees and agrees to be bound by their terms, as those terms may be amended from time to time.

4.3 Customer authorizes Bank to charge the Primary Account for all applicable Service Fees for Business Online Banking Services to the extent that such Service Fees are not offset by other allowances for Customer's Account(s). If the balance of Available Funds (as defined herein) in the Primary Account is not sufficient to cover such fees, Bank may charge such fees to any other Deposit Account maintained by Customer with Bank. Customer also agrees to pay all sales, use or other taxes (other than taxes based upon Bank's net income or that are otherwise the legal responsibility of Bank) that may be applicable to the Business Online Banking Services provided by Bank hereunder.

4.4 Bank may amend the Service Fees, in the aggregate or individually, at any time. Bank will give notice to Customer of such changes in accordance with applicable law.

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

6. Software.

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

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

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

7. Computer Requirements . For certain Business Online Banking Services, Customer will need to provide, at Customer's own expense, a computer, software and necessary telephone lines, Internet or other connections and equipment as needed to access the Business Online Banking Services and as described during the enrollment process (collectively, the "Computer"). Customer is responsible for the installation, maintenance and operation of the Computer. Customer's Internet or other web browser software must support a minimum 128-bit SSL encryption or other security measures as Bank may specify from time to time. Bank is not responsible for any errors or failures caused by any malfunction of the Computer, and Bank is not responsible for any computer virus or related problems that may be associated with the use of the Services, the Computer or other Internet access, including but not limited to any virus, trojan horse, worm, keystroke logger, rootkit, spyware, dishonest adware, crimeware and other malicious and unwanted software or related problems that may be associated with access to or use of the Services or the Computer. Bank recommends that Customer routinely scan the Computer using reliable virus protection products, and to remove any viruses found using such products. Customer is responsible for all Internet service provider, telephone and other similar charges incurred in connecting to the Services. From time to time, Bank may require that Customer upgrades or installs software to the Computer to ensure the proper operation of the Services. Customer agrees to promptly load any such upgrades or additional installations upon Bank's notice to Customer.

8. Bank Third Parties.

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

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

9. Confidential Information.

9.1 "Confidential Information" means any information obtained by or disclosed or made available to either party hereto (whether in writing, verbally or by observation of objects or processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors.

9.2 Each party acknowledges that it may obtain or have access to the Confidential Information of the other party, and agrees to: (i) maintain the confidentiality, integrity and security of such Confidential Information; (ii) use such Confidential Information only for the purposes set forth in this Agreement, including without limitation for the performance of its obligations and exercise of its rights hereunder; (iii) disclose such Confidential Information only to its employees, agents, auditors, accountants, attorneys and regulators, and only as necessary to perform its obligations and exercise its rights hereunder, or as otherwise permitted by law; and (iv) maintain physical, technical, procedural and administrative controls and safeguards reasonably designed (taking into account the nature and circumstances of such party's

business, and in all cases, no less than a reasonable person standard) to ensure the security, integrity and confidentiality of Confidential Information, and to protect against any anticipated threats or hazards to the security or integrity of, or unauthorized access to, the Confidential Information.

9.3 Confidential Information does not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient's possession before the time of disclosure; (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party's other Confidential Information.

10. Customer Information; Security Procedures.

10.1 In providing the Business Online Banking Services, Bank shall be entitled to rely upon the accuracy of all information and authorizations received from Customer or an Authorized Representative and the authenticity of any signatures purporting to be of Customer or an Authorized Representative. Customer agrees to promptly notify Bank of any changes to any information or authorization provided to Bank in connection with the Business Online Banking Services and further agrees to promptly execute any new or additional documentation Bank reasonably deems necessary from time to time in order to continue to provide the Business Online Banking Services to Customer.

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

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

10.4 Any security procedures maintained by Bank are not intended to detect errors in the content of an instruction, request or transaction received from Customer or Customer's Authorized Representative, agent or vendor. No security procedure for the detection of any such Customer error has been agreed upon between Bank and Customer. Any errors in an instruction, request or transaction from Customer, Customer's Authorized Representative, agent or vendor shall be Customer's sole responsibility. Customer agrees that all security procedures described in this Agreement are commercially reasonable and that Bank may charge Customer's Account for any instruction, request or transaction that Bank executed in

good faith and in conformity with the security procedures, whether or not the instruction, request or transaction is in fact authorized.

10.5 Customer is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized instructions, requests, transactions or transmissions. Customer covenants that no employee or other individual under Customer's control will be allowed to initiate instructions, requests, transactions or transfers in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any Access Devices and related instructions provided by Bank in connection with any security procedure utilized by Bank and/or Customer. If Customer believes or suspects that any such Access Device, security procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period thereafter.

10.6 Customer also agrees to adopt and implement its own commercially reasonable policies, procedures and systems to provide security to information being transmitted and to receive, store, transmit and destroy data or information in a secure manner to prevent loss, theft or unauthorized access to data or information ("Data Breaches"). Customer also agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions. Customer will provide timely and accurate notification to Bank of any Data Breaches when known or reasonably suspected by Customer and will take all reasonable measures, which may include, without limitation, retaining competent forensic experts, to determine the scope of and data or transactions affected by any Data Breaches and promptly provide all such information to Bank.

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

11. Duty to Inspect. Customer is responsible for monitoring its use of all Business Online Banking Services provided by Bank, including each individual transaction processed by Bank, and notifying Bank of any errors or other problems no later than fifteen (15) Calendar Days (or such longer period as may be required by applicable law) after Bank has made available to Customer any report, statement or other material containing or reflecting the error, including an Account analysis statement or Internet Account access. Except to the extent required by law, failure to notify Bank of an error or problem within such time will relieve Bank of any and all liability for interest upon correction of the error or problem (and for any loss from any subsequent transaction involving the same error or problem). In the event Customer fails to report such error or problem within thirty (30) Calendar Days (or such longer period as may be required by applicable law) after Bank made available such report, statement or Internet Account access, the transaction shall be deemed to have been properly authorized and executed, and Bank shall have no liability with respect to any such error or problem.

12. Overdrafts; Set-off. Bank may, but shall not be obligated to, complete any transaction in connection with providing the Services if there are insufficient available funds in Customer's Account(s) to complete the transaction. In the event any actions by Customer result in an overdraft in any of Customer's Accounts, including but not limited to Customer's failure to maintain sufficient balances in any of Customer's Accounts, Customer shall be responsible for repaying the overdraft immediately and without notice or demand. Bank has the right, in addition to all other rights and remedies available to it, to set-off the unpaid balance of any amount owed it in connection with the Services against any debt owing to Customer by Bank, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by Bank, whether collected or in the process of collection, or in any other Account

maintained by Customer at or evidenced by any certificate of deposit issued by Bank. If any of Customer's Accounts become overdrawn, under-funded or for any reason contain a negative balance, then Bank shall have the right of set-off against all of Customer's Accounts and other property or deposit Accounts maintained at Bank, and Bank shall have the right to enforce its interests in collateral held by it to secure debts of Customer to Bank arising from notes or other indebtedness now or hereafter owing or existing under this Agreement, whether or not matured or liquidated.

13. Transaction Limits.

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

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

14. Term and Termination.

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

14.2 This Agreement shall continue in effect until terminated by either party with ten (10) Calendar Days' prior written notice to the other, provided that Customer may terminate this Agreement immediately upon its receipt of notice from Bank of a change in or amendment of the provisions of this Agreement or the Business Online Banking Services to Customer, in accordance with **Section 20** of this Agreement. Either party may terminate a specific Business Online Banking Service in accordance with the provisions of this Section without terminating this Agreement. Upon termination of this Agreement or any Business Online Banking Service, Customer shall, at its expense, return to Bank, in the same condition as when delivered to Customer, normal wear and tear excepted, all property belonging to Bank and all proprietary material delivered to Customer in connection with the terminated Business Online Banking Service(s).

14.3 If a Service is terminated in accordance with this Agreement, Customer must contact Bank's Deposit Operations Manager as set forth in **Section 26** of this Agreement for instructions regarding the cancellation of all future-dated payments and transfers. Bank may continue to make payments and transfers and to perform other Business Online Banking Services that Customer has previously authorized or may subsequently authorize; however, Bank is not under any obligation to do so. Bank will not be liable if it chooses to make any payment or transfer or to perform any other Business Online Banking Services that Customer has previously authorized or subsequently authorizes after a Business Online Banking Service had terminated.

14.4 Notwithstanding the foregoing, Bank may, without prior notice, terminate this Agreement and/or terminate or suspend any Business Online Banking Service(s) provided to Customer pursuant hereto (i) if Customer or Bank closes any Account established in connection with the Business Online Banking Services; (ii) if Bank determines that Customer has failed to maintain a financial condition deemed reasonably satisfactory to Bank to minimize any credit or other risks to Bank in providing Services to Customer, including but not 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) in the event of a material breach, default in the performance or observance of any term, or

material breach of any representation, covenant or warranty by Customer; (iv) in the event of default by Customer in the payment of any sum owed by Customer to Bank hereunder or under any note or other agreement; (v) if there has been a seizure, attachment or garnishment of Customer's Account(s), assets or properties; (vi) if Bank believes immediate action is required for the security of Bank or Customer funds; (vii) in the event of termination of a third party contract by Customer or Bank which is necessary for the performance of one or more Business Online Banking Services; or (viii) if Bank reasonably believes that the continued provision of Business Online Banking Services in accordance with the terms of this Agreement would violate federal, state or local laws or regulations or would subject Bank to unacceptable risk of loss. In the event of any termination hereunder, all Service Fees due Bank under this Agreement as of the time of termination shall become immediately due and payable. Notwithstanding any termination, this Agreement shall remain in full force and effect with respect to all transactions initiated prior to such termination.

15. Limitation of Liability; Disclaimer of Warranties .

15.1 Except to the extent otherwise required by law, the liability of Bank in connection with the Business Online Banking Services will be limited to actual damages sustained by Customer and only to the extent such damages are a direct result of Bank's gross negligence, willful misconduct or bad faith. In no event shall Bank be liable for any consequential, special or indirect loss or damage that Customer may suffer or incur in connection with the Business Online Banking Services, including, without limitation, attorneys' fees, lost earnings or profits, loss or damage from subsequent wrongful dishonor resulting from Bank's acts, or for any indemnification claim, whether contractual, equitable or other, regardless of whether the likelihood of such claim, loss or damage was known by Bank and regardless of the basis, theory or nature of the action on which a claim is asserted. Except to the extent otherwise provided by law, Bank's aggregate liability to Customer for all losses, damages, and expenses incurred in connection with any single claim shall not exceed an amount equal to the monthly billing to Customer for Business Online Banking 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. Notwithstanding any of the foregoing, for transactions that are subject to Article 4A of the UCC, Bank shall be liable for such damages as may be required or provided under Article 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in this Agreement. This Agreement is only between Bank and Customer, and Bank shall have no liability hereunder to any third party.

15.2 Notwithstanding the foregoing, but subject to Customer's compliance with the requirements of **Section 11**, if Customer incurs a loss pursuant to a transaction that Customer has properly processed through the Business Online Banking Services, due to Bank's gross negligence or willful misconduct in the handling of such transaction, Bank will be responsible for returning any improperly transferred funds, with interest at the rate paid by Bank at such time on statement savings accounts, from the date of such error to, but not including, the date such funds are returned to the Account from which the funds were withdrawn and for directing to the proper recipient any payments or transfers that were previously misdirected or not completed. **RE-CREDITING OF CUSTOMER'S ACCOUNT AND RE-DIRECTING OF PAYMENTS AND TRANSFERS, AND INTEREST ONLY AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, SHALL CONSTITUTE BANK'S ENTIRE LIABILITY FOR INCOMPLETE OR INCORRECT PAYMENTS OR TRANSFERS, AND CUSTOMER AGREES THAT IT SHALL NOT BE ENTITLED TO ANY OTHER RECOVERY OR RELIEF.** At Bank's option, payment of such interest may be made by crediting an Account of Customer with Bank.

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

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

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

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

15.7 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, CUSTOMER EXPRESSLY AGREES THAT USE OF THE BUSINESS ONLINE BANKING SERVICES IS AT CUSTOMER'S SOLE RISK, AND THE BUSINESS ONLINE BANKING SERVICES ARE PROVIDED "AS IS." BANK AND ITS SERVICE PROVIDERS AND AGENTS DO NOT MAKE AND EXPRESSLY DISCLAIM ANY WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE BUSINESS ONLINE BANKING 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 BUSINESS ONLINE BANKING SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WITHOUT BREACHES OF SECURITY OR WITHOUT DELAYS. IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE LIABILITY OF BANK AND ITS SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

15.8 Bank and Customer acknowledge and agree that the limitations of liability in this **Section 15** are a bargained-for allocation of risk and liability, and the parties agree to respect such allocation of risk and liability. Customer acknowledges and agrees that Bank would not enter into this Agreement without the limitations of liability set forth in this Section.

15.9 The provisions of this **Section 15** shall survive termination of this Agreement.

16. Indemnification.

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

- (i) any claim of any person that (a) Bank is responsible for any act or omission of Customer or (b) a Customer payment order contravenes or compromises the rights, title or interest of any third party or contravenes any law, rule, regulation, ordinance, court order or other mandate or prohibition with the force or effect of law;
- (ii) any failure by Customer to observe and perform properly all of its obligations hereunder or any wrongful act of Customer or any of its Affiliates;
- (iii) any breach by Customer of any of its warranties, representations, covenants or agreements;
- (iv) any action taken by Bank in reasonable reliance upon information provided to Bank by Customer or any Affiliate or subsidiary of Customer; and

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

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

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

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

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

20. Amendments. Bank may, at any time, amend this Agreement or the Business Online Banking Services in its sole discretion and from time to time. Except as expressly provided otherwise in this Agreement, any such changes generally will be effective in accordance with the notice to Customer as described below. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Business Online Banking Services after the date on which the change becomes effective. Customer will remain obligated under this Agreement, including without limitation, being obligated to pay all amounts owing thereunder, even if Bank amends this Agreement. Notwithstanding anything to the contrary in this Agreement, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Customer.

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

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

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

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

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

26. Notices, Instructions, Contacts.

26.1 Except as otherwise expressly provided in this Agreement, all Customer communications and inquiries, including without limitation all notices that are required or permitted to be given by Customer (including all documents incorporated herein by reference) shall be made to Bank as follows:

Postal Mail — Customer can write Bank at:

Trustco Bank

Attn: Deposit Operations Manager

P.O. Box 1082

Schenectady, NY 12301-1082

Overnight Deliveries :

Trustco Bank

Attn: Customer Service

P.O. Box 1082

Schenectady, NY 12301-1082

Telephone — Customer may contact Bank by telephone Monday – Friday 9:00 a.m. – 6:00 p.m. Eastern Time (ET) at (518) 377-3311.

Bank recommends that Customer not contact Bank by e-mail with respect to Business Online Banking Services. Regular email is not secure. Do not send confidential or sensitive information, such as a social security number, account number, personal identification number or password within the body of any email or any attachments thereto.

All written notices and communications shall be sent by first class mail, postage prepaid and addressed to Bank at the address provided above. All such notices shall be effective upon receipt.

26.2 Customer authorizes Bank to, and Customer agrees that Bank may, send any notice or communication that Bank is required or permitted to give to Customer under this Agreement, including but not limited to notice of any change to the Business Online Banking Services or this Agreement, to Customer's business mailing address or Customer's business email address as it appears on Bank's records or electronically by posting the notice on Bank's website, on or with an Account statement or via facsimile and that any such notice or communication will be effective and deemed delivered when provided to Customer in such a manner. Customer agrees to notify Bank promptly about any change in Customer's business mailing or Customer's business email address and acknowledges and agrees that no such change will be effective until Bank has had a reasonable opportunity to act upon such notice. Customer agrees that Bank may consider any such notice or communication as being given to all Account owners when such notice or communication is given to any one Account owner.

27. Jury Trial Waiver. BANK AND CUSTOMER EACH AGREE THAT NEITHER BANK NOR CUSTOMER SHALL (I) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY ACCOUNT OR THE DEALINGS OF OR THE RELATIONSHIP BETWEEN BANK AND CUSTOMER, OR (II) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANOTHER IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER BANK NOR CUSTOMER HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. BANK AND CUSTOMER EACH ACKNOWLEDGE THAT THIS WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE. The provisions of this **Section 27** shall survive termination of this Agreement.

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

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

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

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

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

(a) If Customer is a Governmental Unit of the type included in (A) above, Customer and the individual signing below represent, warrant and agree:

(i) that this Agreement has been duly executed by the Treasurer, Finance Director, or other financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements;

(ii) that this Agreement has been duly authorized by a vote of the governing body of Customer that was duly called and noticed, at which the necessary majority voted to authorize this Agreement, as evidenced by the certification of the Secretary of the governing body and provided with this Agreement;

(iii) that only persons authorized to disburse municipal funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions;

(iv) that if this Agreement remains in effect for more than one budget year, upon request of Bank, Customer will ratify and provide evidence of the renewal of this Agreement in subsequent years; and

(v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(b) If Customer is a Governmental Unit of the type included in (B) above, Customer and the individual signing below represent, warrant and agree:

(i) that this Agreement has been duly executed by a financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements on behalf of Customer;

(ii) that this Agreement has been duly authorized by a senior officer of Customer;

(iii) that Customer has complied with all state laws and regulations, including any regulations or policies adopted by Customer with respect to electronic commerce in entering into and performing this Agreement and any related ACH or wire transfer agreement;

(iv) that only persons authorized to disburse Customer funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; and

(v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(c) For a Customer of the type included in either (A) or (B) above, Customer and the individual signing below further represent, warrant and agree:

(i) that upon Bank's request, Customer shall provide evidence of those persons authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) above;

(ii) that upon Bank's request, Customer will certify its compliance with (a) or (b), as applicable, on an annual basis; and

(iii) that Customer will provide notice to Bank if any person authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) is no longer so authorized or his/her position of such authority is terminated for any reason.

33. Use of Services with Designated Related Entities. This Section governs Customer's use of the Business Online Banking Services in conjunction with certain of Customer's Designated Related Entities (as defined below), as applicable and as may be approved by Bank from time to time.

33.1 This Section relates to: (i) Bank's provision of the Business Online Banking Services described in and associated with this Agreement to any of Customer's Designated Related Entities in relation to each such party's own Accounts with Bank; (ii) viewing the Accounts of Customer's Designated Related Entities ("View Access"); (iii) transfers of funds between and among Customer's Accounts and the Accounts of any Designated Related Entities ("Internal Transfers"); and (iv) transfers of funds from the Account(s) of Customer and/or any Designated Related Entities to third parties by bill payment, ACH or wire transfer, where applicable, as and when approved by Bank in its sole and exclusive discretion ("External Transfers"). The permitted scope of View Access, Internal Transfers and External Transfers is described in this Section.

33.2 Consistent with this Section, Customer and all Designated Related Entities agree, jointly and severally, to be bound by and liable for the terms and conditions set forth in this Agreement, and agree that each obligation of Customer shall be performed by and be the responsibility of all of them. Without limiting the foregoing, Customer and each Designated Related Entity shall be jointly and severally liable for (a) the use of any of the Business Online Banking Services as described herein, (b) any fees due with respect to the Business Online Banking Services, (c) any overdraft resulting from use of the Business Online Banking Services, and (d) any post-dated instructions or transfers, including Internal Transfers and External Transfers, which may be initiated by any Authorized User.

33.3 For purposes of this Section, "Designated Related Entity" means any business entity related to or affiliated with Customer, that:

- i. desires, by means of the Business Online Banking Services, to authorize and engage in the View Access, Internal Transfers and External Transfers described in this Section;
- ii. directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Customer (where "control," "controls" and "controlled" means ownership of more than fifty percent (50%) of the shares or other equity interests entitled to vote for the election of directors or otherwise select the person(s) authorized to manage an entity); and
- iii. Customer designates to Bank in writing or otherwise in accordance with the requirements of the Business Online Banking Services and such other application, schedule, exhibit, set-up or other form or document as Bank may require from time to time (hereinafter a "Designated Related Entity Access Form").

Subject to Bank's approval, each Designated Related Entity hereby authorizes and requests Bank to provide the Business Online Banking Services to each Designated Related Entity as may be requested by Customer from time to time, acting as agent for each Designated Related Entity. Such acts of Customer may be requested by Customer's Administrator and any Authorized User. Customer is authorized to designate which Accounts of Designated Related Entities with Bank (which may include all such Accounts) shall be accessed using the Business Online Banking Services and which of the Business Online Banking Services shall be used in conjunction with each Designated Related Entity. Bank is hereby authorized and directed by each Designated Related Entity to accept instructions from Customer, as agent for Designated Related Entity, with respect to any and all Business Online Banking Services provided to Designated Related Entity from time to time under this Agreement.

33.4 Rights under this Section.

33.4.1 Without limiting the foregoing, Customer shall have the ability hereunder, upon direction of Customer's Administrator and/or Authorized User(s) and without inquiry by or notice from Bank, to access and utilize the Business Online Banking Services described in this Agreement in conjunction with the Account(s) of Customer and/or any Designated Related Entities. Subject to Bank's prior approval, in its sole and exclusive direction, such use may include: (i) View Access to the Account(s) of any Designated Related Entity; (ii) initiating or otherwise engaging in Internal Transfers involving the Account(s) of any Designated Related Entity; and (iii) initiating or otherwise engaging in External Transfers involving the Account(s) of any Designated Related Entity.

33.4.2 Without limiting the foregoing, each Designated Related Entity shall have the ability hereunder, upon direction of Customer's Administrator and/or Authorized User(s) and without inquiry by or notice from Bank, to utilize the Business Online Banking Services described in this Agreement in conjunction with the Account(s) of Customer or any Designated Related Entities. Subject to Bank's prior approval, in its sole and exclusive direction, such use may include: (i) View Access to Customer's Account(s) or of any other Designated Related Entity; (ii) initiating or otherwise engaging in Internal Transfers involving Customer's Account(s) or of any other Designated Related Entity; and (iii) initiating or otherwise engaging in External Transfers involving Customer's Account(s) or of any Designated Related Entity.

33.4.3 Without limiting the foregoing, individual or daily transfers between Accounts may be made in any amount not exceeding the available balance in the Account from which the transfers are made. Bank reserves the right to limit the frequency and dollar amount of transfers from the Accounts for security reasons. In addition, Customer's and each Designated Related Entity's ability to transfer funds between certain Accounts is limited by law and as set forth in each Account Disclosure Notice between Bank and Customer or Bank and the applicable Designated Related Entity.

33.5 Acknowledgments.

33.5.1 Customer and each Designated Related Entity acknowledge and agree that, pursuant to the terms hereunder, Customer and each Designated Related Entity, acting through any Authorized User (whether or not in fact authorized in a particular case, including whether or not a signer on a Designated Related Entity's Account(s)) and as applicable, will be permitted to view the Account(s) of Customer or any Designated Related Entity, to initiate Internal Transfers and to engage in External Transfers. Customer and each Designated Related Entity also acknowledge and agree that, pursuant to the terms hereof and subject to Bank's prior approval, in Bank's sole and exclusive discretion, Customer and each Designated Related Entity may also be permitted to utilize additional Business Online Banking Services involving the Account(s) of Customer or any Designated Related Entity. Customer and each Designated Related Entity hereby expressly acknowledge and agree to comply with, abide and be governed by the terms described in this Agreement regarding their respective use of the Business Online Banking Services. Without limiting the foregoing, Customer and each Designated Related Entity agree that an Internal Transfer or External Transfer initiated by an Authorized User employed by *any* of them (or by any person utilizing the security procedures applicable to such Authorized User) shall be deemed an act of an Authorized User of Customer or the Designated Related Entity whose funds are affected by such transfer, and all of the terms and conditions of this Agreement shall apply to such transfer as if it had been ordered by such Customer or Designated Related Entity.

33.5.2 Customer specifically acknowledges and agrees that its rights with respect to the Account(s) of each Designated Related Entity are limited to those rights specifically described in this Section, and that other features of the Business Online Banking Services described in the Agreement may or may not be made available with respect to any Designated Related Entity's Account(s).

33.5.3 Each Designated Related Entity specifically acknowledges and agrees that its rights with respect to Customer's Account(s) and of each other Designated Related Entity are limited to those rights specifically described in this Section, and that other features of the Business Online Banking Services described in this Agreement may be made available with respect to Customer's Account(s) or the Account(s) of any other Designated Related Entity at Bank's sole and exclusive discretion.

33.5.4 Customer and each Designated Related Entity acknowledge and agree that: (a) each Administrator and Authorized User of the Services will have the ability to exercise the rights described herein with regard to both Customer's and each Designated Related Entity's Account(s); (b) each

Administrator of Customer and each Authorized User designated by such Administrator(s) shall be deemed to be an Authorized User of each Designated Related Entity, subject to such limitations, restrictions and other requirements designated by the Administrator(s) for each Authorized User with respect to each Account of each Designated Related Entity; and (c) all Authorized Users of a Designated Related Entity may be designated by such Administrator(s) as an Authorized User of Customer and all other Designated Related Entities, subject to such limitations, restrictions and other requirements designated by the Administrator(s), and as otherwise provided under the terms herein.

33.5.5 Customer may remove or add additional Designated Related Entities, or additional Accounts of current or future Designated Related Entities, to this arrangement without notice to, or the knowledge or consent of, any current Designated Related Entity.

33.5.6 Customer may add additional Administrator(s) and/or Authorized User(s) to this arrangement without the knowledge or consent of any other Designated Related Entity. Such Administrator(s) and/or Authorized User(s) may or may not be signers on the Designated Related Entity's Account(s), in which case funds can be transferred to or from any Designated Related Entity's Account(s) by individuals who are not signers on the Designated Related Entity's Account(s).

33.5.7 Customer and each Designated Related Entity acknowledge and agree that Bank did not at any time solicit Customer and/or any Designated Related Entity for activation of this arrangement, and that Bank is providing the arrangement as an accommodation to and at the express request of Customer and each Designated Related Entity.

33.5.8 Customer and each Designated Related Entity acknowledge and agree that Customer and each Designated Related Entity are all responsible for reviewing and understanding any negative impact on Customer or any Designated Related Entity that may arise due to this arrangement or allowance of these affiliated-entity access services (for example, loss of any insurance coverage, increased possibility of liability for obligations or actions of each other in insolvency or otherwise, and increased losses due to unauthorized transactions).

33.5.9 Customer and each Designated Related Entity acknowledge and agree that Bank shall have no obligation to allow any person or entity to become a Designated Related Entity with respect to this arrangement, to allow any Account of any person or entity to be added to this arrangement, or to provide or continue to provide this arrangement for any Designated Related Entity or Account. Bank may also, at any time and from time to time, establish limits on or eligibility criteria for the types or number of Designated Related Entities or Accounts for which this arrangement is provided.

33.6 Representations, Warranties and Covenants.

33.6.1 Customer and each Designated Related Entity represent, warrant and covenant that any and all transfers and commingling of funds that may occur via the Business Online Banking Services and as described herein, and all other aspects of the rights with respect to the Account(s) of Customer and each other Designated Related Entity, have been duly authorized by all necessary parties, including, without limitation, the accountholder of each Account, and that Customer and each Designated Related Entity have obtained, and shall maintain in their regular business records and make available to Bank upon reasonable demand for a period of six (6) years after the termination of this Agreement or any Business Online Banking Service(s), adequate documentary evidence of such authorization from the accountholder of each Account, executed by the duly authorized officer(s) of each such accountholder in accordance with that accountholder's organizational requirements.

33.6.2 Customer and each Designated Related Entity further covenant and agree that: (a) each transfer or any commingling of funds that may occur via the Business Online Banking Services and described herein shall not be in violation of any of their internal policies and procedures, nor be in violation of any applicable federal, state or local statute, ordinance, regulation or rule of law, or of any decree, judgment or order of any judicial or administrative authority; and (b) this Agreement has been duly authorized by all necessary organizational action and are the valid and binding agreements of each of them, enforceable in accordance with their terms.

33.7 Ongoing Customer Responsibilities. Customer and each Designated Related Entity shall have the sole responsibility, on an ongoing basis, for:

- i. Monitoring the features and capabilities of the Business Online Banking Services and assessing the propriety of continuing its enrollment in the Business Online Banking Services and this arrangement;
- ii. Assessing the propriety of its continuing participation in this arrangement (which includes Customer's authority and ability to designate additional Designated Related Entities , additional Accounts, and additional Authorized Users);
- iii. Obtaining from Customer updated listings of all Designated Related Entities ,Accounts and Authorized Users under this arrangement, together with such further information concerning such Designated Related Entities ,Accounts and Authorized Users as the Designated Related Entity deems necessary;
- iv. Obtaining from Customer the level of access (e.g., "View" only or "Full") provided to each Authorized User, and determining the propriety of that level of access; and
- v. Establishing and maintaining appropriate procedures to account for its funds and transactions in its Accounts.

33.8 Modifications . Customer and each Designated Related Entity acknowledge and agree that additional Designated Related Entities may be added to this arrangement by request of Customer, subject to Bank's approval. A Designated Related Entity may be removed from this arrangement by request of Customer , or by action of Bank. Each Designated Related Entity hereby approves of the addition or removal, at any time, of other Designated Related Entities ,Accounts and Authorized Users as provided herein, without notice to or further consent of such Designated Related Entity. Customer and each Designated Related Entity acknowledge and agree that the addition of any new or deletion of any current Designated Related Entity(ies) to this arrangement shall require the execution and delivery of an appropriate form(s) by Customer, and by any new Designated Related Entity(ies) in Bank's sole discretion, which documents shall be considered a part of this arrangement and otherwise attached hereto. Removal of a Designated Related Entity shall not relieve that Designated Related Entity of any contingent or matured obligation incurred hereunder prior to that removal.

33.9 Indemnification. Without limiting anything else contained herein, Customer and each Designated Related Entity shall indemnify Bank in the manner described in **Section 16** of this Agreement against any claim made by any of them, or by any third party, relating to or arising out of Bank's compliance with the instructions of Customer or any Designated Related Entity pursuant to this Agreement, including, without limitation, any claim that any transfer or deposit authorized pursuant hereto was wrongful as against any of Customer, any Designated Related Entity, or any such third party. The foregoing indemnification obligation shall also apply, and Bank shall have no liability whatsoever, in the event that any of the Services are used by Customer and/or any current Designated Related Entity(ies) involving any new Designated Related Entity(ies) for which a new request has not been delivered to Bank by Customer, as described in **Section 33.8** above.

34. Third Party Service Provider Activities. Subject to Bank's prior approval and in its sole and exclusive discretion, Customer may be permitted to use one or more of the Services provided hereunder on behalf of and in conjunction with Accounts that belong to Customer's clients, who may or may not otherwise be customers of Bank, as well as on Customer's own behalf (hereinafter, in such capacity as a "Third-Party Service Provider"). Customer shall execute any such other agreement(s) or documents as deemed necessary or appropriate by Bank prior to the initiation or continuation by Customer of any Services in the capacity of a Third-Party Service Provider. Customer agrees that Bank retains the right to reject any request by Customer to engage in Third-Party Service Provider activities as well as any transactions initiated by Customer in such capacity, in Bank's sole discretion. In the event Bank approves Customer's use of the Services as a Third-Party Service Provider, then the following shall also apply:

(a) Customer represents and warrants to Bank that each Customer client has given Customer authority to access and conduct transactions with respect to its Accounts through use of any of the Services to the same extent as if Customer owned them, including in the capacity of a "third party service provider;"

(b) each reference to “Customer” in the Agreement will be deemed to be a collective reference to Customer and each Customer client whose Accounts are included in Bank’s implementation of Customer’s set-up for the Services;

(c) all of the provisions set forth in the Agreement will apply to the Customer client’s Account(s) as if Customer owned them;

(d) each person who is authorized to act on Customer’s behalf with respect to a Service is also authorized to act on Customer’s behalf to the same extent with respect to the Accounts of each Customer client whose Accounts are included in Bank’s implementation of Customer’s set-up for that Service; and

(e) Customer shall be liable for all monetary, confidentiality and other obligations to Bank under this Agreement as they relate to Customer’s use of the Services for itself as well as each such Customer client. Bank may require written confirmation from each Customer client that it has authorized Customer to include its Accounts in Bank’s implementation of Customer’s set-up for the Services, and Customer agrees to notify Bank immediately if that authority is revoked or changed.

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

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PART II: ONLINE BANKING SERVICE

This Part applies to Online Banking.

36. Definitions. In addition to the definitions set forth in Part I, certain terms used in this Part II are defined in the specific portion of this Part II where they are used. The following terms are also used throughout this Part II and have the meanings indicated:

“*Administrator(s)*” or “*Account Administrator(s)*” means Customer’s employee(s) or other person(s) that Customer (or any Administrator designated by Customer) designates on the Set-Up Form (defined below) associated with use of Online Banking as being Customer’s Authorized Representative or as authorized to act on Customer’s behalf with respect to the administration of Online Banking.

“*Authorized User*” means any person that Customer’s Administrator designates as being authorized to access or use Online Banking on Customer’s behalf.

“*Available Funds*” means the dollar amount of money in a Deposit Account that is currently available for use. It considers all collected funds on deposit, all posted transactions, certain electronic transactions, any holds placed on the Deposit Account due to uncollected funds, pending deposits, or withdrawals, and any overdraft or other credit line balance associated with the Deposit Account. Please refer to Bank’s Federal Availability Schedule in Compliance with the Expedited Availability Act and Regulation CC (“Federal Availability Schedule”) and Bank’s Deposit Account Disclosure Notice for more information.

37. Eligibility. Customer is eligible to use Online Banking if Customer maintains an Account (checking, savings and/or loan), has executed this Agreement, satisfies the Computer requirements associated with Online Banking and maintains an email address, and if Bank has otherwise approved Customer’s use of Online Banking as described further below.

38. Access. To use Online Banking, Customer must have a Computer, access to the Internet and an email address. Customer will be required to complete and submit a set-up form associated with use of Online Banking (hereinafter, “Set-Up Form”), which is attached hereto as **Schedule A**. Once Bank has received such Set-Up Form and verified Customer’s Account information, Bank will send Customer (by, e.g., telephone, secure email or similar method as Bank may elect from time to time) confirmation of Bank’s acceptance of Customer’s enrollment. For security reasons and to maintain the confidentiality of Customer’s Log-on ID, Password(s), and Secure Login information, Customer will select its own Log-on ID, Password, and other secure factors authenticating and authorizing Customer to obtain access to Online Banking. Customer can also add or remove access to any of Customer’s Accounts through Online Banking by completing required form(s). Access to Customer’s Accounts through Online Banking will be based upon the identification of Authorized Users and authority levels specified by Customer in Customer’s Set-Up Form. Except as may otherwise be set forth in this Part II, Bank shall have no

responsibility or obligations whatsoever to monitor transactions through Online Banking to determine that they are made by or on behalf of Customer.

39. Administrator and Authorized Users .

39.1 Customer shall designate an Administrator with Bank as set forth in the Set-Up Form. Customer is solely responsible for designating its Administrator.

39.2 The Administrator may designate other Administrators and/or Authorized Users. Notwithstanding the foregoing, Bank recommends, as an additional security procedure, that Customer designate only one Administrator at a time. Customer accepts as its sole responsibility the Administrator's designation of Authorized Users. Customer understands that Administrator(s) will control, and Customer authorizes Administrator(s) to control, access by Authorized Users of Online Banking by instructing Bank to issue Access Devices. The Administrator(s) may instruct Bank to add, change or terminate Customer's Authorized User(s) or de-activate an Access Device(s) from time to time and in his/her sole discretion. Bank does not control access by any of Customer's Authorized Users to any feature of Online Banking. In the event that Customer designates more than one Administrator, Bank recommends that Customer manage its use of Online Banking by requiring dual approval to set up new Authorized Users.

39.3 Customer will require each Administrator and each Authorized User to review and comply with all provisions of this Agreement and all other applicable agreements. Customer acknowledges and agrees that it is fully responsible for the failure of any Administrator or any Authorized User to so comply. Customer is responsible for any payment, transfer and other use of Online Banking and any charges incurred by any Administrator and any Authorized User, even if such Administrator or Authorized User exceeds his/her authorization as established by Customer.

39.4 If an Authorized User authorizes other persons/entities to use the Authorized User's Access Devices in any manner, said authorization will be considered unlimited in amount and manner until Customer has notified Bank in writing as set forth in this Agreement, that Customer has revoked the authorization and changed, or caused Bank to change, the subject Authorized User's Access Devices. Customer is responsible for any transactions made by such persons/entities until Customer notifies Bank that transfers by that person/entity are no longer authorized and Bank has had a reasonable opportunity to act upon the requested change. Bank will not be liable for and will not reimburse Customer for any losses that may occur as a result of this authorized use of an Authorized User's Access Devices.

39.5 Customer shall notify Bank of any changes in access to or use of Online Banking by the Administrator(s) or Authorized User(s) in accordance with the terms of this Agreement. Notwithstanding the foregoing, whenever an Administrator or Authorized User leaves Customer's employ or Customer otherwise revokes an Administrator's or Authorized User's authority to access or use Online Banking, Customer must notify Bank in writing immediately.

40. Access Devices; Security Procedures.

40.1 Upon successful enrollment, Customer can access Online Banking from Bank's designated website, using the Access Devices and Security Procedures applicable to Customer's access to and use of Online Banking, as described in **Schedule B** attached hereto and throughout this Agreement from time to time (hereinafter collectively the "Security Procedures").

40.2 Customer accepts as its sole responsibility the use, protection and maintenance of confidentiality of, and access to, the Access Devices. Customer agrees to take reasonable precautions to safeguard the Access Devices and keep them confidential. Customer agrees not to reveal the Access Devices to any unauthorized person. Customer further agrees to notify Bank immediately if Customer believes that the confidentiality of the Access Devices has been compromised in any manner.

40.3 The Access Devices identify and authenticate Customer (including the Administrator and Authorized Users) to Bank when Customer accesses or uses Online Banking. Customer authorizes Bank to rely on the Access Devices to identify Customer when Customer accesses or uses any of Online Banking and as signature authorization for any payment, transfer or other use of Online Banking. Customer acknowledges and agrees that Bank is authorized to act on any and all communications or instructions received using the Access Devices, regardless of whether the communications or instructions are

authorized. Bank owns the Access Devices, and Customer may not transfer them to any other person or entity.

40.4 Customer acknowledges and agrees that the Access Devices and other Security Procedures applicable to Customer's use of Online Banking and set forth in this Part II as well as this Agreement generally are a commercially reasonable method for the purpose of verifying whether any payment, transfer or other use of Online Banking was initiated by Customer. Customer also agrees that any election Customer may make to change or waive any Security Procedures recommended by Bank is at Customer's risk and that any loss resulting in whole or in part from such change or waiver will be Customer's responsibility. Customer further acknowledges and agrees that the Access Devices are not intended and that it is commercially reasonable that the Access Devices are not intended to detect any errors relating to or arising out of a payment, transfer or any other use of Online Banking.

41. Basic Features of Online Banking.

By subscribing to Online Banking, Customer can choose to have access to various of the basic features of Online Banking, which can include the following features:

- a. View Account(s) histories;
- b. Export Account(s) histories, including the use of financial management software;
- c. Perform Internal Transfers from Customer's checking, money market deposit, savings and certain line of credit Account(s) to Customer's checking, money market deposit, savings and loan Account(s);
- d. Change Customer's address;
- e. Stop payment of checks written (Customer may refer to Bank's Fee Schedule for applicable fees); and
- f. Sign up for Account alerts.

In addition to basic features of Online Banking, additional features or modules related to Online Banking may be offered from time to time by Bank, in its sole and exclusive discretion, including but not limited to the following:

(i) **ACH Originations**. ACH originations are subject to the terms and conditions of Part III of this Agreement. The ACH Origination Service allows Customer to initiate and approve (with pre-authorization) certain ACH transactions that Customer desires Bank to enter into the ACH network on Customer's behalf.

(ii) **Wire Transfers**. Wire transfers are subject to the terms and conditions of Part IV of this Agreement. The Wire Transfer Service allows Customer to transfer funds electronically, typically from Customer's Account(s) to other account(s) with Bank or to account(s) at other banks.

(iii) **Re-order Checks**. This feature allows Customer to request and pay for additional checks for any of Customer's Account(s).

(iv) **Bill Payment**. The bill payment feature allows Customer to pay bills to certain third-party payees. This feature is subject to the terms and conditions provided in **Section 46** of this Part II.

(v) **Mobile Banking**. Mobile banking allows Customer to use a smartphone or other eligible mobile device to perform certain electronic banking tasks such as view and monitor certain Account balances, transfer funds between certain Accounts, and pay bills. This feature is subject to the terms and conditions provided in Part V of this Agreement.

Additional electronic business banking services may be added by Bank from time to time in Bank's sole discretion. The use of certain features or modules related to Online Banking may incur fees or other charges, which are disclosed in the Fee Schedule.

42. Internal Transfers . Internal Transfers (transfers between Customer's eligible Accounts) may be processed as follows:

42.1 One-Time Transfers.

- i. One-Time transfers and payments are used for transfers and payments between eligible Accounts which occur on an infrequent or irregular basis, or which vary in amount. Such transfers may only be scheduled for a Business Day. To have a transfer processed on the same Business Day, Bank must receive Customer's instructions before the established funds transfer cut-off time described in **Section 43**. Customer must have sufficient Available Funds (either in the Account or via an overdraft line of credit) on the day and at the time Customer requests a same-day one-time transfer, as the transfer is memo-posted to Customer's Account immediately.
- ii. Customer may also request that a transfer be made on a future date that Customer may designate which is in advance of the Scheduled Transfer Date. Such transfers may only be scheduled for a Business Day. The "Scheduled Transfer Date" will be the effective date Customer enters, or the previous Business Day should the effective date fall on a weekend or holiday. If Customer requests a transfer for a future date, Bank processes the transaction at the close of business on that day only if it is a Business Day; otherwise, the transaction will be processed on the following Business Day. If Bank receives Customer's instruction after the end of a Business Day, Bank will process the transaction on Bank's next Business Day.
- iii. If Customer designates an Internal Transfer for a future date, Customer must have sufficient Available Funds before the established funds transfer cut-off time. Scheduled future Internal Transfers may be cancelled up to the established funds transfer cut-off time in advance of the Scheduled Transfer Date.

42.2 Recurring Transfers. If Customer designates an Internal Transfer as a recurring transfer, Customer may request, and Bank will use, a Scheduled Transfer Date that re-occurs on a specified regular basis (e.g., weekly, bi-weekly, semi-monthly, monthly, etc.). In conjunction with each Internal Transfer, Customer may designate an "end" date. Customer must have sufficient Available Funds before the established funds transfer cut-off time on the Scheduled Transfer Date as described below. Recurring transfers may be cancelled up to the established funds transfer cut-off time in advance of the Scheduled Transfer Date.

42.3 Limits on Transfers. Internal Transfers initiated through Online Banking are subject to there being sufficient Available Funds in the affected Account to cover the transfer on the Scheduled Initiation Date. Except as provided herein, Internal Transfers are subject to the terms and conditions applicable to such Account as set forth in the governing Account Disclosure Notice. Bank reserves the right to limit the frequency and dollar amount of transfers for security reasons.

Customer's ability to transfer funds between and/or make payments from Customer's savings or money market Deposit Accounts is limited by federal and state law, as may be further set forth in the Account Disclosure Notice.

43. Internal Transfers: Other Features.

43.1 Account Designation. Customer will designate Accounts between which Customer may transfer funds electronically through Online Banking. All of these Accounts must be in Customer's name (as owner or co-owner), unless otherwise approved by Bank and subject to the terms of this agreement, and be eligible for Internal Transfer. Eligible Accounts for Internal Transfer include checking, savings, and money market Accounts.

43.2 Cut-off Time; Funds Availability. Although Customer receives immediate provisional credit upon completion of an Online Banking session for Internal Transfers made during the session, Customer must make Internal Transfers before 5:00 p.m. on a Business Day for those funds to be posted on an Account on the same Business Day and to be available for non-Online Banking transactions. Internal Transfers designated as One-Time transactions made after 5:00 p.m. on a Business Day or on a weekend or holiday will be available for the payment of non-Online Banking transactions on the following Business Day.

44. Internal Transfers: Canceling or Modifying. A One-Time Internal Transfer cannot be canceled. In order to cancel or change a scheduled transaction through Online Banking that is designated as "Future" or "Recurring," Customer must use Online Banking and follow the instructions provided to Customer.

Customer must cancel or modify the "Future" or "Recurring" Internal Transfer using Online Banking before the cut-off times described above.

45. Stop Payment. Subject to Bank's approval, Customer may elect to use Online Banking to initiate a stop payment request for any check written on Customer's Accounts. Customer agrees that any stop payment request shall be null and void after six (6) months from the date of the order, or such earlier time as communicated by Bank to Customer. Customer agrees to provide all required information relating to stop payment requests. If Customer fails to provide Bank with complete information or if the information Customer provides is incorrect, Customer agrees that Bank shall not be responsible for any failure to stop payment on such item. Customer understands that if the stop payment request comes too late for Bank to have a reasonable time to act on it prior to paying, settling for, posting or becoming accountable for the check described in the request, then Customer's stop payment request shall be of no effect. Customer agrees not to make a claim against Bank if the check is paid through inadvertence, accident, oversight or if Bank is required to pay such check by a holder in due course or if by reason of such payment, other items drawn on Customer's Account(s) are returned insufficient. Customer agrees to indemnify and hold Bank harmless from and against any and all losses, damages and expenses, including court costs and attorney's fees, incurred by Bank due to Bank's refusal of payment of any check or other item in accordance with Customer's stop payment instructions. Unless otherwise provided in this Part II, Customer may not stop payment of electronic fund transfers. Therefore, Customer should not employ electronic access for purchases or services unless Customer is satisfied that it will not need to stop payment.

46. Bill Payment Service.

46.1 The Online Banking Bill Payment Service ("Bill Payment") allows Customer to schedule business-purpose bill payments through the Internet. Bill Payment is offered through and actual payments are handled by Bank's third party service provider. Additional terms and conditions govern Bill Payment and are available on the Online Banking site. In addition to the terms and conditions available on the Service's site, this Agreement, including the Bill Payment security procedures described in Schedule B and the following additional terms and conditions, shall also apply to Customer's use of Bill Payment.

46.2 Customer is required to enroll in Bill Payment prior to using it. Each Deposit Account owner, regardless of the type of ownership held on a Deposit Account (joint, sole, business, etc.), must enroll separately to use Bill Payment. Bill Payment may be used for the business use of Customer only. Any attempt or use of Bill Payment to process payments for third parties is prohibited and can result in termination of Bill Payment. Joint owners of a single Deposit Account must have enrolled separately, and the payment history and payee information for each enrollee will not be shared or accessible by any other enrollee, even at the request of either party.

46.3 Enrollment in Bill Payment includes separate terms and conditions provided during enrollment that Customer will be required to accept as a condition for using Bill Payment. Customer and/or at least one (1) Authorized Representative must enroll in Bill Payment in order for it to be activated. Customer and/or Customer's Authorized Representative and all Authorized Users of Bill Payment will be required to review and accept, and thereby be bound by, the additional terms and conditions, which will be displayed electronically during the Bill Payment Service enrollment process. Without limiting the foregoing, by granting its Authorized Representative(s) and any Authorized User(s) access to Bill Payment, Customer acknowledges and agrees to all of the terms and conditions contained in this Agreement, as well as those available on the Service's site, with respect to the Bill Payment Service.

46.4 Except as is otherwise provided by this Agreement or by applicable law, Bank cannot and will not guarantee or have any responsibility whatsoever for the completion or accuracy of transactions performed through Bill Payment, including electronic fund transfers that Customer requests be performed by Bank's service provider. Payments initiated through Bill Payment that are paid via paper check may appear to be drawn on a third-party processor and not Bank.

46.5 **Single Payments.** A single payment will be processed on the Business Day that Customer designates as the payment's process date, provided the payment is submitted prior to the daily cut-off time on that date. The daily cut-off time is currently 2:00 p.m. A single payment submitted after the cut-off time on the designated process date will be processed on the following Business Day. If you designate a

non-Business Day as the payment's process date, the payment will be processed on the first Business Day following the designated process date.

46.6 Recurring Payments. When a recurring payment is processed, it is automatically rescheduled by the system. Based upon your selected frequency settings for the payment, a process date is calculated for the next occurrence of the payment. If the calculated process date is a non-Business Day, it is adjusted based upon the following rules:

46.6.1 If the recurring payment's "Pay Backward" option is selected, the process date for the new occurrence of the payment is adjusted to the first Business Day prior to the calculated process date. If the recurring payment's "Pay Backward" option is not selected (or if the "Pay Backward" option is not available), the process date for the new occurrence of the payment is adjusted to the first Business Day after the calculated process date.

46.6.2 If Customer's frequency settings for the recurring payment specify the 29th, 30th, or 31st as a particular day of the month for processing and that day does not exist in the month of the calculated process date, then the last calendar day of that month is used as the calculated process date.

46.7 For single and recurring payments, CUSTOMER MUST ALLOW AT LEAST FIVE (5) BUSINESS DAYS, PRIOR TO THE DUE DATE, for each bill payment to reach the payee. Any bill payment can be changed or canceled, provided Customer accesses the bill paying service prior to the cut-off time on the Business Day prior to the Business Day the bill payment is going to be initiated.

46.8 Customer agrees to have Available Funds on deposit in the Account Customer designates in amounts sufficient to pay for all bill payments requested, as well as any other payment obligations Customer has to Bank. Bank reserves the right, without liability, to reject or reverse a bill payment if you fail to comply with this requirement or any other terms of this section. If you do not have sufficient funds in the Account and Bank has not exercised its right to reverse or reject a bill payment, you agree to pay for such payment obligations on demand. You further agree that Bank, at its option, may charge any of your Accounts with Bank to cover such payment obligations.

47. Balance Reporting. This feature provides Customer with various online reports that display certain Account(s) balances, status summary and information detail that can be reviewed online and exported. This feature also provides online access to images of paid checks.

48. Alerts. Online Banking provides optional, voluntary Account alerts associated with certain modules of Online Banking that must be activated by Customer. Account alerts allow Customer to choose alert messages for Customer's Account(s). Bank may add new alerts from time to time, or cancel old alerts. If Customer has opted to receive an alert that is being canceled, Bank will notify Customer in accordance with the terms of this Part II. Each alert has different options available, and Customer may select from among these options upon activation of Customer's alerts service.

Voluntary alerts are subject to the following:

(i) Electronic alerts will be sent to the email address, text or phone number identified by Customer on the Set-Up Form, as applicable. If Customer's email address, facsimile, text or phone number changes, Customer is responsible for updating that information via Online Banking, and such change(s) will apply to all of Customer's alerts.

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

Alerts are not encrypted. Bank will never include Customer's passwords or full Account number(s). However, alerts may include Customer's name and some information about Customer's Accounts, depending upon Customer selection of specified alerts. Customer's employees who have access to the specified transmission address or number enables him/her to view the contents of these alerts.

Bank may charge a fee for Account alerts, once activated. Any such fee and the other Service Fees are disclosed in the Fee Schedule (Schedule C). Fees are subject to change from time to time in accordance with the terms of this Agreement.

49. Financial Management (FM) Software. The Financial Management Software feature of Online Banking (“FMS Service”) allows Customer to use personal financial management software (“FMS Software”) (e.g., Quicken®, or QuickBooks® [LI](#)) to access Online Banking and download Account information such as balance and transaction history. This **Section 49** sets forth additional terms and conditions that apply whenever Customer uses or permits any other person(s) or entity to use the FMS Service. The terms and conditions contained in this Section are limited to use of the FMS Service, and do not include use of products and services directly accessible through Online Banking without the use of FMS Software. Online Banking utilizes current releases of Quicken® and QuickBooks®, as may be made available from time to time from the respective software manufacturer. Customer is responsible for obtaining and maintaining any software that is required for operation of the FMS Service. Customer’s use of the FMS Software is governed by the software license agreement(s) included with each software application. Customer must agree to the terms and conditions of the software license agreement(s) during the installation of the FMS Software on Customer’s Computer. Customer is responsible for the correct set-up and installation of the FMS Software, as well as maintenance, updates and upgrades to the FMS Software and/or Customer’s Computer. Bank makes no warranties nor accepts any liability for such software. Bank is not responsible for any problems related to the FMS Software itself, Customer’s Computer or Customer’s ability to connect using the FMS Software as described in this Part II.

49.1 The FMS Service. Information about Account activity is synchronized between Customer’s FMS Software and Online Banking website. Customer may access such information directly through Online Banking. Information via Customer’s FMS Software may differ from the information that is available directly through Online Banking. Information available directly through Online Banking may not be available via Customer’s FMS Software, may be described using different terminology, or may be more current than the information available via Customer’s FMS Software. The method of entering instructions via Customer’s FMS Software may also differ from the method of entering instructions directly through Online Banking. Bank is not responsible for such differences, whether or not attributable to Customer’s use of FMS Software.

49.2 Customer is responsible for all transfers and payments that Customer authorizes using FMS Software. If Customer permits other persons to access Online Banking using FMS Software, Customer is responsible for all transactions it authorizes from Account(s) accessed via FMS Software. Customer must establish its own internal security procedures for employees that Customer authorizes to use Online Banking via FMS Software and to prevent unauthorized use by other employees or persons.

49.3 This Part II describes Bank’s responsibility for completing transfers and payments, and any exceptions from liability for its failure to do so. These rules apply to Customer’s transactions using FMS Software. Bank is not responsible for any problems that Customer may have using FMS Software to connect to Online Banking if no known problem exists with Bank’s systems that might impede such connectivity, or if the problem is due to Customer’s software, Computer or Internet service. Customer should verify all Account data obtained and transactions executed on Customer’s Accounts using FMS Software. Bank’s records of transactions, instructions and communications regarding Customer’s Accounts and use of Online Banking supersede any records stored or created on Customer’s Computer through the use of FMS Software. Customer is responsible for any and all obligations to any software vendor arising from Customer’s use of that vendor’s FMS Software.

50. Authorization to Charge Accounts. Customer authorizes Bank and Bank’s processor(s) to provide Online Banking to Customer, and, if applicable, authorizes Bank or Bank’s processor(s) to initiate automated clearing house (ACH) debits or charges to Customer’s designated Account(s) for any transactions accomplished through the use of Online Banking, including the amount of any Internal Transfer that Customer makes and any charges for Online Banking.

51. Documentation and Verification of Transactions.

51.1 Confirmation Numbers. Upon completion of a transaction using Online Banking, a confirmation number will be given. Customer should record this number, along with the transaction amount in

Customer's checkbook register (or other permanent record), because this will help in resolving any problems that may occur. No printed receipts are issued through Online Banking.

51.2 Statements. Customer will not receive a separate Online Banking statement. Transfers to and from Customer's Accounts using Online Banking will appear on the respective periodic statements for each of Customer's Accounts.

52. Customer Responsibilities; Security.

52.1 Customer is responsible for all transfers, payments or other Online Banking transactions that Customer authorizes to be made using Online Banking.

52.2 Customer agrees not to disclose any proprietary information regarding Online Banking to any third party (except to Customer's Administrator(s) and Authorized User(s)). Customer also agrees to comply with any operating, security and recognition procedures Bank may establish from time to time with respect to Online Banking. Customer will be denied access to Online Banking if Customer fails to comply with any of these procedures. Customer acknowledges that there can be no guarantee of secure transmissions over the Internet and that Online Banking's Security Procedures are reasonable. Customer is responsible for reviewing the transaction reports Bank provides on-line and in Customer's monthly statements to detect unauthorized or suspicious transactions. In addition to any other provision hereof regarding authorization of transactions using Online Banking, all transactions will be deemed to be authorized by Customer and to be correctly executed after Bank first provides Customer with a statement or online transaction report showing that transaction, unless Customer has provided written notice that the transaction was unauthorized or erroneously executed within the timeframes set forth in **Section 11** of Part I.

53. Disclosure of Account Information. In accordance with Bank's privacy policy, Bank will disclose information to third parties about Customer's Account(s) or Customer's Online Banking transactions:

- (i) when it is necessary in order to complete transfers;
- (ii) to verify the existence and/or condition of Customer's Account(s) for a third party, such as a credit bureau or merchant;
- (iii) to comply with a government agency or court order or the request of a state or federal regulatory agency;
- (iv) if Customer gives permission to Bank; and
- (v) on a closed Account, if Bank believes Customer has mishandled it.

54. Contacting Bank. Customer may contact Bank at the phone number and address provided in **Section 26** of Part I to: (a) request stop payment, (b) inquire about the receipt and/or amount of credits to Customer's Account(s), (c) notify Bank if Customer's Access Devices are lost or stolen, (d) notify Bank of unauthorized transactions appearing on Customer's statement, or (e) change Customer's mailing or email address.

55. Joint Accounts. To the extent applicable, when Customer's access to Online Banking is linked to one or more jointly owned Accounts, Bank may act on the verbal, written or electronic instructions of any joint owner of those Accounts. Each owner of a Deposit Account is authorized to access all of the Available Funds held in that Deposit Account through Online Banking.

56. Hyperlinks. Bank may elect to display one or more hyperlinks on the Online Banking website from time to time. A hyperlink is any highlighted words or phrases in a document that allows Customer to click through to another section of the same document or to another document on the Internet. A hyperlink may allow Customer to click through to a third party website over which Bank has no control. Bank disclaims any responsibility for the content, products and services provided at linked third party websites. Bank is not liable for any failure of the products or services advertised on third party websites. Customer should be aware that third party websites may have privacy policies that differ from Bank's; it is Customer's responsibility to review privacy policies at the linked third party websites to determine whether those policies are acceptable to Customer. The linked third party websites may provide less security than Bank's website.

57. Hours of Access. Online Banking is generally available seven (7) days a week, twenty-four (24) hours a day. Some or all features of Online Banking may not be available from time to time due to problems arising in connection with transmissions over the Internet, as well as emergency or scheduled system maintenance. Bank will post a notice of any extended periods of non-availability on the Online Banking site. Certain transactions posted outside normal business hours, such as those using the Bill Payment Service, will not take effect until the next Business Day.

58. Fees and Charges. Customer agrees to pay the service fees associated with Customer's use of Online Banking as set forth in the Fee Schedule as it may be amended from time to time. Customer agrees that all such service fees will be deducted from the checking Deposit Account designated as the "Primary Account" on Customer's Set-Up Form. If Customer closes the Primary Account, Customer must contact Bank immediately to designate another Deposit Account as the Primary Account. Customer agrees to pay any and all additional charges for services that Customer may request which are not covered by this Part II or elsewhere in this Agreement. Customer acknowledges and agrees to be responsible for all telephone and Internet service fees Customer may incur in connection with Customer's use of Online Banking.

59. Overdrafts. Customer agrees to initiate or schedule all transfers or payment transactions only when there are or will be sufficient Available Funds in the Account for that transfer or payment. The completion of any transfer or payment order is subject to sufficient Available Funds in the Account at the time the transaction is posted. If Customer's Account has insufficient Available Funds to perform any fund transfer Customer has requested for a given Business Day, Bank may either pay or return it. Bank is not required to provide notification to Customer in any form that the transfer or payment order was not honored, and it is Customer's responsibility to make other arrangements to facilitate the processing of the transaction or payment by other means, which may include rescheduling or reinitiating the transaction in Online Banking. Customer agrees to pay the outstanding overdraft and any fee(s) associated with the overdraft in accordance with Bank's Fee Schedule, whether the item is paid or returned. The honoring of one or more of Customer's overdrafts, however, does not obligate Bank to honor any future overdrafts. Bank may assess a fee to Customer's Account for processing an item that is presented for payment for which there are no funds, insufficient funds or unavailable funds. Please refer to the Fee Schedule for the amount of this fee. If Customer has an "Overdraft Protection" feature with Customer's Deposit Account, any check or debit that overdraws such Deposit Account will be honored up to Customer's available credit limit.

60. Limits on Amounts and Frequency of Online Banking Transactions.

60.1 Transactions initiated through Online Banking may be limited in number or dollar amount. Bank reserves the right to limit the amount or number of any type of transaction for any customer at any time. Bank may limit the amount and or the number of transactions for any specific customer group or entity as Bank deems appropriate in its sole and exclusive discretion. Additional information regarding limitations on the amount of transfers can be found the applicable Account Disclosure Notice. Any transaction limitation that is disclosed in these documents, in other areas, or is part of the Fee Schedule, may be applied to any and all transactions initiated in Online Banking (and/or with a Mobile Device, where applicable). Bank may amend, change, or abolish transaction limits of any kind at any time. Bank will use commercially reasonable efforts to give prior notice of such changes, but is not bound to do so except where governed by applicable law. All transactions are subject, in addition to any limitations on dollar amount or amount, to internal review by Bank from time to time, including but not limited to the review of factors such as the sending Account, receiving Account, the amount of the specific transaction, the aggregate amounts of other transactions processed or ordered by the customer, fraud screening, and other factors that Bank deems applicable and appropriate. If Bank determines that there are risks associated with the transaction, Bank may delay or cancel the transaction. Bank may request additional information regarding the transaction before it is finalized or any funds are released. In addition, if a hold has been placed on the deposits made to an Account from which Customer wishes to transfer funds, Customer cannot transfer the portion of the funds held until the hold expires.

60.2 By regulation, certain restrictions apply to the number of Internet transfers from savings Deposit Accounts (including money market Deposit Accounts) processed in a statement cycle. For a detailed

description of the limits on such transactions, please refer to the Account Disclosure Notice for business and non-consumer Accounts.

61. Unauthorized Online Banking Service Transactions.

61.1 Customer will notify Bank at once if Customer believes its Access Devices have been stolen or compromised. Customer's Administrator must instruct Bank to de-activate, and has the sole responsibility for instructing Bank to de-activate, any such Access Device(s). In addition, Customer will notify Bank at once if Customer believes someone has transferred or may transfer money from Customer's Account(s) without Customer's permission or if Customer suspects any fraudulent activity on Customer's Account. In no event will Bank be liable for any unauthorized transaction(s) that occurs with any Access Devices.

61.2 When Customer gives someone its Access Device(s), Customer is authorizing that person to use Online Banking, and Customer is responsible for all transactions the person performs using Online Banking. All transactions that person performs, even transactions Customer did not intend or want performed, are authorized transactions. Transactions that Customer or someone acting with Customer initiates with fraudulent intent are also authorized transactions. For Customer's protection, Customer should sign-off after every Online Banking session and close Customer's browser to ensure confidentiality.

PART III: ACH ORIGATION SERVICE

This Part applies to the ACH Origination Service.

62. ACH Service.

62.1 This Part III applies to all automated clearing house ("ACH") and associated services made available to Customer by Bank (the "ACH Service").

62.2 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*").

63. Types of Entries; Transmission Methods. Customer will only initiate those Entry types (Standard Entry Class or "SEC" Codes) that Bank has expressly authorized Customer to initiate, as set forth in **Schedule A** attached hereto and/or related ACH Service's Set-Up Form(s). All other SEC Codes that Bank may subsequently permit in its sole discretion and from time to time with respect to the ACH Service 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 ACH Service 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. Customer agrees to initiate Entries described herein in accordance with the requirements of and in compliance with its responsibilities, representations and warranties as an Originator under the *NACHA Rules*. Customer may transmit a *NACHA*-formatted file to Bank via Online Banking as forth in **Schedule A**. Customer expressly authorizes Bank to process each such file and to originate Entries on behalf of Customer (as the Originator) to Receivers' accounts. Customer agrees to the terms of Part II and the Security Procedures when initiating Entries. If required by Bank, prior to the origination of Entries, Customer agrees to create a test file pursuant to procedures established by Bank.

64. Compliance with the *NACHA Rules* and Applicable Law. Customer's rights and obligations with respect to any Entry are governed by the *NACHA Rules*, this Part III and applicable law. Customer has access to a copy of the *NACHA Rules* and acknowledges receipt of a copy. (The *NACHA Rules* may be obtained at *NACHA*'s website at <http://www.nacha.org/> or by contacting *NACHA* directly at 703-561-1100.) Customer agrees to subscribe to receive revisions to the *NACHA Rules* directly from *NACHA*. Customer represents and warrants that it is bound by and will comply with the *NACHA Rules* and applicable laws, regulations and regulatory requirements. Customer further represents and warrants that it will not transmit any Entry or engage in any act or omission that violates or causes Bank to violate the *NACHA Rules* or the laws of the United States, or any other applicable laws, regulations or regulatory requirements, including, without limitation, regulations of the Office of Foreign Asset Control ("OFAC"), sanctions or executive orders.

65. Transmittal of Entries.

65.1 Customer will transmit file(s) of credit and debit Entries to Bank with: (i) computer readable information; (ii) an ACH file and format consistent with current NACHA file and/or Bank specifications; (iii) via Online Banking and in accordance with the Security Procedures associated with that transmission medium, and otherwise with the formatting and content requirements identified in **Schedule A** attached hereto or as otherwise instructed by Bank. Bank may establish exposure limits associated with Customer's use of the ACH Service, which may include, e.g., a limit on the dollar amount of Entries or files transmitted by Customer to Bank and on the total dollar amount of Entries that may be transmitted by Customer on any one day as may be set forth in **Schedule A**, and across multiple settlement dates. Bank shall also monitor Entries initiated by Customer relative to such exposure limits. Such limits may be modified from time to time by Bank at its sole discretion with notice to Customer. Bank may in its sole discretion reject any file that exceeds such exposure limits. Bank may further reject any Entry or file transmitted by Customer 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.

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

65.3 Customer acknowledges the right of a consumer Receiver of an unauthorized debit Entry, as applicable and as described in the *NACHA Rules*, to obtain a refund of the funds debited from Receiver's account by such Receiver sending a written notice to Receiver's Depository Financial Institution within fifteen (15) Calendar Days after the Receiver's Depository Financial Institution sends or makes available to the Receiver information pertaining to that debit Entry. Customer also acknowledges the right of a corporate Receiver of a debit Entry, as applicable and as described in the *NACHA Rules*, to obtain a refund of the funds debited from such Receiver's account by such Receiver sending a notice to Receiver's Receiving Depository Financial Institution ("RDFI") within two (2) Business Days following the Settlement Date of the original Entry. Customer indemnifies Bank against any such claim for a refund by any Receiver.

66. Security Procedures.

66.1 Customer and Bank shall comply with the Security Procedures described in Part I and/or Part II of this Agreement and as applicable with respect to Entries transmitted by Customer via that mechanism to Bank, and/or as set forth in **Schedule B** hereto. Customer acknowledges and agrees that such 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 so long as it complies with such Security Procedures. Customer acknowledges that the purpose of such Security Procedures is to attempt to verify the authenticity of Entries transmitted by Customer 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 Customer.

66.2 Customer is strictly responsible for establishing, implementing and maintaining and (as appropriate) updating its own appropriate and commercially reasonable security procedures (a) to safeguard against the unauthorized transmissions, and (b) relating to the initiation, processing and storage of Entries. Customer 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"). Customer 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 Part III and in the *NACHA Rules*.

66.3 As required by the *NACHA Rules* with respect to the protection of ACH information (non-public information, including financial information of Receivers and Customer's customers, used to create, or contained within, an ACH Entry and any related addenda record), Customer shall ensure that its security policies, procedures and systems: (1) protect the confidentiality and integrity of the protected information; (2) protect against anticipated threats or hazards to the security or integrity of protected information until its destruction, and (3) protect against unauthorized use of protected information that could result in substantial harm to the Receiver/customer.

66.4 Customer 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 Procedures and any passwords, codes, security devices and related instructions provided by Bank in connection with the Security Procedures and to restrict access thereto to Customer's employees trusted with the duty to transmit Entries to Bank. If Customer suspects, knows, believes or has reason to believe that any such information or instructions have been known or otherwise accessed by unauthorized persons, Customer 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.

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

67. Compliance with Security Procedures.

67.1 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was transferred in accordance with the Security Procedures applicable to the Service and thereby purports to have been transmitted or authorized by Customer, it shall be deemed effective as Customer's Entry (or request), even if the Entry (or request) was not authorized by Customer. If Bank accepted the Entry (a) in compliance with the Security Procedures with respect to such Entry, (b) in compliance with any written agreement or instruction of Customer restricting acceptance of payment orders issued in Customer's name, and (c) in good faith, then with respect to a credit Entry, Customer shall be obligated to pay Bank the amount of such Entry, and with respect to a debit Entry, Customer shall maintain sufficient funds in the Settlement Account, as defined in **Section 73**, to fund the reversal of such Entry, if necessary.

67.2 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was actually transmitted or authorized by Customer, Customer shall pay Bank the amount of any such credit Entry and shall maintain funds in the Customer's Settlement Account to fund the reversal of any such debit Entry, whether or not Bank complied with the Security Procedures described herein or in the Part I and whether or not that Entry was erroneous in any respect or that any such error would have been detected if Bank had complied with the Security Procedures.

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

68.1 Except as provided in **Section 77** -- On-Us Entries and **Section 78** -- Rejection of Entries, Bank will process, transmit and settle for credit and debit Entries initiated by Customer as provided in the *NACHA Rules* as in effect from time to time and pursuant to this Part III.

68.2 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 as Bank may agree otherwise, 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. 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. Customer will hold Bank harmless from all charges that may be incurred by Bank as a result of Customer's delivery of late Entries.

68.3 If any of the above Customer requirements is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deadline that is a Business Day and a day on which the ACH Operator is open for business.

68.4 Customer acknowledges and agrees that credit given by Bank to Customer with respect to an ACH credit Entry is provisional until Bank receives final settlement for such Entry through a Federal Reserve Bank. If Bank does not receive such final settlement, Customer acknowledges and agrees that Bank is entitled to a refund of the amount credited to Customer in connection with such Entry, and the party making payment to Customer via such Entry (i.e., the originator of the Entry) shall not be deemed to have paid Customer in the amount of such Entry. Customer also acknowledges and agrees that Bank is not required, in its capacity as an RDFI under the *NACHA Rules*, to provide and therefore will not provide Customer, as the Receiver, with notice that Bank has received a credit Entry to Customer's Account.

69. Payment by Customer for Credit Entries. Customer shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Part III at such time on the Settlement Date with respect to such Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date of such Entry as Bank, in its discretion, may determine, and in accordance with the requirements of **Section 73** -- Settlement Account; Pre-Funding.

70. Customer Representations, Warranties and Agreements; Indemnification.

70.1 In addition to Customer's obligations and agreements otherwise described in this Part III, Customer further represents and warrants to Bank and agrees, with respect to each and every Entry transmitted by Customer that:

(i) each person shown as the Receiver on an Entry received by Bank from Customer has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry;

(ii) each authorization is operative at the time of transmittal, crediting or debiting by Bank as provided herein;

(iii) Entries transmitted to Bank by Customer are limited as set forth in **Section 63** and in **Section 65**;

(iv) Customer shall perform its obligations under this Part III in accordance with the *NACHA Rules* and all applicable federal and state laws, regulations and orders, including, but not limited to, the transaction screening and sanctions laws, regulations and orders administered by OFAC, and the laws, regulations and orders administered by FinCEN, as applicable;

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

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

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

(viii) with respect to any International ACH Transactions (IATs) that Customer may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, that Customer shall (a) classify and format payments transmitted to or received from a financial agency outside the U.S. as IATs 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 IATs prior to transmitting any file(s) of Entries to 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 the *NACHA Rules* and OFAC, as well as the laws and payment rules of a non-U.S. foreign destination;

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

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

(xi) as to any Accounts Receivable (ARC) Entries that Customer may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, that (a) the amount of the Entry, the routing number, the account number, and the check serial number are in accordance with the source document, (b) Customer will retain a reproducible, legible image, microfilm, or copy of the front of the Receiver's source document for each ARC Entry for two (2) years from the Settlement Date of the ARC Entry, (c) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, and (d) Customer has established reasonable procedures under which the Receiver may notify Customer that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's account and that Customer will allow the Receiver to opt-out of check conversion activity;

(xii) as to any Back Office Conversion (BOC) Entries that Customer may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, that (a) Customer has employed commercially reasonable procedures to verify the identity of the Receiver, (b) Customer has established and maintains a working telephone number for Receiver inquiries regarding the transaction that is answered during normal business hours and that such number is displayed on the notice required by the *NACHA Rules* for BOC Entries, (c) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (d) Customer will retain a reproducible, legible image, microfilm, or copy of the front of the Receiver's source document for each BOC Entry for two (2) years from the Settlement Date of the BOC Entry, (e) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to BOC Entries;

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

(xiv) as to any Returned Check (RCK) Entries that Customer may be permitted by Bank to initiate, in Bank's sole and exclusive discretion and from time to time, that (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.

70.2 Customer shall indemnify and defend Bank against any third-party claims, alleged claims, loss, liability or expense (including attorneys' fees and expenses) directly resulting from, related to or arising out of:

- i. any material breach of the foregoing representations and warranties of this Part III, including any claim brought by a third party in connection with a breach of any of the foregoing representations or agreements;
- ii. Customer's failure to exercise ordinary care in connection with its duties hereunder;
- iii. any action by the RDFI upon an unauthorized or erroneous Entry initiated by Customer;
- iv. any actions by a service provider or agent of Customer that result in a material breach of this Part III by Customer; or
- v. to the extent that it involves Bank, any litigation by an ACH Operator, an RDFI or any Receiver asserting noncompliance on Customer's part with the *NACHA Rules* or any other applicable laws, regulations or regulatory requirements.

In the event a Report of Possible Rules Violation is filed against Customer as described in the *NACHA Rules*, Customer will immediately notify Bank of the filing and take appropriate steps to correct the problem within the time frames suggested by Bank.

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

71.1 The liability of Bank under this Part III shall in all cases be subject to the provisions of Part I of this Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. Without limiting the foregoing, 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 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. Customer agrees to indemnify and defend Bank against any loss, liability or expense (including reasonable attorney's fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Customer or any other person described in this **Section 71.1**. Customer 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 Customer. Customer shall also be responsible for any fees imposed upon Bank by NACHA for the return of an Entry initiated by Customer that did not comply with the *NACHA Rules* or the terms of this Part III.

71.2 Customer acknowledges and agrees that Bank's provision of the ACH Origination Service 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.

71.3 EXCEPT AS OTHERWISE PROVIDED IN THIS PART III, CUSTOMER EXPRESSLY AGREES THAT USE OF THE ACH SERVICE IS AT CUSTOMER'S SOLE RISK, AND THE ACH SERVICE IS PROVIDED "AS IS," AND BANK AND ITS AGENTS DO NOT MAKE, AND EXPRESSLY DISCLAIM ANY,

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

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

73. Settlement Account; Pre-Funding.

73.1 Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Part III by debiting the Account(s) of Customer identified in **Schedule A** attached hereto (which shall collectively, be referred to herein as the "Settlement Account") or any future Accounts established by Customer at Bank, and Bank shall credit the Settlement Account for any amount received by Bank by reason of the return of an Entry transmitted by Bank for which Bank has previously received payment from Customer. Such credit shall generally be made as of the day of such receipt by Bank.

73.2 Customer agrees to irrevocably provide Available Funds in the Settlement Account for the total amount of all credit Entries submitted to Bank for processing. Customer's Settlement Account will generally be debited on the Settlement Date of the Entries/files.

73.3 Notwithstanding the requirements of **Section 73.2**, Bank reserves the right, in its sole and exclusive discretion and at any time, to require, as a condition of initiating any ACH credit Entries/files, that Customer irrevocably provide Available Funds in the Settlement Account for the total amount of such Entries/files submitted to Bank for processing, e.g., two (2) Business Days prior to the Effective Date of the transactions ("Pre-Funding"). In such event, Bank will place a hold on funds in the Settlement Account equal to the total amount of the ACH credit Entries on the Business Day that Bank begins processing Customer's ACH file, and Customer's Settlement Account will be debited on the Settlement Date of the Entries/files, simultaneously with removal of the hold on funds in the Settlement Account.

74. Risk Mitigation. In order to reduce the risk of loss to which Bank is subject under this Part III, Bank may in its sole discretion establish such risk mitigation procedures as Bank deems reasonably necessary, including without limitation, requiring personal guaranties of Customer's principals, prefunding of credit Entries, delayed availability of funds to Customer to cover returned debit Entries, and submission of balanced or unbalanced files (e.g., submission of a credit file for which Bank shall then create the offsetting debit file.)

75. Due Diligence. Customer will supply Bank with due diligence information when reasonably requested. This information may include, but is not limited to, financial data, names and other information concerning the principles of Customer, information about the business in which Customer participates, information regarding the creditworthiness of Customer, projected return rates, and payment history. Bank may, in its reasonable discretion, conduct a limited review of Customer's operations to ensure

compliance with the provisions of this Part III. Where Bank reasonably believes that Customer's financial condition is impaired or deteriorating, Bank may refuse to process any Entries or may require Pre-Funding of all Entries.

76. Cancellation or Amendment of an Entry. Customer shall have no right to cancel or amend any Entry after its receipt by Bank. However, Bank shall use reasonable efforts to act on a request by Customer to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with this Part III, including the Security Procedures described in this Agreement. Bank shall have no liability if cancellation or amendment is not accomplished as requested. Customer shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting or attempting to effect Customer's request for the cancellation or amendment of an Entry.

77. On-Us Entries. Except as provided in **Section 78** -- 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 shall debit or credit 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 68** are 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*.

78. Rejection of Entries. Bank may reject any Entry which does not comply with the requirements of **Section 65** – Transmittal of Entries, or **Section 66** – 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 if Customer has failed to comply with its Account balance or pre-funding obligations under **Section 73** – Settlement Account / Pre-Funding, and as otherwise provided in **Section 65** of this Part III. Bank may reject any Entry if Customer does not adhere to the Security Procedures described in **Schedule B** and may reject any Entry if Customer is not otherwise in compliance with the terms of this Part III or the *NACHA Rules*. Bank shall notify Customer in accordance with **Schedule A** of such rejection no later than the Business Day such Entry would otherwise have been transmitted by Bank to the ACH Operator or, in the case of an On-Us Entry, its Effective Entry Date. Notices of rejection shall be effective when given. Bank shall have no liability to Customer by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

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

80. Notice of Returned Entries and Notifications of Change.

80.1 Bank shall notify Customer in accordance with **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 retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Part III with respect to the original Entry. If a customer or client of Customer asserts that an Entry was unauthorized, Customer shall be solely responsible to collect any funds owed to Customer. Bank has no obligation to originate a transaction where authorization has been revoked.

80.2 Bank shall notify Customer of all Notifications of Change received by Bank relating to Entries transmitted by Customer, in accordance with **Schedule A**, no later than one (1) Business Day after receipt thereof. Customer shall ensure that changes requested by the Notifications of Change are made within six (6) Business Days of Company's receipt of the Notification of Change information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

81. Entries Returned as Unauthorized. Customer 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, Customer will contact the necessary parties and resolve any dispute. During this process, Customer may ask Bank to request from the RDFI a

copy of the "Written Statement of Unauthorized Debit." Bank will use reasonable efforts to obtain the statement and will deliver it to Customer when received. Customer agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer re-authorizes the Entry or Entry stream.

82. Pre-Notification and Rejection of Pre-Notification. Bank recommends that, as permitted by the *NACHA Rules* or applicable law, Customer send pre-notifications at least three (3) Business Days prior to initiating an authorized Entry to a particular account in a format and medium approved by the *NACHA Rules*. Customer may also initiate a new pre-notification (i) when any changes are made to an account number, financial institution, or individual identification number or (ii) as otherwise stated in the *NACHA Rules*. If Customer receives notice that any such pre-notification has been rejected by an RDFI, Customer will not initiate any related Entry until the cause for rejection is resolved as provided in the *NACHA Rules*. If Customer receives notice that an RDFI will not receive Entries without having first received a copy of the authorization signed by its customer, Customer will not initiate any Entry to such customer(s) until it has provided the RDFI with such authorization within the time limits provided in the *NACHA Rules*. Customer understands and acknowledges that once a pre-notification has been initiated using the Services, Customer will be restricted from initiating any Entry to such customer(s) for three (3) Business Days.

83. Unauthorized Return Rate in Excess of NACHA Rules Limits. In the event the rate of unauthorized returns of Entries submitted by Customer exceeds the limits provided in the *NACHA Rules*, as the same may be amended from time to time, Bank will share the data with Customer and Customer will take immediate steps to revisit its authorization procedures to reduce the unauthorized return rate to comply with the *NACHA Rules* and shall further promptly prepare and submit a written plan and timeline to Bank noting Customer's intended plan to reduce unauthorized returns. Effective September 18, 2015, the unauthorized return rate provided under the *NACHA Rules* will change from 1% to 0.5%.

84. Inconsistency of Name and Account Number. Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, posting of the Entry transmitted by Bank to the RDFI may be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number supplied by Customer, even if such account number identifies a person different from the named Receiver. Customer's obligation to settle 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 Customer shall be liable to pay that Entry.

85. Right to Audit. Customer agrees to review its compliance with the *NACHA Rules* on a periodic basis. Upon reasonable written notice to Customer (five (5) Business Days being deemed, in all circumstances, the maximum reasonable notice required), Customer shall permit Bank to review Customer's operations as they relate to compliance with this Part III and the *NACHA Rules*, and to examine and copy any books, records, and source documents related thereto.

86. Data Retention. Customer shall retain Entry data on file in a format adequate to permit remaking of Entries for five (5) Business Days following the date of their transmittal by Bank as provided herein, and shall provide such data to Bank upon request. Without limiting the generality of the foregoing provision, Customer specifically agrees to be bound by and comply with all applicable provisions of the *NACHA Rules* regarding the retention of documents or any record, including, without limitation, Customer's responsibilities to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*. Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Part III may be electronically recorded and retained by either party by use of any reasonable means.

87. Evidence of Participant Authorization.

87.1 To the extent required by the *NACHA Rules* or applicable law, Customer will obtain all consents and written authorizations for all Entries in accordance therewith. Such authorizations and any related disclosures shall be in a form that complies with (i) all requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, as the same may be amended from time to time, including, without limitation, any applicable requirements of Regulation E, the Federal Electronic Funds

Transfer Act, and sanctions enforced by OFAC. Customer shall obtain and maintain current information regarding OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC or by visiting the OFAC website at www.ustreas.gov/ofac.) Each Entry will be made according to such authorization and shall comply with the *NACHA Rules*. No Entry will be initiated by Customer after such authorization has been revoked or the arrangement between Customer and such Receiver or other party has terminated.

87.2 Customer shall retain all consents and authorizations for the period required by the *NACHA Rules*. Customer will furnish to Receiver, or to Bank upon its request, an original or a copy of an authorization as required under or for any purpose required by the *NACHA Rules*. No investigation or verification procedure undertaken by Bank shall be deemed to limit or waive Customer's obligations under this **Section 87**.

88. Cooperation in Loss Recovery Efforts. In the event of any damages for which Bank or Customer may be liable to each other or to a third party pursuant to the services provided under this Part III, Bank and Customer shall 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.

89. Records of Bank. All electronic or other files, Entries, security procedures, and related records used by Bank for transactions contemplated by this Part III shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Customer's request. Any expenses incurred by Bank in making such information available to Customer shall be paid by Customer.

90. Data Breaches .

90.1 Customer 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.

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

90.3 Customer will provide prompt and accurate notification to Bank by calling Customer Service with regard to any Data Breaches when known or reasonably suspected by Customer, including but not limited to, Data Breaches to Consumer-Level ACH Data, and will take all reasonable measures, which may include, 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.

91. Fees / Charges.

91.1 Customer agrees to compensate Bank for the ACH Service provided by Bank pursuant to this Part III in accordance with the applicable Fee Schedule (**Schedule C**) or other agreements between Bank and Customer in effect from time to time that apply to the ACH Service. By and upon entering into this Part III, Customer acknowledges receipt and acceptance of the Fee Schedule and agrees to be bound by its terms, as those terms may be amended from time to time.

91.2 Customer authorizes Bank to charge the Settlement Account for all applicable charges and fees for the ACH Service to the extent that such charges and fees are not offset by earnings credits or other allowances for Customer's Deposit Account(s) with Bank. If the balance of Available Funds in the Settlement Account is not sufficient to cover such fees, Bank may charge such fees to any other Deposit Account maintained by Customer with Bank.

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

that survive termination of this Part III, including with limitation Sections 81 and 82 of this Part III and as set forth in Part I.

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

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PART IV: WIRE TRANSFERS

This Part applies to Wire Transfers.

94. Meaning of Certain Terms. In addition to the definitions set forth elsewhere in this Agreement, certain terms used in this Part IV are defined in the specific portion of this Part IV where they are used.

95. Wire Service. The service described in this Part IV provides Customer with the capability to wire transfer funds from specific Deposit Account(s) to other accounts (the "Recipient Account(s)") as directed by Customer (the "Wire Service"). The Recipient Account(s) may be Customer accounts or domestic-only (U.S.-based) or international (non-U.S.-based) third-party accounts and may be with Bank or with domestic or international third-party financial institutions. Customer may use the Wire Service to initiate one-time wire transfers. All wire transfers must be initiated by Customer and/or an Authorized User of Customer.

96. Transfer Instructions and Transmission Methods.

96.1 Customer may instruct Bank to transfer funds from Customer Deposit Account(s) maintained at and approved for use with the Wire Service by Bank. For purposes of this Part IV, such instruction (or "order") shall be initiated by Customer or an Authorized User by means of the Online Banking , or such other transmission method as Bank may permit in its sole discretion from time to time.

96.2 In order to transmit instructions via the Wire Service, Customer must first agree to and transmit all instructions in accordance with all of the terms, conditions and Security Procedures applicable to and/or described in this Part IV and in Part II, including any schedules associated therewith as well as **Schedule B** attached hereto, as may be amended by Bank from time to time.

96.3 Customer's authority to make the transfer and to issue other directions and instructions shall be conclusively presumed if the security procedures associated with the applicable transmission method are followed.

97. Transactions Limits; Execution of Wire Transfers.

97.1 By submitting a wire transfer request, Customer authorizes and instructs Bank to withdraw the amount of any requested wire transfer, plus any applicable fees and charges, from Customer's designated Deposit Account. Subject to the terms of this Part IV, Bank will accept and execute a wire transfer received from Customer that has been authenticated by Bank and is in conformity with the Security Procedures (as further described below and in **Schedule B**), cut-off times, transaction limits and other requirements as described in this Part IV, **Schedule A** and any other associated exhibits, set-up form(s) and other documentation. Bank will reject wire transfer orders that would cause Customer's transactions to exceed any daily transaction limit or any daily exposure limit established by Bank for Customer. Such daily transaction limit and the daily exposure limit may be modified from time to time upon request of Customer in accordance with Bank's rules and policies. Any change to such limits shall be in Bank's sole discretion.

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

or similar limits established by Bank hereunder shall be made in Bank's sole discretion and shall be communicated promptly to Customer.

97.3 All wire transfers to accounts at other depository institutions are transmitted using the Fedwire funds transfer system owned and operated by the Federal Reserve Bank or via a similar wire transfer system used primarily for funds transfers between financial institutions, which may include a system provided by or through a Bank service provider.

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

98. Repetitive Transfers / Templates.

98.1 A Repetitive Transfer is a template-based transfer order that Customer intends to be made on a recurring, periodic basis to the same beneficiary and the same account at the same beneficiary bank, and for which only the date and dollar amount and any additional optional information vary.

98.2 Upon set-up of a Repetitive Transfer, which may include the incorporation of a repeat code, Bank will transfer funds from Customer's Account(s) according to Customer's instructions and in accordance with the terms applicable to the Wire Service as well as Online Banking, or any associated exhibits or attachments.

98.3 For domestic and international Repetitive Transfers transmitted through Online Banking, Repetitive Transfers must be authorized in accordance with the terms and conditions of the Online Banking Service, and related service requirements. Customer shall be responsible for the creation of all Repetitive Transfer templates. Bank shall not be liable for any error in Customer's set-up or creation of any template.

98.4 Modifications or deletions of Repetitive Transfers that were established via Online Banking must be modified or deleted by Customer via Online Banking prior to Customer's desired effective date of the change or deletion and/or in accordance with the requirements associated with Online Banking.

99. Time of Execution - Domestic Wires.

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

99.2 Except for future-dated outgoing wire transfers, domestic outgoing wire transfers (U.S.-based receivers) initiated and approved by the cut-off time set forth in **Schedule A** on a Business Day will be processed that same day if that day is also a Business Day for Bank's correspondent facility and the recipient bank. Outgoing domestic wire transfers initiated and approved after the cut-off time set forth in **Schedule A** will be processed the next Business Day if that day is also a Business Day for Bank's correspondent facility and the recipient bank. Future-dated domestic outgoing wire transfers will be initiated on the effective date requested by Customer, provided that date is a Business Day, not on the date Customer entered the transaction using the Wire Service. Customer may submit a future-dated domestic wire transfer up to such period of time in advance of the effective date requested by Customer as the Wire Service permits.

99.3 If more than one wire transfer request is made at or about the same time and the Available Funds in the applicable Account do not cover all of such orders or requests, Bank may at its option execute as many of such orders or requests as possible within the dollar limits of such Available Funds.

100. International Wires.

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

100.2 Bank shall send Customer's authorized and authenticated wire transfers to foreign banks through any bank which is a member of Bank's correspondent network. Neither Bank nor any of Bank's correspondents shall be liable for any errors, delays or defaults in the transfer of any associated messages in connection with such a foreign wire transfer by any means of transmission. Unless otherwise approved by Bank in its sole discretion, international wire transfers will be made in U.S. currency only.

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

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

100.5 International wire transfers are subject to any and all applicable regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Bank has no obligation to accept any international wire transfer(s) directed to or through persons, entities or countries restricted by government regulation or prior Bank experience with particular countries. To the extent not otherwise prohibited by law, in connection with any international wire transfer(s) involving a transfer to or from any country outside of the U.S., Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed the international wire transfer(s), including without limitation, any loss due to failure of a foreign bank or intermediary to deliver the funds to a beneficiary.

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

102. Notice of Rejection or Return. Bank shall have no liability for wire transfers sent by Bank as directed by Customer which cannot be completed or which are returned due to incorrect information furnished by Customer. Customer is required to fully complete beneficiary name and address, as beneficiary bank may elect to return an otherwise valid wire transfer for incomplete beneficiary information. Bank may reject or impose conditions that must be satisfied before it will accept Customer's instructions for any wire transfer, in its sole discretion, including, but not limited, to if there are insufficient Available Funds on deposit with Bank for the specified Deposit Account, if the transfer order that does not comply with the security procedures, if there is any inconsistency between a transfer order and information previously supplied to Bank, if Bank is unable to obtain confirmation of such transfer order satisfactory to Bank, if Bank believes that the wire transfer may not have in fact been authorized, or if Bank has other reasonable grounds not to honor the payment order. A wire transfer may also be rejected

by an intermediary or beneficiary bank other than Bank, or by operation of law. If a wire transfer is rejected, Bank will endeavor to notify Customer promptly. If Customer wishes to elect a method of notification other than the method set forth above, Customer must obtain Bank's prior agreement thereto in writing. Upon rejection or return, Bank shall have no further obligation to act upon a wire transfer, nor shall Bank have any liability to Customer due to rejection by another person in the wire transfer process, or the fact that notice was not given or was not given at an earlier time, or within any specified time of receipt, acceptance, execution or payment of any wire transfer.

103. Security Procedures.

103.1 Customer and Bank shall comply with the Security Procedures described in **Schedule B** attached hereto and as applicable with respect to wire transfers sent by Customer to Bank. Customer acknowledges and agrees that the Security Procedure requirements described in **Schedule B** are a commercially reasonable method of providing security against unauthorized wire transfers, and that Bank shall be deemed to have acted in good faith so long as it complies with such Security Procedure requirements. Customer acknowledges that the purpose of such Security Procedures is to attempt to verify the authenticity of wire transfers sent by Customer and not to detect errors in the transmission or content of wire transfer. No security practice or procedure for the detection of any such error has been agreed upon between Bank and Customer.

103.2 Customer is strictly responsible for establishing and maintaining its own appropriate and commercially reasonable security procedures to safeguard against the unauthorized transmission of wire transfers to Bank. Customer shall prevent and safeguard against unauthorized transmissions, disclosures and access to security-related items, including information associated with the transmittal of wire transfers, 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"). Customer 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 Part IV.

103.3 Customer 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 Procedures and any passwords, codes, security devices and related instructions provided by Bank in connection with the Security Procedures described in **Schedule B** and to restrict access thereto to Customer's employees trusted with the duty to transmit Entries to Bank. If Customer suspects, knows, believes or has reason to believe that any such information or instructions have been known or otherwise accessed by unauthorized persons, Customer 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.

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

104. Compliance with Security Procedures.

104.1 If a wire transfer (or a request for cancellation or amendment of a wire transfer) received by Bank was sent in accordance with the Security Procedures described in **Schedule B** and thereby purports to have been transmitted or authorized by Customer, it shall be deemed effective as Customer's wire transfer (or request), even if the wire transfer (or request) was not authorized by Customer. If Bank accepted the wire transfer (a) in compliance with the Security Procedures referred to in **Schedule B** with respect to such wire transfer, (b) in compliance with any written agreement or instruction of Customer

restricting acceptance of wire transfer issued in Customer's name, and (c) in good faith, then Customer shall be obligated to pay Bank the amount of such wire transfer.

104.2 If a wire transfer (or a request for cancellation or amendment of a wire transfer) received by Bank was actually sent or authorized by Customer, Customer shall pay Bank the amount of any such wire transfer, whether or not Bank complied with the Security Procedures described in **Schedule B** and whether or not that wire transfer was erroneous in any respect or that any such error would have been detected if Bank had complied with the Security Procedures.

105. Accuracy; Inconsistency of Receiving Beneficiary Name and Account Number . In submitting any wire request or related instructions, Customer shall be responsible for providing all necessary information required by Bank. Bank's Wire Service is only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in an unintended transfer of funds. Bank bears no responsibility and shall not be liable to Customer for any information provided by Customer in a wire request or related instructions that is inaccurate, incomplete or otherwise incorrect. Customer acknowledges and agrees that, in accordance with Article 4A of the UCC, Bank shall be entitled to rely upon the numbers supplied by Customer to identify banks, beneficiaries and other parties to the wire transfer, even if those numbers disagree or are inconsistent with the names of those parties as provided by Customer. Bank and any other receiving financial institution shall have no obligation to determine whether a name and number identify the same person or institution. Customer acknowledges that payment of a wire request or related instructions may be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary.

106. Payment; Authorization to Charge Account.

106.1 Customer will compensate Bank for the Wire Service as provided in the Fee Schedule. In connection with each wire transfer, Customer shall also pay Bank's online wire transfer fee(s) as may be in effect at the time of such transfer and as may be set forth in **Schedule C**, the Fee Schedule. Bank shall be authorized to deduct its fees hereunder from any Deposit Account of Customer.

106.2 Customer agrees to pay Bank the amount of each transfer order received from Customer on the Business Day that Bank executes said order or at such other time as Bank may determine. Bank may, without prior notice or demand, obtain payment of such amount by debiting the Deposit Account designated or, in the event there are not sufficient Available Funds in the Deposit Account, debiting any other Deposit Account or crediting any line of credit that Customer maintains with Bank, in Bank's sole and exclusive discretion. Customer agrees to at all times maintain a balance of Available Funds in Customer's designated Deposit Account sufficient to cover payment of Customer's obligations under this Part IV.

107. Advices and Statements. All wire transfers accepted by Bank (including wire transfers sent or received on behalf of Customer) will be reflected on Customer's Online Banking daily history and/or on Customer's periodic Deposit Account statement issued by Bank with respect to the Deposit Account(s) to or from which Customer's wire transfer was made. Customer agrees to monitor its use of the Wire Service as set forth in **Section 11** of Part I.

108. Refunds. In the event that a beneficiary does not receive payment for the wire transfer and Customer is entitled to a refund, upon receipt by Bank of the returned funds, Bank will refund the amount to Customer less any expenses associated with the recovery. Bank will notify Customer of such a refund by telephone or in writing, in its discretion, as soon as reasonably practical.

109. Use of Correspondent Accounts. A wire transfer may be executed through any one, or a series of, correspondent banks of the beneficiary's bank and of Bank in a manner deemed most appropriate and effective by Bank or by any other bank participating in the wire transfer.

110. Bank Reliance; Authentication.

110.1 Bank shall be entitled to rely in good faith on communications it receives as being given or sent by an Authorized User and as being genuine and correct when made in accordance with this Part IV. Bank shall not be liable to Customer for the consequences of such reliance.

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

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

110.4 Wire transfer transactions are subject to all the foregoing and all regulations governing electronic transactions, including but not limited to Article 4A of the UCC.

111. Bank Responsibilities.

111.1 In the performance of the Wire Service addressed by this Part IV, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Customer pursuant to this Part IV, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the Wire Service as expressly provided for in this Part IV. Bank shall not be responsible for Customer's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any instruction or transaction received from Customer or through Customer's Access Devices) or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, and no such person shall be deemed Bank's agent. Customer agrees to indemnify and defend Bank against any loss, liability or expense (including reasonable attorney's fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Customer or any other person described in this Section 111.

111.2 Customer acknowledges and agrees that Bank's provision of the Wire Service 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 reasonable control. From time to time Bank may need to temporarily suspend the Wire Service or the processing of a transaction for greater scrutiny or verification, including, but not limited to, suspending processing to review for suspected fraudulent activity, verification that Available Funds are sufficient as well as fully collected and valid, 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 a payment, transfer or other use of the Wire Service (i) if, in Bank's reasonable judgment, processing a payment, transfer or other use of the Wire Service 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; (ii) if Bank reasonably suspects that a transaction involves fraudulent activity or that Available Funds will not ultimately be sufficient to cover a transaction, or (iii) if processing a payment, transfer or other use of the Wire Service, in Bank's sole discretion, would cause Bank to engage in an unsafe or unsound practice.

112. Cooperation in Loss Recovery Efforts. In the event of any damages for which Bank or Customer may be liable to each other or to a third party pursuant to the services provided under this Part IV, Bank and Customer shall 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.

113. Records of Bank. All electronic or other files, transactions, security procedures, and related records used by Bank for transactions contemplated by this Part IV shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Customer's request. Any expenses incurred by Bank in making such information available to Customer shall be paid by Customer.

114. Data Breaches . Customer agrees to comply with the requirements of **Section 10** of Part I with respect to Data Breaches.

115. Compliance. Customer shall comply with all applicable laws, rules and regulations in connection with the Wire Service. Customer agrees to be bound by such rules, and agrees not to initiate or receive a wire transfer request or related instruction in violation of international, federal, state and local laws and regulations including, without limitation, the regulations promulgated by the Office of Foreign Asset Control (“OFAC”). To the extent permissible under applicable law, Customer shall be responsible for and shall fully indemnify Bank for any and all fines, assessments and reasonable attorney’s fees incurred by or imposed on Bank as a result of any infraction or violation of such rules caused by or attributable to Customer.

116. Termination. The parties may terminate this Part IV in accordance with the terms and conditions of Part I. This Part IV will automatically and immediately terminate if this Agreement terminates. Any termination of this Part IV shall not affect any of Bank’s rights and Customer’s obligations with respect to wire requests or related instructions initiated by Customer prior to the effective time of such termination, or the payment obligations of Customer with respect to services performed hereunder by Bank prior to the effective time of such termination, or any other obligations that survive termination of this Part IV. The provisions of this Part IV that are necessary to give effect to the purposes of this Part IV shall survive its termination.

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PART V: MOBILE BANKING SERVICE

This Part applies to Mobile Banking.

117. Mobile Banking. Mobile banking is a service that allows Customer to use a downloadable software application on a smartphone or other eligible Mobile Device (as defined below) to perform certain electronic banking tasks, as fully described below (hereinafter, “Mobile Banking”).

118. Definitions. In addition to the definitions set forth in Parts I and II of this Agreement, certain terms used in this Part V are defined in the specific portion of this Part V where they are used. The following terms are also used throughout this Part V.

“*Mobile Apps*” means a downloadable application designed to run on smartphones, tablet computers and other mobile devices, through which Mobile Banking may then be accessed.

“*Mobile Device*” means (a) a web-enabled cell phone, tablet or other handheld mobile device whose network allows secure SSL traffic using the software that supports Mobile Banking, and (b) that Customer registered with Bank.

“*Mobile Web*” is the mobile-optimized version of the authenticated portions of the designated Bank’s website through which Mobile Banking may be accessed from any web-enabled Mobile Device.

“*Short Message Service*” or “*SMS*” is a text messaging service component of Mobile Banking that uses standardized communication protocols to allow fixed line or Mobile Devices to exchange short text messages regarding Customer’s Mobile Banking Accounts.

119. System Requirements . To use Mobile Banking, Customer must have:

- i. An iPhone running iOS or later or Android device running Android 1.6 or later is required in order to download the native applications (the Mobile Apps) available in the Apple App Store and Google Play Store; and/or
- ii. Any Mobile Device with an Internet connection can access Mobile Banking through the Mobile Web version at <http://www.trustcobank.com/>.

120. Enrolling in Mobile Banking. In order to use Mobile Banking, Customer must: (a) be enrolled in Online Banking, (b) have a Mobile Device and (c) register while logged into Online Banking. Although Mobile Banking is phone device agnostic and will work with most Mobile Devices, the enrollment process may require Customer to provide information about the Mobile Device that Customer will use for Mobile Banking, as well as the telephone number for Customer’s Mobile Device, the telecommunications carrier that provides service to Customer’s Mobile Device, and Customer’s email address. Enrollment requires identification of Customer’s banking relationship with Bank as well as verification of Customer’s Mobile Device. The Mobile Device verification is completed by Customer receiving an SMS message with a

verification code on Customer's Mobile Device that Customer will have to enter on the Online Banking website. If Customer uses a handheld mobile device other than its Mobile Device to access Mobile Banking, all SMS text messages originating from Mobile Banking will be sent to the Mobile Device that Customer entered and verified when registering for Mobile Banking. ***It is Customer's responsibility to provide Bank with accurate, complete and current information about Customer and Customer's Mobile Device (including its telephone number, and Customer's email address), and to notify Bank immediately if any of this information changes or if service to Customer's Mobile Device is terminated.*** Bank reserves the right to refuse or cancel Customer's registration for Mobile Banking if Bank cannot verify information about Customer and/or Customer's Mobile Device.

121. Standard Data and Text Messaging Rates Apply. *Customer understands that the standard data and text messaging rates charged by the telecommunications carrier providing service for Customer's Mobile Device apply when Customer uses its Mobile Device to enroll in and use Mobile Banking.*

122. Representations, Warranties and Covenants. When Customer uses Mobile Banking to access Account(s) designated during the enrollment process (each Account so designated being a "Mobile Banking Account"), Customer agrees to the following:

- a. Representations and Warranties . When enrolling in and using Mobile Banking, Customer represents and warrants that:
 - i. Customer is the legal owner of the Mobile Banking Accounts and other financial information that may be accessed via Mobile Banking; and
 - ii. All information Customer provides to Bank in connection with Mobile Banking is accurate, current and complete, and that Customer has the right to provide such information.
- b. Covenants and Agreements . When enrolling in and using Mobile Banking, Customer covenants and agrees that:
 - i. Customer will not misrepresent its identity or its Account information;
 - ii. Customer will keep its Account information up-to-date and accurate;
 - iii. Bank and Bank's service providers may send Customer, by SMS message, email, and other methods, communications relating to Mobile Banking (with an opportunity to opt-out where required by applicable law), including without limitation welcome messages, information and requests for information relating to use of Mobile Banking, Online Banking and other ancillary services;
 - iv. Customer will use Mobile Banking carefully, keep its access or Log-on ID, Password and other credentials required to log-in to Mobile Banking confidential and secure and not share that information with others;
 - v. Customer will check its statements and transactions regularly, report any errors to Bank promptly by visiting a branch or calling Bank at 518-377-3311 between the hours of 9:00 a.m. to 6:00 p.m., Monday through Friday, and cancel immediately Customer's participation in Mobile Banking if Customer observes any material errors in Mobile Banking; and
 - vi. If Customer uses any location-based feature for Mobile Banking, Customer agrees that Customer's geographic location and other personal information may be accessed and disclosed through Mobile Banking. If Customer wishes to revoke access to such information, Customer may cease using location-based features of Mobile Banking.

123. Proper Use of Mobile Banking. Mobile Banking will not work unless Customer uses it properly. Customer accepts responsibility for making sure that Customer understands how to use its Mobile Device and Mobile Banking and applicable associated software / application (the "Software") before using it, and that Customer always uses it in accordance with any online instructions that may be delivered to Customer. From time to time Bank may change, upgrade, or add new features to Mobile Banking. In the

event of such changes, Customer is responsible for making sure that Customer understands how to use the updated or changed version of Mobile Banking and/or Software. Bank will not be liable to Customer for any losses caused by Customer's failure to properly use Mobile Banking or Customer's Mobile Device. Customer agrees to exercise caution when utilizing Mobile Banking and to use good judgment and discretion when obtaining or transmitting information.

124. Relationship of these Mobile Banking Terms to Other Agreements. Customer agrees that when it uses Mobile Banking, Customer remains subject to the terms and conditions of Online Banking (as set forth in Part II of this Agreement) and the Bill Pay Terms (as set forth in **Section 46** of Part II of this Agreement), the agreements associated with Customer's Account(s) and any and all other existing agreements with Bank and Bank's affiliates. Customer also agrees it will continue to be subject to the terms and conditions of its existing agreements with any unaffiliated service providers, including, but not limited to, the telecommunications carrier for Customer's Mobile Device, and Customer understands that its use of Mobile Banking and these terms do not amend or supersede any of the agreements with these telecommunications carriers (such agreements being Customer's "Mobile Device Agreements"). Customer understand that its Mobile Device Agreements may provide for fees, limitations and restrictions which might impact Customer's use of Mobile Banking (for example, they may impose data usage or text message charges for use of or interaction with Mobile Banking, including while downloading the Software, receiving or sending Mobile Banking text messages and alerts, or other use of Customer's Mobile Device when using the Software or other products and services provided by Mobile Banking). Customer agrees to be solely responsible for all such fees, limitations and restrictions. Customer agrees that only Customer's mobile service carrier or provider is responsible for its products and services, and that Customer's mobile service carrier is not the provider of Mobile Banking. Accordingly, Customer agrees to resolve any problems with its carrier or provider directly with its carrier or provider without involving Bank. Customer also agrees that if Customer has any problems with Mobile Banking, you will contact Bank directly.

125. Mobile Banking Transactions. Customer may use Mobile Banking to initiate the following types of transactions to or from Customer's Mobile Banking Accounts through Customer's Mobile Device (each, a "Mobile Banking Transaction"):

- a. View Limited Transaction History : To view balances and recent transactions for Customer's Mobile Banking Accounts.
- b. Make One-Time Transfers Between Customer's Mobile Banking Accounts : To make immediate, one-time transfers of funds between Customer's Mobile Banking Accounts (each such transfer a "Mobile Transfer"). Customer may transfer any amount of its Available Funds (as defined in Customer's Account Disclosure Notice) per Mobile Transfer as long as the transaction does not cause Customer's Available Funds in the Mobile Banking Account to be debited to be less than zero. Mobile Transfers received by 3:00 p.m. will be effective on the current Business Day. Mobile Transfers made after this cut-off time or any time on a Saturday, Sunday or federal holiday will be effective the following Business Day. Customer is not able to schedule future or recurring transfers with Mobile Banking, or to make two or more transfers from one Mobile Banking Account to a second Mobile Banking Account in exactly the same amount between the cut-off hour on one Business Day and the cut-off hour on the next Business Day. If Customer attempts to make two such identical transfers, only the first transfer will be transmitted.
- c. Initiate Mobile Bill Pay Transactions : If Customer is enrolled in the Bill Pay Service, Customer may use Mobile Banking to pay a bill from the Mobile Banking Account that Customer has designated as its payment Account under the terms of our Bill Pay terms (which are incorporated into and made a part of these Mobile Banking terms). Each Bill Pay Service transaction that Customer initiates through its Mobile Device will be considered a "Mobile Bill Pay Transaction." Customer may also use Mobile Banking to view, edit and delete pending Mobile Bill Pay Transactions. Customer must maintain its payment Account in good standing with Bank in order to perform Mobile Bill Pay Transactions. If Customer's payment Account is closed for any reason, Bank will suspend or terminate Customer's right to initiate Mobile Bill Pay Transactions. Customer may initiate Mobile Bill Pay Transactions in amounts up to the Available Funds (as defined in Customer's Account Disclosure Notice) in Customer's payment Account. For security reasons,

Bank may limit the frequency and dollar amount of Mobile Bill Pay Transactions from Customer's payment Account. Customer may not set-up or initiate Mobile Bill Pay Transactions to any new Payees that are not currently on Customer's Payee list as established pursuant to Bank's Bill Pay terms. Customer may not establish (or delete or edit any pending) recurring Mobile Bill Pay Transactions through Mobile Banking.

- d. Initiate ACH Entries and Wire Transfers : If Customer is enrolled in the ACH Origination Service and/or the Wire Transfer Service, Customer may use Mobile Banking to initiate an ACH entry or file or a wire transfer to any payee previously established through Online Banking. As an additional Security Procedure, Customer will be required to utilize a one-time PIN when initiating an ACH entry or file or a wire transfer through Mobile Banking.
- e. Text Message Alerts : Bank also offers its Customers access to certain Account information (e.g., for checking balances and last transactions) through SMS text messages, as well as the option to set up alerts for certain Accounts (e.g., low balance alerts). Additionally, Customers may select the type of alerts and other preferences which will determine, together with their account data, the frequency of alerts delivered to them. ***Standard messaging charges apply if Customer enrolls to receive such alerts, and Customer will be allowed to opt out of this program at any time*** . To stop the messages from coming to Customer's Mobile Device, Customer can opt out by sending a text that says "STOP" to this number: 4692228. Customer will receive a one-time opt-out confirmation text message. After that, Customer will not receive any future messages.

126. Limitations on Mobile Banking Transactions.

126.1 Regulatory Limits. Because regulations require Bank to limit certain types of transfers from Customer's Accounts, the following limitations apply:

- i. Statement Savings Accounts . Customer can make no more than six (6) transfers per statement period by preauthorized or automatic transfer or by telephone or through Mobile Banking from a statement savings Account (transfers to such an Account are unlimited).
- ii. Money Market Accounts . Customer can make no more than six (6) transfers per statement period by preauthorized or automatic transfer or by telephone or through Mobile Banking from a money market Account.

126.2 Dollar and Frequency Limitations on Transfers. Funds can be transferred immediately or on a future date between your Account(s) , where they are Mobile Banking Accounts. Bank reserves the right to limit the frequency and dollar amount of transfers for security reasons. Customer may transfer any amount of Customer's Available Funds per transaction, as long as the transaction does not cause the Available Funds in Customer's Account to be less than zero.

126.3 Mobile Device Limitations. Mobile Banking and some Mobile Banking Transactions may not be available on all types of Mobile Devices. Customer also understands and agrees that Mobile Banking may not be accessible or may have limited utility over some mobile networks, such as while roaming.

127. Changes to Mobile Banking. Bank reserves the right to modify the scope of Mobile Banking at any time. Bank reserves the right to refuse to make any Mobile Banking Transaction requested by Customer.

128. Availability. Customer can use its Mobile Device to access Mobile Banking 24 hours a day, 7 days a week. However, Customer's access to Online Banking and Mobile Banking may be restricted during regular maintenance periods and any special maintenance periods. Bank may process requests for Mobile Transactions only on Business Days. The cut-off times for your Mobile Transactions are disclosed above. Any requests for a Mobile Transaction received after these cut-off times will be processed on the next Business Day.

[\[1\]](#) ^[1] Quicken® (and QuickBooks®) is a registered trademark of Intuit Inc.

FACTS	WHAT DOES TRUSTCO BANK DO WITH YOUR PERSONAL INFORMATION	
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> • Social Security number and account balances • payment history and transaction history • assets and checking account information <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>	
How?	All Financial companies need to share customers personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers personal information; the reasons Trustco Bank chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal Information		Does Trustco Bank share?
For our everyday business purposes- such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		Yes
For our marketing purposes- to offer our products and services to you		Yes
For joint marketing with other financial companies		Yes
For our affiliates everyday business purposes- information about your transactions and experiences		No
For our affiliates everyday business purposes- information about your creditworthiness		No
For nonaffiliates to market to you		No
Questions?	Call (800) 670-3110 or go to www.trustcobank.com	
Who we are		

Who is providing this notice?	Trustco Bank
What we do	
How does Trustco Bank protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Trustco Bank collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> • open an account or show us your government issued ID • apply for a loan or give us your income information • give us your contact information We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why cant I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> • sharing for affiliates everyday business purposes information about your creditworthiness • affiliates from using your information to market to you • sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> • <i>Trustco does not share with our affiliates.</i>
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> • <i>Trustco Bank does not share with nonaffiliates so they can market to you.</i>
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> • <i>Our Joint marketing partners include independent broker/dealers and insurance agencies.</i>
Other important information	

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Thomas Jenkins
(b) County of Residence of First Listed Plaintiff Kissimmee, FL
(c) Attorneys (Firm Name, Address, and Telephone Number)
James Bilsborrow, Weitz & Luxenberg, P.C.
700 Broadway, New York, NY 10003 - (212) 558-5500

DEFENDANTS
Trustco Bank
County of Residence of First Listed Defendant Schenectady
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
7 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(d)
Brief description of cause:
Improper charge of overdraft fees

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 03/01/2021
SIGNATURE OF ATTORNEY OF RECORD /s/ James J. Bilsborrow

FOR OFFICE USE ONLY
ANYNDC-5440464
RECEIPT # AMOUNT \$402.00 APPLYING IFP JUDGE GLS MAG. JUDGE ATB

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Trustco Bank Hit with Class Action Over Alleged Overdraft, Insufficient Funds Fee Practices](#)
