



## **ONLINE TREASURY MANAGEMENT DISCLOSURE STATEMENT AND AGREEMENT**

This Online Treasury Management Disclosure Statement and Agreement (this "Agreement"), contains the terms and conditions governing your use of BankUnited's Online Treasury Management Services ("OTM Services").

When used in this Agreement, the terms the "Bank", "we", "us" or "our" mean BankUnited, N.A. ; the "Company", "you", or "your" mean the entity that is reflected in our records as the owner of an account or a party-in-interest to an account (such as an escrow agent of an escrow account); "Account" or "Accounts" mean the accounts that will be accessed through the OTM Services including, without limitation, checking accounts, savings accounts, money market accounts, and linked loan accounts or lines of credit the Company maintains with the Bank (loan accounts and lines of credit collectively referred to as "Credit Accounts"); "business account" means an account owned by an entity; "personal account" means an account owned by an individual that is used primarily for personal, family or household purposes; "Owner" or "Owners" mean each person or entity that has an ownership interest in the Company; "Specific Service" or "Specific Services" mean those products, services, materials, content, features and methods of conducting transactions offered, obtained or otherwise made available on or through the OTM Services; "Site" or "Sites" mean the web site(s) owned or operated by Bank, including, without limitation, <http://www.bankunited.com>; and <https://www.bankunitedbusinessonlinebanking.com>; and "business day" means Monday through Friday, excluding Federal Reserve holidays and other days the Bank is not opened for business.

### **ACCEPTING THE AGREEMENT**

When you use or access the OTM Services, or when you permit any other person or entity to use or access the OTM Services, you agree to the terms and conditions of this Agreement. Please access, read and review this Agreement regularly. We may amend, revise or modify the terms and conditions of this Agreement at any time and from time to time, in our sole discretion. We will notify you of any such changes, as required by law, by posting the updated Agreement within the OTM Services. You will be prompted to accept or reject any material change to this Agreement the next time you log in to use the OTM Services after we have made the change. The revised version will be effective at the time it is posted unless a delayed effective date is required by law and is expressly stated. Your use of the OTM Services, or any of the Specific Services, after the posting of a revised version of this Agreement becomes effective will constitute your acceptance and agreement to such changes. You understand and agree that notwithstanding the foregoing, we reserve the right to provide any such notice of change to you in printed form. Further, the Bank may, from time to time, revise or update the applications, services and/or related material, which may render all such prior versions obsolete. Consequently, the Bank reserves the right to terminate this Agreement as to all such prior versions of the applications, services and/or related material and limit access to only the more recent revisions and updates.

### **RELATION TO OTHER AGREEMENTS**

Your use of the OTM Services may also be affected by the terms of a deposit agreement, disclosure statement, fee schedule, application, enrollment form, user guide, or other agreement between you and us (collectively, "Other Agreements"), which are all incorporated herein by reference. When you use the OTM Services, or any of the Specific Services, you are governed by this Agreement as well as the terms of the Other Agreements. You should review this Agreement and such Other Agreements carefully for information regarding any applicable fees, availability of deposits, limitations on the number of transactions that you can make, liability rules for electronic funds transfers and for other restrictions that may impact your use of any Account with the OTM Services. To the extent that there is a conflict between the terms of this Agreement and such Other Agreements, the terms of this Agreement will control to the extent necessary. Additionally, if there is a conflict between what an employee of the Bank says and this Agreement, the terms of this Agreement will prevail.

## **SERVICE COMMENCEMENT**

Prior to commencing and using the OTM Services you must open and maintain an Account with the Bank. If you maintain more than one Account that is eligible for access through the OTM Services, upon request we will link your Accounts together and such Accounts will appear in Company's online banking profile unless requested otherwise.

All Accounts linked within the OTM Services must contain an authorized signatory that is common to all Accounts. You understand and agree that a change in Owners and/or any authorized signers on an Account will not affect the OTM Services which shall remain in full force and effect until terminated as set forth herein.

The Bank will provide the Specific Services as selected by the Company. Please note that the Specific Services may be changed by the Bank on thirty (30) days notice to the Company and will be binding upon the expiration of such period. The Bank reserves the right to modify, terminate or suspend the OTM Services and any and all Specific Services in the event that the Company fails to pay any amounts when and as due, or otherwise fails to abide by the terms of this Agreement or any other agreement applicable to the Account(s).

Certain features, information, transactions or other services available through the OTM Services may not be available when accessing the OTM Services through a mobile device.

## **COMPANY ADMINISTRATOR**

The Company will be required to designate at least one individual ("Company Administrator") with the authority to determine who will be authorized to view account information and/or effect transactions through the OTM Services on behalf of the Company. The Company Administrator should be an authorized signatory that is common to all Accounts. The Company Administrator will have full access to the OTM Services with respect to the Accounts and will be able to add, modify or delete users (including other administrators), set limits on each user's authority to conduct transactions and access account information, and reset user IDs and passwords. The Company Administrator shall be responsible for performing any maintenance with respect to any user designated to use the OTM Services on behalf of the Company. If the Company Administrator loses or forgets their user ID or password, the Company Administrator should contact the Bank.

Each user is authorized on behalf of the Company to issue requests, directions or instructions, including, without limitation, Payment Orders (as hereinafter defined), and conduct transactions on any Account set up on the OTM Services. Company acknowledges and agrees that limitations on a user's access can only be controlled by Company and the Company Administrator, not the Bank. Company further acknowledges and agrees that each individual designated as a user may have the ability to conduct transactions on Accounts for which the individual may not otherwise be authorized to sign and conduct transactions on one or more Accounts set up within the OTM Services. Company has reviewed and understands the risks associated with designating such individuals as users and agrees to assume sole responsibility for such risks including, without limitation, the actions of the Company Administrator, the authority given to other users to act on behalf of the Company and the actions of such users. Company agrees to be liable for any and all loss that may result from the authority given to any such users and the action of such individuals, notwithstanding the signing authority otherwise stated in the applicable signature card. The Bank will not be liable to Company or any third party for any loss, damage or expense arising from access to an Account by a user, and Company agrees to indemnify and hold harmless Bank against all actions, claims, demands, losses or expenses including, without limitation, reasonable attorney's fees and court costs arising from or relating to any action of a user. Such indemnification obligations shall survive termination of this Agreement and termination of Company's participation in the OTM Services.

The Company shall be responsible for notifying the Bank in writing when the authority of a user, including the Company Administrator, has been withdrawn, revoked or terminated. The Bank is authorized to rely upon any document that indicates that an Administrator or any user is authorized to act on behalf of the Company with respect to the OTM Services, until the Bank has received, and has had a reasonable opportunity to act, on such notice.

## **ACCESS**

To access the OTM Services, the Company must maintain equipment and software that is compatible with our systems or the systems of our third party service providers and that maintains at least the level of security that we require. We may change our requirements from time to time and Company is responsible to meet our requirements. Unless we provide otherwise, Company is responsible for the selection, installation, maintenance and operation of its equipment and software. Company shall, at its own cost and expense, maintain in good working order all hardware and equipment necessary for a service and implement, on a regular basis, back-up measures to a service. Bank assumes no responsibility with respect to any errors, failures or malfunctions of Company's equipment or software or for any computer virus or related problems that may occur with Company's use of any computer or telecommunication network.

To use the OTM Services, Company must have its own internet service provider, the necessary computer equipment and a compatible browser that supports a minimum 128 bit encryption and Secure Sockets Layer 3 or higher. We may change these requirements from time to time. To the extent that the Company is able to access the OTM Services using a browser with lower than 128 bit encryption, such use shall be at the Company's sole risk, and the Company, and not the Bank, shall be liable for any losses resulting from such use. The Company shall be responsible for any and all fees imposed by any internet service provider or communications service provider. Bank does not endorse or provide any internet service provider, nor are we responsible for the actions or inactions of your internet service provider. The Company agrees that the Bank is not responsible for any errors or problems that may arise from the malfunction or failure of the Company's computer, equipment, or internet service provider.

The Company is hereby granted a non-exclusive, non-transferable limited and revocable right to access and use the OTM Services as well as any technology in object code. The Company agrees that the Bank and its suppliers or servicers retain all intellectual property rights in any hardware, software, documentation, systems or other technology or intellectual property ("Technology") that may be made available to the Company in connection with the OTM Services. The Company further agrees: (i) to read and comply with any license terms with respect to any Technology made available to the Company; (ii) to use the Technology solely for purposes of accessing the OTM Services; (iii) to maintain the confidentiality of the Technology and not copy, transfer or disclose the Technology; (iv) not to attempt to circumvent any use or access limitations contained in the Technology; (v) not to translate, reverse engineer, disassemble or decompile any Technology; (vi) to use the Technology in accordance with its documentation and all relevant security policies and procedures; and (vii) to return any and all copies of the Technology to us upon request. All Technology is provided to the Company on an "AS IS" and "AS AVAILABLE" basis.

The Company acknowledges that there are certain security, corruption, transmission error and access availability risks associated with using open networks such as the internet and hereby expressly assumes such risks. The Company further acknowledges that it is responsible for the security of Company's firewall, computer hardware, computer software, computer network and/or systems and/or other hardware and/or software (collectively, "Computer System") used by the Company to access the OTM Services.

Company acknowledges that it is responsible for and shall maintain its Computer System and for the transmission and receipt of information using such system. Company shall implement and regularly update anti-virus software programs and other deterrent systems necessary to prevent unauthorized access to its Computer System. Company shall take reasonable precautions to prevent the introduction of any viruses disabling procedures (including, but not limited to, software, lock, malicious logic, worm, trojan horse, bug, time bomb, spyware, malware, etc.) into Company's or Bank's software and shall scan its Computer System on a regular basis in order to detect and remove such viruses or disabling procedures. Company agrees that the Bank shall not be responsible for any security breach, compromise, intrusion, misuse, malfunction and/or failure on or involving Company's Computer System. In addition to and without limiting the foregoing, Bank shall not be liable for (a) any unauthorized access to Company's Accounts through the OTM Services; (b) any unauthorized transactions that may occur on Company's Accounts; or (c) any losses, damages, liabilities, costs and expenses (including attorney's fees) arising out of or resulting from any such security breach, compromise, intrusion, misuse and/or failure of Company's Computer System.

The Company further agrees that the Bank is not responsible for notifying the Company of any upgrades, fixes or enhancements to, or for providing technical support or other support for, the Company's Computer

System.

## **HYPERLINKS**

In connection with the OTM Services, the Bank may provide the Company with a link (“Hyperlink”) to a third party site. Such Hyperlinks are used at the Company’s own risk. The Bank is not responsible for, nor do we control, the content, products or services provided through these sites. The Bank does not endorse or guarantee the products, information or recommendations provided by any such linked sites and is not liable for any failure of any products or services advertised on such sites. The Bank further makes no representations or warranties of any kind, express or implied, as to the operations conducted at such other third party sites, or the accuracy or completeness of any information, content, materials or products included thereat, including, but not limited to, the warranties of non-infringement of third party rights, title, merchantability and fitness for a particular purpose.

## **CODES AND PASSWORDS**

If the Company is approved to use the OTM Services, the Bank will provide the Company with certain information, including, but not limited to, access codes, passwords and user identifications (“Access Information”). The Company acknowledges that it is solely responsible for securing and maintaining the confidentiality of the Access Information. In furtherance of the foregoing, Company is required to develop and put in place internal procedures to limit such risks, including, but not limited to (a) changing the password of each user at least once every ninety (90) calendar days; (b) not permitting users to share their identification codes or passwords; (c) deleting the identification codes of users who no longer have access to the OTM Services; and (d) keeping all Access Information under secure conditions. The Company agrees to comply with any additional access or identification procedures the Bank may establish. The Company further agrees to immediately notify the Bank by telephone (and confirm such oral notification in writing) if it has reason to believe that any Access Information has been stolen, compromised, misused or has, or may, become known by an unauthorized person (whether or not employed by the Company).

These responsibilities may not be waived or modified by agreement or authorization by any Bank employee, agent or representative. The Company acknowledges that such Access Information is appropriate and reasonable to afford protection against unauthorized use and agrees that use of Access Information in connection with the OTM Services shall give rise to a conclusive presumption that the use is authorized. The Company shall be liable for, and shall indemnify and hold the Bank harmless from any and all claims, losses, damages, liabilities and expenses including, without limitation attorney’s fees, court costs and related litigation costs and expenses, arising from use of the OTM Services, whether authorized or unauthorized, and without regard to the signing authority on an Account, by any person who utilizes the Access Information or who gains access by any other means. In furtherance of the foregoing, in the event an employee, agent or representative of the Company or anyone accessing the system by utilizing the Access Information, willfully or through negligence, damages or causes disruption of the systems of the Bank, the Company shall be liable for all claims, losses and/or damages resulting therefrom.

## **INTERNAL CONTROLS**

As a business client, Company shall be responsible for and shall maintain, commercially reasonable internal controls including, without limitation, segregation of certain duties, such as accounts payable and accounts receivable, and initiation and confirmation of transactions, to help prevent the misuse of its Accounts. Bank shall not be liable to Company for any losses arising by reason of Company’s failure to maintain commercially reasonable internal controls.

## **FEES**

The Company agrees to pay any and all fees that the Bank establishes for the OTM Services and each of the Specific Services made available through the OTM Services. Please refer to the most recent Schedule of Fees applicable to your Company Account(s) for the current amount of the Bank’s fees. Fees may be changed by the Bank on thirty (30) days notice to the Company and will be binding upon the expiration of such period. Any services in addition to those Specific Services selected by the Company will be charged in accordance with the Bank’s then current Schedule of Fees. The Company shall maintain sufficient collected

and available balances, as determined in accordance with the Bank's then current Funds Availability Disclosure ("Available Funds") to pay all fees and charges. The Company authorizes Bank to deduct such fees and charges from the Account(s) designated by the Company. In the event the Company does not maintain sufficient Available Funds in its designated Account(s) to pay all fees and charges when due, Company shall, upon demand, immediately pay all outstanding fees and charges. Notwithstanding the foregoing, the Bank may, without notice, set off against any other accounts maintained by the Company with the Bank, or any of Company's affiliates or subsidiaries, for all amounts due hereunder. In addition, all Account(s) shall be subject to the Bank's customary fees and charges, as disclosed in its Schedule of Fees.

### **ELECTRONIC MESSAGES AND OTHER COMMUNICATIONS**

The Company agrees that all notices and other communications directly related to its use of the OTM Services, any of the Specific Services or to its Accounts may be sent electronically to any e-mail address we have on record or, at our option, any other manner permitted by applicable law. As e-mail is not a secure method of communication over the internet, the Bank recommends that the Company does not send confidential information, such as account numbers and financial information, to the Bank by e-mail. Please be advised that the Bank will not immediately receive an electronic message sent, and no action will be taken on any electronic message until the Bank actually receives the Company's message and has had a reasonable opportunity to act on it. If the Company needs to contact the Bank immediately, please call Treasury Management Support at 866-708-4384.

### **ALERTS**

Enrollment in any of the Specific Services offered through the OTM Services may include access to mobile text messaging related services and alerts ("Alerts."). By using the OTM Services, the Company agrees that the Bank may send messages through the Company's communication service provider for delivery to the Company and that the communication service provider is acting as the Company's agent in this capacity. The Bank may use a telephone number or e-mail address on file in its records for the Company, or such other contact information as the Company may provide to the Bank, for sending these Alerts.

These Alerts are provided for the Company's convenience and do not replace your monthly account statements, which are the official record of the Company's Account(s). The Company understands and agrees that the information sent through an Alert may not be encrypted and may include personal or confidential information about the Company such as your account activity or account status, and anyone with access to the Company's e-mail or mobile device may be able to access the Alert. Additionally, Alerts sent via telephone may be delivered to voice mail or answering machines if no one answers the telephone. It is the Company's responsibility to secure its mobile device, protect its Access Information and provide timely information about changes to its telephone number, e-mail address or other method of delivery in order to protect the confidentiality of this information.

The Bank endeavors to provide Alerts to you in a timely manner, however it does not guarantee the delivery or accuracy of any information sent through an Alert. Messages may be delayed or impacted by factors pertaining to the Company's communication service provider, internet service provider or other third parties. The Bank will not be liable for any losses or damages arising from the disclosure of account information to third parties, non-delivery, delayed delivery, misdirected delivery or mishandling of or inaccurate content in information sent through an Alert.

### **HOURS OF ACCESS**

The Company generally can use the OTM Services seven (7) days a week, twenty-four (24) hours a day, although some or all of the Specific Services offered through the OTM Services may not be available during regularly scheduled maintenance periods or during system/network interruptions.

### **STATEMENT REVIEW**

The Company shall be notified of transactions performed in connection with the OTM Services through periodic account statements. The Company shall have the obligation to promptly review all activity pertaining to the Account(s), and promptly, but in no event exceeding thirty (30) days from the Bank's issuance of a

statement reflecting such activity, notify the Bank of any unauthorized access. Failure by the Company to so review and advise shall release the Bank of any and all liability (if any) for any activity taken by any unauthorized party. Without regard to care or lack of care, the Company's failure to discover and report any suspected error, discrepancy or unauthorized transaction in connection with the OTM Services within such thirty (30) day period, will bar any claim against Bank with respect to any such error, discrepancy or unauthorized transaction or any subsequent error, discrepancy or unauthorized transaction by any unauthorized person. Notwithstanding anything to the contrary contained herein, in no event shall the Bank be liable for any activity in the Company's Account(s) undertaken by unauthorized person(s) if the activity was initiated by use of the Access Information.

Additionally, the Company shall notify the Bank of any other errors, omissions or interruptions in, or delay or unavailability of, any of the OTM Services as promptly as practicable, and in any event, within one (1) business day after the earlier discovery thereof, or the date discovery should have occurred through the exercise of reasonable care. Failure by the Company to so notify the Bank within the time periods set forth herein shall relieve the Bank of any liability for such error, omission or discrepancy.

### **WAIVER OF REQUIREMENT FOR MULTIPLE SIGNATURES**

The Company agrees that any requirement of verifying multiple signatures on checks, if such a requirement exists, does not apply to any transactions made using or through the OTM Services. The Company agrees to release the Bank from any liability when making such transactions.

### **SECURITY PROCEDURES**

The Company agrees to comply with the Bank's security procedures, including the use of Access Information, one-time passcodes and other security or authentication devices ("Security Procedures") in connection with the use of the OTM Services. The Company acknowledges and agrees that the Bank's Security Procedures are designed to verify the origination of instructions, orders or other communications (each a "Communication") sent in connection with the use of the OTM Services and not for the detection of errors in transmission or content (i.e. duplicate payments or errors in funds transfer instructions).

The Bank shall have no duty to discover, and shall not be liable for errors or omissions by the Company. Each time a transaction is made through the OTM Services, the Company warrants that these Security Procedures are commercially reasonable and adequate for the purposes intended. The Bank reserves the right to issue new Security Procedures and/or to modify or change any Security Procedures from time to time.

The Company shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of any Security Procedures and shall immediately notify the Bank if the Company believes or has reason to believe that the confidentiality or integrity of any Security Procedure has been breached, threatened or become known to an unauthorized person (whether or not such person is employed by the Company). Additionally, if the Company fails to follow any Security Procedure, the Company shall be liable for any unauthorized disclosure or unauthorized access to the Company's information or data. The Company shall be liable for any instructions and other communications initiated before the Bank has received such notice and has had a reasonable opportunity to act on such notice. The Bank shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any Security Procedures.

The Company acknowledges and agrees that Bank shall be entitled to deem any individual having knowledge of any Security Procedures (as hereinafter defined) or Access Information (as hereinafter defined) to be a user. The Bank shall be entitled to act on any Communication received in accordance with the Security Procedures without being obligated to verify the content of such Communication, or establish the identity of the person giving the Communication. The Company acknowledges and agrees that the Bank may, without liability, refuse to act on a Communication that is not transmitted in accordance with the Security Procedures. The Company further acknowledges and agrees that the Bank may, without liability, refuse to act on any Communication if the Bank reasonably doubts its authorization, contents, or origination or compliance with the Security Procedures. The Company assumes full responsibility for any transaction, whether or not authorized, issued in the Company's name and accepted by the Bank in accordance with the Security Procedures.

## **BANK'S RESPONSIBILITY**

In the performance of the OTM Services, the Bank will be entitled to rely solely on the information, representations and warranties provided by the Company, and will not be responsible for the accuracy or completeness thereof. The Bank shall have no duty or obligation to inquire as to the appropriateness, correctness or authenticity of any entry, instruction, transaction or order in connection with the OTM Services, whether or not it will result in payment to any officer, employee, or agent of the Company, or is otherwise tendered in payment of such person's individual obligations. The Bank has no obligation to verify the availability of funds in any account at the time of any transfer request, even if honoring such a request will result in an overdraft. In the event such a request is honored, the Company shall immediately pay such overdraft and shall be responsible for payment of all applicable overdraft charges. Further, the Bank is not obligated to honor, either in whole or in part, any transaction or instruction which (a) is not in accordance with any terms or conditions applicable to the relevant Specific Service, (b) the Bank has reason to believe may not be authorized by Company, (c) involves funds subject to a hold, dispute or legal process preventing their withdrawal; or (d) would violate any applicable federal or state law, rule or regulation.

Notwithstanding any other provision of this Agreement, the Bank shall have no liability for any damage, loss, expense or liability of any nature that the Company may suffer or incur, except to the extent of direct losses attributable solely to the Bank's own gross negligence or willful misconduct, and only to the extent set forth herein. In furtherance of, and without limiting the foregoing, the Bank will not otherwise be responsible for any action taken, allowed or omitted or for any liability, loss, claim or damage arising from an act of God, loss or delay occasioned in transit of data or processed work, labor disputes, material or labor shortages, accident or damage to facilities, inaccuracy of information, computer viruses, malicious code or other defects in the OTM Services, incompatibility between the OTM Services and the Company's browser or from other causes or events beyond the control of the Bank. The time, if any, required for the Bank's performance under this Agreement shall be automatically extended during the period of such delay or interruption. In no event shall the Bank be liable for any indirect, special, consequential or punitive loss or damage of any kind (including, without limitation lost profits) whether or not foreseeable, even if the Bank has been advised of the likelihood of such loss or damage, and regardless of whether the claim for loss or damage is made in negligence, gross negligence, breach of contract or otherwise. This section shall survive termination of this Agreement and termination of Company's participation in the OTM Services.

## **SPECIFIC SERVICES**

### **A. ACH ORIGINATION SERVICES**

Through the Bank's Automated Clearing House origination services ("ACH Services"), the Company will be permitted to initiate credit and/or debit Entries as an Originator by means of the Automated Clearing House Network ("ACH") pursuant to the terms of this Agreement and the operating rules and guidelines of the National Automated Clearing House Association ("NACHA") including, any exhibits or appendices thereto, as same may be amended from time to time (collectively, the "Rules"), which Rules are incorporated herein and made a part of this Agreement. Terms not defined herein shall have the meanings ascribed to them in the Rules. **PLEASE NOTE THAT COMPANIES THAT INITIALLY ENROLLED IN BANKUNITED'S BUSINESS ONLINE BANKING PLUS MAY ONLY USE ACH SERVICES FOR TAX PAYMENTS AND PAYROLL PAYMENTS.**

To be eligible to enroll in and use the ACH Services, the Company must be approved by the Bank. The Company agrees to provide the Bank with such financial, business and operating information as the Bank may reasonably request in connection with the Bank's approval process.

The Company acknowledges that it has a copy of, or has access to a copy of, the Rules. The Company agrees to comply with and be bound by the Rules. The Company represents and warrants to Bank that Company's actions with respect to Company's use of the ACH Services including, without limitation, the preparation, transmittal and settlement of Entries, shall comply with the Rules and all applicable federal and state laws, rules and regulations. The Company acknowledges that Bank will charge the Company for any fines or penalties imposed by NACHA or any other organization which are incurred as a result of Company's actions or inactions and Company agrees to fully reimburse and/or indemnify Bank for such charges or fines.

It is the Customer's responsibility to deliver all credit and debit Entries to the Bank with all information necessary to complete the Customer's requested transactions in compliance with formatting and other requirements set forth in the Rules or as otherwise specified by the Bank. The Bank may reject or delay processing transactions if information and/or instructions are not complete or are inaccurate, do not comply with the terms of this Agreement or the Rules, or otherwise do not meet the criteria specified by the Bank for acceptance.

The Company shall obtain authorization as required by the Rules from the person or entity whose account will be debited or credited as a result of a debit or credit Entry initiated by the Company. The Company shall retain the original or a copy of each authorization and other documentation required under the Rules for a period of not less than two (2) years after termination or revocation of such authorization or such longer period as is provided in the Rules. If Bank receives a request from a RDFI for any such authorization or documentation, Company shall promptly furnish an original or copy thereof to the Bank so that Bank can provide it to the RDFI within ten (10) banking days of the request.

The Company may elect to send pre-notification that it intends to initiate an Entry or Entries to a third party account within the time limits prescribed by the Rules. Pre-notification shall be provided to the Bank in the format and on the media prescribed by the Rules, unless otherwise specified by the Bank. In the event that the Company has received notice that a pre-notification has been rejected within the prescribed period by a RDFI, the Company will not initiate any Entry of such third party's account until the cause for rejection has been corrected and another pre-notification has been submitted and accepted by the RDFI within the time limits prescribed by the Rules.

Subject to Bank's approval, Company may elect to have Company's ACH Entries originated on a "same-day" basis, for settlement on the same day as the Effective Entry Date (each a "Same Day Entry" and collectively "Same Day Entries"). Bank may, in its sole discretion, establish exposure limits limiting the number of Entries or dollar thresholds of Same Day Entries that Company may have outstanding at any time. Further, Bank may terminate Company's right to originate Same Day Entries at any time. To be eligible to be treated as a Same Day Entry the Entry must: (i) have been received on a business day by the Bank's designated cut-off time for Same Day Entries; (ii) not exceed \$25,000 per transaction; and (iii) contain an Effective Entry Date as the same business day of receipt. IAT Entries are not eligible to be Same Day Entries. Same Day Entries shall be identified based on the date entered by Company in the Effective Entry Date field. Company agrees and understands that it is Company's responsibility to ensure the correct date is inputted into the Effective Entry Date Field. Use of the current date or any date in the past will also trigger fees for same day processing that may be higher than the fees for traditional ACH processing. Bank may utilize same-day processing for any Entry that qualifies as a Same-Day Entry even if Company did not intend the Entry to be processed using same-day processing. In such instances, Company is still responsible for all fees associated with same-day processing. Bank does not represent, warrant or otherwise guarantee that a receiving depository financial institution is able to receive or initiate Same Day Entries, or will post Same Day Entries by applicable deadlines, or will otherwise make funds available in a timely manner, and the Bank shall not be responsible for any loss resulting therefrom.

Company shall transmit Entries to Bank to the locations and in compliance with the formatting and other requirements set forth in the Rules and Bank's specifications. Company will not submit individual or total monthly Entries in excess of the maximum limits including, without limitation, dollar amounts and/or Standard Entry Class Code types, established by Bank, in its sole discretion, as may be amended from time to time. Company shall not divide a transaction into more than one Entry in order to avoid these limitations. Bank's processing of Entries in an amount greater than the established limits shall not be deemed a waiver of this provision. Bank may cease processing Entries in a greater amount at any time without prior notice.

Except as otherwise provided for herein, Bank shall (i) process Entries received from Company that conform with the file specifications set forth in the Rules; (ii) transmit such Entries as an ODFI to an ACH Operator selected by Bank in its sole discretion; and (iii) settle for such Entries as provided in the Rules. Bank shall endeavor to transmit or complete the necessary authorizations for Entries by the deadline of the ACH Operator provided: (a) such Entries are received by Bank's applicable cutoff time on a business day; (b) for Entries, other than Same Day Entries, the Effective Entry Date is at least two (2) business days after such business day (for credit Entries) and at least one (1) business day after such business day (for debit Entries) and (c) the ACH Operator is open for business on such business day. Entries shall be deemed received by



Bank when the transmission and compliance with any related Security Procedures is completed. Company acknowledges and agrees that Bank only acts as the Company's agent for transmission of the Entries and assumes no responsibility for said Entries, except that Bank will endeavor to exercise due care in the transmission. If any of the requirements of this paragraph are not met, Bank may use reasonable efforts to transmit such Entries to the ACH Operator by the next deadline of the ACH Operator which is a business day and a day on which the ACH Operator is open for business.

All transactions are subject to acceptance by the Bank. The Bank has no obligation to accept any Entries and therefore may reject any Entry issued by or on behalf of the Company. The Bank will endeavor to notify the Company if the Bank deems it necessary to reject a submitted Entry. The Bank shall have no liability to the Company for rejection of any Entry. The Company agrees that it shall not initiate or transmit any Entry that violates the Rules.

The Company shall have no right to cancel or amend any Entry after its receipt by the Bank. Notwithstanding the foregoing, the Bank may, at its option, act on a request by the Company for cancellation or amendment of an Entry prior to transmitting it to the ACH or crediting/debiting a Receiver's account. Please note, however, that any request to cancel an Entry that has been submitted as part of a batch may require that the entire batch be cancelled. Company acknowledges that in the case of a Same Day Entry any request by Company to cancel the Entry must be made immediately in order for Bank to have an opportunity to effect cancellation. Despite Bank's commercially reasonable efforts to act on such a request, cancellation of a Same Day Entry may nevertheless be impossible and Company understands and accepts the risk of this occurrence. The Company agrees to pay any and all fees and charges as set forth in the applicable Schedule of Fees in connection with such request. The Bank shall have no liability if any such cancellation or amendment is not effected. If the Bank accepts a cancellation or amendment of an Entry, the Company hereby agrees to indemnify, defend and hold Bank harmless from and against any and all claims, losses, demands, damages, fees, charges, costs and expenses including, without limitation, attorney's fees, incurred by the Bank as a result of its acceptance of the cancellation or amendment. This indemnification obligation shall survive termination of the Company's relationship with the Bank.

In the event any Entries are rejected or returned from the ACH Operator, the Bank shall make reasonable efforts to notify the Company no later than one (1) business day after the business day of such receipt. Except for an Entry retransmitted by the Company in accordance with the requirements provided for herein, the Bank shall have no obligation to retransmit a returned Entry if the Bank complied with the terms of this Agreement with respect to the original Entry. If the Company wants to resubmit any returned or rejected Entry, it is the Company's responsibility to correct the Entry and resubmit it, or otherwise resolve the rejection or return in accordance with the Rules. The Bank shall have no liability to the Company due to the rejection or return of any such Entry or due to the fact that Bank may not have not timely notified the Company about the rejection or return. The Company shall retain data on file adequate to permit remaking of entries for five (5) business days following the date of their transmittal by the Bank as provided herein, and shall provide such data to the Bank upon its request.

Bank may monitor the Company's return activity and may request proof of authorization of any Entry. If the Bank, in its sole discretion, deems that the Company has excessive returns or rejections, the Bank may immediately terminate the Company's ability to submit debit Entries. The Company shall indemnify, hold harmless and defend the Bank, at the Company's sole cost and expense, against all suits, claims, demands, loss, liability and expenses, including but not limited to attorney's fees, court costs and related litigation costs and expenses, arising out of any rejected or returned Entry except to the extent that such rejection or return was solely due to the Bank's gross negligence or willful misconduct. This indemnification obligation shall survive termination of the Company's relationship with the Bank.

Except with respect to Entries rejected by the Bank, if an Entry submitted by the Company is an On-Us Entry (received for credit or debit to an account maintained at the Bank), the Bank shall credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided that the Entry has been submitted to the Bank in accordance with the applicable time limits set forth herein. If any of the applicable time limits have not been met, the Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.

The Bank shall provide the Company with all information, as required by the Rules, with respect to each Notification of Change (“NOC”) Entry or Corrected Notification of Change (“Corrected NOC”) Entry received by the Bank relating to Entries transmitted by the Company within two (2) business days of the Settlement Date of each NOC or Corrected NOC. The Company shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) business days of the Company’s receipt of the NOC information from the Bank or prior to initiating another Entry to the Receiver’s account, whichever is later. If a NOC or Corrected NOC is incorrect or refused by the Company, the Company will promptly deliver a refused Notification of Change to Bank stating the applicable reason code as specified in the Rules. If the Company does not comply with the requirements to make changes requested by a NOC or Corrected NOC, the Bank may charge the Company for any and all NACHA rule violation fines resulting from such rule infraction or cease processing Entries for the Company until the changes are made. Company acknowledges and agrees that if Company fails to make changes requested by a NOC or Corrected NOC, Bank shall have the right to apply such requested changes to future transactions and that Company may be charged a fee in connection therewith.

The Company acknowledges and agrees that if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person differently from the named Receiver, and Company’s obligation to pay the amount of the Entry to the Bank shall not be excused in such circumstances.

The Company shall designate a settlement account at the Bank for the purpose of funding the Company’s Entries (“Settlement Account”). The Company agrees to maintain sufficient Available Funds to offset any Entries submitted and against which any rejected or returned Entries, and applicable fees and charges in accordance with the applicable Schedule of Fees then in effect, may be credited or debited. The Bank will either charge or credit the Settlement Account(s) for any credit or debit Entry originated by the Company on the Settlement Date. Even though the Bank debits or credits the Settlement Account, such debit and/or credit is provisional until the Bank receives final settlement. In the event any provisional credit and/or debit or any final credit and/or debit is reversed for any reason, then the Bank will charge the Settlement Account for such item and impose a fee in accordance with the Schedule of Fees then in effect. The Company is responsible for reimbursing the Bank for any and all temporary or final credit reversals. If there are not sufficient Available Funds in the Settlement Account, the Company agrees that the Bank may charge any other Account maintained by the Company with the Bank to cover the Company’s obligations hereunder. Notwithstanding the foregoing, the Bank reserves the right to require the Company to pre-fund the Settlement Account prior to the Settlement Date of an ACH credit file. The Bank shall determine whether pre-funding is required based upon criteria established by the Bank from time to time. When pre-funding, the Company shall maintain sufficient Available Funds in the Settlement Account. With respect to the origination of debit Entries or Reversals of credit Entries, the Company acknowledges and agrees that the Bank need not make any deposit to the Account available for withdrawal or transfer unless and until the Bank has a reasonable belief that such Entry has been paid.

The Company acknowledges that it shall be bound by and comply with the provision of the Rules regarding making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. The Company specifically acknowledges that it has received notice of that Rule and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and the Company shall not be deemed to have paid the Receiver the amount of the Entry.

The Company acknowledges that due to the “next day” settlement procedures used by the ACH, there is the possibility of loss to the Bank in the event that the Company does not have Available Funds at the time of settlement. Accordingly, the Bank may from time to time establish or revise maximum dollar limits for the total value of all Entries the Bank will release on the Company’s behalf in any 24 hour period. Any instructions exceeding this aggregate limit need not be honored, but may, at the Bank’s discretion, be honored. Notwithstanding the foregoing, the Company shall remain liable for all Entries that exceed the foregoing amount, to the extent honored by the Bank. The Bank may change or cancel the limits at any time without prior notice to the Company, although the Bank will try to notify the Company before the Bank does so. The Bank has no obligation to discover and shall not be liable to the Company for any errors made by the Company including, without limitation, errors made in identifying the Receiver or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Bank shall likewise have no duty to discover and shall not be liable

for duplicate Entries issued by the Company.

Notwithstanding the foregoing, if the Company discovers that any Entry it has initiated was in error, it may notify the Bank of the error and the Bank will make reasonable efforts on behalf of the Company, consistent with the Rules, to correct the Entry. In all such cases, it is the responsibility of the Company to notify its affected customers that an Entry has been made which is at variance with the customer's authorization or is otherwise erroneous. The Bank shall not be liable for such Entries or the Bank's failure to correct the Entry. The Company is responsible for all expenses incurred as a result of the error and shall indemnify, hold harmless and defend the Bank at the Company's sole cost and expense against all suits, claims, demands, loss, liability and expenses, including but not limited to attorney's fees, court costs and related litigation costs and expenses, resulting directly or indirectly from such errors whether in an action between the Bank and the Company or between the Bank and a third party or otherwise. This indemnification obligation shall survive termination of the Company's relationship with the Bank.

The Company will be deemed to make the same warranties to the Bank as the Bank makes pursuant to the Rules. Additionally, with respect to each and every Entry transmitted by the Company, the Company represents and warrants to the Bank and agrees that: (i) each person or entity shown as the Receiver on an Entry received by the Bank from the Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (ii) such authorization is operative at the time of transmittal or crediting or debiting by the Bank as provided herein, (iii) Entries transmitted to the Bank by the Company are limited to those types of credit and debit Entries permitted pursuant to this Agreement. Without limiting the foregoing, the Company acknowledges that International ACH Transactions ("IATs") are not permitted under the terms of this Agreement and the Company represents and warrants to the Bank that no such Entry transmitted by the Company shall be an IAT, (iv) the Company shall perform its obligations under this Agreement in accordance with all applicable laws, regulations and orders including, without limitation, the sanctions laws, regulations and orders administered by the United States Treasury Office of Foreign Assets Control ("OFAC"), laws, regulations and orders administered by FinCEN, and any state, laws, regulations or applicable to the providers of ACH payment services. Without limiting the foregoing, the Company agrees that it will not initiate any transactions in violation of the requirements or sanctions of OFAC or act on behalf of, or transmit funds to or from, any party subject to OFAC sanctions, and (v) the Company shall be bound by and comply with the provision of the Rules making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement of such Entry. The Company shall indemnify, hold harmless and defend the Bank at the Company's sole cost and expense against all suits, claims, demands, loss, liability and expenses, including but not limited to attorney's fees, court costs and related litigation costs and expenses, resulting directly or indirectly from any breach of any of the representations or warranties of the Company set forth herein. This indemnification obligation shall survive termination of the Company's relationship with the Bank.

From time to time, the Bank may request information from the Company with respect to the Company's ACH Services activity for the purposes of evaluating a continuation of the ACH Services and/or adjustments of any limits. The Company agrees to provide the requested information promptly upon request. In connection with these evaluations, the Bank reserves the right to require the Company to establish reserves with the Bank, in amounts calculated by the Bank in its discretion, to cover the Company's obligations to the Bank arising from the Company's use of the ACH Services. Reserves may be expressed as fixed dollar amount or as a "rolling reserve" calculated based on "rolling" averages as determined in accordance with the Bank's periodic evaluations. The amount of the reserves required by the Bank, if any, will be communicated directly to the Company from time to time. The Company agrees to establish reserves as required by the Bank within seven (7) days after being notified by the Bank. The Company acknowledges and agrees that the Bank may suspend the Company's ACH Services if the Company fails to establish the required reserves within such seven (7) day period.

When the Company is acting in the capacity as a Third-Party Sender, the Company, in addition to acknowledging the Third-Party Sender Annual Attestation, acknowledges that the Company is bound by the Rules and represents and warrants to the Bank as follows:

1. The Company shall perform all of the duties to verify the identity of any Originator prior to transmission of any ACH Entry. The Company shall be responsible to provide the Bank with any information that the Bank considers reasonably necessary to identify each Originator for which the Bank,

as ODFI, transmits Entries. Upon the receipt of a request from the Bank for such information, the Company shall provide the information within two (2) business days of such request.

2. The Company has agreed to assume the responsibilities of an Originator, as authorized by the Originator and required by the Rules. In any case in which the Company fails to perform its obligations as an Originator under the Rules, the Company agrees to indemnify the Bank, hold harmless and defend the Bank at the Company's sole cost and expense against all suits, claims, demands, loss, liability and expenses, including but not limited to attorney's fees, court costs and related litigation costs and expenses, resulting directly or indirectly, from the failure of the Company to perform its obligations as an Originator. This indemnification obligation shall survive termination of the Company's relationship with the Bank.

3. If the Company performs any obligations of the Bank as ODFI under the Rules, the Company agrees it shall also perform the requirements of an ODFI under the Rules, and warrants that it has the legal ability to do so.

4. The Company is obligated to make payment to the Bank for all credit Entries and all debit Entries that are returned by the RDFI. In the event that the Bank does not receive payment from the Company, the Originator of the Entry agrees to pay the Bank.

5. The Company shall ensure that its Originators agree to the responsibilities outlined herein for the retention and delivery of any records, documentation and data related to copies of items, copies of source documents or records of authorization.

6. The Company shall conduct an annual audit of its compliance with the Rules and upon request, to provide documentation supporting such audit within five (5) business days of such request.

7. The Company acknowledges and agrees that Bank as ODFI, has the right to terminate or suspend this Agreement with the Third-Party Sender, or any contractual agreement with each Originator of the Third-Party Sender, for breach of these Rules in a manner that interferes with Bank's compliance with the Rules or other applicable laws.

## B. ACH ALERT SERVICES

Through ACH Alert Services ("ACH Alerts") the Company can receive notifications via e-mail or text messaging regarding ACH Debit Transactions (as hereinafter defined) presented for payment against its Accounts. For purposes of ACH Alerts, "ACH Debit Transaction" shall refer to certain electronic funds transfers which settle within a bank or between banks according to specified rules and procedures governed by the Federal Reserve Bank and NACHA and which have the intended result of debiting funds from the Company's Accounts.

To activate ACH Alerts, the Company shall complete the Bank's enrollment form ("Enrollment Form") designating which Accounts are to be enrolled ("Designated Account"). The Company shall also provide a valid telephone number and/or e-mail address where alert notifications ("Alert Notification") are to be sent. Bank shall be allowed a reasonable period of time in which to process the Enrollment Form following its receipt from the Company. Bank shall not be obligated to process any Enrollment Form that is missing any information or is otherwise incomplete.

Company acknowledges and agrees that each Alert Notification may not be encrypted and may include the name of the company attempting to debit (the "Sender"), and certain information pertaining to, the Designated Account. Receipt of an Alert Notification may be delayed or prevented by factors affecting the Company's internet or telecommunications service providers. Bank neither guarantees the delivery or the accuracy of the contents of any Alert Notification.

In the event that any ACH Debit Transaction is presented for payment against a Designated Account, an Alert Notification will be sent to the telephone number or e-mail address provided during enrollment. Company must provide Bank with instructions to pay or return the ACH Debit Transaction prior to the Bank's established cut-off time on the business day immediately following the settlement date for the ACH Debit Transaction.

If Company does not provide Bank with instructions to pay or return an ACH Debit Transaction on or before the established cut-off time, the transaction shall be paid or returned in accordance with the default decision provided by Company. Company acknowledges and agrees that if paid an ACH Debit Transaction may not be returned and shall remain paid.

If Company has specified a list of originating company names and identification numbers who the Company has authorized to originate ACH Debit Transactions against the Designated Accounts ("Approved List"), Bank will match ACH Debit Transactions that are presented for payment to the Approved List. If an ACH Debit Transaction does not match the Approved List, an Alert Notification shall be provided to Company. If Company does not provide Bank with instructions to pay or return the ACH Debit Transaction by the established cut-off time, then such transaction shall be paid or returned in accordance with the default decision provided by Company. Company acknowledges and agrees that Company is responsible for making any revisions, amendments, updates, deletions or any other changes to the Approved List.

Company acknowledges and agrees that ACH Alerts is only applicable for ACH transactions identified with Standard Entry Class (SEC) Codes of CCD, CTX, PPD, ARC, BOC, RCK, POP, WEB, and TEL.

Company may not use ACH Alerts to reverse any ACH Debit Transaction for any reason other than that a transaction is "unauthorized" or "improper" (as designated by the Company). ACH Alerts may not be used to reverse transactions in the event there are insufficient funds in the Company's Accounts or to reverse an otherwise authorized transaction.

Company acknowledges that the return of an ACH Debit Transaction is subject to dispute on the part of the Sender. In the event of such a dispute the Company acknowledges and agrees that the Bank must act in accordance with the NACHA Rules. Without limiting any of its indemnification obligations to Bank, Company hereby agrees to accept liability for and hold Bank harmless from and against any and all, damages, losses, fines, fees, taxes, liabilities, costs and expenses including, without limitation, reasonable attorney's fees, arising out of or related in any way to the return of any ACH Debit Transaction in accordance with the Company's instructions.

Any ACH Debit Transaction that is paid in accordance with ACH Alerts shall be considered properly payable and Company agrees that Bank shall have no liability to Company for paying any ACH Debit Transaction in accordance herewith. Notwithstanding anything to the contrary contained herein, Bank may, but shall not be obligated to, pay any ACH Debit Transaction if there are not Available Funds on deposit in the Account.

Company acknowledges that failure to use the Bank's ACH Alerts Service could substantially increase the likelihood of undetected fraudulent activity on its Account(s) and that it is neither unreasonable nor unreasonable under the circumstances for the Bank to require Company to use its ACH Alerts Service upon request. Company agrees that if it fails to implement the ACH Alerts Service following the Bank's request to do so, Company will be precluded from asserting any claim against the Bank for paying an unauthorized, altered, counterfeit or other fraudulent item that the ACH Alerts Service was designed to detect or deter, and Bank will not be required to re-credit your Account(s) or otherwise be liable to Company for paying such item.

### C. ZERO BALANCE ACCOUNT TRANSFER SERVICES

With the Bank's Zero Balance Account Transfer Services, the Company can eliminate excess balances in separate accounts and maintain greater control over disbursements. The Company will designate one master funding account ("Master Account") from which Available Funds will be transferred to and from each zero balance account ("Subsidiary Account") at the close of each business day such that the balance in such Subsidiary Account shall be the target balance set by the Company (the "Target Balance"). If the Company fails to specify a Target Balance for a Subsidiary Account, the Target Balance for such account shall be zero dollars. If a Subsidiary Account does not have sufficient Available Funds to cover any checks paid or debits made (collectively "Debits") from such account, the Bank will automatically transfer Available Funds from the Master Account in an amount sufficient to pay such Debits and bring the Subsidiary Account to its Target Balance; provided, however, if more than one Subsidiary Account is linked to a Master Account, the Bank will transfer Available Funds from the Master Account to cover Debits from all Subsidiary Accounts

prior to making transfers from such Master Account to restore the Target Balance in any Subsidiary Account. If there are insufficient Available Funds in the Master Account to cover all Debits from all Subsidiary Accounts, the Bank reserves the right, in its sole discretion, to pay or return any such Debits. The Bank is hereby authorized to add or remove Subsidiary Accounts from time to time upon receipt of written notice from an authorized signer on the Master Account.

The Company acknowledges and agrees that, in the event that the Bank receives any levy, garnishment, restraint, or other legal process freezing or otherwise restricting access to funds on deposit in the Master Account or a Subsidiary Account, the Bank may, at its option and without liability, refuse to honor orders to pay, transfer or withdraw funds from any and all Accounts to the extent permitted by applicable law.

**PLEASE NOTE THAT ZERO BALANCE ACCOUNT TRANSFER SERVICES ARE ONLY AVAILABLE TO COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

#### D. ACCOUNT RECONCILIATION SERVICE

The Bank's Account Reconciliation Service ("ARP Service"), enables the Company to manage, track and reconcile payment activity in its Account(s). We offer both full and partial account reconciliation, as well as a deposit reconciliation service.

Our ARP Service applies only to checks issued by the Company from the Account(s) designated for the ARP Service and only to those checks that are presented for payment through customary interbank clearing methods. The Company acknowledges that customary interbank clearings do not include items presented for payment at a teller window, through an ATM or by mail. The Bank may, at its sole discretion, attempt to compare the Check Information (as hereafter defined) against such items, however, the Bank will not be liable for its failure or refusal to do so, even if the Bank has done so on previous occasions.

Company's enrollment in the ARP Service does not alter Company's obligations to regularly review its Account activity and promptly report to the Bank any errors, discrepancies or unauthorized transactions.

The Company shall electronically transmit to the Bank, no later than 10:00 p.m. ET on the business day that a check(s) payable on its Account(s) is issued, a file containing the following information for each check: check number, issue date, check amount, account number and any such other information that the Bank may require from time to time ("Check Information").

#### Full Reconciliation

Within five (5) business days after the close of the applicable Account statement cycle, the Bank will provide a reconciliation report package, including a consolidated balance sheet and check paid report, detailing the Company's account activity during the cycle.

#### Partial Reconciliation

Within five (5) business days, after the close of the applicable Account statement cycle, the Bank will provide a report package including a consolidated profile of checks paid and checks outstanding for the period.

#### Deposit Reconciliation

With Deposit Reconciliation, if Company has multiple business locations depositing checks to a single account, the Bank will segregate the deposits by location. Company is required to use pre-encoded deposit tickets when making check deposits to the Account. The Bank will report the deposit information by location and in the aggregate within five (5) business days after the close of the applicable statement cycle.

The Company acknowledges that any reports issued by Bank in connection with the ARP Service are being provided solely as an accommodation to the Company and the Bank makes no representation or

warranty regarding the accuracy of the information contained therein.

**PLEASE NOTE THAT ACCOUNT RECONCILIATION SERVICES ARE ONLY AVAILABLE TO COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

**E. POSITIVE PAY SERVICES**

The Bank's Positive Pay Services ("Positive Pay Services") are designed to assist the Company in the timely identification of unauthorized or suspect check activity on its Accounts. The Bank offers the following three options within its Positive Pay Services: (i) Positive Pay; (ii) Payee Positive Pay and (iii) Reverse Positive Pay. Prior to commencing use of the Positive Pay Services, the Company must provide Bank with a test file and must do so in the form and within the time frame we require.

**Positive Pay**

The Company shall submit a check issue file ("Issue File") to the Bank by 10:00 p.m. ET on the business day on which the Company issues a check(s) that accurately contains the following information with respect to each check drawn on its Account since the last Issue Report was submitted: (a) account number; (b) check serial number; (c) dollar amount of each check and any other information the Bank may require (collectively, the "Issue Information"). For first time users of Positive Pay, a list of all outstanding checks as of that day must be sent to the Bank. The Issue File shall be electronically transmitted to the Bank in a format mutually agreed upon by the parties.

The Bank shall electronically compare the Issue Information with each check presented for payment ("Presented Item"). If the Issue Information matches the information on a Presented Item, the Bank is hereby authorized to pay such item. If any of the Issue Information does not match the information on a Presented Item, the Bank will identify the item as an exception item ("Exception Item"), and report it to the Company by sending an exception report ("Exception Report") specifying the item serial number, the item amount and the reason why the item is an Exception Item. The Exception Report will be made available to the Company electronically generally by 9:30 a.m. ET, or such other time as may be established by Bank from time to time, on the business day following the business day the Exception Item is presented for payment. The Company shall promptly review the Exception Report each business day. The Company must timely notify Bank whether to pay or return each Exception Item before 3:00 p.m. ET, or such other cut-off time as may be established by the Bank from time to time, on the same business day the Exception Report is made available to the Company. If Company fails to notify Bank of its instructions with respect to an Exception Item prior to the established cut-off time, the Exception Item will be paid or returned in accordance with the Company's default instructions. If no default instructions have been provided, the Exception Item will be returned.

**Payee Positive Pay**

Payee Positive Pay enhances the Bank's Positive Pay Service by additionally comparing the payee name from the Presented Item against the payee name on the Issue Information. As part of the Issue Information, Company will also include the payee name. When items are presented for payment, in addition to comparing the check number and amount, the payee name will also be compared to the name presented in the Issue Information. Company will provide Bank with pay or return instructions for Exception Items that either do not have a payee match or that have a payee match but that do not match the MICR information provided by Company to Bank. In the event we are unable to perform the payee name comparison on any day that an item posts to your Account(s), the Payee Positive Pay Service will revert to Bank's Positive Pay service for that day.

**Reverse Positive Pay**

Reverse Positive Pay allows Company to review all checks presented against its Accounts. Each business day, Bank will electronically send Company a file with a list of checks presented for payment the previous business day ("Reverse Positive Pay Report"). Checks that are presented over the counter for deposit will appear on the Reverse Positive Pay Report made available to the Company the second business day after the day of deposit. Checks that are presented over the counter for encashment are not eligible for Reverse

Positive Pay. The Reverse Positive Pay Report will be made available by 9:30 a.m. ET. Company shall compare the information on the Reverse Positive Pay Report to the Company's Issue Information. Company shall notify Bank no later than 3:00 p.m. ET whether to pay or return each item on the Reverse Positive Pay Report. If Company fails to notify Bank of its instructions with respect to an item on the Reverse Positive Pay Report prior to the established cut-off time, the Exception Item will be paid or returned in accordance with the Company's default instructions. If no default instructions have been provided, the Exception Item will be returned.

#### General Terms and Conditions Applicable to all Positive Pay Services

The Company acknowledges and agrees that by enrolling in and using the Positive Pay Services, each Presented Item will be processed as described herein and that Bank shall have no obligation to perform its customary or any other check verification procedures including, without limitation, inspecting any check for the presence of any number of designated signature(s) or determining whether any signature is authorized or valid. The Company further acknowledges and agrees that if Bank acts in accordance with the procedures set forth herein in paying items through the Positive Pay Services, Bank shall be deemed to have exercised good faith and ordinary care as defined by Articles 3 and 4 of the Uniform Commercial Code ("UCC") and Bank shall have no liability whatsoever in paying such item(s). With respect to any item dishonored or returned by Bank in accordance with Company's instructions, Company waives and releases any claim that the item is properly payable and any claim against Bank for wrongful dishonor under the UCC and any Other Agreement between Company and Bank or otherwise.

The Company understands that the Bank's Positive Pay Service may not identify counterfeit or duplicate checks. The Company agrees to promptly review all statements, returned items, reports and other check and transaction information that is made available to the Company, and to immediately report any identified discrepancies to the Bank.

Nothing herein shall affect the Bank's right to return any check if the Company's Account on which such check was drawn does not contain Available Funds to pay such item or if the Bank in its sole discretion determines that such item is not properly payable. Additionally, the Bank, may, without liability to the Company, refuse to pay any check presented for payment at any of the Bank's branch locations. If the Bank decides to pay an item presented for encashment at the teller line of one of its branch locations, the Company authorizes the Bank to pay such item based upon the Issue Information at the teller line. The Bank may charge a person who presents an item drawn on the Company's Account(s) a fee at the time of encashment.

Company acknowledges and agrees that Bank shall have no obligation to insure the receipt or accuracy of any information or data furnished by Company in connection with the Positive Pay Services and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of such information or data.

The Company agrees that the Positive Pay Services are intended to be used to identify and return items which Company suspects, in good faith, are fraudulent, and are not intended to be used as a substitute for Company placing stop payment orders on items which Company does not wish to be paid and which are not suspected as being fraudulent. If Bank suspects or concludes, in its sole discretion, that Company is using the Positive Pay Services in violation of the previous sentence, the Bank may require the Company to provide evidence that the items the Bank is being requested to return pursuant to Company's instructions are in fact fraudulent. Company shall be responsible for reimbursing Bank for any and all costs, expenses, losses (including, without limitation attorney's fees and court costs) that Bank may sustain on items returned under the Positive Pay Services which are not established to be fraudulent items.

The Company acknowledges that Company's failure to use the Positive Pay Services could substantially increase the likelihood of undetected fraudulent activity on its Accounts and that it is neither unreasonable nor unreasonable under the circumstances for us to require Company to use our Positive Pay Services upon request. Company agrees that if it fails to implement the Positive Pay Services following Bank's request that it do so, Company will be precluded from asserting any claim against Bank for paying an unauthorized, altered, counterfeit or other fraudulent item that the Positive Pay Services were designed to detect or deter, and Bank will not be required to re-credit your Account(s) or otherwise be liable to Company



for paying such item.

**PLEASE NOTE THAT POSITIVE PAY SERVICES ARE ONLY AVAILABLE TO COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

#### F. WIRE TRANSFER SERVICES

Through the Bank's Wire Transfer Services, the Company can electronically initiate domestic and international funds transfers ("Funds Transfer") from an Account(s) to a specified deposit account of the Company or a third party at the Bank or other financial institution. **PLEASE NOTE THAT COMPANIES THAT WERE INITIALLY ENROLLED IN BANKUNITED'S BUSINESS ONLINE BANKING PLUS MAY ONLY USE THE WIRE TRANSFER SERVICES TO SEND WIRES DOMESTICALLY.**

The Company may use the Wire Transfer Services to initiate one-time Funds Transfers, or to create templates for Funds Transfers made on a repetitive basis which involve the same Company Account and beneficiary account. Templates created by the Company for repetitive transfers are the sole and exclusive responsibility of the Company. The Company agrees that the Bank shall have no liability to the Company for any loss or liability which the Company may incur after the Bank has executed a repetitive Funds Transfer including, without limitation, any loss or liability due to Company error in creating the template.

Upon receipt of instructions to initiate a Funds Transfer ("Payment Order") from the Company, the Bank is authorized and directed to execute such request and charge the appropriate Account for the amount thereof plus any applicable fees and charges. The Bank is further authorized, but has no responsibility, to receive incoming Funds Transfers for credit to the Company's Accounts and to post such funds to the Account(s) specified in the transfer instructions. All Payment Orders sent to the Bank shall be in the format specified by the Bank. The Company represents that all information set forth in a Payment Order shall be accurate and complete. In order to allow the Bank sufficient time to comply with a Payment Order on the business day it is received, the Company shall submit the Payment Order by 4:00 p.m. ET, or such other cut-off time that may be established by the Bank from time to time. Payment Order requests received on a non-business day or after 4:00 p.m. ET on a business day will be treated as being received on, and may be executed on, the next business day.

Payment Orders initiated by the Company through the Services shall be verified and approved by the Company prior to transmission of the Payment Order to the Bank. Company acknowledges and agrees that Company is responsible for any Payment Order and associated funds transfer, whether or not authorized, originated in accordance with the terms set forth in this Agreement. The Bank strongly recommends that the Company designate one (1) authorized user as the initiator of a Payment Order and at least one (1) authorized user as the approver of a Payment Order. The Bank further recommends that an authorized user not act as both an initiator and approver. Notwithstanding the Bank's recommendation, if the Company permits an authorized user to act as both the initiator and the approver, the Company hereby authorizes and directs the Bank to process a Funds Transfer initiated and approved by such authorized user. The Company acknowledges that not using a dual validation approval process substantially increases the Company's risk of liability for an unauthorized transaction. The Company hereby releases the Bank from and against any and all claims, losses and/or damages including, without limitation, attorney's fees, court costs and related litigation expenses, arising from or related in any way to the Company's waiver of the dual validation approval process recommended by the Bank.

The Bank, in its sole discretion, may execute Payment Orders in any order it determines regardless of the order in which they are received. The Bank may use any payment network, clearinghouse, correspondent, intermediary, agent or sub-agent (collectively "Correspondent") including, without limitation, the Fedwire Payment System ("FEDWIRE"), the Clearing House Interbank Payment System (CHIPS) and the Society for Worldwide Interbank Financial Telecommunications (SWIFT) as the Bank, in its sole discretion, determines is appropriate when processing a Funds Transfer. The Company acknowledges that the Bank's ability to execute a Funds Transfer is subject to the funds transfer systems rules and by the funds transfer system capabilities of each Correspondent. Once a Funds Transfer is accepted by a Correspondent, it is that Correspondent's responsibility to pay the funds to the beneficiary and complete the Funds Transfer and the Bank will no longer have any control over the funds. The Bank is not responsible or liable for any delay in processing a Funds Transfer or making funds available to the

beneficiary including, but not limited to, if related to a Correspondent's fraud and/or sanctions screening procedures or compliance with the Bank Secrecy Act, OFAC requirements or other similar laws or regulatory requirements. The Company understands and agrees that FX International Funds Transfer (hereafter defined) transactions may not be future-dated. If the Bank informs Company of any "value date" or estimated date that a Funds Transfer may arrive at the beneficiary's bank, Company understands that such information is an estimate only based on information available at the time of the Payment Order, and Bank provides no promise or guarantee that the Funds Transfer will be deposited in the beneficiary's account by that date. Incoming Funds Transfers are conditional upon settlement and the Bank has no responsibility to accept any such transfers for the Company's benefit, or pay the Company the amount of such incoming Funds Transfer until the Bank receives final settlement. Should the Bank not receive such final settlement, the Company authorizes the Bank to reverse any such Funds Transfer. If there are not sufficient collected funds in the Account, the Company agrees to refund all amounts the Bank paid to the Company relating to the transfer.

If the Company requests that United States Dollars be sent to a beneficiary, beneficiary institution or other institution located outside of the United States, the Bank or any Correspondent may automatically convert the Funds Transfer from U.S. Dollars to the currency of the country of the beneficiary's financial institution, unless the Company instructs us otherwise ("Auto Convert"). The rate of exchange will be the applicable rate in effect at any point in the processing chain as determined by either the Bank or its designated Correspondent in its discretion. The Company agrees to accept the resulting determination of the currency exchange rate. Alternatively, when a beneficiary's bank (or its correspondent bank) converts a U.S. Dollar transaction into a foreign currency, such conversion shall be subject to rates and fees assessed by such banks, and may be further subject to various local laws and practices. The Bank has no control over those rates, fees or conditions, and the Company authorizes the Bank to process any resulting changes or credits to the Company's Account. In the event that the Company's wire is automatically converted by the Bank or its designated Correspondent, and the foreign beneficiary requires the payment to be received in U.S. Dollars, the wire will be re-converted by our designated Correspondent and settled in U.S. Dollars.

If Company requests a Funds Transfer in a currency other than U.S. Dollars ("FX International Transfer"), the Bank will debit the Account for the amount requested in U.S. Dollars for the amount of the transfer requested based upon the exchange rate for that foreign currency. The Company acknowledges that a FX International Transfer must be based on a currency that we trade in. For a current list of currencies we trade in, please contact your Treasury Management Officer. A daily exchange rate for each currency we trade in will be set and published each business day. The exchange rate will be based upon customary retail exchange rates reflecting market conditions, which will be different from the wholesale (bank-to-bank) published rates. Those rates will be applied to all transactions initiated on the same day unless the Company contacts the Bank to request a custom rate quote. Any exchange rates quoted are subject to change without notice until accepted by the Company. The Bank reserves the right to correct any misquoted or mistaken rates including, without limitation, the right to substitute the correct exchange rate or decline to process the wire transfer. Acceptance of the exchange rate by the Company is an irrevocable agreement to complete the transaction. The Company will be liable for any and all losses, costs, commissions, fees and damages incurred and/or paid by the Bank if the transaction is not completed, if the foreign exchange transaction is reversed or if the transaction is cancelled.

The Company understands that Auto Convert and FX International Transfer transactions are subject to transactional, sovereign and other risks including, without limitation, applicable regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions, trade restrictions and embargoes, time-zone issues, and cultural differences with respect to holidays and times of observation, and the Company agrees to assume and bear all such risks. Neither the Bank nor any of its Correspondents shall be responsible for any liability the Company may incur if its currency exchange rates are different from rates offered or reported by third parties, or offered by the Bank or our Correspondents at a different time, at a different location or for a different transaction amount.

If an Auto Convert or FX International Transfer wire is returned for any reason, we will convert the payment back to U.S. Dollars at our then current buying rate, less any fees and expenses including, without limitation, any Correspondent or beneficiary bank fees, and re-credit such amount to the Company's Account. The Company agrees to accept this amount as a full refund, even if it is less than the original amount the Bank transferred.

All Payment Orders are subject to verification. The Company covenants that all Funds Transfers originated by or on behalf of the Company shall comply with the terms of this Agreement. The Company further covenants that all Funds Transfers initiated by or on behalf of Company shall comply with all applicable laws, rules and regulations including, without limitation Article 4A of the Uniform Commercial Code and all anti- money laundering and exchange control laws and regulations including economic and trade sanctions promulgated by the Office of Foreign Assets Control of the United States Department of Treasury (“OFAC”). The Bank, without any liability to the Company, is under no obligation to honor either in whole or in part, any Payment Order or associated Funds Transfer that (i) it is unable to obtain proper and satisfactory verification of such Payment Order; (ii) there is any inconsistency between a Payment Order and information previously supplied to the Bank; (iii) a Payment Order is not initiated in accordance with the Bank’s Security Procedures; or (iv) there are insufficient or uncollected funds in the Account specified in the Payment Order. Additionally, the Bank shall be excused from failure to transmit a Funds Transfer or delay acceptance of a Payment Order if the Bank is required to take or refrain from such action by any legal, regulatory or governmental authority, or if the Bank reasonably believes that such action may violate any applicable laws, rules or regulations, including, without limitation any regulations issued by OFAC. In such event the Company irrevocably agrees that the Bank may retain any monies transmitted to the Bank, which monies shall not bear interest. The Company further agrees that the Bank may retain such monies until the Bank receives a written release from the appropriate legal, regulatory or governmental authority, or may pay such monies to the appropriate legal, regulatory or governmental authority, if and when required by law. The Bank may disclose or make information available to such legal, regulatory or governmental authorities concerning any Payment Order or associated Funds Transfer as the Bank reasonably believes is necessary or appropriate. Notwithstanding anything to the contrary contained herein, the Bank, in its sole discretion, except when prohibited by applicable law, may reject any Payment Order it receives from the Company for any reason.

The Company is responsible for the accuracy of all information in a Payment Order. The Company understands and agrees that in the event that the Company submits a Payment Order which identifies the beneficiary by both name and a unique numeric or alpha- numeric identifier (e.g. CHIPS UID, FEDWIRE RN, SWIFT BIC, or ABA account number), the Bank, our Correspondents, the beneficiary’s financial institution and any other banks participating in the Funds Transfer, may rely solely on the unique identifier, even if it identifies a party different from a party named within the Payment Order, and such reliance shall be binding upon the Company. Neither the Bank, our Correspondents, the beneficiary’s financial institution nor any other participating banks shall have any liability for executing any Payment Order, even if it has knowledge of the discrepancy or inconsistency.

If the Bank receives notice that a Funds Transfer transmitted by the Bank has been rejected by a Correspondent, a beneficiary bank or another bank participating in the Funds Transfer, the Bank shall endeavor to notify the Company of such rejection including the reason given for rejection. Upon rejection, the Bank shall have no further obligation to act upon a Payment Order, nor shall the Bank have any liability to the Company due to rejection by another person in the Funds 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 Funds Transfer.

Once Company provides a Payment Order to Bank, Company cannot cancel or amend the Payment Order. If the Company requests cancellation or amendment of a Payment Order, although Bank has not obligation or duty to do so and makes no representation or warranty as to its ability to do so, the Bank may use reasonable efforts to assist Company to attempt to cancel or amend a Payment Order, but the Bank shall have no liability if such cancellation or amendment is not effected for any reason.

The Company directs and authorizes the Bank, subject to the terms of this Agreement, to debit the amount of any Payment Orders issued by, or in the name of the Company, plus applicable fees and charges from the Company’s Account and to transmit such amounts in accordance with such orders. In the event that any Payment Order exceeds the amount of Available Funds in the Account, the Bank, may, but is not obligated to, execute such Payment Order. If the Bank elects to perform such a transaction, the Company shall remain liable for all amounts transferred including, without limitation, funds transferred in excess of Available Funds in the Account. In such event, the Bank may charge the Account or any other account the Company maintains with the Bank at any time for payment of the overdraft and applicable costs and expenses.

## G. REMOTE DEPOSIT CAPTURE SERVICES

Through the Bank's Remote Deposit Capture Services, the Company may, from time to time, capture an electronic image of a check and transmit that image to the Bank over the internet through a web-based interface for deposit to a Company Account (the "RDC Services").

To be eligible to enroll in and use the RDC Services, the Company must be approved by the Bank. The Company agrees to provide the Bank with such financial, business and operating information as the Bank may reasonably request in connection with the Bank's approval process. If approved, the Company shall be responsible, at the Company's sole cost and expense, for acquiring and installing any hardware, including, but not limited to, a personal computer and an image scanner (the "Equipment") required to access the RDC Services. The Company must use Equipment that meets the Bank's technical requirements. The Company acknowledges and agrees that it is solely responsible, at the Company's cost and expense, for the use, operation, performance and maintenance of all Equipment. The Company further acknowledges and agrees that it will perform or cause to be performed all vendor recommended maintenance, repairs, upgrades and replacements by properly trained personnel. The Bank shall not be liable to the Company for any malfunction, non-function, inaccuracy or other failure of the Equipment used by the Company to access the RDC Services, regardless of whether the Bank approved such equipment.

The Company agrees to use the Equipment in a manner consistent with the terms of this Agreement and for no other purpose. The Company shall be responsible for installing and implementing any changes and upgrades to the Equipment that may be required by the Bank within five (5) days of notification thereof to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the RDC Services. The Company shall be responsible for training its own employees on how to use the Equipment and RDC Services.

The Company agrees that it will only submit checks for processing through the RDC Services that meet the definition of a "check" set forth in Federal Reserve Board Regulation CC, as amended from time to time ("Regulation CC"), and only those checks that are permissible under this Agreement, or such other items that Bank, in its sole discretion, elects to include in the RDC Services. The Company further agrees that it shall not process any Non-Qualifying Items through the RDC Services. For purposes of this Agreement the term "Non-Qualifying Items" shall be deemed to be any check that (a) is payable to any person or entity other than the person or entity that owns the account that the check is being deposited into, (b) contains an alteration on the front of the check or the Company knows or suspects, or should have known or suspected, is fraudulent or otherwise not authorized by the owner of the account on which the check is drawn, (c) is payable jointly, unless deposited into an account in the name of all payees, (d) is a "substitute check", including previously truncated and reconverted substitute checks, or is a "remotely created check", or an "electronically created item" as such terms are defined by Regulation CC, (e) is a savings bond, (f) is drawn on a financial institution located outside of the United States, (g) is not payable in United States currency, (h) is dated more than 6 months prior to the date of deposit and (i) is payable on sight or payable through drafts, as defined in Regulation CC. In the event that a Non-Qualifying Item is processed through the RDC Services, such processing shall not constitute a waiver by the Bank or obligate the Bank to process any other Non-Qualifying Items through the RDC Services in the future. If the Company deposits a Non-Qualifying Item, the Company agrees to reimburse the Bank for any losses, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and related litigation fees and expenses, the Bank may incur in connection with any warranty or indemnity claims.

The Company bears sole responsibility for the care and security of any original paper items in its possession. In this regard, Bank strongly recommends that Company insert the following above its endorsement on each original item that is scanned for transmission through the RDC Services: FOR DEPOSIT ONLY AT BANKUNITED, N.A., ACCOUNT NUMBER [NUMBER]. The Company shall scan and capture the image of the front and back of each check as well as the MICR (Magnetic Ink Character Recognition) encoding line on each check ("Image"). The Company shall ensure that all Images meet the American National Standards Institute ("ANSI") standards for image quality required by Regulation CC, and with any requirements set by the Federal Reserve Board, any other regulatory agency with jurisdiction over Bank, or any clearing house or association that Bank uses or agreement Bank has with respect to processing checks. Each Image shall be of such quality that the following information can be clearly read:

1. the amount of the check;
2. the payee of the check;
3. the signature of the drawer of the check;
4. the date of the check;
5. the check number;
6. the information identifying the drawer and the paying institution that is preprinted on the check, including the MICR line, the routing transit number, and the account number on which the check is drawn; and
7. all other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check.

The Company shall inspect and verify the quality of Images and ensure that the digitized images are legible for all posting and clearing purposes. Please note that we do not recommend using the RDC Services for the deposit of money orders or travelers checks. Any money orders or travelers checks deposited using the RDC Services shall be at Company's sole risk. If Company elects to deposit a money order or travelers check through the RDC Services, the order must have been delivered to, received by, and deposited by Company in the ordinary course of Company's business. Company must handwrite the amount of the money order on the face of the instrument prior to scanning the item. The Company agrees that it shall be responsible for depositing any checks or other items that do not meet image quality standards directly at the Company's branch of account. After capturing the Images, the Company shall transmit one or more files containing such Images and all required information ("Batch") to the Bank in accordance with the reference materials (a copy of which have been provided to the Company) as same may be amended from time to time. Together with each Batch, the Company shall also transmit a control total reflecting the aggregate amount of the checks in the Batch for deposit. The Company shall be solely liable for any Batch or Images that are not received by Bank or are intercepted or altered by an unauthorized third party.

Batch file transmissions will be deemed to have been deposited only when the file is actually received and accepted for processing by the Bank. Files received by the Bank prior to 7:30 p.m. ET on a business day shall be deemed to have been received on that day. Files received after the 7:30 p.m. ET cutoff time on a business day, or at any time on a day that is not a business day shall be deemed to have been received on the following business day.

A Batch will be deemed to have been received and accepted by the Bank for deposit when all of the following have occurred: (i) the Bank has preliminarily verified that the image quality of the checks is acceptable to the Bank in its sole discretion; (ii) all information is complete and the deposit totals balance to the information provided for the Batch. Subject to the provisions of this Agreement, the Bank shall provisionally credit the appropriate Company Account based upon the information provided by the Company. All items submitted through the RDC Services, however, shall be subject to the Bank's verification and final inspection and may be rejected by the Bank in its sole discretion without liability. The Company shall be responsible for verifying the Bank's receipt of a Batch by confirming that deposits have been posted to the appropriate Account. The Bank shall have no obligation to notify Company of the rejection of a Batch or any Image in a Batch but will make reasonable efforts to do so. Funds from items processed pursuant to this Agreement will be made available for withdrawal in accordance with Bank's Funds Availability Disclosure, as same may be amended from time to time.

The Bank in its sole discretion shall determine the manner in which items shall be presented for payment to the financial institution on which the original check is drawn or through which it is payable (the "Drawee Bank"). If the Bank converts a digitized image to a substitute check, that substitute check will be presented to the Drawee Bank through the check collection channels that the Bank would otherwise use to present a check to the Drawee Bank. If the Bank elects to process the item as an image exchange item, the Bank will forward the item for presentment to the Drawee Bank through the electronic item collection channels that the Bank would otherwise use to present an electronic item to the Drawee Bank. All such processing and presentment shall be done in accordance with timelines established by the Bank from time to time.

The Bank may from time to time establish exposure limits, including per deposit limits and daily deposit limits for the total value of Images that may be deposited through the RDC Services on the Company's behalf in any 24-hour period. Any Batches exceeding this aggregate limit need not be honored, but may,

at the Bank's sole discretion, be honored. The Bank may change or cancel these deposit limits at any time without prior notice to Company, although the Bank will endeavor to notify the Company before the Bank does so.

If any item previously deposited by the Company is dishonored and/or returned unpaid for any reason, the Company acknowledges and agrees that the original item will not be returned, and the Company shall only be entitled to receive back a copy of a substitute check representing the returned deposited item. In the event that the Company requests that a returned item be re-presented, the Company may only redeposit the substitute check and not the original check, regardless of whether such original check has not yet been destroyed by the Company, at a bank branch location. Company acknowledges and agrees that any original items for redeposit shall not be processed through the RDC Services.

With respect to each and every item presented electronically for deposit through the RDC Services, the Company represents and warrants to the Bank as follows: (a) the Image completely and accurately represents all of the information on the front and back of the check as of the time the Company converted the check to an Image including, without limitation the data contained in the MICR line of the check; (b) the Image contains all necessary endorsements; (c) neither the checks nor the Images contain any alterations; (d) all signatures on items transmitted are authentic and authorized; (e) there will be no duplicate presentment of a check in any form, including an Image; (f) the Company makes all encoding, transfer, presentment and other warranties that the Bank is deemed to make under applicable law, including, without limitation, those that would have applied had Company deposited the original paper item, and those made under the UCC, Regulation CC, and the rules of any image exchange network or clearinghouse; (g) each drawer of a check that has been converted to an Image was properly notified that the check may be converted; (h) no subsequent transferees of the item(s) including, but not limited to, the Bank, a collecting or returning bank, drawer, drawee, payee or endorsee, shall sustain a loss as a result of the fact that the Image was presented for payment or returned instead of the original item; (i) all information provided by the Company to the Bank is true, accurate and complete and properly reflects the business, financial conditions and principal partners, owners or officers of the Company; (j) the Company is not engaged or affiliated with any businesses, products or methods of selling other than those disclosed by the Company to the Bank; (k) the Company is authorized to enter into and perform its obligations under this Agreement; (l) all checks and business transactions of the Company are, and will be, bona fide, and the Company is a person authorized to collect each item transmitted; (m) after submission of the Image, the Company will not deposit with us or any other deposit taking institution, or otherwise negotiate, endorse or transfer the original item (unless we have notified Company that the Image was not accepted for deposit or that the Image or any substitute check created from the Image is refused by the financial institution upon which it is drawn); (n) no person will receive a transfer, presentment or return of, or otherwise be charged for, the original item, an electronic check or electronic returned check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on an item it has already paid; (o) neither the Image nor the original item has been previously submitted or deposited with us or with any other person or entity; (p) after an Image has been transmitted to Bank, Company will not have the item stopped or cancelled or have a replacement issued; (q) there is no action, suit or proceeding pending or to the Company's knowledge threatened which, if decided adversely would impair the Company's ability to carry on its business substantially as now conducted or which would adversely affect the Company's financial condition or operations; (r) the Company conducts its business and submits checks and files in strict compliance with this Agreement and with all applicable laws, rules and regulations; and (s) no checks and files contain any computer viruses or other harmful, intrusive or invasive codes.

The Company shall bear sole responsibility for secure storage and destruction of each original check submitted through the RDC Services. Company should retain the original checks for only that amount of time (but no fewer than 60 days) that Company deems necessary for its internal business needs or for such time that is required by and in accordance with applicable law, statute or regulation. Company understands and agrees that it must use a high degree of care to protect these items against security risks. These risks include, without limitation: (i) theft or reproduction of the original checks for purposes of presentment for deposit after the original checks have already been presented for deposit via the RDC Services; and (ii) unauthorized use of information derived from the original checks. During the period that Company maintains the original items, Company agrees to promptly produce (but in any event within five (5) business days) the original of, or a legible copy of the front and back of, any check deposited using the RDC Services upon Bank's request to aid in the clearing and collection process, to resolve claims by third

parties with respect to any item or as the Bank may otherwise reasonably require. The Company shall take appropriate security measures to safeguard the originals of such items until they are destroyed in order to prevent duplicate deposit of items and employee fraud. The Company shall use a commercially reasonable method consistent with Regulation CC to permanently destroy each original check after the expiration of the sixty (60) day retention period.

The Company acknowledges that it is responsible for establishing a contingency plan in the event of system failure or other interruption in the RDC Services. Such plan may, for example, include the manual deposit of checks directly at one of the Bank's branch office locations. The Bank shall have no liability of any kind related to or as a result of the Company's failure to establish a commercially reasonable contingency plan.

In addition to the other indemnification requirements set forth in this Agreement, Company agrees to indemnify, defend and hold Bank harmless from and against any and all actions, proceedings, liabilities, losses, claims (including, without limitation, warranty claims), costs, expenses and attorney's fees relating to or arising in connection with: (a) Bank processing of items or debiting or crediting the account of any person in accordance with this Agreement or Company's instructions; (b) Company's actions or omissions including, without limitation, a breach of any representation or failure to comply with this Agreement by Company; (c) any misuse of the RDC Services by Company, its employees or agents; (d) actions by third parties (such as the introduction of a virus) that delay, alter or corrupt the transmission of any Images or information to Bank; (e) the failure to act or delay by any financial institution other than Bank; or (f) any claim by a recipient of a substitute check (or a check in electronic form) that the recipient incurred a loss due to (i) the receipt of the substitute check (or the check in electronic form) instead of the original check, or (ii) multiple payments with respect to the same original check, based on any combination of the original check, the substitute check, and/or a paper or electronic copy of either. This indemnity shall survive termination of this Agreement.

Within five (5) days of any termination of the RDC Services or this Agreement, Company will, at Company's expense, promptly return to the Bank any Equipment provided or owned by the Bank, together with any materials relating to the RDC Services in its possession or under its control.

**PLEASE NOTE THAT REMOTE DEPOSIT CAPTURE SERVICES ARE ONLY AVAILABLE TO COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

#### H. BALANCE REPORTING SERVICES

Through the Bank's Balance Reporting Services, the Company can obtain electronic access to account information, reports and data with respect to the Accounts enrolled in the OTM Services. The Bank reserves the right to modify the information and detail available through the Balance Reporting Services at any time. The Bank will provide notice to the Company of any such changes or modification to the extent such notice is required by applicable law.

#### I. CONTROLLED DISBURSEMENT SERVICES

Through the Bank's Controlled Disbursement Services, on each business day, the Bank shall electronically provide the Company with a report of the total dollar amount of checks which are presented daily for payment against the Company's Accounts ("Clearings Report"). Subject to the limitations set forth herein, the Bank agrees to provide the Clearings Report to Company no later than 12:00 p.m. ET on each business day. Company acknowledges, however, that the clearings reported on the Clearings Report may not be the entire amount actually presented on such day due to late presentments by the Federal Reserve Bank, or any third parties. The Bank makes no representation or warranty and has no liability for the accuracy or completeness of such information.

The Company acknowledges that the Bank may, due to circumstances beyond its control, be unable to provide a Clearings Report early enough for the Company to make a complete and acceptable funding of the Accounts. In such event, the Company agrees to fund the applicable Account(s) by using an estimate of the total clearings.

**PLEASE NOTE THAT CONTROLLED DISBURSEMENT SERVICES ARE ONLY AVAILABLE TO**

## **COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

### **J. INTERNAL TRANSFER SERVICES**

Through the Internal Transfer Services, the Company may initiate internal transfers of funds to or from its Accounts at the Bank. The Company authorizes the Bank to charge its designated Accounts for all transfers that the Company initiates through the Internal Transfer Services.

A transfer request submitted and accepted by the Bank by 9:00 p.m. ET, or such other cut-off time that may be established by Bank from time to time, on a business day that we are open will be processed that same business day. A transfer request received on a non-business day or after 9:00 p.m. ET on a business day will be treated as being received on the next business day the Bank is open for business.

The Bank shall not be obligated to make any transfer the Company may request unless there are sufficient Available Funds or available credit in the Company's Account to cover the transfer. If a transfer is rejected due to insufficient Available Funds or available credit in the Company's Account, an exception notice will be presented to the Company through the OTM Services. If the Company desires to retry the transfer, the Company must submit a new request. The Bank shall not, and shall not be obligated to, automatically retry any rejected transfer.

The following additional terms shall apply with respect to transfers to or from a Credit Account made through the Internal Transfer Services:

(i) Only current regularly scheduled loan payments, principal reduction payments and advances in an amount equal to or less than the amount available for disbursement may be made to or from a Credit Account. **PAST DUE OR FUTURE PAYMENTS TO A CREDIT ACCOUNT MAY NOT BE MADE THROUGH THE INTERNAL TRANSFER SERVICES.**

(ii) Transfers to a Credit Account may be made in amounts up to the available balance in the Account from which the funds are to be transferred.

(iii) Transfers from a Credit Account, including, without limitation, the minimum or maximum amount available for withdrawal, are subject to the terms of the Company's existing credit agreements with the Bank.

(iv) Transfers may not be immediately available for viewing online.

### **K. STOP PAYMENT SERVICES**

Through the Services, the Company may request a stop payment on any checks written on the Accounts which have not yet been paid by the Bank. All stop payment requests entered through the Services shall be deemed a written stop payment within the meaning of the UCC and shall be valid for a period of six (6) months from the date entered, unless otherwise renewed by the Company. All such renewals must be in writing and shall be in the form and substance required by the Bank. A fee in accordance with the Bank's Schedule of Fees will be assessed to the Account for each stop payment request. No stop payment request will be effective against a check that has been paid prior to the time that the Bank has both received the request and has had a reasonable period of time to act upon the request. The Company agrees to indemnify and hold the Bank harmless from and against any and all costs and expenses including, without limitation, attorney's fees, court costs and related litigation costs and expenses, incurred by the Bank for refusing payment on all items upon which a stop payment Request is placed and further agrees not to hold the Bank liable for payment contrary to any such request if the same occurs through inadvertence, accident or oversight.

### **L. ONLINE BILL PAY SERVICES**

Please refer to our Online Bill Payment Terms and Conditions for Business Accounts for the terms and conditions which govern these services.



## M. CASH CONCENTRATION SERVICES

Through the Bank's Cash Concentration Services, the Company can utilize the Bank's ACH Services solely for the purpose to transfer funds from accounts the Company holds at other financial institutions ("Outlying Accounts") into a designated concentration account at the Bank ("Concentration Account"). To be eligible to use the Bank's Cash Concentration Services, the Company must be approved the Bank. The Company agrees to provide the Bank with such financial, business and operating information as the Bank may reasonably request in connection with the Bank's approval process.

The Cash Concentration Services can ONLY be used to transfer funds from the Company's Outlying Accounts to its Concentration Account. The Cash Concentration Services cannot be used to move funds from the Concentration Account or any other Account to the Company's Outlying Accounts.

To schedule a transfer, the Company shall initiate an ACH debit Entry setting forth the amount to be transferred from each Outlying Account ("Transfer Amount") to the Concentration Account and submit to the Bank. The Company agrees that Entries submitted shall be in file and format consistent with current NACHA Rules and the Bank's specifications and requirements as set forth in the ACH Services Section of this Agreement. The Company further agrees that any Entries initiated by the Company through the Cash Concentration Services shall be in compliance with the Company's responsibilities, representations and warranties as an Originator under the NACHA Rules. The Company may elect, at its sole option, to consolidate Transfer Amounts from all Outlying Accounts as one credit Entry to the Concentration Account. If the Company does not affirmatively elect this option, the Transfer Amounts shall not be consolidated and shall be processed as individual credit Entries to the Concentration Account. The Company is solely responsible for managing its Outlying Accounts since transactions that impact the available balance may be subject to overdraft or other charges.

The Bank will process, transmit, and settle debit Entries initiated by the Company as provided in the NACHA Rules, and to the extent not inconsistent with the terms herein, in accordance with the terms set forth in the ACH Services Section of this Agreement. Debit Entries received by the Bank before 8:00 p.m. ET, or such other time as may be established by the Bank from time to time, shall be deemed to have been received on that business day. Entries received after 8:00 p.m. on a business day or at any time on a day that is not a business day shall be deemed to have been received on the following business day. Company acknowledges and agrees that Bank shall have no obligation to confirm the receipt, or accuracy, of any Entries submitted by Company, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of such Entries.

The Company represents and warrants to the Bank that the Company is authorized to initiate debit Entries as described herein for the purpose of transferring funds from its Outlying Accounts to the Concentration Account.

The Bank will provisionally credit the Concentration Account with the amount of each debit Entry and make such funds available for withdrawal in accordance with the Bank's Funds Availability Policy in effect from time to time. The Bank has no obligation to notify the Company of any Entries received by the Bank for credit of funds to the Concentration Account. The Company acknowledges and agrees that because such Entries are provisional, they are subject to refund if there is not final settlement and that such Entries are not effective as final payments unless the Bank receives final settlement.

The Company acknowledges and agrees that the authorization of the Company to use the Cash Concentration Services does not permit or authorize the Company to use the ACH Services for any other purpose, unless the Bank has specifically approved the Company to enroll in and use the ACH Services.

**PLEASE NOTE THAT THE CASH CONCENTRATION SERVICES ARE ONLY AVAILABLE TO COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

## N. BUSINESS MOBILE APP – "BankUnited Biz"

The Business mobile application, "BankUnited Biz" is a customized app designed specifically for smartphones and similar devices. This business financial information management service will allow you

to access your account(s) information and perform limited functions within the application. Please refer to our Business Mobile Application User Agreement for the terms and conditions which govern these services.

**PLEASE NOTE THAT THE BUSINESS MOBILE APP SERVICES ARE ONLY AVAILABLE TO COMPANIES ENROLLED IN BANKUNITED'S ONLINE TREASURY MANAGEMENT SERVICES.**

#### O. ACCOUNT LINKING SERVICES

Through the Account Linking Services, Company may request to have the following personal and business accounts linked to the Company's Account within the OTM Services: (i) the eligible personal accounts of an Owner and/or (ii) the eligible business accounts of another entity that has authorized Company to access its account information and/or effect transactions on its accounts. Notwithstanding the foregoing, Company acknowledges and agrees that Bank may, in its sole discretion, refuse to link any personal account or business account without liability hereunder.

In connection with a request to link accounts, Company agrees to provide Bank with such documentation that Bank may reasonably request including, without limitation the Bank's account linking authorization form completed and executed by all Owners. Additionally, at any time during which the Account Linking Services are activated, Company agrees, upon request, to promptly provide to Bank any and all documentation reasonably requested evidencing all ownership interests in the Company and Company's authority to link such Accounts.

By using the Account Linking Services, Company, on its behalf and on behalf of each and every Owner understands, acknowledges and agrees that any person who has access to the OTM Services has the ability: (i) view all Accounts linked within the OTM Services, (ii) conduct transfers to and from such Accounts including, without limitation, transfers to and from personal accounts and business accounts, and (iii) perform any other function as may be available through the OTM Services of any Accounts. Notwithstanding the foregoing, Company, on its behalf and on behalf of each and every Owner, understands, acknowledges and agrees that in no event shall any person who has access to the OTM Services be permitted to conduct transactions using the Wire Transfer Services from any personal accounts through the OTM Services.

The Bank shall have no duty or obligation to inquire as to the appropriateness, correctness or authenticity of any transaction, order, instruction or entry performed through the Account Linking Services including, without limitation, whether a transaction was authorized, the purpose of the transaction, the amount of the transfer, or the application of any funds transferred, even if such transfer will result in payment to the Company, or any Owner, officer, employee, agent, authorized signatory, user or any other person. COMPANY UNDERSTANDS AND AGREES THAT COMPANY IS RESPONSIBLE FOR ANY PAYMENTS, TRANSFERS OR OTHER TRANSACTIONS, WHETHER AUTHORIZED OR UNAUTHORIZED, AND WITHOUT REGARD TO THE SIGNING AUTHORITY, PERFORMED ON ANY ACCOUNTS USING THE ACCOUNT LINKING SERVICES AND AGREES TO RELEASE AND FOREVER DISCHARGE THE BANK, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, AFFILIATES, SUBSIDIARIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES AND CAUSES OF ACTION, WHETHER IN LAW OR IN EQUITY, WHICH MAY NOW EXIST OR MAY HEREAFTER EXIST AGAINST THE BANK ON ACCOUNT OF OR ARISING OUT OF THE ACCOUNT LINKING SERVICES OR ANY TRANSACTION, WHETHER AUTHORIZED OR UNAUTHORIZED, PERFORMED THROUGH THE ACCOUNT LINKING SERVICES.

Company agrees to immediately notify the Bank in writing if its authority to access or effect transactions on an Account changes or if it desires to de-link any Account. Such notice shall include the name, account number and taxpayer identification number of the Account to be de-linked. Bank shall not be liable to Company, any Owner or any other person for any transactions performed on such Account before the Bank has received such notice and has had a reasonable opportunity to act thereon.

**ADDITIONAL TERMS APPLICABLE ONLY TO PAYMENTS AND TRANSFERS FOR PERSONAL ACCOUNTS**

### Your Liability for Unauthorized Transfers or Payments (Personal Accounts)

If you permit other persons to use your Access Information, you are responsible for any transactions they authorize from your personal accounts. If you believe your Access Information has been lost, stolen or compromised or that someone has made payments, transferred or may transfer money from your personal account without your permission, notify us AT ONCE, by calling our Client Care Center at (877) 779-BANK (2265) or writing us at:

BankUnited, N.A.  
Operations/EFT Error 7815 NW  
148<sup>th</sup> Street  
Miami Lakes, Florida 33016

If you telephone us, we may require that you send us written confirmation of your notice to be received within ten (10) business days of your phone call. You agree to cooperate with us in the investigation of any claim or dispute and provide us with information and documentation as may be necessary in order to assist us in resolving your claim or dispute.

Tell us AT ONCE if you believe your Access Information has been lost or stolen or that an unauthorized transfer or payment has been made from any of your deposit accounts. Telephoning us is the best and fastest way of keeping possible losses to a minimum. If you do not do so, you could lose all the money in each of your Accounts, including, the available balance in any credit account. If you tell us within two (2) business days after you discover the loss or theft, you can lose no more than \$50 if someone gained access to and used your Access Information without your permission.

If you do NOT tell us within two (2) business days after you discover the loss or theft of your Access Information and we can prove that we could have stopped someone from using your Access Information without your permission, if you had told us, you could lose as much as \$500.

Also, if any account statement shows transactions that you did not make and you do not contact us within sixty (60) days after the statement was transmitted to you, you may not get back any money lost after the sixty (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 an extended hospital stay, kept you from telling us, we may extend the time periods.

### Our Liability for Failure to Complete Transactions (Personal Accounts)

If we do not complete a transaction on time or in the correct amount, when properly instructed by you, we will be liable for those damages as the law imposes in such cases. However, there are some exceptions. We will not be liable for example:

- i. if, though no fault of ours, there are insufficient funds in your personal account to complete the transaction or the account has been closed
- ii. the funds in your personal account are unavailable
- iii. the funds in your personal account are subject to legal process
- iv. we have reason to believe that the transaction requested is unauthorized
- v. your operating system or software was not functioning properly at the time you attempted to initiate such transaction and it was evident to you at the time you began the transaction
- vi. the failure is due to a loss of power or internet connectivity during your session where you were not provided, or did not record, your transaction confirmation
- vii. the failure was due to circumstances beyond our control such as fire, flood, act of God, power outage and the like
- viii. you attempt to complete a transaction that is not a permissible transaction
- ix. you have not provided us with complete and correct information or properly followed our procedures on how to complete a transaction

This list of examples is meant to illustrate circumstances under which we would not be liable for failing to

make a transaction and is not intended to list all of the circumstances where we would not be liable.

#### In Case of Errors and Questions about your Accounts (Personal Accounts)

If you think your statement is wrong, or if you need more information about a transaction listed on it, please call us at (877) 779-BANK (2265) or write to us at:

BankUnited, N.A.  
Operations/EFT Error 7815 NW  
148<sup>th</sup> Street  
Miami Lakes, Florida 33016

We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared. You must provide us with the following information:

1. Your name and account number;
2. A description of the error or the transaction you are unsure about, and why you think it is an error or want more information; and
3. The amount of the suspected error.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. However, if we need more time, we may take up to forty-five (45) days to investigate your complaint or question. If we do this, we will credit your account within ten (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 you opened your account less than thirty (30) days before the date of the suspected error or the transaction occurred at a point-of-sale location or outside the United State, the forty-five (45) day period is extended to ninety (90) days. For new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error. If you tell us verbally we may require that you send your complaint or questions in writing within ten (10) business days to the above address. If we do not receive it within ten (10) business days, we may not credit your account.

We will tell you the results within three (3) 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 investigation. If we credited your account, you must repay us if we conclude no error has occurred.

#### **UNLAWFUL TRANSACTIONS**

The Company agrees not to use the OTM Services for any illegal or unlawful purpose. The Company further acknowledges and agrees that the Bank has no obligation to monitor or review the Company's transactions for legality and that the Bank may presume that all of the Company's transactions are legal in all applicable jurisdictions. The Bank reserves the right however, to decline any transaction that it believes is an illegal transaction or a high-risk transaction in any applicable jurisdiction. The Bank is not responsible for the recovery or reimbursement to the Company of any funds transferred in connection with any authorized transaction that is determined to be illegal.

Company further agrees that the OTM Services shall not be used in locations prohibited under United States laws and regulations including, without limitation, laws and regulations issued and administered by the United States Treasury Office of Foreign Assets Control

The Company further agrees not to use any Account(s) or any of the OTM Services to engage in any internet or online gambling transaction, including, without limitation, those activities prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq. The Bank reserves the right to decline any transaction that it believes is an internet or online gambling transaction.

#### **REPRESENTATIONS AND WARRANTIES**

THE COMPANY EXPRESSLY UNDERSTANDS AND AGREES THAT USE OF THE OTM SERVICES AND ANY OF THE SPECIFIC SERVICES IS AT COMPANY'S SOLE RISK. THE OTM SERVICES AND THE SPECIFIC SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES OF THE BANK AND ITS THIRD PARTY SERVICE PROVIDERS, AND THE COMPANY'S RIGHTS AND REMEDIES SET FORTH HEREIN, ARE EXCLUSIVE. THE BANK AND ITS THIRD PARTY SERVICE PROVIDERS HEREBY EXPRESSLY DISCLAIM, AND THE COMPANY HEREBY WAIVES AND RELEASES THE BANK, ITS THIRD PARTY SERVICE PROVIDERS AND THEIR RESPECTIVE OWNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY KIND, OBLIGATIONS AND LIABILITIES, RELATING TO THE OTM SERVICES OR ANY OF THE SPECIFIC SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT, QUALITY, ACCURACY, SUITABILITY, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE, OR COURSE OF PERFORMANCE.

THE BANK MAKES NO REPRESENTATION OR WARRANTY THAT THE OTM SERVICES OR ANY OF THE SPECIFIC SERVICES WILL MEET THE COMPANY'S REQUIREMENTS OR EXPECTATIONS, OR THAT THEY WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. THE BANK FURTHER DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ANY ERRORS IN TECHNOLOGY WILL BE CORRECTED. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE OTM SERVICES IS OBTAINED AT COMPANY'S OWN DISCRETION AND RISK, AND THE BANK IS NOT RESPONSIBLE FOR ANY DAMAGE TO THE COMPANY'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL, WHETHER DUE TO COMPUTER VIRUS OR OTHERWISE. THE BANK MAKES NO REPRESENTATION OR WARRANTY AS TO THE COMPLETENESS, ACCURACY OR RELIABILITY OF ANY THIRD PARTY INFORMATION OR DATA THAT THE COMPANY OBTAINS THROUGH THE USE OF THE OTM SERVICES.

THE BANK MAY PERIODICALLY AMEND, ADD, DELETE, UPDATE OR ALTER THE OTM SERVICES OR ANY OF THE SPECIFIC SERVICES INCLUDING, WITHOUT LIMITATION, THIS AGREEMENT. EXCEPT AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE BANK ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT OF THE SITE AND SPECIFICALLY DISCLAIMS ANY DUTY TO UPDATE THE INFORMATION ON THE SITE.

THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT AND COMPANY'S PARTICIPATION IN THE OTM SERVICES.

#### **INDEMNIFICATION BY COMPANY**

In consideration of the OTM Services to be provided hereunder, the Company agrees to indemnify and hold the Bank, its officers, directors, employees, parent, subsidiaries, affiliates, representatives, agents, and each of their respective successors and assigns harmless from and against all liability, claims, damages, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and related litigation costs and expenses, incurred by the Bank in connection with the provision of the OTM Services or any Specific Services by the Bank, or in any action between the Bank and the Company or any action between the Bank and any third party, arising out of or concerning the OTM Services, any Specific Services or this Agreement, except if such liability or expense results solely out of the Bank's gross negligence or willful misconduct. The Company's indemnification obligation shall survive termination of this Agreement and termination of Company's participation in the OTM Services.

#### **INTERRUPTIONS IN SERVICE**

The Bank may, at any time and from time to time, revise, update, modify or discontinue, in whole or in part, the OTM Services or any Specific Services. The Bank will endeavor to provide the Company with prior notice of such changes (by posting a notice of such changes on the Site) but we cannot guarantee that such notice will be provided.

## **SECURITY INTEREST**

To secure all obligations of the Company to the Bank arising from this Agreement, the Company grants to the Bank a security interest in all Accounts of the Company at the Bank, whether now or hereafter established by or for the benefit of the Company, and all funds in those Accounts. This security interest shall survive termination of this Agreement and termination of Company's participation in the OTM Services. This security interest is supplemental to and not in lieu of any security interest granted by the Company to the Bank pursuant to any other agreement.

## **COMPLIANCE WITH LAW**

The Company shall comply with all laws, rules and regulations applicable to the Company's use of the OTM Services and any of the Specific Services including, without limitation, Regulation CC, Federal Reserve Board Regulation J, the UCC, the Unlawful Internet Gambling Enforcement Act, any rules established by an image exchange network through which items are processed pursuant to this Agreement and any data protection requirements imposed under applicable federal, state and local laws, rules and regulations. The Company shall be responsible for fulfilling any compliance requirement or obligation that the Bank and/or Company may have with respect to the OTM Services and any of the Specific Services under all applicable U.S. federal and state laws, rules and regulations including, without limitation sanction laws administered by OFAC and other requirements relating to anti-money laundering including, without limitation the federal Bank Secrecy Act, the USA Patriot Act and any regulations of the U.S. Treasury Department to implement such acts, as each may be amended from time to time.

## **UPDATES**

The Company shall provide written notice to the Bank of any changes to the information provided by the Company to the Bank including, without limitation, additional locations, any change in business, any new business, any change to the identity or principals and/or owners, any change to the form of business organization, type of goods and services provided and method of conducting sales. Such notice must be received by the Bank within five (5) business days of the change. The Company shall provide any additional information requested by the Bank within five (5) days of such request. The Bank retains the right to (i) review the Company's files and business activities from time to time to confirm the Company is conducting business as stated by the Company when entering into this Agreement and (ii) re-price or terminate the OTM Services or any Specific Service based on changes to information previously provided by the Company to the Bank.

## **TERMINATION**

Either the Bank or the Company may terminate this Agreement upon thirty (30) days prior written notice. Additionally the Company acknowledges and agrees that the Bank may immediately terminate or suspend access to the OTM Services without notice to the Company if any of the following occurs: (a) the Company becomes insolvent, files or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (b) a material adverse change occurs in the Company's business or financial conditions; (c) the Bank has reason to believe that the Company has engaged in fraudulent or illegal activity; (d) the Company violates the terms of this Agreement or any other Agreement with the Bank; (e) the Company fails to provide financial information reasonably requested by the Bank; (f) the Bank determines, in its sole discretion, that it is impractical or illegal for the Bank to continue to provide the OTM Services because of changes in laws, rules or regulations; (g) the Bank determines, in its sole discretion, that the Company' use of the OTM Services presents unacceptable financial risk to the Bank; or (h) the Bank is required by governmental authority. Notwithstanding anything to the contrary contained herein, upon the closing of an Account, all OTM Services linked to such Account shall be simultaneously terminated. Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to such termination. All sections of this Agreement which are intended by their terms to survive termination of this Agreement, will survive any such termination.

## **BANK'S PROPERTY**

All materials produced by the Bank, and all documentation, programs and magnetic tapes and files are, and shall remain the property of, the Bank, free of any claim by the Company, and same shall not be used by the Company for any purpose other than as set forth herein. Upon termination of the OTM Services by either party, the Bank may deactivate or delete any Access Information and all related information and/or bar the Company further access to the OTM Services.

### **CONFIDENTIAL INFORMATION**

The Company acknowledges that all information or data provided through or related to the OTM Services including, without limitation, this Agreement, the Software, system documentation, and processes, constitute trade secrets and proprietary data of Bank and its applicable licensors or suppliers. The Company further acknowledges and agrees that the Company has no ownership interest in such information and agrees that such information shall not be used or disclosed, in whole or in part, to any person, firm, corporation, association or other entity, other than its employees requiring such knowledge in the performance of their duties or as required by law.

### **INTERNET DELIVERED SERVICES**

The Company acknowledges that the OTM Services involve use of the internet for the delivery of files and other information and for obtaining files and other information. The Company represents that it is aware of the processes implemented by the Bank with respect to the use of the internet in connection with the delivery of the OTM Services and the Company agrees that such processes are commercially reasonable and acceptable to the Company even if such processes do not consist of the most recently developed technologies for such activities. The Company further acknowledges that the Bank does not and cannot control the flow of data to or from the Bank's network and other portions of the internet and that the Bank is not responsible or liable for any delays, malfunctions or inconveniences resulting therefrom.

### **SERVICE PROVIDERS**

The Company acknowledges and agrees that from time to time Bank may make the OTM Services available through or using one or more third party service providers. The Bank shall have no obligation to disclose arrangements with third parties to the Company or obtain the Company's consent thereto. Company agrees that we have the right to delegate to such service providers all of the rights and performance obligations that we have under this Agreement and that such service providers will be third party beneficiaries of this Agreement and will be entitled to all the rights and protections that this Agreement provides to Bank. The Company authorizes the transfer of information relating to the Company to such service providers for use in connection with the OTM Services or as required by law.

### **ASSIGNMENT**

The Company may not assign, sell, transfer, pledge, encumber or hypothecate any of its rights hereunder. The Bank may assign its rights and liabilities hereunder without notice or liability to Company.

### **AUDIT**

Upon notice from the Bank, the Company shall provide the Bank's employees, regulatory examiners, and auditors access, at reasonable times, to the Company's facilities, data and records relating to the OTM Services. The Company agrees to allow the Bank to review available reports of independent audits performed at the Company's location related to information technology, the OTM Services and any associated operational processes. If the Company refuses to give the Bank or its regulators or auditors access to the Company's facilities, data or records, the Bank may terminate the Company's use of the OTM Services and this Agreement.

### **NOTICES**

Unless expressly stated otherwise, any notice, request, demand or other communication to be given in connection with this Agreement shall be in writing and shall be either personally delivered against a written

receipt, delivered by recognized overnight courier or by first class mail, postage prepaid, registered or certified, return receipt requested to the then current address of record. Any notice, request, demand or other communication shall be deemed validly and effectively given on the date of such delivery.

### **GOVERNING LAW/VENUE**

This Agreement shall be governed and interpreted in accordance with applicable federal law, rules and regulations, and by applicable state law to the extent not superseded by federal law. The applicable state law shall be the law of the state of the Bank's banking center where the account is opened, or if the account is opened by mail, internet or other remote means, the applicable state law shall be Florida. Any action or proceeding arising out of or concerning this Agreement, the OTM Services or any of the Specific Services shall be brought exclusively in the state or federal courts sitting in the state in which the Bank's banking center where the Accounts are maintained is located. The Company hereby waives and agrees not to assert in any action or proceeding that the Company is not personally subject to the jurisdiction of such courts or that the action or proceeding is brought in an inconvenient or improper forum.

### **JURY TRIAL WAIVER**

EXCEPT WHERE PROHIBITED BY LAW, THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LEGAL PROCEEDING RELATING TO THE OTM SERVICES, THE SPECIFIC SERVICES OR THIS AGREEMENT.

### **RISK OF LOSS**

In the event of a system failure or interruption, Company's data may be lost or destroyed. Any transactions that the Company was in the process of completing or completed shortly before a system failure or interruption should be verified by the Company through means other than the OTM Services to ensure the accuracy and completeness of such transactions. The Company assumes the risk of loss of its data during any system failure or interruption and the responsibility to verify the accuracy and completeness of any transactions so affected.

### **MISCELLANEOUS**

No failure of the Bank to enforce any right or remedy shall act as a waiver thereof. No waiver shall be valid unless in writing. In the event any part of the Application or these terms and conditions is deemed unenforceable or void, the remainder shall, at the option of the Bank, continue in full force and effect or be canceled immediately. Headings and captions contained in this Agreement are inserted for convenience purposes only and shall not be construed in the interpretation thereof. Except as otherwise expressly set forth herein, no person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof, intended or otherwise.

### **INTELLECTUAL PROPERTY**

All marks and logos related to the OTM Services or any Specific Service are either Bank's trademarks or registered trademarks of our licensors. In addition, all page headers, custom graphics, button icons, and scripts are our service marks, trademarks and/or trade dress or those of our licensors. Company may not copy, imitate or use any of the above marks without our prior written consent, which we may withhold in our sole discretion, and you may not use them in a manner that is disparaging to Bank or the OTM Services or display them in a manner that implies our sponsorship or endorsement. All right, title and interest in and to the OTM Services, the technology related thereto, the Site and any and all technology and any content created or derived from any of the foregoing, is our exclusive property or that of our licensors. Company may not copy, reproduce, distribute or create derivative works from, reverse engineer or reverse compile the technology for the OTM Services, any Specific Services or any other services or technology used in connection with the OTM Services. Moreover, any suggestions, ideas, notes, drawings, concepts or other information that Company may send to us regarding the OTM Services shall be considered an uncompensated contribution of intellectual property to Bank and our licensors, shall also be deemed Bank's and Bank's licensors' exclusive intellectual property and shall not be subject to any obligation of



confidentiality on our part. By submitting any such materials to Bank, Company automatically grants (or warrants that the owner of such materials has expressly granted) to Bank and our licensors a perpetual, royalty-free, irrevocable, non- exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute such materials or incorporate such materials into any form, medium or technology now known or later developed, and you warrant that all so-called “moral rights” in those materials have been waived and you warrant that you have the right to make these warranties and transfers of rights.