**1. ACH PROCESSING SERVICES.** Whereas Company wishes to initiate various pre-authorized Debit or Credit Entries ("Entries"), pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("NACHA"), through the Automated Clearing House ("ACH") and Processor is capable and willing to act as a Third-Party Sender ("TPS") with respect to such Entries, Company hereby agrees to the following:

1.1. <u>Authorization.</u> Company authorizes Processor to transmit electronic funds transfers as a TPS through such account(s). Company understands that not all items are eligible to be processed electronically through the ACH and may require processing as a paper item. Therefore, Company hereby authorizes Processor to submit such items as paper drafts, through image exchange, or image replacement documents (IRDs). This authorization shall remain in effect until sixty (60) days after revoked in writing.

1.2. <u>Processing, Transmittal and Settlement by Processor.</u> Whereas Company will initiate various pre-authorized Entries as indicated on this Agreement, pursuant to these Terms and Conditions, and the Rules to a Receiver's account, Processor shall:

a. Process Entries received from Company that are consistent with the Rules and conform to the required file specifications;

b. Transmit such Entries as a TPS to the ODFI, to which will be sent to the Federal Reserve ("ACH Operator") acting as an ACH processor; and

c. Settle for such Entries as provided in the Rules and in accordance with this Agreement.

Processor shall transmit such Entries provided: (i) such Entries are received by Processor's 4:30 pm (CST) cut-off time on each business day; (ii) the Effective Entry Date is at least one day after such business day; (iii) the ACH Operator is open for business on such business day; and (iv) the dollar amount of Entries does not exceed established limits or thresholds as listed on the Agreement. If any of the requirements of the above are not met, with the exception of exceeding established limits or thresholds, Processor shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator, which is a business day, and a day on which the ACH Operator is open for business. For purposes of this Agreement, a "business day" is a day on which Processor is open to the public for carrying on substantially all of its business. Processor reserves the right to alter the availability of funds without notice and at the sole discretion of Processor. Funds that have not been made available to Company are considered un-cleared funds and are not property of Company. Un-cleared funds are held by Processor, the custodian of all un-cleared funds.

1.3. <u>UCC Article 4A Disclosure.</u> In the case of credit entries subject to UCC Article 4A (CCD credit entries to non-consumer accounts), the Company is hereby notified that: (i) the entry may be transmitted through the ACH; (ii) the rights and obligations of the Company are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, unless the Company and Processor have agreed that the laws of another jurisdiction shall govern their rights and obligations; (iii) credit given by the Receiving Depository Financial Institution ("RDFI") to the Receiver for the entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment; and (iv) if the RDFI does not receive such payment for the entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and the Company will not be considered to have paid the amount of the credit entry to the Receiver.

1.4. <u>Company Representations, Agreements, and Warranties.</u> Company hereby: (i) assumes the responsibilities of, and makes the warranties of, an Originator under the NACHA Operating Rules (the "Rules") and agrees to reimburse the Originating Depository Financial Institution ("ODFI") for returns, reversals, adjustments, reclamations, and warranty claims and responsibilities related to Company's ACH Entries; (ii) agrees to comply with, and be bound by, the Rules, including but not limited to the requirements of Article Two (Rights and Responsibilities of ODFIs, Their Originators and Third Party Senders), Rule 2.15 (Obligations of Third-Party Senders, and of ODFIs and Originators that Use Third Party Senders), and if international ACH Entries are initiated by Company, the Rules applicable to IAT ACH Entries, (iii) agrees to comply with all applicable state and federal laws, rules and regulations, including, but not limited to, sanction laws administered by the Office of Foreign Assets Control ("OFAC"), the Electronic Funds Transfer Act, the Unlawful Internet Gambling Enforcement Act, the Uniform Commercial Code, and Federal Reserve Board Regulation CC and E (the foregoing and the ACH Rules are, collectively, the "Applicable Rules"); and (iv) acknowledges that ACH Entries may not be initiated that violate the laws of the United States, including but not limited to the sanctions laws, regulations, and orders administered by OFAC, laws, regulations, rules, and orders administered by the Financial Crimes Enforcement Network ("FinCEN"), and any state laws, regulations, or orders applicable to the providers of ACH payment services. Company agrees to perform its obligations under this Agreement and in accordance and compliance with the Rules. Company further understands that it is subject to all applicable laws and regulations and that these may supersede provisions in this agreement. Company expressly agrees that it will not initiate Entries that violate the laws of the United States. Company further represents to Processor and agrees that:

a. Each person shown as the Receiver on an Entry received by Processor from 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.

b. That such authorization is operative at the time of transmittal of a credit or debit Entry by Processor as provided herein.

c. Each Entry contains the Receiver's correct account number and all other information necessary to enable the RDFI to company with its requirements under the Rules and that all information transmitted with an Entry is related to the payment represented by such Entry.

d. Company shall obtain written authorization or authorization that is compliant with the Rules.

e. Company shall retain the original or legally acceptable copy of the authorization as required in the Rules and shall produce the original or legally acceptable copy of the authorization within 7 banking days upon Processor's request. Failing to provide proper authorization, or failing to provide proper authorization within allowed time, will result in a fine of $100.00 per un-provided authorization. Company will be responsible for any fines incurred to Processor resulting from a Rules violation.

f. Company agrees to follow procedures and post, provide, or include, at Processor's direction, any notices, or updates to such notices, which may be required. Company shall strictly follow any and all Operational Procedures provided by Processor, as amended from time to time.

g. Company shall only transmit approved Entries as indicated on the Service Agreement, or as otherwise notified by Processor.

h. Company shall transmit Entries to Processor that comply with Processor's formatting and other requirements. The dollar amount of Entries transmitted by Company to Processor on any one day shall not exceed established limits or thresholds listed on the Agreement. Processor will periodically review limits and thresholds for compliance.

i. Company shall notify Processor of any changes affecting the Company during the Term of this Agreement. Such changes shall include, but are not limited to, changes in Company's name or address, changes in Company ownership or legal structure, and changes to any bank account information.

1.5. <u>Rejection of Entries.</u> Processor shall have the right to reject any Entry. Processor shall make reasonable efforts to notify the Company of such rejection, but is not required to. Processor shall have no liability to Company by reason of the rejection of any such Entry, or Entries, or the fact that such notice is not given at an earlier time than that provided for herein. Company acknowledges understanding that Processor may reject Entries for any reason permitted or required in the Rules, or if the Entry would cause Processor to violate any laws of the United States, the Federal Reserve, other regulatory risk control program, or any other law or regulation. Processor reserves the right to assess Company a $35.00 fee for any such Entry or Entries resulting in deletion.

1.6. <u>Notice of Returned Entries.</u> Processor shall notify Company of the receipt of a returned Entry, or Entries, from the ACH Operator no later than one business day after the business day of such receipt, and shall credit or debit such Entries to Company's account or deduct such Entries from Company's funds held by Processor. Company will provide collected funds to indemnify Processor if any debit is returned after Processor has credited funds to Company's account. Processor may, but shall have no obligation to re-transmit a returned Entry.

1.7. <u>Notifications of Change.</u> Processor shall notify Company of all Notifications of Change ("NOC") received by Processor related to Entries transmitted by Company no later than two banking days after receipt of such NOC. Company shall ensure that changes requested by NOC are made within six

banking days of Company's receipt of the information or prior to initiating another Entry to the Receiver's account, whichever is later.

1.8. <u>Cancellations or Amendments by Company</u>. Company shall have no right to the cancellation or amendment of any Entry, or Entries, after its receipt by Processor. However, Processor shall use reasonable efforts to act on a request by Company for cancellation, modification, or deletion of an Entry prior to transmitting it to the ACH Operator, but will have no responsibility for the failure to comply with such a request. All requests must be made in writing and faxed, delivered, or emailed to Processor. Processor reserves the right to assess Company a $35.00 fee for each requested cancellation, modification or deletion of Entry or Entries.

2. **CHECK 21 PROCESSING SERVICES.** Check 21 processing shall be provided to Company if so duly indicated on this Agreement, or in the event an eligible item was not able to be electronically presented through the ACH, or other acceptable reason deemed appropriate by Processor. In such instances, Processor provides services whereby a Company may use Processor's software, or other software not provided by Processor, but has been configured and tested to meet Processor's transmission specifications, in conjunction with an imager to scan paper checks to create an image cash letter file, utilizing X9.37 image files or other approved format, to send to Processor, who shall then facilitate the transfer of this image cash letter file to a financial institution for processing ("Check 21 Services"). Whereas Company wishes to utilize such Check 21 Services and Processor is willing and able to provide such Check 21 Services, the Company hereby understands and agrees to the following:

2.1. <u>Availability of Funds.</u> Company understands and agrees that items transmitted using Check 21 Services are not subject to the funds availability requirements of Regulation CC.

2.2. <u>Eligible Items.</u> Company agrees to scan and transmit only "checks" as that term is defined in Regulation CC. Company agrees that the image of the check transmitted to Processor, as it is converted to an Image Replacement Document or Substitute Check for subsequent presentment and collection, shall be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code.

2.3. <u>Unacceptable Items.</u> Company understands and agrees that it will not transmit the following items using the Check 21 Services: (i) items containing an alteration on the front of the item, or which Company knows or suspects, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn; (ii) any check previously converted to a Substitute Check as defined in Regulation CC; (iii) any item issued by a financial institution in a foreign country; (iv) any item that that has been re-deposited or returned; (v) items that are "stale dated" or "postdated"; (vi) items that are incomplete or non-negotiable; (vii) remotely created checks; and (viii) items that are drawn on or otherwise issued by the U.S. Treasury Department.

2.4. <u>Image Quality.</u> The image cash letter file transmitted to Processor by Company in accordance with Processor's transmission specifications shall contain images of the front and the back of the check or items scanned remotely by Company. The checks or items shall be of such quality that the following information can clearly be read by sight review of the images: (i) the amount of the item; (ii) the payee; (iii) the drawer's signature; (iv) the date of the item; (v) the item number; (vi) the information identifying the drawer and the paying bank that is printed on the check, including the MICR line; and (vii) all other information placed on the item prior to the time an image of the item is captured, such as any required identification written on the front of the item and any endorsements applied to the back of the item. The image quality of the check must also comply with the requirements established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve Board, including the requirements under federal Regulation CC, or any other regulatory agency, clearing house or association. The Company shall ensure that all required information is captured from the MICR line of the check. Images may be rejected for quality purposes if it does not meet the criteria established.

2.5. <u>Check Retention and Destruction.</u> Company agrees to securely store each original check that is used in conjunction with Check 21 Services for a reasonable period of time after the transmission to Processor in order to verify settlement and credit. Until such time that the check is destroyed, Company agrees to securely store using commercially reasonable methods. After such reasonable time period expires, Company agrees to destroy the original check. Company understands and agrees that it is responsible for any loss caused by the failure to secure an original check.

2.6. <u>Company Representations, Agreements, and Warranties.</u> Company makes the following representations and warranties with respect to the use of the Check 21 Services and each image of an original check that is transmitted to Processor using the Check 21 Services: (i) Company is responsible for the accurate scanning of all checks, for the results of the use of the Check 21 Services, and for submitting and transmitting accurate, complete and readable image cash letter files to Processor; (ii) Company shall assure that all checks are properly endorsed prior to scanning and that the images created accurately represent all of the information on the front and back of the checks, including all endorsements; (iii) each image of a check transmitted to Processor is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check; (iv) the amount, the payee, signature(s), and endorsement(s) on the original check are legible, authentic, and authorized; (v) each check that Company submits to Processor will not be resubmitted in any format to Processor, or deposited or resubmitted to any other person or financial institution for payment, resulting in the same drawer's account to be debited twice; (vi) each check that the Company submits to Processor is drawn in United States dollars on a financial institution located within the United States, excluding its territories; (vii) Company will only transmit eligible items and has handled the original items in accordance with applicable laws, rules and regulations; (viii) each Substitute Check meets all the requirements for legal equivalence under Check 21; (ix) Company will not transmit duplicate items; (x) Company will retain possession of each original check deposited using the Check 21 Services for a reasonable amount of time and neither the Company nor any other party will resubmit the original check for payment; (xi) Company has not knowingly failed to communicate any material information to Processor and all information provided to Processor by Company is accurate and true; (xii) Company and its clients are reputable and are not using Processor or its Check 21 Services as a conduit for money laundering, illegal activity or transactions, or other illicit purposes; (xiii) the sum of all items presented will not exceed any of the limits identified on the Service Agreement; (xiv) Company will comply with this Agreement and all applicable rules, laws, regulations and requirements; (xv) Company will indemnify and hold harmless Processor from any damages, liabilities, costs, expenses or other harm arising out of any violation thereof; and (xvi) all checks are made payable to the Company.

2.7. <u>Security Procedures.</u> Company is responsible for establishing and maintaining commercially reasonable measures to safeguard against unauthorized access and network infections. Company acknowledges and agrees that it has approved such security procedures and that the procedures are adequate for the purposes intended. Company bears the risk of loss or alteration of information in transit from Company's systems to Processor's systems.

3. **GUARANTEE SERVICES.** The Guarantee Service shall be provided to Company if so duly indicated on this Agreement. Whereas Company wishes Processor to provide a guarantee for reimbursement of losses sustained by Company in accepting and processing checks ("Guarantee Services"), and Processor is capable and willing to provide such Guarantee Services, the Company hereby understands and agrees to the following:

3.1. <u>Services Provided by Processor;</u> Processor shall provide: (i) Company with information in deciding whether or not to accept a check ("Verification"); (ii) processing services; (iii) check guarantee for transactions that complied with the guarantee requirements and any other applicable restrictions as set forth in this Agreement; and (iv) certain check collection and recovery services.

3.2. <u>Guarantee Requirements.</u> Processor will guarantee each check that was electronically processed by Processor that Company utilized Processor's processing services, and for which Company obtained a valid approval code from Processor, provided, however, that Processor's liability shall be limited by the Guarantee Maximum and Guarantee Requirements, and shall not exceed the amount of the check. Company represents and agrees with respect to each Guarantee transaction submitted to Processor under this Agreement that:

a. The check is a first party check drawn on a US bank account and is made payable to Company. Processor will not guarantee two party, 3rd party, travelers, employee, money market, credit card, convenience, counter checks or checks made payable to cash.

b. The check has an imprinted Consumer or Business name and check number by the check manufacturer. Processor will not guarantee starter or counter checks.

c. The check is fully completed including: (i) imprinted Consumer or Business name; (ii) a physical address (no PO boxes); (iii) at least one valid phone number with area code; (iv) driver's license number and state of issuance; (v) check date; (vi) check amount; (vii) payee; and (viii) a signature.

d. For Consumer checks, the signature on the signed authorization receipt is not substantially different from the name imprinted on the check.

e. The check date accurately coincides within 2 business days of the date of the Verification. Processor will not guarantee pre- or post-dated checks.

f. The check amount matches the signed authorization receipt and the Verification amount exactly and does not exceed the Guarantee Maximum.

g. The Company received a valid single approval code from Processor's Verification service. Company warrants that it did not attempt to bypass any limits imposed, such as, but not limited to, splitting a single transaction into subsequent transactions in order to avoid maximum dollar restriction.

h. The Company, and its employees, complied with all applicable laws, rules regulations, and NACHA Rules.

i. The original check was used for the purchase of goods or services rendered.

In addition to the restrictions set forth in these Terms and Conditions, notwithstanding any provisions to the contrary, Processor has established per account Guarantee and Velocity limits, as included as part of this Agreement, in the attached Schedule B.

3.3. Guarantee Chargebacks and Exclusions. Processor may chargeback to Company, or exclude from reimbursement, any transaction processed by Processor for any of the following circumstances:

a. The Company failed to comply with this Agreement.

b. The check was returned as stop payment, unauthorized or equivalent.

c. The transaction is illegal, void or invalid, or violates any applicable laws, rules regulations, or NACHA rules.

d. The Company received full or partial payment in relation to any transaction processed by Processor.

e. The signed authorization receipt does not meet the requirements as provided for in the Rules or was not received by Processor within 7 days of request to Company.

f. The original check was used for another transaction or was deposited by the Company in addition to being processed by Processor, thereby creating a duplicate entry against the Consumer's account.

g. The closeout of the Batch and transmission of the transaction for processing did not occur within 48 hours from the date the approval code was issued.

h. The transaction is in relation to an account that the Company, or Processor at Company's request, has defined a custom Velocity override for.

i. The amount of, or number of, counterfeit or fraud transactions becomes excessive, as determined by Processor.

j. The Consumer: (i) has a valid complaint against Company; (ii) returned the goods, or services were not rendered, in relation to the transaction; or (iii) disputes the validity or accuracy of the transaction.

k. The Company: (i) processed the transaction with reason to believe or know that the check was likely to receive a decline reason; (ii) attempted to avoid the Guarantee or Velocity restrictions; or (iii) did not receive a valid approval code;

l. The Company intentionally provided misleading information at the time the Agreement was made or after its execution.

**4. REPRESENTMENT SERVICES.** The Representment Service shall be provided to Company if so duly indicated on this Agreement. Company hereby authorizes Processor to represent all eligible returned items forwarded to Processor in accordance with the Rules. In cases in which Processor did not electronically present the original item, the Company authorizes their Bank to forward all returned items belonging to Company to Processor upon the immediate failure of the first presentation. This authorization shall remain in full force until: (i) Processor has received a written notification from Company of its termination in such a manner as to afford Processor reasonable

opportunity to act on it; and (ii) all financial obligations of Company to Processor that have arisen under this Agreement have been paid in full. Processor, or Processor's affiliate, will retain the right to complete their check recovery process for all returned check items forwarded to Processor prior to the termination.

4.1. Services Provided by Processor. Processor shall represent eligible items received from the Company's financial institution that are consistent with the Rules. Processor will then pay the Company 100% of the face value of all items recovered electronically. Such recovered items shall be transmitted to the Company, via an ACH transaction into a business bank account designated by the Company, the first business day following successful recovery provided that the ACH Operator is open for business on such business day. If the Company is receiving a percentage of the recovered fees, these fees will be paid only if and when the item that the fee relates to has been successfully recovered electronically and provided that such fee was collected electronically. In the event that an item is returned unpaid following transmission of recovered funds to the Company, Processor will debit the Company's account for the amount of the returned item. Processor does not guarantee the recovery, collection or payment of any returned item presented to Processor for representment.

4.2. Company Representations, Agreements, and Warranties. Company represents that all information provided in the enrollment process and this Agreement is correct and complete. Company agrees to notify Processor in writing of any changes to the information in the Agreement. Company is liable to Processor for all losses or expenses incurred by Processor arising out of Company's failure to report changes. Company agrees to provide notice to the check writer or Receiver at the point of sale, on an invoice, in a service agreement, or other acceptable location. The notice language will be provided to the Company by the Processor. When applicable, Company agrees to complete a Return Item Authorization form, provided by Processor, and will forward to the Financial Institution(s) utilized by the Company so that all returns will be forwarded to Processor after first presentation. If Company accepts payment directly, it is the responsibility of the Company to mark the item appropriately within the solution immediately. Company will be responsible for resolving any issues and fees, including return item bank fees, arising from accepting payments on items that have already been paid or have already been sent for payment through the Representment system. Company acknowledges and agrees by virtue of acceptance and participation in this service that:

a. Processor is not acting as an insurer of items or as a collection agency.

b. Processor is providing access to an automated software program to be used by the Company for the purpose of allowing Company to electronically represent their returned or dishonored items.

c. Processor will oversee the software's operation and provide the secured hosting that the software runs on, but any activity that occurs outside of the software's function is the responsibility of the Company.

d. Data processing entails the risk of human and machine errors, omissions, delays and losses, including inadvertent loss or misstatement of data that may give rise to loss or damage and Processor shall not be liable for any errors, or unintentional negligence or misconduct.

e. Processor shall not be responsible for delays in receipt of Company information or processing of Company information because of causes beyond its reasonable control, including, without limitation, failures or limitations on the availability of third party telecommunications or other transmission facilities, including (if applicable) the Company's failure to properly enter and/or transmit information.

f. Processor, or Processor affiliate, will retain the right to complete their check recovery process for all returned check items forwarded to Processor prior to any termination.

4.3. Secondary Collections. Company is responsible for utilizing third party collection affiliates to apply additional collection action in cases where the representment attempts fail or where items don't qualify for representment. Users are responsible for manually releasing items they want to be sent to a secondary collection agency of their own accord.

**5. CENTRALIZED RETURNS SERVICES.** The Centralized Returns Service shall be provided to Company if so duly indicated on this Agreement. Whereas Company wishes to utilize Processor's centralized return checks services ("CR Services") to route to Processor checks that have been returned and

Processor is willing and able to provide such CR Services with respect to routing such returned checks.

5.1. <u>Services Provided by Processor.</u> Company agrees to direct returned checks to Processor by endorsing each check received with endorsement verbiage supplied by Processor, prior to depositing at Company's depository bank(s). The endorsement verbiage shall include, but is not limited to, Processor's name and routing number, and shall be endorsed where indicated by Processor, in order for Company's returned checks to be routed to Processor. Company agrees to accept back any item received by Processor, or Processor's Financial Institution, on behalf of Company. Returned checks that are delivered to Processor will be charged to the account maintained by Processor at Processor's Financial Institution. Within the same business day of Processor having received Company's returned checks, Processor will make returns available to Company, or other approved party agreed to by Processor and Company, in the manner agreed to by Processor and Company.

5.2. <u>Company Representations, Agreements, and Warranties.</u> While it is intended that checks endorsed as described above will be returned to Processor's account at Processor's Financial Institution, rather than Company's depository account(s), Company recognizes and understands that there may still be some checks that are returned to Company's depository account(s) notwithstanding the endorsement verbiage directing returned checks to be returned to Processor. Company understands that Processor makes no warranty that returned items will in fact be returned to Processor, and Processor will not be responsible for items returned to Company's depository bank(s). Company further represents to Processor and agrees that:

   a. Company shall take all precautions necessary to protect any endorsement instruments from unauthorized use or theft. In the event the endorsement instruments are used in an unauthorized manner, Processor shall make reasonable efforts to notify the Company of such unauthorized use, but is not required to, nor is responsible for, said returned checks to Company.

   b. Company is solely responsible for any losses incurred in the unauthorized use of the endorsement instruments and Company will promptly reimburse Processor for said returned checks.

   c. Any and all liability incurred due to the failure of Company in protecting any endorsement instrument shall reside solely with the Company.

   d. Should Company learn or discover the misuse of the endorsement instrument, Company will promptly notify Processor, but final liability shall still remain with the Company.

   e. Company understands that data processing entails the risk of human and machine errors, omissions, delays and losses, including inadvertent loss or misstatement of data that may give rise to loss or damage and Processor shall not be liable for any errors, or unintentional negligence or misconduct.

   f. Company understands that Processor does not guarantee the accuracy or completeness of the return, the return information, or the quality of any return image, made available to Company.

   g. Upon termination, Company agrees to immediately cease using Processor's endorsement verbiage, or any endorsement instruments. Company shall be responsible for any returns received by Processor following the termination date.

5.3. <u>Data Entry.</u> Data entry services shall only be provided if indicated on the Agreement. Processor's data entry services include data keying of pertinent information, and any additional available information specified by the Company, from the image of the check, and delivering such information to the Company.

5.4. <u>Reserve Requirements.</u> Company agrees to place with Processor a reserve as indicated on Schedule E, determined by Processor, and understands that Processor may require an increase in this amount at any time, as is deemed necessary by Processor, in connection with the number and/or the amounts of the checks returned to Processor. In the event of a termination of this Agreement, the amount of the reserve shall be disbursed to the Company, less any outstanding obligations owed to Processor, pursuant to the following schedule:

- Disbursement One – On the 60$^{th}$ day following the date the last return was received by Processor, Company shall be disbursed one-third of the amount of the reserve, less any outstanding obligations owed to Processor.

- Disbursement Two – On the 120$^{th}$ day following the date the last return was received by Processor, Company shall be disbursed one-third of the amount of the reserve, less any outstanding obligations owed to Processor.

- Disbursement Three – On the 180$^{th}$ day following the date the last return was received by Processor, Company shall be disbursed the remaining amount of the reserve, less any outstanding obligations owed to Processor.

5.5. <u>Settlement by Processor.</u> The account designated by Company shall be debited on the same business day in which Processor received Company's returned checks for the total amount of said returned checks and any applicable fees set forth on the Agreement, including any Addenda(s), Schedule(s) or Exhibit(s), or pursuant to the Agreement, as changed from time to time by Processor.

**6. <u>VERIFICATION SERVICES.</u>** Verification Services shall be provided to Company if so duly indicated on this Agreement. Whereas Company wishes to utilize Processor's Verification Services to provide Company or Merchants with coded information in order to assist in deciding whether or not to accept a check and Processor is willing and able to provide such Services. Processor does not guarantee the accuracy or completeness of the information provided to Company or Merchants. Company and Merchants agree that there shall be no payment to Company or Merchants for any loss from transactions processed. Company and Merchants assume all risks that checks accepted by Company or Merchants may result in Return Items.

**7. <u>GENERAL TERMS.</u>**

7.1. <u>Debit and Credit Authorization.</u> Company hereby authorizes the account(s) provided in conjunction with this Agreement to be debited and/or credited by Processor according to these Terms and Conditions. This authorization is also applicable for any new account information provided by Company to Processor. Company authorizes its Financial Institution to accept all credits and debits made to its account as a result of Processor's services.

7.2. <u>Account.</u> Processor may, without prior notice or demand, obtain payment of any amount due and payable to it, under this Agreement, including any Addenda(s), Schedule(s), or Exhibit(s), or pursuant to this Agreement, by debiting the account(s) of Company, and shall credit the account for any amount received by Processor by reason of the return of an Entry transmitted by Processor, for which Processor has previously received payment from Company. Company shall, at all times, maintain a balance of funds available in the account sufficient to cover its payment obligations under this Agreement. In the event there are not sufficient available funds in the account to cover Company's obligations under this Agreement, Company agrees that Processor may debit any account maintained by Company and made available to Processor now or in future, or take other measures it deems appropriate, along with a returned invoice fee of $75.00.

7.3. <u>Account Reconciliation.</u> Entries transmitted by Processor will be reflected on Company's settlement statement provided by Processor. Company agrees to notify Processor promptly of any discrepancy between Company's records and the information shown on any such statement. If Company fails to notify Processor of any such discrepancy within thirty (30) days of receipt of a settlement statement containing such information, Company agrees that Processor shall not be liable for any losses of any kind, including any loss of interest with respect to an Entry shown on such settlement statement, resulting from Company's failure to give such notice. Company understands that in the cases in which transmission of Entries did not occur, that no such settlement statement exists and therefore cannot be provided by Processor.

7.4. <u>Payment.</u> Company shall pay Processor the rates and fees set forth on the Agreement, including any Addenda(s), Schedule(s) or Exhibit(s), or pursuant to the Agreement, as changed from time to time by Processor. Payment shall be made by Processor debiting the account(s) provided by Company. Company shall maintain a commercial checking account with a United States Bank, and shall maintain available funds sufficient to cover Company's obligations under this agreement, including the amount of each Entry transmitted by Processor on the settlement date. In the event there are not sufficient available funds in the account to cover Company's obligations under this Agreement, Company agrees that Processor may debit any account maintained by Company and made available to Processor, or take other measures it deems appropriate. Company shall be solely responsible for payment of any and all sales, use, excise, value added, utility or other taxes or similar taxes relating to the services provided for herein or relating

to any fees or charges provided for in this Agreement, and any such tax amounts shall be forwarded to Processor as required under applicable law.

7.5. <u>Term, Termination, and Amendments.</u> Processor will provide selected services as indicated on this Agreement. This Agreement will remain in effect for twelve (12) months from the start date and will automatically renew, without any action by either party, on the first day of each succeeding month for the entire duration of the month or until terminated in accordance with the provisions of this Agreement. After the initial term, either party may terminate this Agreement at any time with 90 days prior written notice. Processor, or Processor's ODFI, may terminate this Agreement at any time upon notice of such termination to Company and such termination will be considered effective immediately, or at such later date as may be stated in Processor's notice. Termination of this Agreement shall not affect any of Company's obligations arising from this Agreement. From time to time, Processor may amend this Agreement, including, without limitation, any Terms and Conditions contained in this Agreement, and any Schedules, Addenda(s), or Exhibit(s). Such amendments shall become effective and binding immediately, or at such later date as may be stated in Processor's notice, upon providing notice to Company.

7.6. <u>Liability; Limitations on Liability; Indemnity.</u> Company is responsible for the results of using a TPS, any services provided by Processor, and for the accuracy and adequacy of the data Company or Processor provides. Company authorizes the ODFIs to act on any instruction which has been or reasonably appears to have been sent by Processor or Company, including but not limited to funds transfer instructions. ODFI is not obliged to take any further steps to confirm or authenticate such instructions and will act on them without getting further confirmation. Company understands that if it or the Processor provides the ODFIs with incorrect information or if there is any error in the instruction it accepts full responsibility for losses resulting from any of the errors, duplication, ambiguities, or fraud in the information that was provided to the ODFIs. The ODFIs are not responsible to third parties (such as, but not limited to, third party service providers and the third parties to whom wire or ACH debit or credits are transmitted hereunder) and Company shall defend, indemnify, and hold the ODFIs harmless from, the actions or omissions of the Processor, or any claim made against the ODFIs arising out of Company's use of the services, breach of this Agreement, or breach of any warranty under the Rules. Company further represents and agrees that:

a. In no event shall Processor be liable to Company, or to any other person or entity, under this Agreement, or otherwise, for any punitive, consequential, incidental, special, punitive or indirect loss or damage, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages.

b. Processor shall be responsible only for performing the services expressly provided for in this Agreement.

c. Processor shall not be responsible for any of Company's acts or omissions, including, without limitation, any amount, accuracy, or timeliness of transmittal or due authorization of any Entry received from Company, or those of any other person or entity.

d. Company agrees to indemnify, defend, and hold Processor harmless from and against any and all loss, liability, claim, or expense, including attorneys' fees and expenses, resulting from or arising out of (i) any claim by any person or entity alleging that Processor is responsible for any act or omissions of Company or any other person or entity or (ii) any breach of, or failure to fully comply with, this Agreement by Company or any person or entity associated or affiliated with Company.

e. Company agrees that Processor's maximum liability under this Agreement, under any circumstance, shall be limited to the amount of fees the Company has paid Processor during the prior six (6) months of this Agreement. Processor will not be liable for loss of interest resulting from any error or delay.

7.7. <u>Investigative Report.</u> Company understands that an investigative, Consumer Report, Financial Institution inquiry, or any combination of the above, may be made in connection with this Agreement regarding the Company, and any of the principals, officers, beneficial owners, or other employees provided by the Company. Company hereby authorizes Processor to request and obtain such reports and that such requested information may be released to Processor. If approved, the Company also authorizes Processor to obtain

subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. The Company furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to Processor that Processor deems appropriate or necessary in order to investigate, verify or research references, statement or data obtained in conjunction with this Agreement.

7.8. <u>Company Analysis and Audit.</u> Processor and the ODFIs reserve the right to routinely analyze and audit Company's compliance with this Agreement and the Rules, including Company's transactional and return activity. In the event the Company exceeds its established threshold parameters, or is not in compliance with the Rules, Processor and the ODFIs reserve the right to take any actions deemed necessary, including, but not limited to, modifying limits or thresholds, hold times, pricing, suspension, or termination of this Agreement.

7.9. <u>Notices, Instructions, Etc.</u> Processor shall be entitled to rely on any written notice, oral or electronic communication believed by it in good faith to be genuine and to have been communicated by an Authorized Representative, or by an individual who, in good faith, the Processor believes is authorized to act on behalf of the Company. Company shall maintain responsibility of notifying Processor of any changes, including additions and deletions, of Authorized Representatives. All notices shall be deemed to have been duly given when (i) delivered in person, (ii) transmitted by facsimile or electronic transmission, (iii) upon receipt after dispatch by registered or certified mail, postage prepaid; or (iv) on the next Business Day if transmitted by national overnight courier (with confirmation of delivery). Either party hereto may change the address at which it receives written notice by so notifying the other party hereto in writing.

7.10. <u>Event of Default.</u> An Event of Default is any failure of the Company to comply with (i) any of the requirements contained in this Agreement; (ii) any representation, warranty or statement made in this Agreement; or (iii) a case is commenced with respect to Company under any applicable bankruptcy, insolvency or other similar law or Company makes a general assignment for the benefit of Creditors, or Company's financial condition materially deteriorates to the point that Bank deems itself insecure. If any Event of Default occurs Processor shall be entitled to all remedies available at law and in equity, and Processor may immediately terminate this Agreement without prior notice. In addition and not in lieu of the foregoing, if any Event of Default shall occur and be continuing Processor may take any action to cease accepting Entries and delay forwarding funds associated to Entries. In any Event of Default Processor shall be entitled to all costs and expenses incurred, including without limitation attorney fees, cost of litigation and interest on any funds advanced to cover Entries.

7.11. <u>Non-Assignment.</u> Company may not assign this Agreement or any of the rights or duties hereunder to any person without Processor's prior written consent which will not be unreasonably withheld.

7.12. <u>Binding Agreement.</u> This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. The individuals signing this Agreement in a representative capacity on behalf of Processor or Company, as applicable, individually represent and warrant that they have full and complete authority to sign and to fully bind Processor or Company, as applicable, to this Agreement. This Agreement is not for the benefit of any other person, and no other person shall have any right against Processor or Company hereunder.

7.13. <u>Right of Setoff.</u> Subject to applicable law, the Processor may exercise its right of setoff or secure interest against any and all collected funds that are un-cleared or pending release to Company without notice, for any liability or debt of Company, whether joint or individual, whether direct or contingent, whether now or hereafter existing, and whether arising from overdrafts, returns, reversals, ACH credits, endorsements, guarantees, loans, attachments, garnishments, levies, attorneys' fees, or other obligations. All parties to this Agreement now and in the future authorize Processor to exercise its right of setoff against any and all collected funds that are on hold or pending release, as well as any account made available to Processor through any Agreements made between Processor and Company.

7.14. <u>Governing Law.</u> This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania.

7.15. <u>Entire Agreement.</u> This Agreement, which includes these Terms and Conditions, and any Addenda(s), Schedule(s) or Exhibit(s) attached hereto, is

the complete Agreement between Processor and Company with respect to the subject matter hereof and supersedes any prior Agreement(s) between Processor and Company with respect to such subject matter. In the event performance of the services provided herein in accordance with the Terms and Conditions of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Processor is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Processor shall incur no liability of any kind or nature to Company as a result of such violation or amendment.