



# TREASURY MANAGEMENT SERVICES AGREEMENT

## PART I: GENERAL TERMS APPLICABLE TO ALL SERVICES

Capitalized terms used herein have the meanings provided in Section 23 at the end of Part II.

SECTION 1.	AGREEMENT .....	1
SECTION 2.	AMENDMENTS.....	1
SECTION 3.	ASSIGNMENT .....	1
SECTION 4.	BUSINESS DAYS/CUTOFF TIMES.....	1
SECTION 5.	CLIENT PROVISION OF REQUESTED INFORMATION/FORMS .....	1
SECTION 6.	CLIENT RECORDS; COOPERATION IN LOSS RECOVERY .....	2
SECTION 7.	COMPLIANCE AND GOVERNING LAW; DISPUTE RESOLUTION.....	2
SECTION 8.	CONFIDENTIALITY .....	2
SECTION 9.	DISCLAIMER OF WARRANTIES.....	2
SECTION 10.	EVENTS BEYOND BANK'S CONTROL .....	2
SECTION 11.	FEES AND TAXES.....	2
SECTION 12.	INDEMNITY .....	3
SECTION 13.	INSTRUCTIONS AND COMMUNICATIONS .....	3
SECTION 14.	INSUFFICIENT ACCOUNT BALANCES FOR SERVICE.....	3
SECTION 15.	LIABILITY/LIMITATIONS ON LIABILITY.....	4
SECTION 16.	LIMITATIONS ON SERVICES .....	4
SECTION 17.	NOTICES .....	4
SECTION 18.	PERIODIC STATEMENTS AND CONFIRMATIONS .....	5
SECTION 19.	RECORDING AND USE OF COMMUNICATIONS .....	5
SECTION 20.	REPRESENTATIONS AND WARRANTIES.....	5
SECTION 21.	REPRESENTATIVE PERSONS OF CLIENT.....	5
SECTION 22.	RIGHT TO AUDIT .....	5
SECTION 23.	SECURITY PROCEDURES AND FRAUD PREVENTION.....	6
SECTION 24.	SEVERABILITY; WAIVER.....	7
SECTION 25.	SOFTWARE AND EQUIPMENT .....	7
SECTION 26.	STANDARD OF CARE.....	7
SECTION 27.	TERMINATION AND SUSPENSION.....	7
SECTION 28.	THIRD PARTY BENEFICIARIES .....	8
SECTION 29.	USE OF THIRD PARTIES/VENDORS .....	8
SECTION 30.	AFFILIATES.....	8
SECTION 31.	SURVIVAL .....	9

## Section 1. AGREEMENT

(a) *Complete Agreement.* This Treasury Management Services Agreement is divided into two parts: Part I provides the General Terms applicable to all Treasury Management Services, and Part II details the Service Terms & Conditions applicable to the specific Services. Parts I and II, the Authorization and Agreement form, any set-up forms and/or User manuals, together with the Account Agreement (including signature cards), comprise the complete statement of the agreement between Bank and Client with respect to Bank's Treasury Management Services and supersede any prior agreement between Bank and Client with respect to such Services. Terms and disclosures governing Client's business-purpose Accounts are found in the Account Agreement, which was provided to Client upon account opening.

(b) *Inconsistencies.* If there is an inconsistency between (i) the terms of this Agreement and the Account Agreement, the terms of this Agreement will govern to the extent of the inconsistency; (ii) the Service Terms & Conditions (provided in Part II of this Agreement) and these General Terms, the Service Terms & Conditions will govern to the extent of the inconsistency.

(c) *Means of Authentication.* Upon acceptance of this Agreement as instructed by Bank, Client will have agreed to this Agreement including the Service Terms & Conditions for each Service to which Client subscribes from time to time. If Client uses a Service in any manner, Client's first such use constitutes its agreement to the Service Terms & Conditions provided in this Agreement for that Service.

(d) *Account Access.* Client hereby authorizes and directs Bank to access any of Client's Accounts with Bank, as set forth in the Service Terms & Conditions and as required to provide the Services.

(e) *Defined Terms.* Capitalized terms in this Agreement have the meanings provided in Section 23 of Part II of this Agreement.

(f) *Affiliate Access/Authority to Transfer or Commingle Funds.* In the event that Client requests Bank to provide Services to any of Client's Affiliates as described further in Section 30 below, Client agrees that it shall be jointly and severally liable for each Affiliate's obligations under this Agreement. Bank will only permit such combined access to the Services by Client and its Affiliates if they share a common Authorized Representative. Client hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by Client, and all other aspects of combined access to the Services by Client and its Affiliates have been duly authorized and that Client has obtained and shall maintain in its regular business records, and will make available to Bank upon reasonable demand, for a period of seven (7) years after termination of this Agreement, adequate documentary evidence of such authorization. Client further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, bylaw, or resolution of Client or any of its Affiliates, nor is it in violation of any Applicable Law. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transfer and commingling of funds authorized hereunder.

## Section 2. AMENDMENTS

(a) *Amending this Agreement.* From time to time, Bank may amend any of the terms and conditions contained in this Agreement, including changing or removing any existing terms or adding new terms to the Agreement. Such amendments will be

made in any manner deemed acceptable by Bank, including but not limited to posting the amended version of the Agreement on the Bank's website and/or within ONPointe, sending notice to Client by Electronic Transmission, or other means permitted by law. Using any of the Services following the effective date of the amendment shall be deemed evidence of Client's acceptance of, and agreement to, the amendment. If Client does not agree to the changes as set forth in the amendment, Client may choose to terminate its Services prior to the effective date of the amendment by discontinuing further use of the Services and following the procedures set forth in Section 27, "Termination and Suspension." This Agreement may not be amended or modified by Client unless agreed to in writing by Bank.

(b) *Change in Applicable Law.* In the event performance of the Services in accordance with the terms of this Agreement would result in a violation of present or future Applicable Law that governs or affects the transactions contemplated by this Agreement, this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Client as a result of such violation or amendment.

## Section 3. ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. Client may not sell, assign, or transfer rights, obligations, or duties under this Agreement without Bank's prior written consent. Client's failure to comply with the assignment provisions shall give Bank, at its sole discretion, the option to either accept Client's assignee or terminate this Agreement. No assignment shall release Client of its obligations hereunder. Bank may assign its rights and obligations hereunder, in whole or in part, without Client's consent. Bank shall notify Client of any such assignment of all of its rights hereunder within a reasonable time after such assignment.

## Section 4. BUSINESS DAYS/CUTOFF TIMES

Transactions, deposits, Payment Orders, Entries, or other requests by Client received by Bank on a non-Business Day or after established Cutoff Times may be treated as received on the next Business Day. Bank may change any Cutoff Times at any time by posting a notification within the applicable Service or by giving notice of the change to Client.

## Section 5. CLIENT PROVISION OF REQUESTED INFORMATION/FORMS

(a) *Information for Services.* Prior to opening a new Account or initiating a Service, or at any other necessary time, Client will provide all information and conduct any test that Bank may reasonably request, in form and substance acceptable to Bank, including, without limitation, providing set-up and maintenance instructions, signature cards, test files, transmissions, resolutions and other documents.

(b) *Financial Statements.* Client agrees to furnish Bank with financial statements, in a form acceptable to Bank, upon Bank's request. Customer further agrees to furnish Bank upon request with copies of Federal Tax Returns upon their preparation each year together with all other financial information reasonably requested by Bank.

(c) *Confirmation and Credit Reports.* Bank may confirm any information that Client provides to Bank. Client authorizes Bank to make or obtain any credit or other inquiries Bank deems appropriate for the provision of the Services. Client affirms it has

the written authorization on behalf of its owners and officers to and does authorize Bank, in Bank's discretion, to investigate personal credit and trade references and obtain a consumer report for owners or officers of Client at the time Client applies for an Account or Service.

## Section 6. CLIENT RECORDS; COOPERATION IN LOSS RECOVERY

Client shall retain and provide to Bank upon request all information necessary to remake or reconstruct any deposit, Payment Order, transmission file, or Entry for at least fifteen (15) Business Days following receipt by Bank of the deposit, Payment Order, transmission file, Entry, or other order affecting any Client Account. In the event of any damages for which Bank or Client may be liable to each other or to a third party pursuant to the Services provided under this Agreement, Bank and Client will undertake reasonable efforts to cooperate with each other, as permitted by Applicable Law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

## Section 7. COMPLIANCE AND GOVERNING LAW; DISPUTE RESOLUTION

(a) *Compliance Obligations.* Bank and Client shall comply with all Applicable Law in connection with the Services. It is Client's responsibility to obtain information regarding OFAC sanctions. Client may choose Services to which the NACHA Rules or other network or association rules are applicable. Client agrees to be bound by such rules and agrees that no communications that violate United States law may be initiated. Client shall be responsible for and shall fully indemnify Bank for any and all fines and assessments imposed on Bank as a result of any infraction or violation of the NACHA Rules caused by or attributable to Client. **Unlawful Internet Gambling Notice:** Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through the Account(s) or Client's relationship with the Bank. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, Checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

(b) *Governing Law.* Bank is a national bank with its main office located in Indiana. To the extent allowed by Applicable Law, all actions relating to Client's Account, including this Agreement, will be governed by federal laws and regulations and the laws of the State of Indiana.

(c) *Dispute Resolution.* If Client has a dispute with Bank, Client should contact Client's Treasury Management Services representative to see if they can solve the problem. If the dispute cannot be resolved informally, Client and Bank agree that any dispute will be resolved by the arbitration process described in the Arbitration Provision in the Account Agreement, which is incorporated herein by reference. Client and Bank each agree to waive the right to a jury trial or a trial before a judge in a public court. The only exception to this is claims that may be filed in small claims court. If Client's unresolved dispute is within the jurisdiction of small claims court, Client should file Client's claim there.

## Section 8. CONFIDENTIALITY

Bank has implemented policies, procedures and controls to safeguard Client Confidential Information in accordance with Applicable Law. Bank or its Vendor will remain the sole owners of

all Bank Confidential Information, and Client will not acquire any interest in or rights to the Bank Confidential Information as a result of Client's use of the Services except as set forth herein. Client represents, warrants, and agrees that all Bank Confidential Information will be maintained in strictest confidence and shall not be used or divulged to any other party except as may be necessary or advisable for the due performance of any Service or as required expressly or permitted by Applicable Law. Client may disclose the Bank Confidential Information only to its authorized persons and Vendors who need to know the Bank Confidential Information in order to fulfill responsibilities to Client with respect to the Services.

## Section 9. DISCLAIMER OF WARRANTIES

Bank represents and warrants that it has developed each Service (other than any portion furnished by a third-party Vendor) and has the right to furnish the same (including any portion furnished by a third-party Vendor). Unless otherwise stated herein or in the applicable Service Terms & Conditions, BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY, EITHER TO CLIENT OR TO ANY OTHER PARTY, PERSON OR ENTITY WITH RESPECT TO THE SERVICES, PRODUCTS, SOFTWARE AND EQUIPMENT PROVIDED BY BANK AND ANY VENDOR.

## Section 10. EVENTS BEYOND BANK'S CONTROL

(a) *Force Majeure.* Under no circumstances shall Bank be responsible for liability, loss or damages resulting from a delay in performance of or failure to perform in connection with a Service that is caused by interruption of telephone, facsimile or communication facilities, delay in transportation, Equipment breakdown or mechanical malfunction, electrical, power or computer failure, accidents, fire, flood, explosion, theft, natural disaster, pandemic or other national emergency or catastrophe, acts or failure to act by Client or any third-party, strikes or lockouts, emergency conditions, riots, war, events of terrorism or chemical or nuclear radiation, acts of government, or such other circumstances that are unavoidable or beyond Bank's control. Bank shall not be liable for failure to perform its obligations in connection with any Service if such performance would result in it being in breach of Applicable Law. Bank has no responsibility and will incur no liability for an act or failure to act by any other financial institution, intermediary or any other third party including any failure, delay or error by any Federal Reserve Bank or other intermediary bank in timely presenting data or Checks to Bank.

(b) *Other Events.* Bank shall be excused from failing to transmit or delay in transmitting an Entry or Payment Order if such transmittal would result in Bank having exceeded any limitation upon its intraday net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

## Section 11. FEES AND TAXES

(a) *Payment of Fees.* Client shall promptly pay Bank the fees and charges for the Service(s) provided to it, as determined by Bank from time to time based on the then-effective standard fee schedule or account analysis. Bank may update fees at any time. Bank may, on a monthly basis, debit the Account selected by

Client for payment of fees and charges due, even if it creates an overdraft, unless Client arranges another payment procedure acceptable to Bank. Client shall be responsible for any past due fees and charges owed to Bank. Client shall pay Bank's costs and expenses, including, reasonable attorneys' and paralegals' fees, costs, and expenses, paid or incurred by Bank in collecting or attempting to collect amounts or other obligations due Bank under this Agreement.

(b) *Taxes.* Unless otherwise expressly stated in this Agreement, Bank's fees and charges do not include sales, excise, use or other similar taxes. Bank reserves the right to charge Client for any present or future applicable sales, excise, use or other similar taxes required to be collected or paid by Bank for the Service used by Client. Client agrees to promptly pay to Bank when due, unless Client shall have delivered to Bank a valid and appropriate tax exemption number issued by the proper taxing authority.

## Section 12. INDEMNITY

Except in the case of Bank's gross negligence or willful misconduct, and in addition to indemnification commitments contained in the Service Terms & Conditions and the Account Agreement, Client agrees to indemnify, defend and hold Bank and its Affiliates and their respective shareholders, directors, officers, employees, attorneys, agents, insurers, and other representatives, individually and collectively, harmless from and against any claims, actions, lawsuits, losses, damages, obligations, liabilities, costs and expenses, including without limitation reasonable attorneys' and paralegals,' experts' and expert witness fees, costs and expenses, directly or indirectly arising out of or relating to (i) Client's or its Authorized Representatives' or System Administrators' or Users' use of the Services; (ii) Bank's performance under this Agreement including the Service(s) and the Software; (iii) Client's omissions or Client's breach of any representation, warranty or covenant under this Agreement or the Account Agreement; (iv) any act or omission of a third-party Vendor engaged by Client; or (v) if Client voluntarily waives or improperly uses a Security Procedure.

## Section 13. INSTRUCTIONS AND COMMUNICATIONS

(a) *Authorization.* By utilizing the Services available under this Agreement, Client will be entitled to authorize various transactions electronically that otherwise would require written authorization. In addition, Client may have Accounts that require multiple signers to execute transactions, but Bank shall have no duty to monitor for Client compliance with dual signatures. Client agrees that Bank is authorized to complete each transaction initiated electronically by means of the Internet, including but not limited to transfer of funds, credit payments, and issuances of Checks or electronic payments, based on the Security Procedures, not the signature card.

(b) *Electronic Signatures, Contracts, and Records.* Bank may now or in the future offer Client and its Authorized Representatives the ability to sign agreements, forms, and other documents with an electronic signature. The electronic signature of Client through its Authorized Representatives has the same legal effect, validity, and enforceability as a manual or "wet" signature. All records maintained by Bank of transactions and/or signed documents under Client's credentials shall be deemed to have been signed and will further constitute an original when printed from records established and maintained by Bank in the ordinary course of business. Client agrees not to contest the validity or enforceability of Bank's electronic records and documents. Further, Client agrees that Bank's authentication

procedures with respect to verifying the Authorized Representative's identity are legally sufficient, and Bank is entitled to rely upon such electronic signature as Client's authorization of the underlying action or request.

### (c) *Electronic Transmissions.*

(i) For some Services, Client may elect to send instructions or reports via Electronic Transmission. Bank recommends that such communications be made via secure email, such as the secure messaging feature available through the *ONPointe* platform. If Client chooses to communicate with Bank via unsecure email, it must not include Account numbers, PINs, or other Confidential Information. Bank may reply to Client in an Electronic Transmission or verbally with any requested information. Client assumes all risks, and Bank shall not be liable for, any loss that results from the non-receipt, disclosure or alteration of any instruction or request regardless of the method of communication

(ii) Electronic Transmissions from Bank or its Vendor to Client may include instructions, confirmations, PIN mailers, disclosures, amendments, updated fee schedules, any set-up and maintenance forms, and other notices and documents transmitted hereunder, including but not limited to: (A) an email notice; (B) access to a website that Bank will designate in an email notice Bank sends to Client at the time the information is available; (C) by posting the communication to the *ONPointe* website; or (D) by requesting Client to download a document containing the communication.

(iii) Bank will never contact Client by email in order to ask for or to verify Account numbers, Credentials, or any sensitive or Confidential Information. In the event Client receives an email or other electronic communication that Client believes, or has reason to believe, is fraudulent, Client should not respond to the email, provide any information to the email sender, click on any links in the email, or otherwise comply with any instructions in the email.

(d) *Written Notices Required.* Notwithstanding the above, certain legal notices and communications must be documented in writing and signed by the party supplying the notice or communication as provided in Section 17 of these General Terms.

(e) *Reliance.* Bank shall be entitled to rely, without independent verification by Bank, on any written or Electronic Transmission believed by Bank in good faith to be genuine and to have been initiated by an Authorized Representative, User or Vendor of Client. Any such communication will be deemed to have been authorized by Client. Bank's records of telephonic instructions shall be conclusive evidence of the actual notice or instructions given. Bank shall be entitled to rely solely on the information, representations and warranties provided by Client and shall not be responsible for the accuracy and completeness thereof.

## Section 14. INSUFFICIENT ACCOUNT BALANCES FOR SERVICE

(a) *Overdrafts.* Client must maintain a sufficient Collected Balance in the Account as required by the Service to cover Client's obligations. Bank may on occasion provide a Service against insufficient funds in Account(s), but is not obligated to do so, and any action by Bank of this nature will not constitute an obligation by Bank to provide the same in the future. The Account Agreement contains additional disclosures as to overdrafts.

(b) *Daylight Overdrafts.* Bank may permit intraday or "daylight" overdrafts incurred by Client when the balance in the Account

utilized for a Treasury Management Service will be brought positive by the end of the Business Day.

(i) **Process.** If approved by Bank, based on its credit underwriting and monitoring of Client's historical Account activity, and subject to the credit agreement entered into between Bank and Client, Client may overdraw the Account on an intraday basis. Bank will establish daylight overdraft limits. Any amount in excess of the limit must be approved by a Bank credit officer.

(ii) **Repayment.** Client must repay the intraday credit on or before the Cutoff Time established by Bank on each Business Day that an amount is outstanding. Repayment may be made through incoming cash flow, deposits, or sweeps. Any daylight overdrafts that remain unpaid will be treated as overdrafts subject to the terms of the Account Agreement. Bank may terminate this accommodation immediately in the event any daylight overdraft remains unpaid.

(iii) **Security Interest.** The security interest granted by Client under any loan agreement with Bank and under the Account Agreement will cover extensions of credit under this Section as future advances and Bank will have a security interest in the collateral therefor.

## Section 15. LIABILITY/LIMITATIONS ON LIABILITY

(a) **General Liability.** Except as provided below or in the applicable Service Terms & Conditions, Bank shall be liable only for Client's actual damages and only to the extent such damages are a direct result of Bank's gross negligence, willful misconduct, or bad faith. In no event shall Bank be liable to Client, its Affiliates, or any third party under this Agreement for any consequential, special, incidental, punitive or indirect loss or damage or loss of profits, whether or not the likelihood of such damages was known or contemplated by Bank and regardless of the legal or equitable theory of liability that Client may assert, including, without limitation, Client's failure to follow the procedures required or recommended by Bank or Bank's Vendor.

(b) **Specific Limits.** For Payment Orders that are subject to Article 4A of the UCC, Bank is liable only for damages required to be paid under Article 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in this Agreement, provided that Client has otherwise complied with any duties imposed on Client under these General Terms or any applicable Service Terms & Conditions (which includes the Wire Transfer Service Terms & Conditions). For all Payment Orders and Entries not subject to Article 4A, and for all other obligations under Bank's ACH Origination Service, Bank's liability is limited to actual damages, resulting directly from Bank's gross negligence, willful misconduct or bad faith or Bank's failure to exercise reasonable care, not exceeding the following, as applicable: (i) in case of an excessive debit to Client's Account, the amount of the excess plus compensation equivalent to interest from the date of the excessive debit to the date of the refund; (ii) in case of payment to an account not specified by Client, the amount of the payment plus compensation equivalent to interest from the date of the payment to the date of the refund; (iii) in case of any delay in crediting a Debit Entry to Client's Account, the amount of compensation equivalent to interest for the period of delay; or (iv) in all other cases, the damages specified in subsection (c) below. If Bank fails to credit an Account utilized in connection with any Service in accordance with the Service Terms & Conditions, as of the date such credit was earned, upon discovery or notification of such error, Bank will properly credit such Account, but Bank shall not incur any liability therefore except as otherwise provided herein or in the Service Terms & Conditions. Client must use

reasonable efforts to assist Bank in recovering the amount of any overpayment for which Bank is liable. If Bank is obligated to pay interest compensation, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period and amount in question, for a period not to exceed thirty (30) days from the date Client was provided notice of the transaction claimed to be in error, provided that Bank's investigation confirms that Bank's gross negligence, willful misconduct or bad faith was the proximate cause of such error. At Bank's option, payment of such interest may be made by crediting the Account. If Client transmits a Payment Order to Bank by way of a funds-transfer system or other third-party communications system not specifically required by Bank, the system is deemed to be Client's agent for that purpose. Bank is not liable to Client for any discrepancy between the terms Client transmits to such system and the terms it then transmits to Bank.

(c) **Limit of Liability.** Bank's aggregate liability for damages from any cause of action whatsoever relating to any Service will not exceed the lesser of the actual damages sustained by Client or the fees Bank received for providing the Service to Client for the three (3) months preceding the loss (or such number of months as Bank is able to recover damages under any applicable Vendor agreement).

## Section 16. LIMITATIONS ON SERVICES

Bank may place limitations on any Service based on its risk management procedures, and it may consider the creditworthiness of, and its experience and transactions with, Client for that purpose. Such limits may be changed by Bank in its sole discretion from time to time. Bank will notify Client of the applicable limits.

## Section 17. NOTICES

(a) **Notices.** Client may provide notices or other communications required or permitted to be given under this Agreement, delivered as follows:

<b>Old National Bank</b>	Facsimile No.: 812-464-1597
Attn: Treasury Management, RYL-002	Telephone: 800-844-1720
P.O. Box 718 Evansville, IN 47705	Email: tmservice@oldnational.com

Except as otherwise expressly provided herein, any such notice shall be deemed given when received. Certain telephonic notices must be followed up in writing as provided in the applicable Service Terms & Conditions.

(b) **Written Notices Required.** Client must provide notices of termination, amendment, and assignment to Bank by written notice, signed by an Authorized Representative. In addition, the particular Service Terms & Conditions may require written notice for certain communications. Any waivers by Bank of the terms of this Agreement must be in writing. Written notices may be sent by United States registered or certified mail, postage prepaid, or by express carrier, to the address above, unless another address is substituted by notice delivered or sent as provided herein. Client must also promptly notify Bank in writing of any change in the name of Client's business or organization, address, or email address.

## Section 18. PERIODIC STATEMENTS AND CONFIRMATIONS

(a) *Periodic Statements.* Bank will send Client Periodic Statements, confirmations, notices, and other information regarding the Account including any activity resulting from the Services to Client's current address in Bank's files by mail (or by Electronic Transmission if permitted by law). Transactions to and from Client's Account will be reflected on the Periodic Statement.

(b) *Duty to Inspect.* Client is responsible for monitoring all Services, including each individual transaction processed by Bank in connection with the Service. Client agrees to notify Bank promptly of any discrepancy between Client's records and the information shown on a Periodic Statement or other confirmation. Certain Services require immediate notification following confirmation of a transaction, as set forth in the applicable Service Terms & Conditions. If Client fails to notify Bank of any discrepancy on the Periodic Statement within fourteen (14) days of receipt, Client agrees that Bank shall not be liable for any loss of interest or any interest equivalent with respect to any transaction shown on such Periodic Statement or any other losses resulting from Client's failure to give such notice. Client's failure to notify Bank within this period will prevent it from asserting against Bank a claim for lost interest on an erroneous or unauthorized transfer. Furthermore, Client will also be liable to Bank for any losses Bank may incur as a result of Client's failure to notify Bank within the time period set forth herein.

(c) *ACH Debit Entries.* In accordance with the NACHA Rules, Client must report an unauthorized ACH Debit Entry to Client's Account by the established Cutoff Time on the Business Day following the Settlement Date of the unauthorized Entry. Otherwise, Client's sole recourse is to the Originator of the transaction.

## Section 19. RECORDING AND USE OF COMMUNICATIONS

(a) *Recordings.* All telephone conversations or data transmissions between Client and Bank or their Vendors made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means.

(b) *Calls to Client.* In order for Bank to service the Account, mitigate fraud or to collect any amounts owed to Bank, Bank or its Vendor may from time to time make calls and/or send text messages to Client at any telephone number(s) associated with the Account, including cell phone numbers that could result in charges to Client. The manner in which these calls or text messages are made may include, but is not limited to, the use of prerecorded/artificial voice messages and/or an automatic telephone dialing system.

## Section 20. REPRESENTATIONS AND WARRANTIES

(a) *Mutual Representations and Warranties.* Client and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (i) it is duly authorized to execute and deliver this Agreement, to enter into the transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (ii) it will engage in such transactions as principal (or, if agreed in writing in advance of any transaction by the other party hereto, as agent for a disclosed principal); (iii) the person authenticating this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal); (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement

and the transactions hereunder and such authorizations are in full force and effect; and (v) the execution, delivery and performance of this Agreement and the transactions hereunder will not violate any law, ordinance, charter, bylaw or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected.

(b) *Business Purpose.* CLIENT FURTHER REPRESENTS AND WARRANTS THAT IT WILL USE THE SERVICES, AND ANY EQUIPMENT OR SOFTWARE PROVIDED IN CONNECTION WITH THE SERVICES FOR BUSINESS USE ONLY AND ACKNOWLEDGES THAT THE SERVICES SHALL NOT BE USED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

## Section 21. REPRESENTATIVE PERSONS OF CLIENT

(a) *Authorized Representatives.* Bank is entitled to rely and act upon any notices, transactions and instructions purportedly received from Client's Authorized Representatives with respect to the Services and this Agreement. An Authorized Representative may, on Client's behalf, conduct transactions, enroll in Services, appoint System Administrators, sign any documentation that may be necessary to implement Services, and give instructions with regard to set-up and maintenance of any Service. Client is bound by and responsible for all transactions, instructions and other actions of the Authorized Representatives, and agrees to indemnify and hold Bank harmless from and against any losses in connection with the foregoing.

(b) *System Administrators and Users.* ONPointe uses a hierarchy of authorized persons and assigned privileges. The Service Terms & Conditions for ONPointe in Part II hereof describe the roles and responsibilities of System Administrators and Users in connection with the commercial online banking platform and online and mobile Services. Client is bound by and responsible for all transactions, instructions and other actions of its System Administrators and Users, and agrees to indemnify and hold Bank harmless from and against any losses in connection with the foregoing.

(c) *Change in Authority; Bank Reliance.* Bank is entitled to rely on the authority of Client's Authorized Representatives and System Administrators until Bank receives properly authorized written notice in the form provided by Bank or other form acceptable to Bank that the existing authorization is changed or terminated, and Bank has a reasonable opportunity to act on such notice. Bank will not be responsible for any losses if Client fails to timely and properly notify Bank of changes in the Authorized Representatives and/or System Administrators.

## Section 22. RIGHT TO AUDIT

During the term of this Agreement and for a period of two years thereafter, Bank, and any third party representatives designated by Bank, including bank regulatory agencies, independent auditors and forensics experts, shall have the right, upon reasonable prior notice to Client (except in the event of fraud, unauthorized access to Accounts or any other circumstance where delay could result in loss to Client, in which case this right shall be immediate), to audit Client's books, records, systems, IT infrastructure, internal controls, computers and procedures to the extent necessary to verify Client's compliance with the terms of this Agreement, including compliance with applicable Service Terms & Conditions, Applicable Law and, as applicable, NACHA Rules, which may include, in Bank's sole discretion, the right to enter onto the premises of Client for such purpose. Client acknowledges that the audit rights granted hereunder shall also apply with respect to Client's vendors relating to any Service and

Client is responsible for reserving those rights in its vendor contracts.

## Section 23. SECURITY PROCEDURES AND FRAUD PREVENTION

(a) *Security Procedures.* Bank may offer and recommend Security Procedures in connection with the Services, including but not limited to the use of Credentials. The applicable Security Procedures will be described under the Service Terms & Conditions for each Service within this Agreement or may be contained within the Service (e.g., an online screen). Client agrees that the Security Procedures recommended by Bank are commercially reasonable for the type, size, frequency, and volume of Payment Orders and other transactions Client will conduct using the Services. All Payment Orders and other instructions communicated to Bank in Client's name in accordance with the Security Procedures are considered authorized by Client and enforceable under the terms of this Agreement if accepted by Bank in good faith. Unless stated otherwise in the applicable Service Terms & Conditions, Bank will have no obligations under the Security Procedures and Client agrees that Bank's failure to use or comply with any Security Procedure does not excuse Client's obligation to pay Bank the amount of any Payment Order or other transaction made or authorized by Client or for which Client is otherwise liable. If Client chooses to communicate any Payment Order or other instruction to Bank in a manner that varies from the Security Procedures, Client will be deemed to have refused the Security Procedures that Bank recommends as commercially reasonable and Client will be bound by any Payment Order or other instruction issued in Client's name and accepted by Bank in good faith, whether or not authorized. Notwithstanding the foregoing, Bank has no obligation to accept any Payment Order that is not communicated in accordance with the Security Procedures and will have no liability for refusing to act upon a Payment Order which does not comply with the Security Procedures.

(b) *Combined Access with Affiliates.* If Bank permits Client to combine access to Services with Affiliates through a common Authorized Representative as described in Section 1(f) and Section 30 of this Part I, Bank may, in its discretion, treat each such entity as a separate entity for all security and set-up procedures, including the assignment of separate Credentials. Bank recommends against the use of common Credentials.

(c) *Safeguarding the Security Procedures.* Client is responsible for establishing, maintaining, and enforcing physical and logical security practices, techniques and procedures that assure the confidentiality of the Security Procedures and related instructions from Bank. Client must develop adequate internal procedures to prevent the disclosure of Credentials for the Services to other persons and the unauthorized use of the Services. Bank will have no knowledge of the Credentials established for each System Administrator, Authorized Representative or User and will have no responsibility for ensuring compliance with the procedures Client develops for protecting the confidentiality of such Credentials.

(d) *Notice of Security Breach.* If Client or its Vendor has reason to believe that a Security Procedure has or may have become compromised in any manner or is known by unauthorized persons (whether or not employed by Client), Client must immediately notify Bank by telephone and confirm the oral notification in writing within twenty-four (24) hours. Bank will act on Client's notice as soon as practical and will replace the Security Procedure in accordance with its security requirements. Client will be solely liable for all instructions and other

communications that were initiated utilizing the Security Procedure before Bank received and had reasonable opportunity to act on such notice. In the event of a security breach, Client agrees to cooperate with Bank in connection with Bank's incident response investigation in a timely manner and to provide any information requested by Bank within two Business Days of the request. Client will permit Bank's authorized persons access to Client's computer systems in connection with such investigation. Any security breach on Client's system is at Client's sole risk and Client will indemnify and hold Bank harmless from and against any claim arising in connection with a data security breach, except to the extent the breach is caused by Bank's gross negligence or the gross negligence of Bank's Vendor. Client understands that Client is solely responsible for any damages sustained as a result, directly or indirectly, of an incident that occurs because of a virus or other breach of security on Client's system, including any breach of Client's system that directly or indirectly thereafter results in a transfer of funds from Client's Accounts.

(e) *Purpose of Security Procedures.* Client acknowledges that the purpose of a Security Procedure is to control administrative functions, detect suspicious activity and verify the authenticity of the transaction, not to detect errors in the transmission or content of the transaction. No Security Procedure verifies the actual identity of the users of the Services or monitors the actions of the users to determine whether their actions exceed the scope of their authority. The Security Procedures are in addition to and do not limit, revoke, or affect the authority of any Authorized Representative to transmit instructions, or any agreement now or hereafter existing between Client and Bank relating to instructions.

(f) *Internet Hazards.* Notwithstanding Bank's efforts to make the Services secure, Client understands that the Internet is inherently insecure and that all data communications and transfers occur openly on the Internet and can be monitored, intercepted, rerouted, copied and read by others. To reduce the likelihood of such third-party access, Client agrees to transmit and receive data and messages using only Software including, but not limited to, browser Software, or other access devices that support a commercially reasonable level of encryption protocol or other protocols required by or acceptable to Bank and to follow the other Security Procedures that support such protocols. Bank is not responsible for any computer virus, related problem or other unknown hazard that originates from the Client that may be associated with using email, the Internet, or a Mobile Device to deliver or receive Services. Client is responsible for establishing policies and performing procedures to protect its computer Software and hardware, including but not limited to using adequate and reliable proxy servers, virus and threat prevention, detection and response programs and firewalls, and updating such Software and hardware as recommended by the manufacturer.

(g) *Fraud Detection.* Client is aware that Bank offers certain tools and Services that may help reduce the incidence of fraud and unauthorized use of Client's Accounts and the Services, including Check Positive Pay Services, ACH Positive Pay and ACH Blocking tools. In addition, Bank recommends Dual Control as part of the Security Procedures for certain Services, and Bank offers a variety of online viewing and reporting tools that enable real time access to Account data and activity. Client acknowledges that careful monitoring of the Services, Accounts and Account data by Client is an effective tool for detecting unauthorized or improper transactions and other Account problems, and for facilitating reporting of potential problems.

(h) *Client Assumption of Risk; Indemnification.* Notwithstanding any other provision of this Agreement, to the extent Client chooses not to utilize the fraud detection tools or Services available to Client, fails to maintain and enforce internal controls and security, or refuses Bank's recommended Security Procedures, CLIENT WILL BE DEEMED TO HAVE ASSUMED THE RISK ARISING THEREFROM AND WILL BE PRECLUDED FROM ASSERTING CLAIMS AGAINST BANK FOR PAYING UNAUTHORIZED, ALTERED, COUNTERFEIT OR OTHER FRAUDULENT ITEMS THAT COULD REASONABLY HAVE BEEN PREVENTED BY THE PROPER USE OF SUCH TOOL, SERVICE OR PROCEDURE, AND BANK WILL NOT BE REQUIRED TO RE-CREDIT CLIENT'S ACCOUNT OR OTHERWISE HAVE ANY LIABILITY FOR PAYING SUCH ITEMS. Client will indemnify and hold harmless Bank for any claim, demand, loss, liability, or expense that arises from Client's assumption of risk. For the avoidance of doubt, if Client has elected a fraud detection Service but has not completed the implementation process (including any testing or training) and begun actively using the Service within a reasonable period of time, Client will be deemed to have chosen not to utilize such fraud detection Service.

(i) *Reservation of Rights.* Bank reserves the right: (i) to change, implement or require new and/or additional Security Procedures or features thereof by giving oral, electronic or written notice to Client; (ii) with or without notice, at any time, to revoke, or to require Client to replace or delete, any Confidential Information used in connection with a Service, and the parties' rights and obligations under this Agreement will not be altered by such action; and (iii) with or without notice, to suspend or terminate the use of any Security Procedure for any Service if Client does not utilize the Service for a continuous period of time described under the Service Terms & Conditions. Client agrees that its use of the Service after Bank provides notice of any change in a Security Procedure will be deemed Client's acceptance of the new Security Procedure.

#### Section 24. SEVERABILITY; WAIVER

In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law and the parties shall promptly negotiate a replacement provision or agree that no replacement is necessary. No course of dealing between Bank and Client will constitute a modification of this Agreement and a waiver by Bank or Client of any term or provision of this Agreement shall not operate or be construed as a waiver of any other previous, current, or subsequent breach by the other party or modify the terms of this Agreement.

#### Section 25. SOFTWARE AND EQUIPMENT

(a) *Use of Software and Equipment.* If a Service requires Software or Equipment to be operated by Client, the provision of the Service by Bank shall be conditioned on the proper installation, configuration, use and maintenance of such Software or Equipment by Client. Client is solely responsible for the selection, purchase or lease and maintenance of its computer Equipment and Software and its compatibility for use where required in connection with any Service. If Bank supplies Equipment or Software, Bank shall remain the owner of such Equipment or Software, and Client shall insure it, use it solely in the manner specified by Bank and in connection with the relevant Service, not remove or modify any name or identifying mark on it,

and return it to Bank upon termination of the Service in good condition, ordinary wear and tear excepted.

(b) *Software License.* The Software provided to Client under this Agreement is generally owned, in whole or in part, by a third party, which may or may not be Bank's Vendor, and licensed to Bank under licenses from Bank's Vendor. Bank grants Client a non-exclusive, non-transferable sublicense to use or operate the Software during the time Client uses the Software under the terms of this Agreement. Client shall have no claim of title or interest in the Software or copies thereof except as expressly provided in this Agreement. Client shall not make, or permit anyone else to make, any copies of the Software, except for one back-up copy of the Software for Client's sole use, without obtaining Bank's prior written consent. Bank may, in its sole discretion, but is not obligated to, provide Client with any updates or other modifications to Software. Client is responsible for installing and implementing any changes and upgrades to the Equipment and Software as required by Bank within five (5) Business Days to ensure compliance with regulatory changes or developments and to protect the integrity and security of the Service. Client shall not sell, assign, transfer, license, sublicense, encumber or otherwise dispose of any Software, now or in the future. Nor shall Client reverse engineer, de-compile or disassemble any of the Software.

#### Section 26. STANDARD OF CARE

Bank will use reasonable care and act in good faith in providing the Services to Client. Bank's care is to be evaluated based on reasonable commercial banking standards prevailing in Bank's industry and location for similarly situated commercial banks and on Applicable Law. Occasional unintentional deviations by Bank from the procedures set forth in this Agreement shall not be deemed a failure to exercise reasonable care in respect to the transactions in which the deviations occur. Clerical errors or mistakes in judgment shall not constitute failure to exercise reasonable care. Further, reliance on any oral, telephonic, electronic, written, or other communication believed in good faith to have been given by or on behalf of Client will in no event constitute a failure to exercise reasonable care.

#### Section 27. TERMINATION AND SUSPENSION

(a) *Rights.* Except as otherwise provided in the applicable Service Terms & Conditions, either party, upon written notice to the other, may terminate any Service and may terminate this Agreement in its entirety. Bank may also terminate or suspend any Service and this Agreement if any of the following occurs:

- Client becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation, or dissolution proceeding of any kind;
- Client fails to maintain an adequate Collected Balance to cover transactions, costs, and expenses;
- In Bank's good faith judgment, a material adverse change occurs in Client's business or financial condition;
- Bank has reason to believe that Client has engaged in fraudulent or illegal activity;
- Client violates the terms of this Agreement or any financing arrangement with Bank;
- Client fails to provide financial information reasonably requested by Bank;
- Client violates Applicable Law, including the NACHA Rules; or
- Bank, in good faith, is unable to satisfy itself that any Services have been properly authorized by Client.

In some cases, in order to mitigate losses, such suspension or termination may occur before notice is provided to Client.

(b) *After Termination.* Upon termination, Client agrees to promptly return to Bank all materials, Equipment, Software and documentation, User Manuals, Bank Confidential Information, and trade secrets, owned or licensed by Bank and under the possession or control of Client, unless Client otherwise is contractually required to return any of the said items directly to Bank's Vendor(s). Notwithstanding termination of this Agreement by either party, Bank's rights and Client's indebtedness, liabilities and obligations under this Agreement existing prior to such termination shall survive.

### Section 28. THIRD PARTY BENEFICIARIES

Except as expressly provided herein, nothing in this Agreement is intended to confer any rights/remedies under or by reason of this Agreement on any third party.

### Section 29. USE OF THIRD PARTIES/VENDORS

(a) *Bank Use of Third Parties.* Some Services are provided by Bank through access to a third-party network. Client agrees that Bank may disclose to any third party any information regarding Client necessary to provide the Service and related support to Client. Third-party network Services are dependent upon the availability of the third-party network on conditions acceptable to Bank. Bank reserves the right to discontinue the Service or provide the Service through an alternative third-party network and shall have no liability should such network become unavailable. Bank shall be entitled to perform its obligations under this Agreement through a Bank Vendor without the assignment or delegation of its rights and obligations hereunder. All expenses associated with hiring a Bank Vendor shall be the responsibility of Bank. The performance of Services through a Bank Vendor shall not relieve Bank of its obligations to perform fully under this Agreement. For many Services, Bank provides Client with access to designated websites operated by its Vendors. BANK IS A MERE AGENT FOR THE PROVIDER OF SUCH DESIGNATED WEBSITES, AND BANK HEREBY DISCLAIMS ANY LIABILITY, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION LIABILITY FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, IN CONNECTION WITH THE CONTENT OF THE WEBSITES.

(b) *Client Delegation to Third Party.* Client confirms that it may grant authority to third-party Vendors to legally bind Client with respect to its use of the Services. Client is liable for (i) Vendor's actual failure to comply with any of Client's obligations under this Agreement; (ii) all fees, costs and expenses owed to each Vendor for its services on Client's behalf; and (iii) any claims, damages, costs, and expenses incurred by Client or Bank as a result of Vendor's failure to perform, delay or error in performing services on Client's behalf. Notwithstanding the foregoing, Client understands and agrees that Bank may refuse to accept any instruction from such Vendor for any reason, but in no event shall Client or Vendor have a cause of action, legal or equitable, against Bank for such refusal. Client shall provide information, including financial information, which Bank may, in its sole discretion, require from time to time regarding Client or any Vendor that Client hires, employs, or retains in any manner, to initiate transactions or assume any of Client's duties under this Agreement. Client understands and agrees that because of the risks involved in certain Services that Client may utilize, Bank may refuse, in its sole discretion, to provide such Services to

Client if Client or the Vendor retained by Client does not meet Bank's qualification criteria. Neither Client nor any other person or entity has the right to rely upon the determination made by Bank nor have a cause of action against Bank for or as a result of Bank's determination.

### Section 30. AFFILIATES

(a) *Primary Client and Affiliates.* Bank, Client and each of Client's Affiliates identified on the Authorization and Agreement agree that each such Affiliate will have all the rights and obligations of, and will for all purposes be a party under this Agreement as a "Client." The Client identified on the Authorization and Agreement will be referred to as the "Primary Client" for purposes of this Section 30. Each Affiliate hereby agrees that it is bound by the terms of this Agreement and responsible for the use of the Services, payment of fees and transactions, and any other obligations and liabilities it incurs related thereto. Client may add or remove Affiliates by executing a new Authorization and Agreement, which will supersede and replace Client's prior Authorization and Agreement as of the date it is actually received and processed by Bank.

(b) *Agent Authority.* Each Affiliate hereby authorizes Primary Client to act as agent for such Affiliate and agrees to be bound by Primary Client's actions in connection with any and all matters related to this Agreement and the Services, including administering the Services and originating transactions, issuing Payment Orders and other instructions, executing documentation, agreeing to amendments to the Agreement, terminating the Agreement and receiving notices under the Agreement, which will be effective against the Affiliates even if such notices are sent only to Primary Client. Bank is entitled to conclusively rely on Primary Client's authority to act for itself and to bind its Affiliates with respect to this Agreement and the Services.

(c) *Combined Access, Security Procedures.* Primary Client and each Affiliate understand and agree that the Security Procedures assigned to Primary Client will be used to access the Services, and that such Security Procedures are commercially reasonable for use of the Services on behalf of each Affiliate. Primary Client and each Affiliate agree that: (i) Bank may rely and act on any and all transactions, communications, Payment Orders and other instructions it receives using the Security Procedures assigned to Primary Client and Bank's reliance shall not constitute negligence or willful misconduct or bad faith; (ii) Primary Client and each Affiliate will be bound by such use of the Services and liable for any transactions debiting an Affiliate's Account; (iii) Bank shall have no liability or responsibility for notifying any Affiliate with which Primary Client shares its Security Procedures; and (iv) use of the Services and any transactions affecting an Affiliate's Account may be reflected on Bank's records as having been initiated by Primary Client.

(d) *Indemnity, Guaranty.* In addition to any other indemnification obligations set forth in this Agreement, Primary Client agrees to indemnify Bank for any and all losses Bank may suffer or incur in connection with providing the Services to the Affiliates or any other matters related to combined access, except for losses attributable to Bank's gross negligence or willful misconduct. Primary Client agrees to be liable to Bank for each Affiliate's performance under, and compliance with, the terms of this Agreement, including the payment of fees, overdrafts, transactions, indemnification obligations and any other amounts owed to Bank hereunder. Primary Client agrees to pay all such amounts on demand by Bank and agrees that Bank may enforce

the Agreement directly against Primary Client without first being required to seek enforcement against any Affiliate.

### Section 31. SURVIVAL

All of the provisions that by their nature are intended to survive termination of this Agreement for any reason shall survive and

remain in full force and effect. Subsections 1(e) and (f), and Sections 6-9, 12, 15, 17, 20, 22-23 and 27(b) of this Agreement shall survive termination for any reason.