



**Cash Management Services  
Enrollment Form**

New  Revised: ACH , Wires and Positive Pay

Across The Bridge Foundation DbA Downtown College Prep  
Client Name

[REDACTED]  
Tax ID Number

This Heritage Bank of Commerce Cash Management Services Enrollment Form ("Enrollment Form") is entered into by and between Heritage Bank of Commerce ("Bank") and the Client named above. This Enrollment Form is used in conjunction with the Cash Management Services Agreement and Disclosure (the "CMS Agreement"). Client acknowledges receipt of a copy of the CMS Agreement, which is by this reference incorporated herein. Client agrees to the terms and conditions of this Enrollment Form and of the CMS Agreement. Client also agrees to the terms and conditions of any applicable "Other Agreements" (as defined in the CMS Agreement). Capitalized terms used in this Enrollment Form have the meaning given to them in the CMS Agreement, unless otherwise specified.

**THE CMS AGREEMENT CONTAINS AN ARBITRATION CLAUSE. THE PARTIES UNDERSTAND THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL, OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT. The Arbitration Clause is set forth in Part C, Section 9 of the CMS Agreement.**

**Services Enrolled and Approved (Check All That Apply):**

- Basic Online Banking\*
- Wire Transfer Service\*  Domestic  International
- Remote Deposit Capture\* \$ \_\_\_\_\_ Daily Deposit Limit
- ACH Service\* [REDACTED] Total dollar amount of ALL ACH entries transmitted by Client to Bank on any one day  
 \$ \_\_\_\_\_ Total dollar amount of DEBIT entries (dues, tuition, etc.) transmitted by Client to Bank on any one day  
 \$ [REDACTED] Total dollar amount of CREDIT entries (payroll, taxes, etc.) transmitted by Client to Bank on any one day
- Positive Pay Default Selection:  Pay  Return Acct(s) #: [REDACTED]
- ACH Debit Block and Filtering Service Default Selection:  Pay  Return Acct(s) # [REDACTED]
- Lockbox Service\*

**\*All accounts associated with the above named entity or any accounts associated within the Multi Access Agreement may be automatically enrolled in the Service.**

**Supervisor Level User Information:** The Client must designate at least one Supervisor Level User ("Supervisor"). Client understands and accepts the additional risks associated with Client designating a Supervisor with the authority to enable an Authorized User (including any Supervisor) to utilize the Services even though the Authorized User may not be an authorized signer on the Accounts. Such risks include, without limitation, the theft or misappropriation of Client's funds or other losses.

**Client Designated Supervisor(s):** Client hereby designates the following person(s) as Supervisor(s):

1st Supervisor's Name (First & Last): Krista Bimson  
 E-Mail Address: krista.bimson@charteradmin.com Phone Number: (916)201-7703  
 Telephone Number for Bank to Deliver One Time PIN by: Voice: \_\_\_\_\_ Text: (916)201-7703

(Optional) 2nd Supervisor's Name (First & Last): Ruth Schriver  
 E-Mail Address: rschriver@dcp.org Phone Number: (408) 271-8120 x. 102  
 Telephone Number for Bank to Deliver One Time PIN by: Voice: \_\_\_\_\_ Text: 408.386.0420

**Fee Account:** Client designates Account # [REDACTED] as the charge account for fees related to Heritage Direct Business Online Banking.

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**Security Procedure Selection:**

**Bank requires the use of:**

- **Login ID / Password:** an individual Logon ID and Password to access Heritage Direct Business Online Banking
- **Out of Band Authentication:** Client may be required to use the Bank's Out of Band Authentication process.
- **Dual Control:** Client will be required to utilize dual security when initiating Wire Transfer or ACH Requests. Dual Security will require one Authorized User to sign into Direct Business Online Banking and via Direct Business Online Banking initiate a Request, and a second Authorized User to sign in and verify and release the Request submitted by the Authorized User who initiated the Request.

**Client may select additional Security Procedures listed on Exhibit A (additional fees may apply), or opt out of additional Security Procedures immediately below**

     (initial) OPT OUT OF ADDITIONAL SECURITY PROCEDURES

By opting out, the "default" procedure will be to rely solely on the individual Logon ID, Password, Out of Band Authentication (when applicable), & Dual Security (Wire Transfers and ACH Requests only) and will be deemed to be Client's "selected" Security Procedure. By initialing to opt out of additional Security Procedures, Client also acknowledges having received and reviewed the additional Security Procedure options provided in Exhibit A.

**Authorized Execution of this Enrollment Form and CMS Agreement**

Bank may request any person signing below on behalf of Client to provide evidence to the Bank of that person's authority to execute this Enrollment Form on behalf of the Client. Anyone signing on behalf of a Client does so in his, her or its capacity as: (a) a general partner of the Client, if the Client is a partnership; (b) a member or manager of the Client, if the Client is a limited liability company managed by its members or by managers, as appropriate; (c) a duly authorized officer or agent of the Client, if the Client is a corporation; or (d) a duly authorized agent of Client, if the Client is other than the foregoing. This Enrollment Form, and therefore the CMS Agreement also, is entered into by and between Heritage Bank of Commerce and the Client as of the date of acceptance by the Bank.

Except to the extent provided otherwise in this Enrollment, this Enrollment will apply to Client's current and future accounts and changes to this Enrollment, including dollar limits, may be made by Heritage Bank of Commerce by providing notice to Client in writing or electronically. Heritage Bank of Commerce will not be required to obtain Client's signature to affect future changes to this Enrollment.

**Each person signing this Enrollment Form personally and in their individual capacity:** (a) represents and warrants that (i) he, she or it has the authority to enter into, execute and deliver this Enrollment Form and the CMS Agreement on behalf of the Client, and (ii) when executed and delivered, the Enrollment Form and the CMS Agreement will be valid and binding on Client, enforceable against Client in accordance with their terms; and (b) agrees to indemnify, defend and hold Bank harmless from any costs, harm, damage or other loss (including reasonable attorney's fees and costs) incurred by Bank due to or arising in connection with any breach of these representations and warranties or any challenge to them.

**FOR CLIENT:**

\_\_\_\_\_  
Signature of Authorized Signer  
(As designated on the Resolutions page)  
**Ruth Wamuyu Schriver**  
\_\_\_\_\_  
Print Name  
**Chief Operating Officer**  
\_\_\_\_\_  
Title  
**12/5/2023**  
\_\_\_\_\_  
Date

**FOR BANK:**

\_\_\_\_\_  
Signature of Authorized Signer  
(Accepted for Heritage Bank of Commerce)  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

(For Bank Use Only)

Entered By: \_\_\_\_\_ Date: \_\_\_\_\_ Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit A  
Additional Security Procedures Selection  
Wire Services**

Bank requires the use of an individual Company ID, Logon ID and Password to access the Heritage Direct Business Online Banking. Client will be required to utilize dual security when initiating Wire Transfer Requests. Dual Security will require one Authorized User to sign into Heritage Direct Business Online Banking and via Direct Business Online Banking initiate a Request, and a second Authorized User to sign in and verify and release the Request submitted by the Authorized User who initiated the Request. Client may still select at least one of the following additional security options (if no selection is indicated, the "default" procedure will be to rely solely on the individual Company ID, Logon ID, and Password, Out of Band Authentication (when applicable), & Dual Security (Wire Transfers) and will be deemed to be Client's "selected" Security Procedure):

\_\_\_\_\_ (Initial) **Call Back to Authorized Representative with Code Word (Available for Wire): \$15.00 per call back**

Upon receipt of a Wire Transfer initiated by an Authorized User, Bank will contact an Authorized Representative as designated on this Enrollment to verify the authenticity of the transaction request. The Authorized Representative may or may not be the Authorized User who originated the transaction request. Bank is only required to make one attempt to contact an Authorized Representative, and if there is more than one Authorized Representative designated then Bank reserves the right in its sole discretion to determine which Authorized Representative to contact. If the Authorized Representative is not available or cannot verify correct Code Word associated with the Authorized Representative, as well as the total dollar amount of the transaction requested, Bank will not process the transaction. **If this option is chosen please list the authorized representatives below and have each representative fill out an Authorized Representative Designation form for purposes of verifying Client communications pursuant to applicable Security Procedure options above, (Each an "Authorized Representative")**

\_\_\_\_\_ (Initial) **Call Back to Authorized Representative with Code Word Variation (Available for Wire): \$15.00 per call back**

Upon receipt of a Request, Bank will first contact an Authorized Representative as designated on this Enrollment to verify the authenticity of the Request. The Authorized Representative must be an individual other than the Authorized User who originated the Request. Bank is only required to make one attempt to contact an Authorized Representative, and if there is more than one Authorized Representative designated then Bank reserves the right in its sole discretion to determine which Authorized Representative to contact. However, if Bank cannot contact an Authorized Representative to confirm the authenticity of a Request, then Bank will attempt to obtain such confirmation by contacting the Authorized User who purportedly initiated the Request. If both the Authorized Representative and Authorized User that purportedly initiated the Request are not available or cannot provide Bank with their respective Code Words, then Bank will not process the Request.

1) Name: _____	Phone #: _____
2) Name: _____	Phone #: _____
3) Name: _____	Phone #: _____

### CASH MANAGEMENT SERVICES AGREEMENT AND DISCLOSURE

This Cash Management Services Agreement and Disclosure (“Agreement”) is entered into by and between Heritage Bank of Commerce (the “Bank”) and the customer (the “Client”) named in the Heritage Bank of Commerce Cash Management Services Enrollment Form (“Enrollment Form”). By signing the Enrollment Form, effective as of the date on the Enrollment Form, Client agrees to the terms and conditions of this Agreement. This Agreement establishes the terms and conditions for electronic access to Client’s accounts using Bank’s electronic banking system Heritage Direct Online Banking and certain “Services” (as defined below). In addition to the details provided in this Agreement, the Services are more specifically described in the following, as updated from time to time (collectively, “Supporting Documents”): (i) the addendums to the Agreement, including any schedules, and exhibits to the same; (ii) the Enrollment Form; and (iii) user guides, user manuals, set-up forms and other user materials, including online terms and information.

#### **PART A – PROVISIONS APPLICABLE TO ALL CLIENTS AND SERVICES**

##### 1. Definitions.

- 1.1. “Accounts” means Client’s deposit and loan accounts at the Bank that may be accessible through Heritage Direct Online Banking.
- 1.2. “ACH Origination Agent” means the person who is designated in a separate “ACH Origination Agent Agreement” to engage in ACH Services on behalf of Client and approved by Bank to be an ACH Origination Agent.
- 1.3. “Agreement” includes any addendums, exhibits, schedules, or other documentation attached hereto.
- 1.4. “Applicable Laws and Regulations” means: (a) all state, federal or foreign laws, rules or regulations applicable to Client, to the business activities of Client or to Client’s use of a Service (including requirements for Client to maintain records regarding Client’s business or employees or to withhold taxes or other deductions); (b) the rules issued by NACHA which govern funds transfers initiated via the ACH system; and (c) other operating rules of systems used to provide Services to Client.
- 1.5. “Authorized User” means the following persons: (a) any person authorized at law or by Client to act on Client’s behalf, whether such authorization is actual or imputed; (b) each Administrator, each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by an Administrator that can be used to access Heritage Direct Online Banking or another Service, and any person who obtains access to Heritage Direct Online Banking or a Service by or through an Administrator or other Authorized User; (c) persons whose Communications are attributable to Client under Sections 6. and 7. of Part A; and (d) Client’s employees, officers, designees, agents or other persons authorized by Client to use a Service or to access Heritage Direct Online Banking.
- 1.6. “Bank” includes Heritage Bank of Commerce and any of its designated processors for Services (as applicable).
- 1.7. Bank’s “Business Days” are Monday through Friday, excluding federal holidays.
- 1.8. “Check” means a draft, payable on demand and drawn on or payable through or at an office of a financial institution (including, without limitation, Bank), whether or not negotiable, that is handled for forward collection, including an image of a Check or a “Substitute Check” (as defined below) or traveler’s check, and does not include a non-cash item payable in a medium other than United States dollars.
- 1.9. “Client” includes the account holder named in the Enrollment Form and anyone else authorized by that account holder to exercise control over the account holder’s funds through the Services.
- 1.10. “Client Check” means a Check drawn on a deposit Account of Client held at Bank where Client is the maker (or “drawer”) of the negotiable instrument.
- 1.11. “Communication” means a message or instruction received by Bank in the name of Client. Communications include, without limitation, Payment Orders and other messages and instructions (e.g., an instruction to initiate an ACH transfer to an Account) that are not Payment Orders. It includes all requests by Client for a Service, such as requests to initiate transactions via Heritage Direct Online Banking such as transfers between Accounts) or transactions on another Service, and requests to amend, cancel or otherwise affect a Service.
- 1.12. “Electronic funds transfers” means a transfer to or from Client’s Accounts using Heritage Direct Online Banking
- 1.13. “Entry” (also referred to in this Agreement as “ACH Entry”) has the meaning provided in the NACHA Operating Rules and Guidelines (“NACHA Rules”), as may be amended from time. “Entry” includes “Credit Entries” and “Debit Entries” (as those terms are defined in the NACHA Rules) when the context so requires, and will also mean the data received from Client from which Bank prepares Entries. It includes a request for an Entry and any amendment or cancellation request, unless otherwise specified.
- 1.14. “Payment Order” has the meaning given at 11103(a) (1) of the California Commercial Code. It includes an instruction or request to Bank to transfer funds or to initiate an ACH transfer from an Account or a wire transfer request.
- 1.15. “Security Procedures” means the logon IDs, passwords, out of band authentication, dual control, and any other tool or method that may be offered or required by Bank as part of the Services to verify the authenticity of any Communication received by Bank in the name of Client. The Security Procedures are further described in Part A, Section 6. below. Some Services also present to Client via the Enrollment Form, or otherwise, the option to choose supplemental security methods that (with the other Security Procedures) may be used to verify the authenticity of Communications, and if chosen by Client such supplemental security methods form part of the Security Procedures.
- 1.16. “Services” means Heritage Direct Online Banking and the various services that are accessible through Heritage Direct Online Banking as provided pursuant to this Agreement.

- 1.17. "Substitute Check" means a paper reproduction of the original Check that: (a) contains an image of the front and back of the original Check; (b) bears a MICR line containing all the information on the MICR line of the original Check (except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks); (c) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for Substitute Checks; and (d) is suitable for processing in the same manner as the original Check.
- 1.18. "Administrator Level User" and "Administrator" mean the person authorized by Client (whether or not designated in the Enrollment Form) to: (a) enable access to a Service (including by each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by the Administrator that can be used to access Heritage Direct Online Banking or another Service; (b) establish levels of authority for each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by the Administrator that can be used to access Heritage Direct Online Banking or another Service; or (c) administer any Service application.

The singular includes the plural. References to "person" include natural and non-natural persons (e.g., corporations, limited liability companies, partnerships, trusts and other non-natural legal entities). The term "or" is used to mean "and/or" or is used in the disjunctive, as the context may require. The term "include" means "including but not limited to" and that examples given or references made are illustrative but are not comprehensive. All references to time (for example, "5:00 p.m.") refer to local time of Bank, unless otherwise specified. Definitions for other terms are provided throughout in this Agreement.

2. Enrollment. Client must complete and return an Enrollment Form to Bank for Bank's approval. By completing the Enrollment form, Client requests access to and use of Heritage Direct Online Banking, and also designates at least one Administrator Level User. Bank may approve or deny Client's request(s), and may discontinue or limit Client's use of Heritage Direct Online Banking or one or more other Services at any time. This Agreement is not consummated unless and until Bank reviews and approves Client's application to use the Services, as set out in the Enrollment Form. A list of the Services that Client may request to use are provided below in Section 3. of Part A. If Client is approved by Bank to use Heritage Direct Online Banking or other specified Services, Bank will communicate such approval to Client, in writing or otherwise. Access to Client's Accounts through Heritage Direct Online Banking by each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by the Administrator that can be used to access Heritage Direct Online Banking or another Service will be designated by Client's Administrator Level User(s).
3. Services. Client may be able to use Heritage Direct Online Banking to access the Services listed below and described more fully in Part B of this Agreement and the Enrollment Form, subject to Bank's approval. To enroll in the Services described below Client must complete the Enrollment Form, which is subject to Bank's approval.
- 3.1. Participate in General Services described below in Section 1. of Part B;
  - 3.2. Participate in the Bill Pay Service described below in Section 2. of Part B;
  - 3.3. Participate in the Wire Transfer Service described below in Section 3. of Part B;
  - 3.4. Participate in the ACH Service described below in Section 4. of Part B;
  - 3.5. Participate in the Positive Pay / ACH Debit Block and Filtering Service described below in Section 5. of Part B;
  - 3.6. Participate in the Remote Deposit Capture Service described below in Section 6. of Part B;
  - 3.7. Participate in the Business Mobile Banking Service described below in Section 7. of Part B;
  - 3.8. Participate in the Lockbox Service as described below in Section 8. of Part B

A Service may appear on Client's Heritage Direct Online Banking profile, but may not be available for use by Client because Client has not been approved by Bank for that Service. Client agrees to only use those Services that are approved by Bank as communicated to Client pursuant to Section 2. of Part A.

4. Other Agreements. This Agreement and the Enrollment Form constitute the entire agreement between Client and Bank with respect to the subject matter hereof and there are no understandings or agreements relative hereto which are not fully expressed herein. The terms and conditions of the deposit agreements and any applicable loan agreements and other account agreements that apply to the deposit or loan Accounts accessed by Client using a Service (collectively "Other Agreements") continue to apply. Client acknowledges receipt of the Other Agreements, which may contain applicable fees, limitations on the number of transfers that Client may make or other restrictions which might impact the use of Client's Accounts and one or more Services. Where the terms of this Agreement differ from those of an Other Agreement, the terms of this Agreement shall supersede those of the Other Agreement to the extent of the inconsistency.
5. Access to Services; Equipment and Software.
- 5.1. To use the Services, Client must have access to Internet service and an e-mail address. Client is also responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. Client agrees to use equipment that is compatible with Bank's programs, systems and equipment, which Bank may change from time to time. Bank assume no responsibility for the defects or incompatibility of any computers or software that Client uses in connection with the Services, even if Bank has previously approved their use. **BANK MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO CLIENT.** Client agrees to notify Bank promptly if any software or equipment Bank provides to Client becomes defective. Bank's sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment.
  - 5.2. Client agrees that Bank is not responsible for any errors or failures from any malfunction outside of Bank's control, including power interruption, delay resulting from high volumes of internet traffic, breach of security (other than Services under Bank's control) or message or transfer interception in transit, or any virus or other computer problem related to the use of the Services. Client agrees to use the Services solely

for business purposes and not to use Heritage Direct Online Banking to transfer funds to or from any account established primarily for personal, family or household purposes.

- 5.3. Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding Bank's efforts to insure that the Services are secure, Client acknowledges that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. Bank cannot and does not warrant that all data transfers utilizing the Services will not be monitored or read by others.
- 5.4. Some Services may require Client to download software from Bank's website and in some cases, Bank may place software on Client's computer(s) as part of the Security Procedures. Client expressly acknowledges that any wireless access to the Services initiated by Client may not be secure and, in such cases, Client assumes the risk associated with unauthorized access to a Service and any information contained therein, resulting from such wireless connectivity. Additionally, Client agrees to implement and maintain administrative, technical and physical safeguards to protect against unauthorized access to or use of any Account information which Client may access or store on Client's computer(s), wireless access device, or other data storage systems. For security purposes, Client agrees to keep Client's browser and operating system up to date. Client agree to install and maintain appropriate firewall and anti-virus software on any equipment Client uses to access the Service, to protect Client's data when connected to the Internet. Except to the extent limited by applicable law, Client assumes sole responsibility for any and all loss, damage or injury arising with respect to any failure of Client's equipment, software not provided by Bank, the disruptions or unavailability of connectivity, viruses, spyware, malware, or worms affecting Client's equipment or software.

## 6. Security and Authentication.

- 6.1. *Temporary Credentials.* Bank will provide Client with temporary credentials (such as User ID, Password, etc.) needed to access Heritage Direct Online Banking and the other Services within one to two Business Days after Bank's approval of Client's use of Heritage Direct Online Banking. For security purposes, Client is required to change Client's temporary credentials upon Client initial login to Heritage Direct Online Banking and the new credentials will not be communicated to Bank.
- 6.2. *Authentication Tools and Security Procedures.* Client agrees and acknowledge that the Security Procedures are authentication tools used by Bank to verify Client's identity. Client agrees to consider the size, type and frequency of its Payment Orders and other Communications to determine if the Security Procedures are a commercially reasonable means to protect Client against loss or harm due to unauthorized Communications being received by Bank in Client's name. Client will consider the risks presented by the possibility of unauthorized access to the Services.
  - a. As applicable, Client will review the various options for security procedures provided in the Enrollment Form and determine whether at least one of the options is a commercially reasonable method for verifying whether a Communication is authorized by Client. After balancing the burdens and benefits of the protection available for each option, Client agrees that it has selected the option that is appropriate for Client's needs. As part of the review of the options for security procedures provided in the Enrollment form, Client will consider the size, type and frequency of the Communications that Client will make or anticipates making, along with such other factors as Client may deem relevant or appropriate.
  - b. For certain Services, as described in the Enrollment form, the Security Procedures may include an out of band authentication process ("Out of Band Authentication") and/or dual control authentication ("Dual Control"). Out of Band Authentication triggers the needs for a unique code during the time a transaction is requested. The unique code is provided to the Authorized User via a text message or telephone call made to the Authorized User's text or telephone number found in Bank's records, and the correct code must be inputted by the Authorized User via Heritage Direct Online Banking before proceeding with the transaction. Dual Control authentication requires a secondary Authorized User's authentication in order to proceed with the requested activity. Additionally, at any time and from time to time, with regard to all Services Bank may require Client to use additional authentication tools (e.g., dual control, codes or information shared only between Client and Bank, confirmation phone calls with or without a code word, software or algorithms, including programs that may be implanted into Client's computer or may use Client IP addresses). Any additional authentication tools that Client is required to use or chooses to use become part of the Security Procedures. Client further agrees that if Client does not use any additional authentication tool required by Bank, if and when they become available, then Client's access and use of the Services may be limited or Client may not be able to use the Services.
  - c. Client will implement and frequently review all Security Procedures available in connection with Services. Client will immediately notify Bank after such a review if Client's use of Services would necessitate or be better served by a level of security that exceeds that offered by the then-existing Security Procedures. If Client fails to so notify Bank, Client acknowledges and agrees that the Security Procedures are appropriate for Client's needs and provide Client with a commercially reasonable degree of security against unauthorized use.
  - d. Notwithstanding Bank's efforts to ensure that the Services are secure, Client acknowledges that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. Bank cannot and does not warrant that all data transfers utilizing the Services will not be monitored or read by others. Bank will not send, and strongly suggest that Client does not send, any confidential information unless using the electronic communication options accessible via the Services or Bank's secure e-mail system.
- 6.3. *Client is Responsible for Communications in Client's Name.* Client agrees that Bank will use the Security Procedures to verify the authenticity of any Communication received by Bank in the name of Client, including requests to amend or cancel a previous Communication. If Bank verifies the authenticity of a Communication using the Security Procedures, Bank may rely on and Client will be obligated on the Communication, whether or not the Communication was authorized by Client. Bank will not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication, including where Bank doubts its authenticity, contents, origination, or compliance with the Security Procedures. However, Bank will have no duty to discover, and will not be liable for, errors or omissions by Client. Bank reserves the right to issue new Security Procedures or to cancel or change any Security Procedures from time to time.

Client agrees that any Communication sent to Bank by any Authorized User, or approved or authorized by an Authorized User, is and will be deemed a Communication authorized by Client. If a Communication was authorized by Client or any Authorized User, Client will be obligated on the Communication even if Bank did not verify its authenticity using the Security Procedures and even if the security procedures would have prevented error. When an Authorized User is added or deleted by Client as an Authorized User of Services, Bank will treat that person as "authorized" if a transfer request or other Communication is received by Bank in accordance with the Security Procedures, without otherwise verifying the person's status with Client or investigating whether the person is in fact an Authorized User or is exercising authority granted by Client or is acting consistent with any limitations imposed by Client on that person. Client agrees that the Security Procedures are intended to verify authenticity and not to detect error.

- 6.4. *Client is Responsible for Confidentiality and Security.* Client agrees not to disclose the Security Procedures except to Authorized Users. Client will establish procedures to protect the confidentiality of all information relating to the Services, including the Security Procedures. Client will be solely responsible for the safekeeping of the Security Procedures and assumes all risk of their accidental or inadvertent disclosure to or use by an unauthorized person. In the event of a breach of the Security Procedure, Client agrees to assist Bank in determining the manner and source of the breach. Such assistance may include, but shall not be limited to, providing Bank or Bank's agent access to Client's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Client further agrees to provide to Bank any analysis of such equipment, device, or software or any report of such analysis performed by Client, Client's agents, law enforcement agencies, or any other third party. Failure of Client to assist Bank shall be an admission by Client that the breach of the Security Procedure was caused by a person who obtained access or information facilitating the breach of the Security Procedure from Client.

Bank requires Authorized Users to create new passwords at reasonably frequent periods, based on Client's assessment of the security requirements appropriate for Services utilized by Client; however, new passwords must be created at least every 120 days. Passwords should not be associated with any commonly known personal identification, such as social security numbers, address, date of birth or names of children, and should not be the same as the "Code Word" designated by Client's "Authorized Representative" in the Enrollment Form for certain Services (the terms "Code Word" and "Authorized Representative" are described in the Enrollment Form). Passwords should be memorized rather than written down. Upon a certain number of unsuccessful attempts to enter a password, the Authorized User's access to Heritage Direct Online Banking will be revoked and the Administrator Level User may be able to reset the password or the Authorized User can contact Bank to have the password reset or to obtain a new temporary password. If the Authorized User is an Administrator Level User, the Administrator Level User must contact Bank or another Administrator Level User to have the password reset or to obtain a new temporary password.

NOTE: Some browser software may store user names and security codes to facilitate the future use of a web site. For security reasons, Client agrees to disable this feature in Client's browser. For security reasons Bank may disable Client's security codes, for example if they are entered incorrectly several times. Passwords should not be easy to guess: for example, children's or pet's names, birth dates, addresses or other easily recognized identification. It is also recommended Client does not have Client's browser automatically remember passwords.

- 6.5. *Client is Responsible for Authorization Controls for Services.* Client is responsible for controlling access to the Services and for any limitations placed by Client on the Services that may be used by other persons. The fact that Bank is or may be made aware of, or could have discovered, any limitation on access to a Service does not make Bank obligated to enforce or attempt to enforce any limitation. Client understands that persons may utilize Heritage Direct Online Banking (including inquiries, transfers, bill payment and account verification) without regard to any restrictions otherwise applicable to an Account. For example, if a person directs transfers from a given Account, that person can initiate the transfers whether or not he has been authorized to do so according to the signature card applicable to the Account. If a person has signing authority over Account "A" but not over Account "B," but has access to Services, he or she could transfer funds from "B" to "A" and then withdraw funds from "A." Client agrees that any arrangements with Bank to require one or more authorized signatures for transactions involving Client's Accounts do not apply to Bank's limit or Bank's obligation to act upon transfer requests received by Bank through Heritage Direct Online Banking .
- 6.6. *In the Event of Suspected Unauthorized Access.* In the event Client suspects any part of Client's security credentials to access the Service have been or may have been compromised, immediately call Bank at (800) 796-4777.

7. *Client is Responsible for Users of Services.* Client must designate at least one Administrator Level User on the Enrollment Form. However, any person designated by Client as an Administrator, or given Administrator credentials by Client or by any Administrator, or otherwise allowed by Client to act as an Administrator, is an Administrator for purposes of this Agreement, even if that person is not listed by Client on an Enrollment Form. Client must immediately notify Bank by submitting a new, completed Enrollment Form to Bank if Client wants to terminate or change the Administrator Level User. Termination or changing an Administrator Level User is not effective until Bank has received the new Enrollment Form requesting to terminate or change an Administrator Level User and Bank has had a reasonable opportunity to process the request.

An Administrator has access to all Services that Bank has approved to be used by Client, and all functionalities of such Service. An Administrator is then responsible for designating other Authorized Users of Heritage Direct Online Banking and the other Services, if applicable. An Administrator will receive administrator credentials that will allow the Administrator to manage the Services that Client has been approved by Bank to access, as described below. Bank may provide Administrator credentials via e-mail to the address shown in the Enrollment Form for an Administrator or otherwise (including via telephone). Bank may provide Administrator credentials to any person, or change Administrator credentials upon the request of any person, who identifies him- or herself as the Administrator and correctly provides the "code word" or other information as may be requested by Bank.

The Administrator is responsible for assigning all Authorized Users with a User ID, password and any other Security Procedure that is necessary to access the Services or Heritage Direct Online Banking and establishing any limitations desired by Client for Authorized Users. Such limitations may include, but are not limited to, determining which Authorized Users have access to certain Services, determine which Account(s) an Authorized User can access via Heritage Direct Online Banking or certain other Services, and determining dollar limitation for each type of Service that an Authorized User can access. For certain Services, Client will also be required to complete an additional access authorization form corresponding to the Service. Client may enroll in additional Services not selected on the Enrollment Form by contacting Bank, subject to Bank's approval. The Administrator is also responsible for changing and maintaining the Administrator's Company ID, User ID and Password. Further, the Administrator Level User is responsible for the ability to do the following with regard to Authorized Users that are set up as users of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by an Administrator that can be used to access Heritage Direct Online Banking or another Service: (i) add, change or delete such an

Authorized User; (ii) add, change or delete such an Authorized User's access to Account(s); and (iii) reset User IDs, passwords or certain Security Procedures for such an Authorized User.

Bank will not control or oversee Authorized Users, including any Administrator. Client agrees that all acts and deeds of any Authorized User are the acts and deeds of Client, and Client is bound by the same. Client also understands and accepts the additional risks associated with Client designating an Administrator with the authority to enable an Authorized User (including any Administrator) to utilize the Services even though the Authorized User may not be an authorized signer on the Accounts. Such risks include, without limitation, the theft or misappropriation of Client's funds or other losses. Client further agrees to assume all risks associated with providing User IDs, Passwords or other Security Procedures to Client's Administrator(s), any Authorized User, any person given such Security Procedures by either of them, or any other of Client's agents, representatives, employees or officers. Client also agrees to limit the issuance and disclosure of the Security Procedures to only those who have a specific need to use the Services. Client is responsible for ensuring that an Administrator establishes authorization parameters and/or limits for each person Client authorizes to use the Services on Client's behalf.

8. Insurance. If requested by Bank, Client agrees to obtain and maintain fidelity and error and omission insurance coverage in an amount reasonably satisfactory to Bank, to cover (at a minimum) losses due to action or inaction by Client's Administrator Level User, or any Authorized User (including unauthorized access by any employee or agent of Client's), and to name the Bank as an additional insured on such policy. Such insurance must be maintained for at least 60 days following the termination of this Agreement. Client will provide evidence reasonably satisfactory to the Bank of the existence of such insurance promptly upon request by Bank.
9. Fees and Charges. Client agrees to pay Bank's fees and charges for Client's use of Services ("Fees and Charges"), including any applicable early termination fees as they are set by Bank from time to time, which include without limitation those fees and charges set forth in Heritage Direct Online Banking schedule of fees ("Schedule of Fees") or fees and charges otherwise communicated to Client. Bank's current Schedule of Fees is available to Client upon request. The Fees and Charges may be changed from time to time and at any time by Bank. As required by law, Bank will provide Client with notice of any changes in the Fees and Charges, normally in advance of the effective date of the change. Client must also pay all attorneys' fees and other costs and expenses Bank may incur in collecting any Fees and Charges or other sums Client may owe to Bank in connection with a Service. Fees and Charges do not include, and Client will be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to the Services, and for any fees or charges provided for in any other agreement between Bank and Client with respect to any Account. If Bank is required to pay any such taxes, Client must reimburse Bank upon demand.  
  
Client agrees that the Fees and Charges may be deducted from any of the Accounts maintained by Client at Bank or any other account of Client, by billing Client, or by setting off against any amounts Bank owes Client without any obligation to give prior notice of the setting off to Client. Client agrees to pay any additional charges for Bank services that Client requests, which are not covered by this Agreement. Bank may use any Account of Client as a settlement account in connection with any debits or credits arising from Client's use of a Service. Client is also responsible for telephone, Internet service and any other third party fees Client incur in connection with Client's use of Heritage Direct Online Banking.
10. Cancellation or Amendments of Communications. Client may not amend or cancel a Communication after it has been received by Bank. If Bank receives a request to cancel or amend a Communication prior to execution by Bank, and Bank is able to verify the request through the Security Procedures, Bank may at its sole discretion use reasonable efforts to act on Client's request. If Bank does, Client will indemnify Bank in accordance with the Agreement for any losses Bank may suffer in connection with Bank's efforts. Bank has no liability if any attempted cancellation or amendment is not affected.
11. Hours of Use; Cut-off Hours. Heritage Direct Online Banking is available 24 hours a day, every day of the year. The availability of other Service may vary, as described in this Agreement or the Enrollment Form to this Agreement. However, Heritage Direct Online Banking or other Services may be temporarily unavailable from time to time while the Bank is updating its files or its equipment, or software is being serviced or is malfunctioning. Delays may result from action by Bank or by any third party service provider with whom the Bank has arranged to provide Heritage Direct Online Banking or a Service. Client understands that such unavailability may be with or without notice to Client, and that Bank is not responsible for any losses or inconvenience resulting from these temporary periods of unavailability.

Communications for a Service received or transactions scheduled or requested to be processed by Bank on a day that is not a Business Day or after the applicable cut-off time on a Business Day may be processed on the following Business Day. Cut-off times for certain Services are provided in the applicable Section of this Agreement or the Enrollment Form.

12. Rejecting or Refusing to Process Communications. Bank may at its sole discretion refuse to accept or otherwise execute, or delay execution of, any Communication (or any part of one) received by Bank in the name of Client, including any request to amend or cancel a previous Communication, whether for cause or without cause and whether or not authenticated, and will have no liability for such refusal.

Without limiting the foregoing, Bank may reject any Communication (or any part of one) if Client is at the time of receipt of the Communication in breach of any provision of this Agreement, or would with the passage of time be in breach, or any Communication which: (a) exceeds the collected and available funds on deposit in Client's designated Account(s), as required under Bank's funds availability policy or applicable Other Agreements; (b) is not authenticated to Bank's satisfaction or which Bank believes may not be authorized by Client; (c) contains incorrect, inconsistent, ambiguous, or missing information; (d) involves funds which are subject to a lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; or (e) is inconsistent with any term or condition of this Agreement.

Bank reserves the right, before processing a Communication, to require Client to provide: (a) available funds to Bank to cover any affected Account; (b) additional evidence reasonably satisfactory to Bank of the authenticity of the Communication; or (c) supplemental information regarding the sources or the uses of funds to be used or the parties involved in the Communication. If Client's Communication is an ACH Entry or a file containing multiple Entries, Bank may act as above as to the entire file or as to any individual Entry or Entries.

13. Sufficient Funds and Overdrafts. Client must have sufficient available funds in an Account to cover the amount of any transaction that would be charged to the Account or any Fees and Charges owed to Bank. Subject to limitations set out in this Agreement, Client can request payments up to the amount of available funds or available credit in the Account. Bank may hold (or "freeze") funds at any time after Client has initiated a transaction for any reason, including as a means of reducing risks that there will be insufficient funds for completing the transaction. If Bank does hold funds, Bank may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions). Bank may allow overdrafts/overlimits or negative balances, but Bank also may discontinue the practice at any time with or without prior notice to Client. If Client does not have sufficient or available funds or credit, Client may be charged an overdraft or other fee (such as fees for returned checks or other electronic items), as

set forth in this Agreement and in the Other Agreements. Nothing in this Agreement, or any course of dealing between Client and Bank, shall be construed as Bank's commitment or obligation to lend Client money. Credits and debits to Client's Accounts will be made in accordance with Bank's standard funds availability and order of processing policies described in the Other Documents.

14. Limits on Transactions. Federal regulations limit the number of certain types of transfers from money market and savings accounts. Client is limited to six pre-authorized electronic fund transfers and telephone transfers (including transfers between Accounts via Heritage Direct Online Banking) per month for each money market or savings account. Each fund transfer or payment through Heritage Direct Online Banking from Client's savings or money market deposit account is counted as one of the transfers Client is permitted each month from that account. Demand deposit accounts are not subject to these transfer limitations. All transfers between Accounts or to third parties are subject to there being sufficient available funds to cover the amount of the transfer request in the affected Account. Bank may at Bank's option require pre-funding of any transfer or request before processing it. Client agrees to pay Bank in immediately available funds any amounts due to Bank as a result of Bank's processing any funds transfer or request or ACH entry for Client. If Bank allows transfers to be processed against insufficient funds, Bank is not obligated to continue that practice. Bank may from time to time impose lower limits on the amount of any funds transfers or requests or on any ACH credit or debit entries and their files, or require funding in advance of actual processing. Bank will communicate these limits to Client if they are imposed.
15. Inconsistencies. With regard to a Payment Order or any other request for a transfer of funds described in this Agreement, if the beneficiary of the transfer of funds is identified by both names and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a request for a transfer of funds by both name and identifying number, Bank and other financial institutions may rely on the identifying number even if the name and the identifying number are not consistent or identify different parties.
16. Provisional Credit. When Bank credits an Account for an incoming Payment Order, it is provisional until Bank receives final settlement for the Payment Order. If Bank does not receive final settlement, Bank must return the funds previously credited to the Account, and the person who sent the Payment Order will not be treated as having paid Client. Client agrees that Bank may refuse to permit the use of any amount credited for an incoming Payment Order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.
17. Receipt of Communications. The time of receipt of a Communication for purposes of the cut-off hours for the Services is determined as set forth in this Agreement. Communications sent by Client to Bank using Heritage Direct Online Banking or otherwise may be delayed in transmission. Bank will be deemed to have received a Communication only when the Communication is actually received by Bank and in a form and format acceptable to Bank and in accordance with the applicable Security Procedures. Where a particular Service requires that a Communication be provided in a specific form or format, Bank may but is not required to act on a Communication that varies from that form or format. Bank is not responsible for delays due to high Internet traffic.
18. Security Interest in Accounts; Reserve Account; Hold on Funds. Client grants Bank a security interest in all Accounts, accounts or other deposits (whether general or special) of Client's held at Bank, and in all funds in such Accounts, accounts or other deposits, to secure Client's obligations to Bank under this Agreement. This security interest will survive termination of this Agreement.

Bank may from time to time establish minimum amounts to be funded by Client as reserve amounts. Bank will endeavor to provide advance notice to Client of any reserve requirement or change in an existing reserve requirement, and Client will immediately fund the reserve amount with finally collected funds. Bank may withhold and use any amounts due to Client under this Agreement to fund or maintain any required reserve amounts, including in advance of notice to Client. Bank may at its option transfer reserve amounts from any Account to a Bank-controlled reserve account ("Reserve Account").

Unless otherwise prohibited by law, Bank may hold and restrict access to funds (including reserve amounts) on deposit in any Account (including any Reserve Account): (a) before termination of this Agreement; and (b) following termination of this Agreement for up to 90 days following the later of (i) termination of this Agreement, or (ii) expiration of any and all return or chargeback rights, or any other obligation Bank has or with the passage of time may have under any law, rule or regulation (including the Rules, Regulation CC, the federal Check Clearing for the 21st Century Act ("Check 21"), and any clearinghouse rules or rules of a funds transfer system) arising from any Communication or transaction (including ACH Entries, Checks, Substitute Checks, Checks processed using remote deposit and other items) processed by Bank under this Agreement for Client.

Client may be denied access to, use of, or ability to transfer or withdraw any funds in its Accounts when subjected by Bank to a hold or access restriction as set forth in this Section. This Section will survive the termination of this Agreement.

19. Waiver of Access Restrictions. Client's Accounts may be subject to access restrictions when Client conducts transactions in person or when Client uses systems other than with a Service. While access restrictions generally do not apply to Client's use of the Services, Bank may limit or deny Services to Client if there are access restrictions. Conversely, Bank may process Client's transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to Client's Accounts.
20. Processing for and by Others (including ACH Origination Agents). Client will not use the Services or any Accounts to process for third parties or any other person (a "Third Party") except after written notice to Bank and approval by Bank. If any such approval is given, except as may otherwise be specified in writing by Bank in such approval, Client represents and warrants that: (a) Client is duly authorized by each Third Party to act on that party's behalf for all purposes necessary under this Agreement, and the Third Party is bound by and responsible for all acts or omissions taken by Client; (b) Client has obtained from the Third Party agreement to terms and conditions substantially similar to those contained in this Agreement; (c) the security interest given in Accounts is legal, valid and binding on the Third Party (to the extent of any property rights the Third Party may have in the Accounts or funds in them); (d) the Third Party will cooperate with Bank in all ways reasonably requested by Bank, including the execution and delivery of such contracts and agreements between Bank and the Third Party as Bank may reasonably request; and (e) Client and the Third Party are in compliance with all Applicable Laws and Regulations as may apply to Client's processing for the Third Party. Client will from time to time provide to Bank evidence reasonably satisfactory to Bank of the accuracy of each of the foregoing if requested by Bank.

Client will not use any Third Party to access Heritage Direct Online Banking or Services on Client's behalf except after written notice to Bank and approval by Bank. Use of any Third Party (whether or not approved by Bank) constitutes appointment by Client of that Third Party (and any agents, delegates or assigns of the Third Party) as the agent of Client whose acts and deeds are the acts and deeds of Client. Any agent of Client submitting ACH Entry data to Bank on Client's behalf must be designated as an ACH Origination Agent in a separate ACH Origination Agent Agreement, subject to Bank's approval.

Client agrees that Client is bound by acts and omissions of the ACH Origination Agent with regards to the ACH Services described below in Section 4. of Part B.

Bank may (but is not required to) require that any Third Party, as a condition to use of a Service on Client's behalf: (a) provide evidence satisfactory to Bank that the Third Party is in compliance with all laws, rules and regulations applicable to the Third Party and its business activities; (b) enter into indemnity or other agreements acceptable to Bank; and (c) otherwise satisfy Bank that the use of the Service will not increase risk to Bank. Client appoints any Third Party used by Client for Services as the agent of Client, and all persons using Heritage Direct Online Banking at the Third Party as Authorized Users.

Client remains responsible for all Client's obligations under this Agreement, including Client's compliance with all Applicable Laws and Regulations. Malfeasance, error, omission, negligence, or fraud by the Third Party, or other controversy between Client and the Third Party (including Third Party action in breach of or in excess of that called for under any services agreement or arrangement between Client and the Third Party) shall not excuse Client from full and complete fulfillment of all obligations imposed on Client under this Agreement. Client shall be bound by all Communications from or use of Heritage Direct Online Banking Services by the Third Party that are done in the name of Client, whether or not authorized by Client, if the Communication is attributable to Client by operation of any law (including the laws of agency), or as a result of this Section, or if the Communication is attributable to Client under this Agreement. Bank shall have no duty to investigate or question any act or omission by a Third Party purporting to act on Client's behalf.

21. Credit Review. Client is subject to a satisfactory credit review by Bank from time to time at Bank's sole discretion and in accordance with Bank's established credit criteria. Client agrees, upon the Bank's request, to provide Bank with any credit-related information and such other information and assistance as Bank may require to perform a review.
22. Financial Information; Audit and Inspection.
  - 22.1. Bank may from time to time request information from Client in order to evaluate a continuation of the Services to be provided by Bank and/or adjustment of any limits set by this Agreement. Client agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank. Client authorizes Bank to investigate or reinvestigate at any time any information provided by Client in connection with this Agreement or the Services and to request reports from credit bureaus and reporting agencies for such purpose. Client covenants and agrees that: (a) it will allow Bank to review and inspect during reasonable business hours, and Client will supply, all financial information, financial records, and documentation of Client regarding the Services (including Checks) that Bank may request; and (b) in the event of the commencement of any proceeding under any bankruptcy or insolvency laws by or against Client, Client will not oppose or object to any motion by Bank seeking relief from the automatic stay provisions of such laws. Bank reserves the right, with prior notice to Client, to enter upon Client's premises from time to time during regular business hours to verify that Client's operations and procedures are in compliance with the terms of the Agreement.
  - 22.2. In connection with any audit described herein, Client agrees to furnish Bank with any documentation or information as is reasonably necessary to establish Client's compliance with the terms of the Agreement. If it is determined by Bank that additional procedures or controls need to be implemented by Client, Client agrees to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.
  - 22.3. In connection with Bank's entry on the premises of Client for the purpose of conducting an on-site audit or inspection, or in connection with providing support to Client, Bank shall not be liable or responsible to Client or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into Client's system, including any which allegedly delay, alter or corrupt the data of Client, whether related to the transmission of check images or other data to Bank or whether caused by the equipment, software, Bank Internet service providers, Internet browsers, or other parties providing communication services to or from Bank to Client.
23. Disclosure of Account Information and Transfers. Client agrees that information about Client's Accounts or the transfers Client make may be disclosed by Bank to others, both in connection with Bank's providing Services and for other business purposes. For example, Bank may disclose personal information to third parties in the following cases, and others:
  - 23.1. If Bank has entered into an agreement with another party to provide any of the Services;
  - 23.2. If it is necessary for completing transfers or otherwise carrying out Client's instructions;
  - 23.3. If it is necessary to verify the existence and condition of an Account for a third party;
  - 23.4. In order to comply with laws, government agency rules or orders, court orders, subpoenas or other legal process or in order to give information to any government agency or official having legal authority to request such information;
  - 23.5. In order to provide Client with information about products and services that Bank or an affiliate offers that Bank believe will be of interest to Client; or
  - 23.6. If Client otherwise gives Bank Client's specific permission.
24. Client's Duty to Notify Bank of Error. Except to the extent expressly prohibited by law or regulation, if Client fails to notify Bank within 30 days (or other time as applicable and prescribed otherwise in this Agreement, including in Section 3. of Part B) after Client receives notice (including, without limitation, notice by paper or electronic statement or otherwise), or through the exercise of reasonable review could have obtained knowledge, of an unauthorized or erroneous transfer or transaction, or that any loss, damage or harm to Client has occurred or with the passage of time may occur due to action or inaction by Bank in connection with any Communication by Client to Bank (a "Discrepancy"), then: (i) Client will be precluded from asserting any lack of authorization or any error against Bank; and (ii) Bank will not be liable for any other losses resulting from Client's failure to give such notice or for any loss of interest because of the Discrepancy. In any case, if notice of the Discrepancy is not received by Bank within 90 days after Client either has knowledge of it or through the exercise of reasonable review could have obtained knowledge of the Discrepancy, then Client will (unless prohibited by law) be precluded from asserting the Discrepancy against Bank. Notwithstanding the foregoing, Bank shall not be similarly limited should Bank discover discrepancies; whenever a discrepancy is discovered by Bank, Bank may debit or credit Client's Account, as the correction requires.
25. Representations and Warranties.
  - 25.1. Client represents and warrants to Bank, as of the date of this Agreement and again at the time any Service is used or performed, that: (a) Client is solvent and in good standing in the state of its organization; (b) Client has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and the Services used; (c) any consent or authorization of any governmental authority or third party

required to be obtained by it in connection with this Agreement or the Services used or performed by it has been obtained; (d) the Enrollment Form, which has been duly authorized and executed by Client, is accurate and complete and constitutes its legal, valid and binding obligation; (e) it is not the present intent of Client to seek protection under any bankruptcy laws; and (d) Client is in compliance as to all Applicable Laws and Regulations.

25.2. Bank makes no warranties, express or implied, with respect to Heritage Direct Online Banking or any other Service, including but not limited to, any warranty of merchantability, or fitness for a particular purpose, the existence of any latent or patent defects, viruses, or the accuracy or freedom from error, of the data or the programs used by or furnished to Client by Bank or any licensor of Bank. Due to the possibility of human and mechanical errors, as well as other factors, the system website is not error-free, and all information is provided "as-is," without warranty of any kind. Without limiting the generality of the foregoing, Bank makes no representation or warranty, express or implied, against any infringement of any proprietary rights of any other party. Client assumes the entire risk as to the quality and performance of the Services and the suitability of the Services for Client.

26. Compliance with Applicable Laws and Regulations; Data Retention. Client shall comply with all Applicable Laws and Regulations with respect to Client's use of the Services, and to provide evidence reasonably satisfactory to Bank of the same if requested by Bank. Client agrees not to use the Services for any illegal purpose, including but not limited to illegal Internet gambling. Without limitation, Client agrees and acknowledge that the Services may not be used by Client in violation of the laws of the United States, including sanctions laws administered by the Office of Foreign Asset Controls. Client acknowledges and agrees that the software Client uses to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations ("Acts"). Client agrees and certifies that neither the software nor any direct product thereof is being or will be used by Client for any purpose prohibited by these Acts.

Additionally, each Account and the Services will be subject to and governed by the following:

- 26.1. The terms or instructions appearing on a screen when using a Service;
- 26.2. The Other Agreements and Bank's rules, procedures and policies;
- 26.3. Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for ACH debits and credit entries initiated via the ACH Service and for bill payments facilitated through the ACH;
- 26.4. Applicable state and federal laws, rules and regulations; and
- 26.5. The rules of other funds transfer systems when used in connection with a Service.

Client will retain data on file adequate to permit remaking or reconstruction of all requested Services (including Payment Orders or other money transactions) for one year following the date of the execution of the request to which such data relate, and will provide the data to Bank upon Bank's request. Client agrees to determine promptly the accuracy of all records and information regarding a Service and to notify Bank immediately of any errors in such records or information. Nothing in this Agreement relieves Client of any obligation Client may have under the Applicable Laws and Regulations, and this Agreement is deemed modified to the extent necessary to allow or require Client to comply with the same. Client will implement and maintain procedures, including retention of legal or compliance services, to ensure that Client is able to comply with all current and future Applicable Laws and Regulations, including any changes to them. Bank is not obligated to provide information, updates or notice of or regarding the Applicable Laws and Regulations, even if Bank is aware of the same and of the potential for material impact on Client and Client's use of the Services, and Client's indemnification and other obligations to Bank are not relieved or reduced by Bank's not providing the same to Client. If Bank does provide information, updates or notices of or regarding the Applicable Laws and Regulations to Client, Bank is not responsible for the accuracy of the same and may discontinue doing so at any time.

27. Limitation on Bank's Liability. Bank is responsible only for performing the Services expressly provided for in this Agreement, and subject to the terms and conditions of this Agreement. Bank will not be liable for its action or inaction except to the extent the same constitutes gross negligence or willful misconduct by Bank. Bank will not be responsible for Client's action or inaction and none of Client's employees or agents will be considered agents of Bank. Except as set forth in this Agreement, Bank will not be liable or have any responsibility of any kind or any loss or damage thereby incurred by Client as a result, directly or indirectly, of any unauthorized person gaining access to, or otherwise making use of, the Services.

Without limiting the foregoing, each party agrees that damages as to any breach by Bank of any term of this Agreement are speculative and difficult to determine, and further agrees that Bank will in no event be liable to Client for an amount in excess of the lesser of \$50,000 or the actual damages suffered by Client. If Bank is responsible to Client for payment of interest under the provisions of this Agreement or under applicable law, the interest on the funds in error will be payable at a rate equal to the effective rate on the affected Account for the period involved or, if no specific Account is affected, at the federal funds rate of the Federal Reserve Bank of San Francisco. Client agrees to cooperate with Bank in any loss recovery efforts Bank undertakes to reduce any loss or liability that arises in connection with the Services. Client acknowledges that Service fees have been established in contemplation of: (A) these limitations on Bank's liability, (B) Client's agreement to timely notify Bank of any discrepancies or problems; and (C) Client's agreement to assist Bank in any loss recovery effort.

Bank will not be responsible for Client's acts or omissions, including without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any Communication received from Client. Bank will not be responsible for acts or omissions of those whom Bank does not exercise control over, including the "ACH Operator" (as defined in Section 4. of Part B), any transmission or communications service provider or facility, any Federal Reserve Bank, intermediary or collecting bank, and any receiver or beneficiary of a transaction, or "RDFI" (as defined in Section 4. of Part B), including the improper return of an Entry by any RDFI or beneficiary or receiver of a transaction, and no such person will be deemed the Bank's agent.

In addition, Bank will be excused from any failure to transmit or from any delay in processing any transaction related to the Services (including executing a Payment Order, transmitting an ACH Entry, or processing any check or item) if to do so would result in Bank's having exceeded any limitation upon intraday net funds positions established pursuant to present or future Federal Reserve System guidelines, or in Bank's otherwise violating any provision of any present or future risk control program of the Federal Reserve System or any rule or regulation of any other U.S. federal or state or any foreign governmental regulatory authority.

**NO CONSEQUENTIAL DAMAGES. IN NO EVENT WILL BANK BE LIABLE FOR SPECIAL, GENERAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR SIMILAR DAMAGES, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.**

This Section will survive the termination of this Agreement, and also limits the liability of any agent, employee or affiliate of Bank.

28. **Indemnity.** Client agrees to defend, indemnify and hold Bank harmless against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of: (a) any acts or omissions by Client or Client's employees or agents; (b) any claims against Bank from a third party resulting directly or indirectly under this Agreement where Bank has acted in accordance with Client's instructions and/or within the terms of this Agreement; and (c) any breach by Client or Client's employees or agents of any representation, warranty, covenant or agreement made pursuant to or in this Agreement. Nothing contained in this Agreement will be deemed to relieve Client of any liability, duty or obligation which may be imposed upon Client by any Applicable Laws or Regulations. This Section will survive the termination of this Agreement.
29. **Third Party Content.** Bank may receive, process, and make available to Client content that Bank receives from Client and others. In this regard, Bank is merely a passive conduit for such content, although Bank reserves the right to block or remove any content that Bank believes violates this Agreement. Bank assumes no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that Client or others provide to Bank, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity on such sites. Bank will not have a duty to interpret or evaluate any content transmitted to Bank or through Bank's website or Services, except to the limited extent, if any, set forth in this Agreement. Bank will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content Bank receives from Client or third parties. Bank will not have a duty to notify Client about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on Bank's website, even if Bank has reason to know of its existence. Use of any content Client obtain from Bank's website is at Client's own risk.
30. **User Communication and Personalization Settings.** Bank's website and Services may permit Client to send or receive communications and to store content and personalized settings for various options. Bank is not responsible for any delay, deletion, alteration, mis-delivery or failure to deliver or store any such communications, content or settings.
31. **User Conduct.** Client agrees not to use the Service or the content or information in any way that would: (a) infringe any third party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (d) be false, misleading or inaccurate; (e) create liability for Bank or Bank's affiliates or service providers, or cause Bank to lose (in whole or in part) the services of any of Bank's service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to the Service; or (i) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.
32. **Electronic Statements.** Electronic statements offer Client a convenient way to view, save and print periodic statements. If Client elects to receive electronic statements, Bank may discontinue sending paper statements and make periodic statements available to Client in electronic form only. This includes, but is not limited to, ongoing terms currently provided on the back of Client's paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. Client agrees to review Client's electronic statements in a timely manner, just as Client would paper statements, and to promptly notify Bank of any errors, unauthorized activity or other problems, as provided in Bank's agreement with Client. Client will be deemed to receive electronic statements when they are made available to Client. Any time periods within which Client must notify Bank of any problems or errors reflected on Client's statement(s) will begin on the date Bank makes the electronic statement available to Client, regardless of when it is actually viewed by Client. If Client cannot access, print or view Client's electronic statements, Client must contact Bank immediately at (800) 796-4777 to make alternate arrangements. Client agrees to periodically logon and check on the delivery of new statements.
33. **Email.** While access to Bank through the secure email function of the Services is "on-line," messages sent to Bank through email are not reviewed by Bank personnel immediately after they are sent. If immediate attention is required, Client must contact Bank by telephone or in person. Client's email messages may be acted upon by Bank if received in a manner and in a time providing Bank a reasonable opportunity to act. Nevertheless, unless otherwise provided herein, email messages will not serve as a substitute for any requirement imposed on Client to provide Bank with "written" notice.

Email or messages sent by Bank to Client will be deemed received by Client when sent by Bank to Client at Client's email address as shown on Bank's records. Client agrees to notify Bank (using the Service or otherwise in form acceptable to Bank) whenever Client's email address changes. Client agrees that information or messages made available to Client via the Services will be deemed received by Client when first posted on Bank's website or made available to Client. Client agrees to access the Service from time to time, in no event less than monthly, to access this information or the messages. If Client fails to update or change an incorrect email address or other contact information, Client understands and agrees that any email shall nevertheless be deemed to have been provided to Client if the email was sent to the email or other contact Bank has on file for Client.

34. **Intellectual Property.** Client acknowledges and agrees that the software and content used by Bank in the operation of Bank's website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included on Bank's website and as part of the Services and Bank's name and product names and the website's URL (collectively the "Intellectual Property"), are owned by Bank and Bank's licensors. As such, Client will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Agreement or otherwise.

Client may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer (i) any portion or element of the Services or the Intellectual Property, or (ii) use of, or access to, Bank's website, Services or Intellectual Property. Further, Client may not: (a) create derivative works of any portion or element of Bank's website, Services or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology Bank incorporates in Bank's website or the Services; (d) modify or erase any copyright or trademark notice Bank places at Bank's website; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of Bank's content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (f) access the Services by any means other than via Bank's website; (g) frame Bank's website or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing Bank's name, trademark, URL, product name or Intellectual Property. Client agrees to comply with the terms of any license agreement Bank makes available to Client with any software.

## **PART B – PROVISIONS APPLICABLE TO SPECIFIC SERVICES**

## 1. General Heritage Direct Online Banking Services.

- 1.1. *View Balance Information and Transactions.* Account balance information (including loan Accounts) may include debits or credits that are provisional and subject to change. Balance and transaction information may not be current in some cases, and may reflect prior Business Day positions rather than current positions. Bank may at any time reduce the historical data available to Client through Heritage Direct Online Banking, modify the format of that data, or otherwise limit the Service. Bank's Account view and transaction history Service is not a disaster recovery or backup system and Client is responsible for implementing those functions outside of Heritage Direct Online Banking.
- 1.2. *Export Functions.* Heritage Direct Online Banking may allow Client to export Account data to financial software and other systems (including disaster recovery) used by Client. Bank is not responsible for successful export of Account data, for the accuracy of the data exported or for data corruption that may arise. Client is and Bank is not responsible for data integrity and information security of any Client systems, including those to which Account data is transferred by Client.
- 1.3. *View Client Checks.* Heritage Direct Online Banking may provide Client the ability to view Client Checks. Client (whether using Positive Pay or not) agrees to review Client Checks daily and to notify Bank immediately of any unauthorized, altered or otherwise suspect items.
- 1.4. *Account Transfers and Loan Payments.* Heritage Direct Online Banking may allow Client to transfer funds between its Accounts at Bank (including on-us loan payments). Transfers may be done on either a one-time or recurring basis. An Account transfer request or any other Communication from Client to Bank is deemed received by Bank only when it is actually received by Heritage Direct Online Banking in a form and format acceptable to Heritage Direct Online Banking. Client is responsible for ensuring that Client initiates any loan payment instruction in time for the payment to be received by Bank before its due date (without taking into account any grace period). Bank is not responsible for any damages, costs or fees Client may suffer if Client does not allow sufficient time between the date the payment is processed and the due date.
- 1.5. *Advances from Client's Commercial Line of Credit.* Heritage Direct Online Banking may allow, subject to Bank's prior approval, Client to draw on Client's commercial line of credit Accounts with Bank. Not all commercial line of credit accounts are eligible for this Service. Client may only use the advances to make a deposit to Client's checking or savings Account held with Bank. Client agrees that every draw from the available credit balance on Client's commercial line of credit via Heritage Direct Online Banking is subject to all terms and conditions of Client's applicable Other Agreement (e.g., Client's commercial line of credit agreement, promissory notes or related loan agreements); provided, however, that any applicable Other Agreement affecting the credit facility is superseded if necessary to allow Client's use of Heritage Direct Online Banking to draw on the facility as described in this paragraph.
- 1.6. *Stop Payments.* Heritage Direct Online Banking may allow Client to request stop payments on Client Checks. However, Bank's acceptance of a stop payment order will not constitute a representation that the Client Checks has not already been paid, or that Bank has a reasonable opportunity to act upon the stop payment order. Stop payment on a bill payment transaction must be placed through the Bill Payment Service. Additionally, Client may not stop payment on: (i) an official check, certified check, cashier's check, teller's check or bank draft issued by Bank; (ii) Client Checks governed by any separate agreement, such as a check guaranty agreement; or (iii) a Client Check after Bank has accepted or otherwise become accountable on the Client Check. Furthermore, Heritage Direct Online Banking may not be used to stop payment on any automatic entry, such as automatic monthly drafts or ACH Debit Entries or Credit Entries, or any Payment Order after execution by Bank, and Bank may ignore these types of stop payment requests.
  - a. *Verification that Client Check has not paid.* Prior to requesting a stop payment, Client should first verify that the Client Check has not already been posted to Client's Account. Client understands that Client, not Bank, is responsible for determining whether a Client Check has or has not been paid. Bank agrees to enter the stop payment order on its main computer system within a reasonable period of time after it receives the request; however, no stop payment instruction will be considered as received by Bank until the request has been received and approved by Bank. No stop payment order will be effective against a Client Check that was paid prior to the time Bank received and had a reasonable period of time to respond to the order. If the Client Check in question has already cleared or been paid prior to Bank's entry of the stop payment order, or if Bank did not have a reasonable opportunity to act upon the stop payment order, then Bank will not be liable for any loss incurred by Client arising from the event.

Client acknowledges that Heritage Direct Online Banking information available regarding the status of Client Checks may not include transactions (including cash payments) on Client Checks that occur on the same Business Day as the date on which Bank receives the stop payment order. Client acknowledges that a transaction search using either the Heritage Direct Online Banking Services or Bank's main computer may not necessarily reveal whether or not a Client Check has been paid until the banking day after the banking day on which Bank receives the stop payment order. Any loss suffered by Client due to its decision to issue a new or replacement Check, or to take any other action, based on information available through Heritage Direct Online Banking or Bank's main computer prior to the next Business Day after the Business Day on which the stop payment order was received by Bank, will be Client's responsibility and not Bank's responsibility.
  - b. *Requesting a stop payment.* To place a stop payment order, Client must provide the date, the amount, and the number of the Client Check, together with the name of the payee and such other information as may be required by Bank. If Client gives the Bank incorrect information or insufficient data, Bank will not be liable for its failure to stop payment on the Client Check.
  - c. *Stop payment term.* A stop payment order is effective for six months. After the expiration of the stop payment order, a Client Check may be paid even though the Check is stale dated or restrictions on the Check may have passed (e.g., the check states that it is not valid after 30 days). If Client would like the stop payment order to remain in effect after the six-month period, Client must renew it. Client may cancel stop payment orders by writing to Bank. Stop payment orders are automatically canceled when the Account on which the Client Check is drawn is closed or at the end of the six month term of the order (unless renewed).
  - d. *Warranties.* With respect to all stop payment orders, Client warrants and agrees (in addition to Client's agreement to the remainder of this Section 1.6 of Part B) to the following:
    - (i) To indemnify and hold Bank harmless from all liability, damage and expense incurred on an account for refusing payment of the Client Check.
    - (ii) To notify Bank in writing to release the stop payment order if and when the reason for the stop payment ceases to exist.

(iii) Despite proper completion and delivery of a stop payment order, Client will still be liable on the Client Check to any subsequent holder in due course. Should the Client Check described in the stop payment order for any reason be paid over the stop payment order, Bank may avail itself of remedies at law to recover the loss.

2. **Bill Payment.** Client may be able to make online bill payments from Client's Accounts to third parties using a bill payment system that is provided by a separate company ("Bill Payment Service"). The Bill Payment Service is subject to the terms and conditions set forth in the Heritage Direct Small Business Bill Pay Terms and Conditions. In order to initiate payments via the Bill Payment Service, Client must first complete the Heritage Direct Small Business Bill Pay Enrollment process and be approved to use the Service by CheckFree, the provider of the Service. Bank is not responsible for the Bill Pay Service and does not guarantee or warrant any of these services.
3. **Wire Transfer Service.** Heritage Direct Online Banking may allow Client to initiate funds transfers in accordance with this Section (the "Wire Transfer Service"). Client may submit funds transfer requests ("Requests") to Bank in accordance with the terms and conditions of this Section. A "Request" includes a Payment Order. Client is responsible for all Requests to the fullest extent provided by law and as set forth in this Section. Bank may choose the funds transfer mechanism (for example, FedWire, correspondent bank transfer, or internal transfer) to be used when acting upon Client's Request.
  - 3.1. **Transmission.** All Requests must be provided to Bank through the Heritage Direct Online Banking system, in the form and with the information required by the Heritage Direct Online Banking system.
  - 3.2. **Account Designation.** Client authorizes Bank to debit its designated account, or any other account maintained by Client at Bank, for any fees or other amounts due Bank in connection with the Services.
  - 3.3. **Accuracy.** Client assumes the sole responsibility for providing Bank with accurate transaction information in the form and format that Bank requires. Bank is not responsible for confirming such information, or for failing to detect and reject duplicate Requests. If Client provides Bank with a Request that is incorrect in any way, Client agrees that Bank may charge Client's accounts for the transaction whether or not the error could have been detected by Bank. Bank is not obligated to detect errors in Client's transfer or payment instructions.
  - 3.4. **Security Procedures.** For the purpose of this Section 3. Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the Wire Transfer Service as provided in the Enrollment Form to this Agreement or otherwise.
  - 3.5. **Foreign Currency Transactions.** If a Request is for a funds transfer in United States Dollars or in a currency other than United States Dollars to a foreign country, Bank may transfer the payment in the currency of the beneficiary bank's country at any exchange rate chosen by Bank. If for any reason the transfer is returned, Client agrees to accept the refund in United States dollars or in foreign currency, as received by Bank. If received in United States dollars, Client acknowledges and agrees that one or more sending banks may have engaged in currency conversions, and agrees to accept an amount of United States dollars after conversion from the foreign money whether based on the buying rate of the bank(s) converting the currency to United States dollars on the date of refund, or based on Bank's current conversion rate and less any charges and expenses incurred by Bank.

The exchange rates used for processing may be a rate selected by Bank or other intermediaries from a range of rates available in wholesale currency markets, which rate may vary from the rate the Bank or the other intermediaries themselves receive, or the government-mandated rate (if any) in effect. These rates may not be the lowest available to Client, or to Bank or other intermediaries.
  - 3.6. **Fees.** In addition to the Fees and Charges described in Section 9. of Part A that Bank may charge for the Wire Transfer Service and Requests, Client agrees and acknowledges that a Request in Client's name also constitutes Client's instruction to Bank, as well as to any intermediary bank used to process the Request, to obtain payment of Bank's and the intermediary bank's charges for services and expenses in connection with the execution of the Request by completing the funds transfer in an amount equal to the amount of the Request less the amount of Bank's and intermediary bank's fees and charges. The intermediary bank used to process the Request is specifically authorized by Client to impose such fees and charges. Client agrees that if any intermediary bank imposes its fees and charges in connection with executing a Request by reducing the amount of the Request by the amount of the fees, Bank will not be liable in any manner whatsoever for Client's damages. This non-liability is without regard to whether the intermediary bank was chosen by Bank.
  - 3.7. **Subject Rules and Regulations.** Client acknowledges that any Request executed by Bank will be subject to rules and regulations applicable to payment orders, including recordkeeping and information transmittal requirement under federal Bank Secrecy Act and its implementing regulations. Client acknowledges and agrees that Bank may capture and transmit information regarding a Request (for example, beneficiary's name, address other beneficiary identifies and beneficiary's account number) as part of the processing of a payment order. Client agrees to assist Bank in connection with any requirements imposed on Bank fulfilling Bank's obligations in this regard.
  - 3.8. **Notice of Returned Entries.** Bank will notify Client of a returned funds transfer made pursuant to a Request no later than the next business day after receipt. Bank is under no obligation to re-execute a Request. , In addition to any retention obligations of Client otherwise provided under the Agreement, Client will retain data on file adequate to permit reprocessing of Requests and amendments to or cancellations of a Request for 90 days following the execution date, and will provide such data to Bank upon request.
4. **ACH Service.** Heritage Direct Online Banking may allow Client to initiate ACH Entries (the "ACH Service") by means of the Automated Clearing House ("ACH") Network pursuant to the terms of this Section, the NACHA Rules and the rules of the local Automated Clearing House Association (collectively the "Rules"). Bank is willing to act as an Originating Depository Financial Institution or "ODFI" (as that term is defined in the NACHA Rules) with respect to such Entries. Accordingly, Client may submit ACH Entries to Bank in accordance with the terms and conditions of this Section. Client is responsible for all Entries to the fullest extent provided by law and as set forth in this Section.
  - 4.1. **The Rules.** A copy of the NACHA Rules can be purchased from NACHA at [www.NACHA.org](http://www.NACHA.org). Client agrees to obtain a copy, to understand and be familiar with the Rules, and to be responsible for keeping up to date with changes in the Rules. Client agrees that information or advice received by Client from Bank as to the Rules or the operation of the Rules is not legal advice and is not a substitute for Client's obligation independently to understand and comply with the Rules.

- 4.2. *Processing Entries.* Subject to Bank's approval, Client may submit ACH Entries to Bank in compliance with the formatting and other requirements set forth in the Rules and the Supporting Documents. The ACH Service will start on a date agreeable to Client and to Bank after all set up requirements have been completed.

Client will not submit individual or total monthly Entries in excess of the maximum limits established by Bank and reflected in the Enrollment Form to this Agreement, as amended from time to time, or otherwise communicated by Bank to Client. The parameters and variations of the limits shall be set at Bank's discretion, including but not limited to limits based on dollar amounts and/or types of "Standard Entry Class Code" (as that term is defined in the NACHA Rules). Client will not divide a transaction into more than one Entry in order to avoid these limitations. Bank may adjust these limitations from time to time by providing notice to Client. Bank's processing of Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision; Bank may cease processing Entries in a greater amount at any time without prior notice.

Client may not originate Entries using Standard Entry Class Codes other than those agreed upon or established by Bank without prior notice to and written approval by Bank. Bank may require Client to submit an application in form and content acceptable to Bank, and execution by Client of such supplemental schedules, agreements and other documents as Bank may require, as a condition precedent to Client's use of other Standard Entry Class Codes. By way of example, the foregoing restrictions and requirements may apply to Client's use of ARC, RCK, BOC, POP, WEB, IAT or TEL Standard Entry Class Codes, or if Client is engaging in cross-border (international) transactions. Bank may block unapproved use of a Standard Entry Class Code or an unapproved cross-border transaction.

Except as provided below for "On-Us Entries," Bank shall: (i) process Entries received from Client to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an ODFI to an ACH Operator selected by Bank in its sole discretion ("ACH Operator"), and (iii) settle for such Entries as provided in the Rules. Bank shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, one Business Day prior to the "Effective Entry Date" (as that term is defined in the NACHA Rules) shown in such Entries, provided: (a) such Entries are received by Bank's related cut-off time on a Business Day, (b) the Effective Entry Date is at least two Business Days after such Business Day for credit Entries, or at least one Business Day after such Business Day for debit Entries, and (c) the ACH Operator is open for business on such Business Day. If any of the requirements of this Section 4. of Part B are not met, Bank may use reasonable efforts to transmit such Entries to the ACH by the next deadline of the ACH Operator which is a Business Day and a day on which the ACH Operator is open for business.

- 4.3. *Security Procedures.* For the purpose of this Section 4. of Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the ACH Service as provided in the Enrollment Form to this Agreement or otherwise.

- 4.4. *On-Us Entries.* In the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in this Section 4. of Part B are met. If said requirements are not met, Bank may use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

- 4.5. *Same-Day Credit Entries.* Subject to Bank's prior approval, the ACH Service permits Client to elect to have Client's ACH credit Entries originated on a "same-day" basis, for settlement on the same day as the Effective Entry Date. Eligible ACH credit Entries received on a business day by the applicable cutoff hour for same-day Entries, will be treated as a "same-day" ACH Entry. For this purpose "eligible ACH credit Entries" will mean ACH credit Entries: (i) received on a business day by the cutoff hour for same-day Entries, (ii) that are less than \$25,000, and (iii) that contain an effective Entry date for the same day as receipt, or a stale or invalid date. Effective September 15, 2017, eligible ACH debit Entries will also be eligible for same-day processing. To qualify as an "eligible ACH debit Entry," the Entry must meet the same criteria outlined above for eligible ACH credit Entries. Bank does not represent, warrant or otherwise guarantee that receiving depository financial institutions will post same-day ACH Entries by applicable deadlines. Bank may utilize same-day processing for any Entry that qualifies as an "eligible" same-day Entry even if Client did not intend the Entry to be processed using same-day processing. In such cases, Client is still responsible for all fees associated with same-day processing.

- 4.6. *Returned or Rejected Entries.* Bank shall notify Client by phone, facsimile or other electronic transmission, including email, of the receipt of a returned or rejected ACH Entry no later than one Business Day after the Business Day of receipt. Except for an Entry retransmitted by Client in accordance with the requirements of this Section 4. of Part B, Bank shall have no obligation to retransmit a returned Entry if Bank complied with the terms of this Section 4. of Part B with respect to the original Entry.

Bank may reject any Entry including, without limitation, an On-Us Entry: (i) which may be rejected under the Rules; (ii) if the total dollar amount of all Entries to be executed by and on behalf of Client on any one day exceeds the exposure limitations as specified by Bank (see Section 4.2 of Part B); (iii) that uses Standard Entry Class Codes not specifically and previously authorized by Bank for use by Client; or (iv) which contains an Effective Entry Date more than five days after the business day on which Bank receives the Entry. If Bank rejects an Entry under this Agreement or for any reason (including legal process or compulsion), Bank may reject or take any other action allowed for the Entry against an entire ACH file or files from Client.

- 4.7. *Prenotifications.* If Client chooses to originate non-dollar prenotification Entries to verify the accuracy of routing and account numbers, it agrees not to initiate live dollar Entries until at least three (3) banking days have passed following the Settlement Date of the prenotification Entry. Prenotifications will be provided to Bank in the format provided in the Rules. If Client receives notice that a prenotification has been rejected or returned, Client will research the problem and make any necessary corrections before transmitting another Entry.

- 4.8. *Notifications of Change.* Bank shall notify Client of all Notifications Of Changes (NOC) received by Bank relating to Entries transmitted by Client by phone, facsimile or other electronic transmission, including email, no later than two Business Days after the Business Day of receipt. Client must make the changes specified in an NOC or corrected NOC: (a) within six Business Days of receipt or prior to initiating another Entry to the Receiver's account, whichever is later; or (b) as otherwise required in the Rules, if the Rules specify a different time for correction.

4.9. *Prefunding; Payment.* Bank may designate Client as “ACH Prefunding,” and Bank may change Client’s designation to or from ACH Prefunding at any time, with or without cause and at Bank’s sole discretion. Bank will inform Client of its designation as an ACH Prefunding client, and of any change in the designation.

Client will pay Bank, in immediately available funds, an amount equal to the sum of all credit Entries or debit Reversals related to Entry data delivered to Bank at such time as Bank may designate or, if not otherwise designated: (a) if Client is not an ACH Prefunding client, no later than the Effective Entry Date; and (b) if Client is an ACH Prefunding client, no later than the date of transmittal of the related Entry data to Bank or at such other time as Bank may have established for Client.

4.10. *Tax Payments.* Client may originate federal and state tax payments using Heritage Direct Online Banking (“Tax Payments”). To help facilitate Client’s origination of Tax Payments, Bank may provide Client a template that Client may utilize to originate federal and state tax payments using Heritage Direct Online Banking. However, given changes that may be made from time to time by the federal and state tax authorities with regard to making tax payments by ACH transactions, Bank does not at any time warrant that the template provided to Client for the origination of Tax Payments will work satisfactorily for purposes of originating federal and state tax payments, and it is the Client’s responsibility to frequently test and ensure the template works for Client’s purposes. For avoidance of any doubt, Bank is not responsible for any federal or state tax payments that are not made or untimely made to the federal and state tax authorities as a result of any problems with the template provided by Bank. Additionally, Client agrees that if the template is or at any time becomes insufficient for Client to timely originate Tax Payments, Client will immediately notify Bank and at that time Bank may in its sole discretion decide to update the template as needed or decide to no longer offer Client the option of originating Tax Payments. Upon Bank’s request, Client agrees to execute such additional enrollment forms and authorizations as Bank may request with respect to the origination of Tax Payments. Client authorizes Bank to release account and tax payment information to any taxing authority in processing Tax Payments and to confirm payments.

CLIENT MUST BE PRE-ENROLLED WITH THE FEDERAL AND/OR STATE TAXING AUTHORITIES PRIOR TO ORIGINATING TAX PAYMENTS. Client warrants that Client is enrolled in the Electronic Federal Tax Payment System (EFTPS) and has selected the ACH Credit option. Client also warrants that all special requirements of the EFTPS system have been met. Client also warrants that Client has completed appropriate enrollment requirements with each state taxing authority, as applicable.

Client is solely responsible for determining the amount of any taxes due and transmitting the correct payment information in accordance with the applicable requirements. Client must furnish Bank with complete and accurate tax payment information. Bank is not responsible for: (i) determining the correctness of any tax computation or payment; (ii) questioning the timing or amount of the payment; (iii) determining or questioning the correctness of any report or information submitted by Client (even if it appears incorrect on its face); or (iv) any penalty which may be imposed if Client instructs Bank to make a payment after Bank’s cut-off time or the date the tax payment is due.

Bank will notify Client orally, electronically or in writing if Bank is unable to process any Tax Payment, and will do so no later than the Business Day following the payment date. If Client fails to maintain sufficient collected and available funds in Client’s account, Bank may refuse to process the Tax Payment. If any payment is rejected, it will be Client’s responsibility to resubmit the payment instruction. If Client does not have sufficient or available funds, Client may be charged an insufficient funds fee and any other fees or charges applicable to the transaction.

Bank will charge Client’s Account for the amount of a Tax Payment when the payment is processed, or at Bank’s option on the corresponding Settlement Date.

Client assumes the risk of any failure to submit payment instructions to Bank in a timely and correct manner. Payments should be submitted at least two Business Days prior to the due date. Any interruption of Bank’s acceptance or processing of any Tax Payment, regardless of the reason, will not relieve Client of Client’s obligation to make a federal or state tax payment or report. Client is ultimately responsible for promptly making any such required tax payment or report. Client is responsible for promptly making required federal or state tax payments by another means in the event there is an interruption in Bank’s acceptance or processing of Tax Payments. Client agrees to be bound by the Rules, as amended from time to time, and all laws and regulations of the United States.

Client acknowledges that Bank’s employees are not authorized or permitted to give tax advice to Client. Client agrees not to seek or place any reliance upon tax advice from Bank or Bank’s employees. To cancel a request for a Tax Payment that Client has scheduled, Client must cancel online prior to Bank’s processing of the request. Payments cannot be cancelled after this time. Bank may, at Bank’s discretion, seek to assist Client in attempting to cancel or amend any payment but is not obligated to do so. If Bank does, Client will indemnify Bank in accordance with this Agreement for any losses Bank may suffer in connection with Bank’s efforts.

4.11. *Client Representations and Warranties.* In addition to the representations and warranties provided by Client under the Agreement, with respect to each and every Entry initiated by Client, Client represents and warrants to Bank and agrees that:

- a. Client shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two years after they expire and other documents related to Entries for a period of six years. Without limiting the foregoing, each person as the Receiver of an Entry received by Bank from Client 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. Client will provide Bank with a copy of such authorization whenever requested to do so within five business days. Such authorization is operative at the time of transmittal or crediting/debiting by Bank as provided herein;
- b. Entries transmitted to Bank by Client are limited to those types of credit or debit Entries set forth in this Agreement;
- c. If the amount of a debit Entry to a Receiver’s account varies in amount from the previous debit Entry relating to the same authorization or preauthorized amount, Client will, at least ten days before the Effective Entry Date of such debit Entry, send the Receiver written notice of the amount of such debit Entry and its Effective Entry Date, unless the Receiver has previously been notified of Receiver’s right to receive such notice and Receiver has elected to receive such notice only when the debit Entry does not fall within a specified range of amounts or varies from the most recent debit Entry by an agreed amount;
- d. If any change is made by Client in the scheduled Effective Entry Date of one or more debit Entries, Client will, at least seven days before the Effective Entry Date of the first such debit Entry to be affected by such change, send the Receiver a written notice of the new Effective Entry Date(s) of such Entry or Entries;

- e. Client shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the treatment of a payment of an Entry by the Receiving Depository Financial Institution (“RDFI”) (as that term is defined in the NACHA Rules) to the Receiver as provisional until receipt by the RDFI of final settlement for such Entry;
- f. Client specifically acknowledges that it has received notice of the Rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Client shall not be deemed to have paid the Receiver the amount of the Entry;
- g. Client will not use the ACH Service to collect: (i) payments for goods or services sold by third parties; (ii) payments relating to adult entertainment, gambling services, or child pornography; (iii) obligations owing to third parties; or (iv) obligations related to cash advances by Client;
- h. Client hereby makes the same representations and warranties to Bank with respect to Entries sent by Bank to an ACH Operator upon the authorization of Client as Bank is deemed to make under the Rules, and Bank shall have no responsibility with respect to matters so represented and warranted by Client; and
- i. Except as previously disclosed in writing by Client to Bank: (i) Client is not a “money-services business” (as defined at 31 CFR 103.11(uu) or successor regulation) and is not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (ii) no Entry data is submitted by Client on behalf of, or as agent, service bureau or processor for another. By way of example, Client will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver.
- j. Client agrees to indemnify Bank against any loss, liability or expense (including attorney’s fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

4.12. *Retention.* In addition to any retention obligations of Client otherwise provided under the Agreement and this Section 4. of Part B, Client agrees to retain and make readily available to Bank on request all information necessary to remake any files of Entries for ten banking days following the Settlement Date.

4.13. *Audit.* In addition to the audit commitments provided under the Agreement, if transactions Client conducts involve some use of the Internet, then Client agrees to conduct an internal security audit at least annually to ensure that the financial information obtained from Receivers is protected by security practices and procedures (“security audit”) that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; (iii) network security to ensure secure capture, storage, and distribution of financial information; and (iv) any other items identified in the NACHA Operating Guidelines of the Rules. Upon Bank’s request, Client agrees to have an external security audit conducted within sixty (60) days of the request. The external security audit will include the same items described in this paragraph for an internal security audit. Client agrees to provide Bank with a copy of each internal and external audit report, as applicable, in a format acceptable to Bank within (30) days from the completion of the audit.

Without limiting the foregoing, Client specifically agrees to establish data security policies, procedures and systems as required by the Rules. This requires Client to:

- a. Protect the confidentiality and integrity of Protected Information
- b. Protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and
- c. Protect against unauthorized use of Protected Information that could result in substantial harm to a natural person

Such policies, procedures, and systems must include controls that comply with applicable regulatory guidance on access to all systems used by Client to initiate, process and store Entries. The Rules define Protected Information as the nonpublic personal information, including financial information, of a natural person used to create or contained within an Entry and any related Addendums record.

5. Positive Pay / ACH Debit Block and Filtering Service. Heritage Direct Online Banking may allow Client to use the positive pay service (“Positive Pay Service”) and/or the ACH filtering/blocking service (“ACH Debit Block and Filtering Service”), collectively the Positive Pay / ACH Debit Block and Filtering Service, described in this Section.

5.1. *Account Designation.* During Client’s enrollment in the Positive Pay / ACH Debit Block and Filtering Service Client will maintain Account(s) with Bank designated in the Enrollment Form or otherwise in writing, to which the Positive Pay / ACH Debit Block and Filtering Service will be made available (collectively the “Designated Account”). Except as specifically provided in this Section 5. of Part B, the Positive Pay / ACH Debit Block and Filtering Service do not cover the handling of the Designated Account or the processing of checks or electronic funds transfers against the Designated Account. As a result, the Designated Account will be subject to, and Client’s operation of the Designated Account will be in accordance with, the terms and provisions of Bank’s deposit account agreement governing the Designated Account, a copy of which Client acknowledges having received.

5.2. *Security Procedures.* For the purpose of this Section 5. of Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the Positive Pay / ACH Debit Block and Filtering Service as provided in the Enrollment Form to this Agreement or otherwise.

5.3. *Positive Pay Service.*

- a. The Positive Pay Service provides certain account services through an automated check matching system. Client’s lists of Client Checks recently issued will be compared against the amounts and check numbers of the checks that actually clear against the specified Client account(s) listed on Enrollment Form and that are approved by Bank for the Positive Pay Service. Client agrees that Bank will only be obligated to match the check number and dollar amount from the Check Issue Data (defined below) and that Bank may in its sole discretion, but is not obligated to, match additional data provided in the Check Issue Data (“Additional Data”), including but not limited to payee name. Regardless of whether Bank decides to match against Additional Data, and notwithstanding the fact that Additional Data may be included in the Check Issue Data, Client further agrees that Bank will not be liable to Client and Client agrees to hold Bank harmless from loss or liability resulting from Bank’s action or inaction with respect to Additional Data. Bank’s determination to match Additional Data in any case will

not obligate Bank to continue to do so in other instances. Notwithstanding the foregoing, Bank and Client may agree to Bank's review of Additional Data, subject to additional terms, fees and conditions.

- b. Client must submit a file ("Check Issue Data") to Bank prior to the cut-off time provided in the Enrollment Form on the day of issuance of any checks against accounts that are subject to the Positive Pay Service. The Check Issue Data must be in the format and contain the information specified by Bank in the Supporting Documentation.
- c. The term "presented item(s)" shall mean checks that are presented for payment against the Designated Account through the normal check collection system. Presented items that do not match an item included in a Check Issue Data, pursuant to this Section, will be identified as Exception Items. Client must submit a "pay" or "return" decision for each Exception Item to Bank on the same Bank Business Day by the deadline specified in the Enrollment Form.
- d. Client grants Bank full authority to honor all checks that match the check numbers and amounts corresponding to the issue records maintained at Bank.
- e. Unless otherwise indicated in writing or email submitted by Client to Bank in the form and containing the information that Bank chooses to require in its sole discretion, the Bank's default is to "pay" any Exception Item for which Client has not submitted a return request on the same Business Day by the deadline specified in the Enrollment Form. Subject to Bank's approval, requests to change the default made on a Business Day before the applicable cut-off hour provided in the Enrollment will take effect the following Business Day, and such requests to change the default made on a non-Business Day or after the aforementioned time on a Business Day will take effect the second Business Day following the date of the request to change the default.
- f. In the event Bank pays an Exception Item as described above in Section 5.3.e of Part B, Client agrees that: (i) Bank will be deemed to have exercised ordinary care under the loss allocation provisions of California Commercial Code Sections 3406(b) and 4406(e); (ii) it will be rightful honor by Bank, and the item will be deemed properly payable; and (iii) Client waives any right Client may have to assert that the item was not properly payable under California Commercial Code Section 4401 or any applicable clearing house rule, or otherwise.
- g. If Client orders or prints checks from any check-printing vendor other than a Bank selected vendor, Client agrees to meet the Bank's MICR encoding specifications.
- h. The Positive Pay Service applies to checks that are presented for payment to Bank through normal interbank automated clearings. Client acknowledges that the Positive Pay Service does not cover checks which are (collectively "ineligible checks"): (i) presented over-the-counter, (ii) presented by mail for collection, (iii) misencoded or duplicate items, and (iv) items which Bank has already cashed, negotiated or paid or which Bank is already committed to honor or pay under applicable laws, regulations or the ACH Rules. Bank may, in its sole discretion, attempt to compare Check Issue Data or other data, as otherwise provided in this Section 5. of Part B, against ineligible checks, but Bank will not be liable for its failure or refusal to do so.
- i. Subject to funds being available pursuant to Bank's funds availability policy, Bank shall honor all checks which are marked as Exception Items and for which Client has not submitted a "return" decision, unless the default for paying items has been changed in accordance with paragraph e. above of this Section 5.3 of Part B.

#### 5.4. *ACH Debit Block and Filtering Service.*

- a. Client may use the ACH Debit Block and Filtering Service to review and confirm ACH debit and credit transactions that post to the specified Client accounts listed on Enrollment Form and approved by Bank for use with the ACH Debit Block and Filtering Service.
- b. Client shall establish (and update from time to time) through Heritage Direct Online Banking , or in a manner acceptable to Bank, its ACH policies which govern permissible transactions by originating company ID, Standard Entry Class Code, dollar range, and/or transaction code, as specified further in the Supporting Documentation. Alternatively, if Client chooses to block ACH Debit Entries versus filtering ACH Debit Entries for specified Accounts, all incoming ACH transactions (debit or credit) may be treated as exceptions and available for the Client's review.
- c. Client shall review exceptions it receives from Bank as communicated through Heritage Direct Online Banking, and determine if the exceptions will be treated as authorized or unauthorized ACH transactions. Note that upon receiving a communication from Bank to Client through Heritage Direct Online Banking, an email notification may be sent to Client's email address found in Bank's records alerting Client to the communication.
- d. Client shall make its exceptions decisions through Heritage Direct Online Banking on each Bank Business Day by the deadline specified in the Enrollment Form.
- e. Client acknowledges that the Services do not cover ACH debit or credit items which Bank has already paid or finalized or which Bank is already committed to pay or honor under applicable laws, regulations or the ACH Operating Rules.
- f. Bank shall compare incoming ACH debit and credit transactions against Client's established ACH policies and accept those transactions which are authorized under Client's ACH policies as established by Client in the System. Bank shall be entitled to rely exclusively on any blocking or filtering instructions provided to Bank by Client, and Bank shall not be required to review Entries to determine if the blocking or filtering instructions provided by Client are consistent with other information contained in an Entry, including the name of the "Originator" (as that term is defined in the NACHA Rules). Bank shall not be liable for action or inaction taken based on Client's information, even if Bank is aware of contrary or inconsistent information in an Entry. Client understands that any error in the Originator identification number will make the block or filter instructions ineffective. Bank will not be responsible for blocking or filtering Entries which contain different or varied Originator identification numbers, including from an Originator previously blocked or authorized but that has altered its identification number (whether to circumvent the block or for other reasons), notwithstanding the same or a similar Originator name is identified in the Entry or was otherwise known to Bank.
- g. Bank shall submit to Client as exceptions any ACH transactions which do not meet Client's ACH policies.

- h. Bank shall make reasonable efforts to make exceptions available to Client on each Bank Business Day by the deadline specified in the Enrollment Form.
  - i. Bank will return and will reflect in Client's account records as posted and returned any ACH exceptions Client does not choose to pay. Generally, unauthorized ACH debit transactions will be returned on the Bank Business Day following posting.
  - j. If Client's default decision is "Pay", and the Bank makes payment of an ACH Entry in accordance with Client's selection, Client agrees that the ACH transaction(s) in question will be posted to Client's Account as properly payable and authorized even if they are not entries that were authorized by Client. When processed in accordance with Client's default decision, Client waives any right Client may have to assert that a transaction or Entry was not properly authorized under the NACHA Rules, or otherwise. If Client's default decision is to "Return", and the Bank returns an ACH Entry as unauthorized in accordance with Client's selection, Client: (i) waives any rights Client may have to assert that the return of the Entry was wrongful under any Rule, or otherwise; and (ii) agrees that the Bank has exercised ordinary care.
  - k. Unless otherwise indicated in writing or email submitted by Client and agreed to by Bank in the form and containing the information that Bank chooses to require in its sole discretion, the Bank's default is to "pay" any item showing as an exception for which Client has not submitted a decision to return the item on the same Business Day by the deadline specified in the Enrollment Form. Subject to Bank's approval, requests to change the default made on a Business Day before 5:00 p.m. will take effect the following Business Day, and such requests to change the default made on a non-Business Day or after the aforementioned time on a Business Day will take effect the second Business Day following the date of the request to change the default.
- 5.5. *System Interruption or Failure.* In the event of system interruption or failure, either that of Client's or Bank's system, resulting in Bank's inability to receive or process Client's Check Issue Data or other communication, the Check Issue Data or other Client communication will be deemed as having not been sent by Client, even if Bank has possession of the Check Issue Data or other Client communication.
- 5.6. *Limitation on Liability.* In addition to any other limitation on liability described in the Agreement, Client agrees that if Bank pays or rejects for payment checks or items in accordance with this Section 5. of Part B, Client releases Bank and holds it harmless from any claim that the checks or items were not properly payable, or for wrongful dishonor, as applicable.
6. Remote Deposit Capture Service. Heritage Direct Online Banking may allow Client to remotely deposit Checks of its customers ("Remote Deposit Capture Service"). The Remote Deposit Capture Service allows for the conversion of Checks to Substitute Checks or Image Exchange Items, which would enable Client to transmit paper checks converted to Imaged Items to Bank for processing and deposit into the designated account of Client maintained at Bank. Client desires to use the Remote Deposit Capture Service to facilitate the services as identified in and subject to this Section. To the extent Client uses a Wireless Access Device to present Imaged Items to Bank for processing, the terms of the Mobile Banking Service (described in Section 7. Part B) will also apply. Bank reserves the right, with prior written notice to Client, to place, from time to time, limits on Client's right to use the Remote Deposit Capture Service.
- 6.1. *Definitions.* Unless otherwise defined below or in this Section 6. of Part B, terms in this Section 6. of Part B shall have the meaning provided in the Agreement.
- a. "Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.
  - b. "Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Paying Bank without conversion to a Substitute Check.
  - c. "Imaged Item" means the digitized image of a Check that is created by Client and transmitted to Bank using the Remote Deposit Capture Service.
  - d. "Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution and payable or endorsed to Client, and includes Original Checks, Substitute Checks and Image Exchange Items.
  - e. "Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Paying Bank.
  - f. "Non-qualifying Item" means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, demand drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or post-dated, savings bonds, Items payable to "cash," Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds Client's transaction limitations as established by Bank from time to time.
  - g. "Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
  - h. "Paying Bank" means the United States financial institution ordered in an Item to make payment to the payee(s) named on the Item.
  - i. "RDC Account" has the meaning provided below in Section 6.1 of Part B.
  - j. "Remote Deposit Capture Services" means the services described in this Section 6. of Part B, to be provided by Bank to Client to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items.
  - k. "Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.
  - l. "UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of the Remote Deposit Capture Service.

- m. "United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.
- 6.2. *Primary Account Designation.* Client may use the Remote Deposit Capture Services to facilitate a deposit to any deposit account Client has with Bank (other than those with deposit restrictions, such as certificate of deposits). The account to which Client designates a deposit shall be referred to as the "RDC Account" for the purpose of this Agreement and the deposit transaction. Client authorizes Bank to debit the RDC Account (or any other account maintained by Client at Bank) for any fees or other amounts due Bank in connection with the Remote Deposit Capture Services. If the RDC Account is closed for any reason, Client's Remote Deposit Capture Services will be stopped along with any unprocessed Remote Deposit Capture Services transfers. To reinstate its Remote Deposit Capture Services, Client must designate a new RDC Account.
- 6.3. *Security Procedures.* For the purpose of this Section 6. of Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the Remote Deposit Capture Service as provided in the Enrollment Form to this Agreement or otherwise.
- 6.4. *Client Rights.* Subject to the terms of this Section 6. of Part B, Bank hereby grants Client a non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with Client's own business operations in accordance with the Supporting Documents.
- 6.5. *Client Responsibilities.* In connection with the Remote Deposit Capture Services, Client shall comply with the following:
- a. Client shall maintain the RDC Account at Bank for the receipt of deposits of Items.
  - b. The electronic images of Checks will be transmitted by Client to Bank, or Bank's authorized processor, over the Internet through a secure web-based interface, in accordance with this Agreement.
  - c. Client's RDC Account will be provisionally credited upon Bank's acceptance of the Imaged Items for deposit which are received by Bank from Client through the Remote Deposit Capture Service.
  - d. Client will maintain the RDC Account for Client to receive credit and provide other specific information required by Bank related to the Remote Deposit Capture Service. As set forth in this Section 6. of Part B, all deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the deposit account agreement governing Client's accounts.
  - e. Client will create images of Checks at Client's location by use of scanning hardware and Software approved or provided by Bank. Client will enter all amounts and any other required information correctly and in accordance with the Supporting Documents.
  - f. Client will only submit Checks for processing to Bank that meet the definition of "Item" as provided in this Section 6. of Part B and will ensure that the Items scanned meet the then current ANSI X9 standards for image quality required by Regulation CC, or other standards established or required by Bank or applicable law, as amended from time to time. Client will not process any Non-qualifying Items. Bank's processing of any Non-qualifying Items shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.
  - g. Client will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank. Notwithstanding the foregoing, Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the deposit account agreement governing Client's accounts.
  - h. Client will not attempt to scan and transmit to Bank any third party checks.
  - i. Client will (i) ensure that Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks as set forth in this Section 6. of Part B and in the Supporting Documents, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.
  - j. Except to the extent otherwise expressly agreed by Bank, Client will provide, at its own expense, a broadband Internet connection, such as via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Remote Deposit Capture Service, all of which must satisfy any minimum requirements set forth in the Supporting Documents or as otherwise may be acceptable to Bank. Except to the extent otherwise provided in this Section 6. of Part B or the Supporting Documents, Client will provide, or obtain from another party selected by Client at Client's expense, support and maintenance of such Internet connection and all other computer hardware, software, and equipment required to use the Remote Deposit Capture Service, including without limitation troubleshooting Internet connectivity issues with Client's internet service provider (ISP).
  - k. Client will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to Bank.
  - l. Client will balance transactions transmitted from the previous Business Day and immediately notify Bank of any error or discrepancy discovered.
  - m. Unless Bank specifically agrees otherwise in writing, Client will not use the Service to deposit any Check or Checks that exceed the transaction limits established by Bank from time to time. Bank may communicate the transaction limits, including changes to the same, by written or electronic notice to Client.
  - n. Client will be responsible for verifying Bank's receipt of Client's transmission(s) by verifying that deposits have been posted to the RDC Account, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
  - o. Client will maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Section 6. of Part B.

- p. Client will not engage in any activity directly or indirectly related to the use of the Remote Deposit Capture Service that is illegal or fraudulent.
- 6.6. *Equipment.* To the extent Bank provides equipment for Client's use of the Remote Deposit Capture Service, Client is responsible for the maintenance of the equipment and Bank may require Client's use of the same to be subject to separate terms. If any equipment is lost, stolen, or damaged in such a manner that Client cannot comply with the capture, transmission, processing, and other applicable procedures and requirements of this Section 6. of Part B, Client agrees to immediately inform Bank and Bank may then provide to Client new equipment or require Client to obtain and substitute new equipment that is acceptable as shown in the Supporting Documentation, before Client continues using the equipment and the Remote Deposit Capture Services. If Client's use or maintenance resulted in damage to any Bank-provided equipment, Client agrees to reimburse Bank on demand for Bank's costs to repair the equipment.
- Client shall be responsible for installing and implementing any changes and upgrades to the equipment as required by Bank, and to do so within 5 days of notice to Client of the same, including when provided to Client as part of an effort by Bank to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the equipment or the Remote Deposit Capture Services. Client will ensure that the equipment is clean and operating properly, and will inspect and verify the quality of images and ensure that the digitized images of Original Checks are legible for all posting and clearing purposes. Client will be solely responsible for verifying the compatibility of any equipment used with the Remote Deposit Capture Service. Client will comply with all capture, transmission, processing, and other applicable procedures and requirements of this Section 6. of Part B (including any Supporting Documentation), the equipment and the Remote Deposit Capture Services. Client will only use the equipment and Remote Deposit Capture Services for Client's own internal business purposes and in accordance with this Section 6. of Part B.
- 6.7. *Software.* At any time during the Client's enrollment in the Remote Deposit Capture Service, Bank may require in its sole discretion the use of Software in connection with the Remote Deposit Capture Services.
- a. To the extent Bank requires the use of Software in connection with the Remote Deposit Capture Service, Client will implement and use the Software, as set forth in the Supporting Documents and any applicable materials relating to the Supporting Documents to transmit output files to Bank.
  - b. Client acknowledges that (i) its license to any Software that may be required for the Remote Deposit Capture Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Client or otherwise provided to Client, (ii) Bank may provide certain "first level" support to Client with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Client with respect to the Software, and (iii) Client will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.
  - c. Client will use the Software solely for the purpose of transmitting Imaged Items and other information to Bank consistent with this Section and not for communications with any other party. Client will not allow access to the Software or the use of the Remote Deposit Capture Service by any person other than Client, and will only process Items arising from a transaction or obligation between Client and its direct payer. Without limiting the foregoing, Client agrees to implement and maintain separation of duties and dual control procedures at Client's location(s) to ensure compliance with the limitation on access commitments provided under this Section 6. of Part B.
  - d. Client will promptly return all copies of the Software and Supporting Documents, including materials related to the Supporting Documents, to Bank upon termination of the Remote Deposit Capture Service.
  - e. To ensure Client's retention obligations under this Section 6. of Part B, Client agrees to implement and maintain business continuity procedures, including but not limited to those needed to ensure proper backup of data and periodic testing of the same.
  - f. Bank may, from time to time, require and change the Software required for the Remote Deposit Capture Service. Client will be responsible to install and implement and changes to the Software within five (5) days following notice of such change.
- 6.8. *Retention and Destruction of Original Check.* Client will retain each Original Check in accordance with the Supporting Documents. If not directed otherwise by the Bank, Client will store Original Checks in a safe and secure environment for a minimum of 10 Business Days, but not exceeding 30 Business Days after such Item has been digitized and processed. Client shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to Original Checks, and (ii) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties. Client will promptly (but in any event within 5 Business Days) provide any retained Original Check (or, if the Original Check is no longer in existence, a sufficient copy of the front and back of the Original Check) to Bank as requested to aid in the clearing and collection process, or to resolve claims by third parties with respect to any Item or as Bank otherwise deems necessary. Client will use a commercially reasonable method which is consistent with any requirements of Regulation CC and approved by Bank to securely and permanently destroy Original Checks after Client's retention period has expired.
- 6.9. *Processing Times.*
- a. Imaged Items processed for deposit through the Remote Deposit Capture Service will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at the location where Bank or its designated agent posts the credit to the RDC Account. A deposit of Imaged Items will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Bank has preliminarily verified that the image quality of the Imaged Items is acceptable to Bank in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Bank for deposit may be rejected by Bank in Bank's sole discretion.
  - b. Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Client. Client agrees to view the images of each scanned Item that is sent to Bank. If Item information received by Bank is not complete or cannot be processed by Bank for any reason, Bank may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to Client's RDC Account. Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.

- c. If an Imaged Item is not accepted for deposit, Client may then submit the Original Check to Bank for processing or contact the maker to reissue the Check. If Client submits the Original Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Paying Bank and may instead require Client to have the maker reissue the Check.
- d. It is Client's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank as set forth in the Agreement or as otherwise established by Bank. Client is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

6.10. *Returned Items.* Client understands and agrees that an Item that is not paid by a Paying Bank, or is otherwise returned for any reason, will in Bank's discretion be: (i) re-presented to the Paying Bank; or (ii) returned to Client and Client's RDC Account charged for the amount of the Item plus any associated fees as disclosed in Bank's applicable fee schedule, which may be changed from time to time in Bank's discretion. Client agrees that Items may be returned as Image Exchange Items, rather than Substitute Checks. Bank's right to charge the RDC Account of Client will apply without regard to whether the Item is timely returned to Bank or whether there is any other claim or defense that the Item has been improperly returned to Bank.

6.11. *Bank Rights and Responsibilities.*

- a. For all Imaged Items processed by Client pursuant to this Section 6. of Part B, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Imaged Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Supporting Documents and as otherwise established by the Bank from time to time.
- b. Unless otherwise agreed by Client and Bank, Bank will process any returned Items in accordance with applicable law and the account agreement governing the deposit account to which the deposit was made.
- c. Subject to the terms of this Section 6. of Part B, availability of credit from Items processed via the Remote Deposit Capture Service will be subject to the availability schedule of Bank, which may be amended from time to time.
- d. Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish transaction limitations and assign them to Client.
- e. Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In the event of any failure or delay, Client acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment, provided such Original Items have not been previously imaged and processed in connection with the Remote Deposit Capture Services.
- f. In addition to any other rights Bank may have with regards to the accounts of Client, Bank may hold and use funds in any Client account following termination of this Section 6. of Part B for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, Client recognizes that under the UCC, Regulation CC and the rules of any image exchange network Bank's representations and warranties as regards Image Exchange Items and Substitute Checks may expose Bank to claims for several years following processing of the Image Exchange Item or Substitute Check.

6.12. *Client Representations and Warranties.* Client makes the following representations and warranties with respect to each Item, including Non-qualifying Items, processed by Client pursuant to this Section 6. of Part B:

- a. The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time Client converted the Original Check to an Imaged Item;
- b. The Imaged Item contains all endorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- c. Except as otherwise specifically disclosed in writing to Bank, Client is not now engaged, and will not during the time Client is enrolled in the Remote Deposit Capture Service engage, in any business that would result in Client being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations;
- d. All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network; and
- e. There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Client will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. Client agrees to indemnify and defend Bank against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check.

6.13. *Bank's Liability.* In addition to any limitations in the Agreement, Bank will not be liable to Client for any refusal of a Paying Bank to pay an Image Exchange Item or Substitute Check for any reason (other than the gross negligence or willful misconduct of Bank), including without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.

## 7. Business Mobile Banking Service.

- 7.1. *Generally.* The Business Mobile Banking Service (“Mobile Banking”) provides wireless access to the Services. Some Services may not be accessible while using Client’s wireless access device (“Wireless Access Device”). Additional Mobile Banking Services may be added to or removed by Bank from time to time. Some Mobile Banking Services may not be available without special application to and approval by Bank, may be limited to specific types of accounts, and may require Client to agree to additional terms and conditions which may be presented online at the time the feature is activated. Client assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Mobile Banking Service or disclosure of any confidential information or instructions by Client, or anyone acting on Client’s behalf.

**Client acknowledges that Client’s mobile service provider may charge for sending and receiving text messages on Client’s Wireless Access Device (defined below). Message and data rates may apply. The Mobile Banking Service is limited to accounts within the U.S. For help, text HELP to 99453 and to cancel text alerts, text STOP to 99453 at any time.**

- 7.2. *CLIENT’S CONSENT TO RECEIVE SMS TEXT AND EMAIL MESSAGING.* By accepting these terms Client expressly authorizes Heritage Bank of Commerce and its service providers to send SMS text messages and emails to Client regarding Client’s accounts and financial transactions, in connection with the Mobile Banking Services. Heritage Bank of Commerce may send these messages to any mobile phone or email address Bank has in its records for Client or Client’s accounts. Link to our Privacy Policy <https://heritagebankofcommerce.bank/Privacy-and-Security.aspx>
- 7.3. *Access.* To access and utilize the Mobile Banking Service Client will need a compatible Wireless Access Device that is connected to the Internet through Client’s mobile communications service provider. Bank reserves the right to change, add to, or terminate services with Bank’s third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Mobile Banking Service by other licensors and third-parties.
- 7.4. *Privacy and User Information.* Client acknowledges that in connection with Client’s use of Mobile Banking, Heritage Bank of Commerce and its affiliates and service providers, including Fiserv, Inc. and its affiliates, may receive names, domain names, addresses, passwords, telephone and device numbers, the content of messages, data files and other data and information provided by Client or from other sources in connection with Mobile Banking or the Software (collectively “User Information”). Heritage Bank of Commerce and its affiliates and service providers will maintain reasonable safeguards to protect the information from unauthorized disclosure or use, but reserve the right to use and disclose this information as reasonably necessary to deliver Mobile Banking and as otherwise permitted by law, including compliance with court orders or lawful instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by Client. Heritage Bank of Commerce and its affiliates and service providers also reserve the right to monitor use of Mobile Banking and the Software for purposes of verifying compliance with the law, these terms and conditions and any applicable license, but disclaim any obligation to monitor, filter, or edit any content.
- 7.5. *Software; Limited Use.* To the extent the Mobile Banking Service involves Bank’s having granted Client software license (“software”) usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use the Mobile Banking Service in connection with Client’s use in accordance with this Agreement. The Mobile Banking Service does not involve the sale of software. Nothing in this Agreement will entitle Client to receive technical support, telephone assistance regarding the software, or updates to software. Upon termination, Client agrees to immediately destroy all copies of any software which had been downloaded to Client’s Wireless Access Device or otherwise in Client’s possession and control as part of Client’s access and use of the Mobile Banking Service. Without limiting the generality of the foregoing, Client agrees not to: (a) make the Mobile Banking Service available or allow use of the Mobile Banking Service in a computer bureau service business, or on a timesharing basis, or (b) otherwise disclose or allow use of the Mobile Banking Service by or for the benefit of any third party. Client acknowledges that Client’s license to use any software that may be required for the Mobile Banking Service is directly from the software provider, pursuant to the license Agreement that appears when any such software is electronically accessed by Client or otherwise provided to Client. By enrolling in portions of the Mobile Banking Service relating to those software systems and programs, and by downloading and installing Mobile Banking software, Client will be evidencing Client’s acceptance of the terms and conditions of those licenses. Bank may also condition Client’s use of the Mobile Banking Service upon Client affirming such licenses by the use of “I Accept” or similar dialogue box acknowledgments, or by other affirmative or use-based acknowledgment and systems.
- 7.6. *Restrictions on Use.* Without limiting Client’s obligation to comply with Applicable Laws and Regulations, including Acts, as otherwise provided under the Agreement, Client agrees that Client will not use Mobile Banking or the Software to transmit or disseminate: (i) junk mail, spam, or unsolicited material to persons or entities that have not agreed to receive such material or to whom Client does not otherwise have a legal right to send such material; (ii) material that infringes or violates any third party’s intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any wireless service provider or any of its clients or subscribers; (iii) material or data, that is illegal, or material or data, as determined by Heritage Bank of Commerce (in its sole discretion), that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm the reputation Heritage Bank of Commerce or any third-party service provider involved in the provision of Mobile Banking; (iv) material or data that is alcoholic beverage-related (e.g., beer, wine, or liquor), tobacco-related (e.g., cigarettes, cigars, pipes, chewing tobacco), guns or weapons-related (e.g., firearms, bullets), illegal drugs-related (e.g., marijuana, cocaine), pornographic-related (e.g., adult themes, sexual content), crime-related (e.g., organized crime, notorious characters), violence-related (e.g., violent games), death-related (e.g., funeral homes, mortuaries), hate-related (e.g. racist organizations), gambling-related (e.g., casinos, lotteries), specifically mentions any wireless carrier or copies or parodies the products or services of any wireless carrier; (v) viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; (vi) any material or information that is false, misleading, or inaccurate; (vii) any material that would expose Heritage Bank of Commerce, any third-party service provider involved in providing Mobile Banking, or any other third party to liability; or (viii) any signal or impulse that could cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of Fiserv or any third party. Client agrees that Client will not attempt to: (a) access any software or services for which Client’s use has not been authorized; or (b) use or attempt to use a third party’s account; or (c) interfere in any manner with the provision of Mobile Banking or the Software, the security of Mobile Banking or the Software, or other customers of Mobile Banking or the Software; or (d) otherwise abuse Mobile Banking or the Software.

- 7.7. *Security and Confidentiality.* Bank is not responsible for the security and confidentiality of information when Client: (i) use wireless connections to download Client's account information, in which case Client acknowledges such connection may permit other persons to access the information being downloaded, or (ii) allow other persons access to Client's Wireless Access Device. Client agrees that any account information that Client downloads is done at Client's own risk, and Client is solely responsible for any damage that might occur to the electronic device to which Client downloads any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device. CLIENT AGREES TO TERMINATE THE MOBILE BANKING SERVICE, OR DISABLE CLIENT'S REGISTERED WIRELESS ACCESS DEVICE FROM THE MOBILE BANKING SERVICE IMMEDIATELY IN THE EVENT CLIENT'S REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY CLIENT.
- 7.8. *Relationship to Third Party Agreements.* Client agrees that, when Client uses the Mobile Banking Service, Client remains subject to the terms and condition of Client's existing agreements with any unaffiliated service providers, including, but not limited to Client's mobile service provider. Client understands that those agreements may provide for fees, limitations and restrictions which might impact Client's use of the Mobile Banking Service (such as data usage or text messaging charges imposed on Client by Client's mobile service provider), and Client agrees to be solely responsible for all such fees, limitations and restrictions. Client also agrees that only Client's mobile service provider is responsible for its products and services. Accordingly, Client agrees to resolve any problems pertaining to Client's Wireless Access Device or mobile services with Client's provider directly.
- 7.9. *Mobile Deposits.* Together with Mobile Banking, the Remote Deposit Capture Service (described in Section 6. of Part B) enables Client to use an approved Software application together with a compatible Wireless Access Device to create electronic images of the front and back of Original Checks and transmit those images and other information to Bank for review and deposit processing.
8. Lockbox Service. The lock box service allows Client to direct its customers to send their checks payable to Client ("Checks") to a Post Office Box that is serviced by Bank ("Lockbox Service"). Bank (including Bank's Processors) will have unrestricted and exclusive access to the mail directed to the Lockbox. Client authorizes Bank to indorse Checks received at the Lockbox, and to deposit them into Client's account designated in the Supporting Documents ("Lockbox Account"). Bank will credit the Lockbox Account with funds no later than the next business day, subject to Bank's funds availability policy. Lockbox deposits credited to Client's Lockbox Account maintained with Bank will be reflected on Client's periodic statement issued by Bank with respect to the Lockbox Account pursuant to the agreement between Bank and Client.

Client acknowledges that this Agreement covers the Lockbox Service to be provided by Bank and, except as specifically provided in this Agreement, does not cover the handling of the Lockbox Account or the processing of Checks drawn on the Lockbox Account. As a result, Client's Lockbox Account will be subject to, and Bank's operation of the Lockbox Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Lockbox Account, a copy of which Client acknowledges having received.

- 8.1. *Commencement of Lockbox Service.* The Lockbox Service covered by this Agreement will start on the date separately agreed to by the Bank and the Client if all of the following events have occurred prior to such date:
- Bank has established a lockbox with the number and at the address specified by Bank to Client.
  - Client maintains one or more accounts in good standing with Bank.
  - Client has completed all Supporting Documents applicable to the Lockbox Service and such other information and documents in a time and manner as Bank requests to enable Bank to commence and operate the Lockbox for Client and to enable Bank to comply with Bank's other obligations under this Agreement.
  - Bank has completed all steps necessary to enable its Processor (as applicable) to service the Lockbox pursuant to this Agreement.
- 8.2. *Remittance Materials.* Unless otherwise identified in the Supporting Documents, papers accompanying each remittance, including copies of additional correspondence, together with all unprocessed or rejected items (collectively, "Remittance Materials") will be forwarded to the Client via USPS.
- 8.3. *Unacceptable Checks.* Unless otherwise requested by Client and agreed to by Bank, Bank will not deposit Checks falling into any of the following categories, or Checks which Bank has otherwise instructed Client not to deposit (collectively, "Unacceptable Checks"):
- Checks on which the name or designation of the payee is not Client's name or a reasonable variation (in Bank or Processor's opinion) of such name.
  - Checks which do not bear a drawer's signature.
  - Checks with alterations.

Notwithstanding the foregoing, Bank will only use reasonable efforts to identify Checks as Unacceptable Checks and prevent deposits. As a result, Bank will have no liability whatsoever, despite anything to the contrary in the Agreement, for deposit of Unacceptable Checks unless the deposit results directly from the willful misconduct of Bank's officers or employees. Client agrees to indemnify, defend and hold harmless Bank, the drawee bank (which may include Bank) and any intervening collecting bank against any claim resulting from Bank's having processed an Unacceptable Check.

- 8.4. *Checks to Be Deposited (also referred to as "Acceptable Checks").* Unless Client specifies otherwise in writing to Bank, checks which do not fall into one of the categories of Unacceptable Checks will be deposited in Client's Lockbox Account, subject to this Agreement. In addition:
- Checks missing a date will be deposited in Client's Lockbox Account after being dated by Bank as of the date the Check is collected from the Lockbox, unless they also fall into one of the categories of Unacceptable Checks, in which case they may not be deposited.
  - Checks will be deposited regardless of their date, including Checks which are postdated after the date they are collected from the Lockbox, and stale dated Checks (i.e., dated six months or more prior to the date they are collected from the Lockbox).
  - Checks with a discrepancy in amount may be deposited in Client's Lockbox Account after being processed in any manner deemed appropriate by Bank or Bank's Processor, which may include depositing the Check in the amount that corresponds to the written amount (rather than the

numerical amount) or the amount identified in the Remittance Materials. Bank reserves the right to forward as unprocessed Checks which Bank or Bank's Processor are unable to determine the amount of the Check.

- d. Bank may disregard restrictive notations, such as "Paid in Full," or "Void if over \$500," and such Checks will be processed as if the restrictive notations did not appear. Bank will have no liability whatsoever, despite anything to the contrary in the Agreement, for Bank's failure to comply with such restrictive notation.

Without limiting the foregoing, Client expressly acknowledges that the Lockbox Service is for Check processing only; Client's payer may not send cash (currency and/or coin), credit transaction authorizations, automated clearing house authorizations, returned merchandise, notices, communications or other materials to the Lockbox except with Bank's specific and prior written approval. Bank has no obligation to respond to billing disputes, and Client agrees not to advise its customers to contact Bank with respect to their payments or the Lockbox Service. Absent an express agreement with Bank providing otherwise, Client agrees to instruct Client's customers and other obligors not to send cash, credit transaction authorizations, or automated clearing house authorizations to the Lockbox. If cash is sent to the Lockbox with any Remittance Materials, the cash will be removed from the envelope containing the Remittance Materials and a credit advice for the amount of the cash will be placed in such envelope.

- 8.5. *Foreign Checks.* Checks drawn on a foreign bank or in a currency other than United States dollars ("foreign checks") may be automatically returned. In the event Bank agrees to deposit foreign checks, Bank or Processor may process the foreign checks through collection systems and at exchange rates chosen by Bank or Processor, and Bank may impose fees and charges for the service, which fees and charges Client agrees to pay. The currency conversion and collection process may take a long time (for example, eight weeks or more), depending on the foreign bank. Adjustments for returned foreign items or otherwise may result in a different currency exchange rate, and Client could lose or gain due to changes in the exchange rates. Bank's determination to take a foreign check for deposit on any occasion will not obligate Bank to do so in the future, unless expressly agreed by Bank otherwise.

- 8.6. *Lockbox Processing.* On each business day, Bank or a Processor will pick up at and transport from the Lockbox to the processing site or sites the Checks or any other mail addressed to the Lockbox. The following Lockbox Services will be performed by Bank or a Processor:

- a. Open the envelopes picked up from the Lockbox and remove the contents.
- b. Inspect all Checks received for acceptability based on this Agreement and the Supporting Documents.
- c. Prepare all Acceptable Checks and their associated paperwork for further processing.
- d. Prepare deposit tickets and process deposits daily.
- e. Prepare and mail to Client any Unacceptable Checks and Remittance Materials as described herein.

If Bank receives any mail containing Client's lockbox number at Bank's operations locations (instead of the Lockbox), Bank may in Bank's sole discretion handle the mail as if it had been received at the Lockbox.

Unless otherwise expressly agreed to in writing by Bank, Client agrees not to permit others to send Checks payable to third parties or demand drafts to the Lockbox. If Bank processes a Check payable to a third party, Client warrants to Bank and Processor(s) that Client has the proper authorization from such payee to have such Check indorsed for deposit, and deposited, into the Lockbox Account. Client agrees to indemnify Bank and Processor(s), along with their officers, employees, agents, representatives and Processors (individually and collectively, the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, any losses, liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees, suffered or incurred by any of the Indemnified Parties as a result of, or in connection with, Bank's or any Processor(s) failure to have such authorization. The indemnification set forth in this Section shall be in addition to, and not in lieu of, indemnification and other rights of Bank under the Agreement.

- 8.7. *Returned Checks.* If any of the Checks (or image of the same) are returned unpaid for any reason, Bank may charge any one of Client's accounts for the amount of the returned Checks plus applicable handling fees, without regard to whether the institution on which the Checks were drawn effected a timely return before its midnight deadline. If any of the Checks are returned for indorsement missing, Bank may, but will not be obligated to, supply an indorsement (utilizing Bank's indorsement stamp) and the Checks may be represented to the depository bank.

- 8.8. *Processor(s).* Client authorizes Bank to use third parties ("Processors") (which, for purposes of the Lockbox Services may include other banks, financial institutions and third parties, and their subcontractors) to provide any one or more of the Lockbox Services to Client. Client authorizes Bank to act (such as opening accounts and providing instructions) as Client's agent and on Client's behalf with Processors as necessary or appropriate to do so. Wherever under this Agreement Client authorizes Bank to take action or inaction, such authorization shall also serve as authorization for a Processor to take such action or inaction. At Bank's option, Bank may use a commingled account at a Processor and process as agent for Client and for others through the commingled account, or Bank may establish a separate account for Client at a Processor and process as Client's agent through the separate account. Bank's responsibility for Processors and liability for action or inaction by a Processor is limited as set forth in the Agreement.

If Bank uses a correspondent financial institution to process payments, deposits to a Lockbox Account: (a) may be delayed by one banking day; (b) may be affected by local bank holidays; and (c) the availability may depend on the availability of the correspondent institution and any required third party service provider or funds transfer system.

- 8.9. *Card Transactions.* Client agrees that the Lockbox may not be used to process card payments, unless Bank has expressly agreed to such processing and Client has agreed to Bank's separate merchant card processing terms and conditions. If Bank and Client agree to the processing of card transactions through the Lockbox, Client will ensure that all card transactions/payments are legible and contain: (i) merchant's name and account number, (ii) the information embossed on the card presented by the cardholder, (iii) the date of the transaction, (iv) description of goods or services, (v) transaction authorization number, (vi) total sale amount, and cardholder signature. Any card transactions/payments missing the required information may be returned to the Client.

- 8.10. *Client Responsibilities.* Client's responsibilities under this Agreement include, but are not limited to each of the following:

- a. Client agrees to encode remittance documents to meet Bank or Processors requirements if Client requires electronic data capture of information on remittance documents.
  - b. Client agrees to duly complete the Supporting Documents and all special instructions, and provide the same to Bank before start of the Lockbox Services.
- 8.11. *Funds Availability.* Funds deposited in connection with this Agreement are subject to Bank's funds availability policy as disclosed in the Bank's policy. For the purpose of application of Bank's funds availability policy and Regulation CC, funds deposited to the Lockbox are considered deposited on the day on which the deposit is removed from the Lockbox and is available for processing by Bank.
  - 8.12. *Cutoff time.* At the Bank's discretion or that of Processor, a cutoff time may be established, and thereafter amended, for the Lockbox Service. The cutoff time assigned dictates when on a business day the last USPS mail is opened pursuant to this Agreement.
  - 8.13. *Imaging Service.* At Bank's discretion, Bank may approve Client for access to the Lockbox online image viewing system ("Imaging Service"), subject to Bank's applicable fee(s) for the service enhancement. Client acknowledges and agrees that Client's access to the Imaging Service will be subject to Client's compliance with the applicable access security protocols, as modified from time to time. Client agrees that the security protocols are a commercially reasonable means of protecting access to the information process through the Lockbox, as provided in this Agreement. Client agrees to maintain the security and controls over the security protocols to ensure protection from unauthorized access to Client's information through the Imaging Service. In no event will Bank have any liability whatsoever for errors resulting from or in connection with the Imaging Service provided hereunder. Client acknowledges and agrees that the image service will not be relied on as a replacement or backup for Client's independent record retention or reproduction obligations under this Agreement, or otherwise as may be required by applicable law. If the images or other forms of the information (e.g., via CD or DVD) are made available to Client, Client agrees to verify the contents when made available and request a replacement, if necessary, within 10 days of receipt.
  - 8.14. *Reports.* Lockbox reporting services may be available to Client for an additional cost. Bank reserves the right to require Client to agree to additional terms to activate lockbox reporting services.
  - 8.15. *Collections.* Unless otherwise agreed, while Client receives Lockbox Services, all funds held in the Lockbox Account shall be deemed to be Client's funds for all purposes, including adjustment, attachment, set-off, security interests, execution, garnishment and other forms of legal process. The crediting and collection of Checks will be handled under the same agreement as applied to other commercial deposits.
  - 8.16. *Reconciliation.* Except as otherwise specified herein and in the Supporting Documents, Bank will not reconcile the Checks, cash or other Remittances in the envelopes to invoices, to remittance statements, or to any other documents or papers in the envelopes elsewhere.
  - 8.17. *Protected Health Information.* Except with prior notice to and written approval by Bank, Client shall ensure that protected health information is not provided to Bank and that the provision of Lockbox Services does not result in Bank being deemed a "business associate" within the meaning of, or otherwise subject to, the Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), including related regulations issued pursuant thereto, or otherwise under medical privacy and securities laws, rules or regulations. Client shall provide to Bank such assistance as Bank may request should Bank's provision of the Lockbox Service subject Bank to any compliance obligations under HIPAA or otherwise under medical privacy and security laws, rules or regulations.
  - 8.18. *Statement; Notice of Discrepancy.* Client agrees to notify Bank no later than five (5) calendar days after Client receives or is provided access to an advice of deposit, or electronic image summary, if there is any error in such advice or summary. If Client fails so to do, then Client shall be precluded from asserting such error or failure, and the advice or statement shall be deemed to be accurate as to any claims by Client (but shall not preclude later adjustment by Bank).
  - 8.19. *Termination.* Bank may terminate, suspend or restrict some or all of Client's access to the Lockbox Services, with or without cause, at any time immediately upon notice to Client. Client has the right to terminate the Lockbox Service, with or without cause, upon sixty (60) days written notice provided to Bank. Should Client terminate this Agreement without prior notice, Client will owe Bank two (2) times the minimum monthly fees as reflected in Bank's then current Lockbox schedule. Upon termination of the Lockbox Service Bank will dispose of the mail addressed to the Lockbox according to written instructions provided by the Client for a period of three (3) months after the termination date, unless arranged otherwise between Client and Bank. Lockbox Service fees with respect to such disposition will be based on Bank's estimate and prepaid directly to Bank at the time of such termination by a check made payable to Bank.

### **PART C – MISCELLANEOUS TERMS AND CONDITIONS APPLICABLE TO ALL CLIENTS AND SERVICES**

1. **Change in Terms.** Bank may from time to time and at any time amend, modify, add or delete (collectively and individually a "change") the terms of this Agreement, or any of the Supporting Documents. A change may include a change to existing terms, a change that involves a new term or a change that involves conditions not otherwise contemplated by Client or Bank at the time this Agreement is entered. If notice of the change is required by law, Bank will notify Client in compliance with applicable law as described in Section 4. below of Part C. Client's continued use of any or all of Services following any change indicates Client's acceptance of the change in terms. Bank reserves the right to waive, reduce or reverse charges or fees in individual situations. Client acknowledges and agrees that changes to fees applicable to specific Accounts are governed by the applicable deposit agreements and disclosures.
2. **Termination.** Client agrees that termination by either Bank or Client does not terminate any of Client's obligations related to transactions initiated under this Agreement prior to termination and will not affect any of Bank's rights under this Agreement. Without limiting the foregoing, any termination will not affect any obligations of Client under this Agreement when such obligations arose prior to termination, or arose from or relate to a Communication or Client's use of a Service that occurred prior to termination, as described in those Sections surviving termination of this Agreement (see Section 14 of Part C).
  - 2.1. *Client's Right to Terminate.* Client may cancel Client's use of Heritage Direct Online Banking or one or more Services at any time by providing Bank with written notice (including via e-mail) or by closing all of the Account(s) accessible via Heritage Direct Online Banking or the other Service(s) to be terminated. Client's access to Heritage Direct Online Banking or one or more Services, as applicable, may be suspended within 3 Business Days of Bank's receipt of instructions to cancel Heritage Direct Online Banking or one of more Services from any person purporting to represent Client. Client will remain responsible for all transactions that occur prior to termination, whether termination by Client or by Bank, and for any fees and charges incurred prior to the date of cancellation.

- 2.2. *Bank's Right to Terminate, Suspend or Limit.* Client agrees that Bank can terminate, suspend or limit Client's access to Heritage Direct Online Banking or one or more Services at any time for any of the following reasons: (i) without prior notice, if Client has insufficient funds in any one of Client's Accounts or breaches any term of this Agreement (note that Heritage Direct Online Banking or one or more Services may be reinstated, in Bank's sole discretion, once sufficient funds are available to cover any fees, pending transfers, and debits); or (ii) at any time with or without advance notice, for cause (including the foregoing) or without cause and for any reason, in Bank's sole discretion.
- 2.3. *Software and Equipment.* Upon Bank's request, or within seven days after termination of a Service, Client will, at its own expense, promptly uninstall and remove all software provided for the Service from its computers and return to Bank all hardware and equipment provided by Bank for the Service, including scanner and any documentation in its possession or under its control, destroy all copies of the documentation that cannot be returned, and certify in writing to Bank that all copies have been returned or destroyed. Client will be responsible and liable to Bank for all lost, stolen or damaged equipment that was provided by Bank to Client in connection with the Services.
3. Periodic Statements. Client will get a monthly account statement. It will not be a separate statement for transactions made using Heritage Direct Online Banking. Transfers to and from Client's Accounts using Heritage Direct Online Banking will appear on the respective periodic statements for Client's Accounts. Client will not receive separate confirmation of transfers to or from Client's Accounts through Heritage Direct Online Banking, other than the transaction information provided to Client via Heritage Direct Online Banking as discussed above in Section 1.1 of Part B.
4. Notices between Bank and Client. Client can write to Bank at the following address: Heritage Bank of Commerce, Attention: Cash Management Services, 150 Almaden Blvd, San Jose, CA 95113. Bank may change the aforementioned address upon notice to Client. Any notice or other
5. Facsimile Signatures. Many customers use a facsimile or other mechanical signature, including a stamp, referred to in this Section as "facsimile signature", to authorize transactions, provide and authorize instructions and to endorse or otherwise complete other documents. If Client uses any form of facsimile signature in connection with any Account, Client agrees to deliver a sample to Bank before Client begins using the facsimile signature, and to execute and deliver agreements in a suitable form, if Bank so requires. If Client uses a facsimile signature for any of these purposes, Client is responsible for any Communications, transactions, instructions or endorsements that appear to Bank to bear a signature that resembles the signature of a person authorized to sign on Client's Account. When Client uses a facsimile signature in connection with any Account, Client agrees that Client shall have the sole responsibility for maintaining security of the facsimile signature or device by which it is affixed, and Client shall bear the entire risk for unauthorized use thereof, whether or not Client is negligent, except as may be required by law. Client agrees that Bank may rely on facsimile signatures that resemble the appropriate original or any signature specimen given to Bank and that appears to have been made through an authorized medium, regardless of how the facsimile signature came to be placed on the item. Bank may rely on facsimile signatures, even if they were placed on items without Client's knowledge or consent. Bank may pay items bearing facsimile signature, regardless of the persons to whom they are drawn or paid. A facsimile signature that resembles an authorized signer's signature or any facsimile signature specimen is not considered a forgery or an unauthorized signature, and such a facsimile or automated signature shall be effective as Client's signature or endorsement, without regard to color variation, whether or not Client has been negligent. Client further agrees to indemnify, defend, and hold Bank harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by Bank as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile signature or the device by which it is affixed. This means that Bank is not responsible for any misuse of a facsimile signature Bank believe Client authorized.
6. Electronic Records and Signatures. When any Payment Order or a Service generates items or transactions to be charged to Client's Account, Client agrees that Bank may charge the affected Account without requiring a signature on an item and without prior notice to Client. Any transactions resulting from Client's instructions which Bank receives in Client's name and under Client's credentials shall be deemed to have been "a writing" and authenticated by Client "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by Bank of transactions under Client's credentials shall be deemed to have been "signed" and to constitute an "original" when printed from records established and maintained by Bank or Bank's authorized agent in the normal course of business. Client agrees not to contest the authorization for, or validity or enforceability of, Bank's electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon Bank's written request, Client agrees to manually sign or place Client's signature on any paper original of any record or "signed" document which Bank provides to Client containing Client's purported signature.
7. Services For Non-Consumer Purposes. Client agrees to use Heritage Direct Online Banking and the other Services for non-consumer transactions only.
8. Governing Law. This Agreement is also subject to applicable federal laws and the laws of the State of California (except to the extent this Agreement can and does vary such rules or laws, and excluding California rules governing conflicts of law).
9. Arbitration. Bank and Client expressly agree that any legal proceeding, any action, dispute, claim, or controversy of any kind (e.g., whether in contract or in tort, statutory or common law, legal or equitable) now existing or hereafter arising between the parties in any way arising out of, pertaining to or in connection with this Agreement shall be resolved, except as otherwise limited or prohibited by law, by binding arbitration administered by the American Arbitration Association (AAA) in accordance with its arbitration rules for consumers and businesses, as applicable. The foregoing matters shall be referred to as a "Dispute." Any of the parties to this Agreement may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Dispute. Any such arbitration shall proceed in Santa Clara County, California, Alameda County, California, or San Benito County, California, and shall be governed by the substantive laws of the state of California. The decision of the arbitrator shall be final and binding upon all parties and judgment upon the award may be entered in any court having jurisdiction thereof by a party. Any arbitrator chosen to preside over the dispute must be a member of the California State Bar either actively engaged in the practice of law or a retired member of the California state or federal judiciary, and, unless otherwise agreed in writing, must have expertise in the process of deciding disputes in the deposit account and/or electronic banking services context. Any party who fails to submit to binding arbitration following a lawful demand of the opposing party shall bear all costs and expenses, including reasonable attorney fees, incurred by the opposing party in compelling arbitration. In Disputes involving indebtedness or other monetary obligations, each party agrees that the other party may proceed against all liable persons, jointly and severally or against one or more of them without impairing rights against other liable persons. No party shall be required to join the principal obligor or any other liable persons in any proceeding against a particular person. A party may release or settle with one or more liable persons as the party deems fit without releasing or impairing rights to proceed against any persons not so released. This Section shall survive any termination, amendment or expiration of any provision of this Agreement, unless otherwise expressly agreed in writing.

UNLESS SPECIFICALLY PROVIDED OTHERWISE UNDER LAW, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING THEIR RIGHT TO BOTH A JURY TRIAL AND A TRIAL BEFORE A JUDGE IN A PUBLIC COURT.

10. Collection. If Bank initiates collection proceedings against Client in an effort to recover any amounts owed, Client agrees to reimburse Bank for all costs and expenses, including attorneys' fees. "Attorneys' fees" includes reasonable charges for the time expended by in-house counsel.
11. Services Not Substitute for Legal, Tax, or Financial Advice or Planning. Client acknowledges that the Services, Heritage Bank of Commerce, its employees and service providers are not intended to provide legal, tax or financial advice or planning. The Services are merely a tool for use to assist Client's independent decision-making and have not been designed in contemplation of Client's specific needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the Services, Client represents that Client will have obtained appropriate and independent legal and tax advice regarding the same, as Client deems appropriate.
12. Third Parties. Client acknowledges and agrees that Bank may arrange to provide software, if required, and/or may arrange for the Services covered by the Agreement to be performed or provided by third parties, including Bank's affiliates. Bank further agrees that any such party is a third party beneficiary of the Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it were Bank, including, without limitation, the limitations on liability and the indemnities described in the Agreement. Bank's ability to provide certain Services may be dependent upon Bank's ability to obtain or provide access to third party networks. In the event any third party network is unavailable or Bank determines in Bank's sole discretion, that Bank cannot continue providing any third party network access, Bank may discontinue the related Service or may provide the Service through an alternate third party network. In such situations, Bank will have no liability for the unavailability or delay of access.
13. Miscellaneous. The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions. If any provision of this Agreement is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. Any waiver (express or implied) by either party of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach. Client may not assign this Agreement. This Agreement is binding upon Client's heirs, successors and assigns. Any of Client's obligations pursuant to this Agreement that by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive termination, cancellation or expiration of this Agreement. This Agreement shall be effective when Bank accept and agree to it, as evidenced by the signature of a Bank officer below. Client represent and warrant that this Agreement, once duly executed and delivered by both parties, will be a valid agreement enforceable against Client in accordance with its terms. Client agrees to cooperate with Bank in all manner reasonably requested by Bank, including providing Bank with information about Client and executing and delivering to Bank any documents reasonably requested by Bank to further the purposes of this Agreement.
14. Survival. Termination of this Agreement will not affect any obligations of an Client under this Agreement when such obligations arose prior to termination, or arose from or relate to a Communication or Client's use of a Service that occurred prior to termination, without limitation and including the Sections otherwise expressly identified herein as surviving termination, surviving sections will include the following Sections of this Agreement: (a) Sections 8., 9., 13., 16., 18., 22., 23., 24., 27., 28., and 29. of Part A; (b) Sections 3.7, 4.6, 4.12.j, 4.13, 5.6, 6.5.i, 6.6, 6.7.d, 6.8, 6.10, 6.11 f, 6.12.e, and 6.13 of Part B; (c) Sections 2.3, 9., and 10., of Part C; and (d) such other Sections of this Agreement as may be specifically noted as surviving termination.

# Schedule of Fees

# Cash Management

CLIENT AGREES TO PAY BANK THE FEES LISTED BELOW. WHERE APPLICABLE, FEES AND CHARGES MAY BE APPLIED TO ACCOUNT ANALYSIS.

## Heritage Direct Business Online Banking

Monthly Access Fee (waived for nonprofit clients) .....	5.00
Stop Payments / each .....	30.00
Bill Pay / monthly.....	10.00
Mobile Banking / monthly .....	no charge

## Wire Transfers Set Up

Set Up .....	no charge
Outgoing Domestic / each .....	25.00
Outgoing Foreign / each .....	35.00

## Remote Deposit\*

Set Up .....	75.00
Monthly	
0 - 50 items .....	35.00
50 - 150 items .....	49.00
151 - 250 items .....	99.00
251 - 500 items .....	129.00
501 - 750 items .....	179.00
751 - 1000 items .....	219.00
1001 + .....	custom quote

### \*Remote Deposit Scanner Options:

- CheXpress30 Scanner - Additional scanner \$13 per month
- TS-240 Autofeed Scanner - Additional scanner \$26 per month

## ACH Origination

Set Up .....	75.00
Monthly .....	50.00
Per File Transmission .....	15.00
Standard / per item .....	0.16
Same Day ACH / per item .....	0.50
Same Day ACH - Special Handling / per file .....	100.00
ACH - Return Item / each .....	12.00
ACH - Unauthorized Return / each .....	15.00
ACH - EDI / CTX Advices .....	no charge
ACH - Notice of Change (NOC) .....	no charge

## ACH Limited

Initial Set Up (includes one transaction) .....	50.00
Per Transaction - Standard / each .....	10.00
Per Transaction - Same Day ACH / each .....	10.50
ACH - Return Item / each .....	12.00
ACH - Unauthorized Return / each .....	15.00
ACH - EDI / CTX Advices .....	no charge
ACH - Notice of Change (NOC) .....	no charge

## Positive Pay/ACH Debit Block and Filtering

Set Up .....	50.00
Monthly .....	25.00

## Lockbox Services

### NONPROFIT

Set Up .....	50.00
Monthly.....	50.00
Standard Items Processed / each .....	0.50
Returned Item / each .....	5.00
Value Added Keying / per field .....	0.25
Documents Scanned / Correspondence / each .....	0.30
Courier / each .....	10.00
Custom Programming / per hour .....	250.00
P.O. Box Rental / monthly .....	50.00

### COMMERCIAL

Set Up .....	150.00
Monthly .....	150.00
Standard Items Processed / each.....	0.50
Returned Item / each .....	10.00
Value Added Keying / per field .....	0.25
Documents Scanned / Correspondence / each.....	0.30
Healthcare Document Imaging .....	0.10
File Sort .....	0.10
Courier .....	10.00
Custom Programming / per hour .....	250.00
P.O. Box Rental .....	150.00

## ZBA / Target Sweep

Master Account / monthly .....	25.00
Sub Account / monthly .....	10.00
Loan Account / monthly .....	100.00

## Armored Car Services .....

\*\*custom quote

## Courier Services

Set Up .....	25.00
Monthly.....	**custom quote

**\*\*This is a custom quote facilitated by Heritage Bank of Commerce for a service that is provided by a third party vendor.**

**HERITAGE**  
BANK OF COMMERCE  
[www.HeritageBankofCommerce.bank](http://www.HeritageBankofCommerce.bank)

Effective date of 01/01/22

If you have questions regarding the Schedule of Fees, please call

**800.796.4777**



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