

# **Business Online Banking Master Cash Agreement and Product Schedules**

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**With this update, customers enrolled in ACH Origination can now request access to complete international ACH transactions(IAT). This service allows a business to pay vendors that qualify for international ACH. International ACH includes but are not limited to Canada, Mexico and most European countries.**

**Update to the Fees on page 31 – Added the International ACH transaction fee to the schedule**

**Update to Section 9. International ACH(IAT) on pages 35-36 – Added points g through k to this section**

## Business Online Banking and Master Cash Management Agreement

The following information represents the Business Online Banking and Master Cash Management Agreement between you and Farmers & Merchants Union Bank ("Financial Institution," "we," "our," "ours"). This Master Agreement, including, as applicable, any related Authorization Form, the signature card, rate and fee schedule, and any applicable Product Schedule and other instructions and the terms and conditions contained herein relating to specific Services that may be provided in connection herewith (collectively, this "Master Agreement"), sets forth the terms and conditions governing the provision of Online Banking and Cash Management Services to you or anyone authorized by you (collectively, "Customer," "you," "your," "yours") and describes your and our rights, responsibilities and obligations. To establish Business Online Banking, you must complete certain enrollment forms or other documents evidencing your desire to access your accounts using Business Online and identifying the specific accounts that will be accessible. The specific services available to you are identified in your Business Online Enrollment forms. By completing and signing the Business Online Enrollment Form, and/or using one or more of the Services, Customer agrees to, and shall be bound by, the terms, conditions and provisions in this Master Agreement, including those for each Service the Customer has selected. Financial Institution, in its sole discretion, may not permit Customer to use the Service until Financial Institution has determined that Customer has accepted or executed the applicable documentation and otherwise provided appropriate information and specifications for the use of the Service, and until Financial Institution has had a reasonable opportunity to review the Authorization Form and activate the Service. In any event, Customer agrees that the use by Customer of any Service shall, without any further action or execution or acceptance of any documentation on the part of Customer, constitute Customer's acceptance of and agreement to Financial Institution's terms and conditions for the use of such Service as may be in effect as of the time of such usage, whether set forth in this Master Agreement, any applicable Product Schedule or otherwise prescribed by Financial Institution. In the event of a conflict between the terms of this Master Agreement and those of any Authorization Form, or Product Schedule, the terms of the Authorization Form, or Product Schedule as applicable, shall govern and control with respect to the Service at issue. In order to activate the Service, you must have at least one Account with us linked to the Service.

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you and Financial Institution, intending to be legally bound, do hereby agree as follows:

### 1. Definitions.

The following terms and definitions apply when used in this Master Agreement.

- 1.1. "Access Device" means access equipment, including but not limited to a personal computer or a Mobile Device that meets the requirements for use of the Service.
- 1.2. "Access Device System" means all software, hardware, Access Devices or other equipment necessary to access the Services.
- 1.3. "Account" or "Accounts" means one or more checking, savings, certificate of deposit or loan account that you have with us.
- 1.4. "Account Access" means your ability to access account and transaction information on Accounts and transfer funds between Accounts through the Internet.
- 1.5. "Account Agreement" means the agreement between you and us that governs the use of your Account including the deposit account agreement, any funds availability agreement, electronic funds transfer agreement or disclosure, line of credit agreement, and our schedule of fees and charges.
- 1.6. "Authorization Form" means the separate Business Online Enrollment Forms.
- 1.7. "Bill Payment Account" means the Account(s) you have authorized us to debit for payment made to Payee(s) in connection with the Online Banking Service.
- 1.8. "Bill Payment Service" means our service available through Online Banking that allows you to pay or transfer funds to designated Payees based upon your instructions to us, via an Access Device.
- 1.9. "Bill Payment" or "Payment" means the remittance of funds, initiated through Online Banking Service, from a Bill Payment Account to a Payee.
- 1.10. "Biometric Logon" mean an authentication method to assist in verifying your identity through collecting your unique facial or fingerprint image (image capture) or your voice characteristics (audio capture).
- 1.11. "Business Day(s)" means 08:00 a.m. to 05:00 p.m. CST Monday through Friday. Federal Holidays are not included. Some online transaction deadlines may vary from this definition.

- 1.12. "Deposit Account Agreement" is the terms and conditions, funds availability, specific account details, and schedule of fees agreement received when you opened your account.
- 1.13. "Electronic" means electrical, digital, magnetic, wireless, optical or electromagnetic technology, or any other technology that entails similar capabilities.
- 1.14. "Funds Transfer" or "Transfer" means a transfer of funds, initiated through Online Banking Service, from one eligible account to another.
- 1.15. "Mobile Device" means an Access Device that is mobile, including but not limited to a mobile phone, smartphone, tablet, any personal data assistant or other wireless device.
- 1.16. "Online Banking" or "Service" means the service(s) described in this Master Agreement.
- 1.17. "Password" means the confidential identification number or other code assigned to you by us or selected by you for identification purposes in connection with the use of our Online Banking Services.
- 1.18. "Payee" means any individual, financial institution, educational institution, company, merchant or other entity you wish to pay using Online Banking Services.
- 1.19. "PC" means personal computer (including any personal data assistant or other wireless access device) that meets the requirements for use of Online Banking Services.
- 1.20. "Product Schedule" refers to a separate agreement for certain cash management services offered by Financial Institution.
- 1.21. "Transfer" means a transfer of funds, initiated through Online Business Services, from one eligible account to another.
- 1.22. "Transfer Day" means Monday - Friday, up to 5:00 p.m., Central Standard Time (CST). Holidays are not included.

Other definitions may be set forth elsewhere in this Master Agreement.

## 2. Setup and Use of Online Access Services.

### 2.1. Eligibility.

To have access to the Services you must be an authorized user as noted on the Authorization Form of the Software you select, if required for use with the Equipment. You must also have at least one eligible deposit or loan account with us. If you have more than one Account, you will have access through the Service to the Accounts you specify on the Authorization Form. If you specify more than one Account on the Authorization Form, we will "link" the Accounts together. Accounts which are "linked" under the Services will have one common owner and signer. Any signer, acting alone, must be authorized to access a linked account. Any non-linked account will not be accessible through the Service. Financial Institution may un-link any Account with or without notice in its sole discretion. You must designate a User Name and Password which will be required to gain access to the Service. Prior to your first use of Online Banking, the Financial Institution will assign you a User Name and Password, Biometric Logon, and/or other means of authentication approved by Financial Institution (collectively referred to as the "Access Code(s)"), required to gain access to Online Banking. The Online Banking system will ask you to change your Password the first time that you use the system.

"Eligible Accounts" include the following:

1. Checking (Demand Deposit) Accounts
2. Savings Accounts
3. Loans
4. Certificates of Deposit

### 2.2. Security Procedure.

The use of the Access Code, in addition to other authentication methods described below, is a security procedure established by Financial Institution to authenticate the identity of the person attempting to gain access to the Service. The security procedure is not designed for the detection of errors. We may require you to change your Access Code from time to time for security reasons. You should keep your Access Code in a secure location. Any person having access to your Access Code will be able to access these Services and perform all transactions, including reviewing Account information and making Transfers to other Accounts

and to other persons. **You are responsible for safeguarding the Access Codes. Providing these Access Codes to another person effectively constitutes a grant of authority to access your accounts.**

You agree to comply with the "Security Procedures" and any other Security Procedures Financial Institution directs you to use, and you acknowledge and agree that the Security Procedures, including (without limitation) any Access Code, password, personal identification number, user identification technology, token, certificate, layered security, or other element, means, or method of authentication or identification used in connection with a Security Procedure ("Security Device(s)"), constitute commercially reasonable security procedures under applicable law for the initiation of the Services you utilize, including without limitation, transfers and access to confidential information. You authorize us to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until you have notified us, according to notification procedures prescribed by us, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than you or your representative(s) and until we have had a reasonable opportunity to act upon such notice. You agree that the initiation of a transaction or instructions using applicable Security Procedures constitutes sufficient authorization for Financial Institution to execute such transaction or instruction notwithstanding any particular designation by you of authorized persons or signature requirements identified on any signature card or other documents relating to your deposit account maintained with Financial Institution, and you agree and intend that the submission of transactions and instructions using the Security Procedures shall be considered the same as your authorized written signature in authorizing us to execute such transaction or instruction.

You acknowledge and agree that you shall be bound by any and all transactions initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by you, to the fullest extent allowed by law. You further acknowledge and agree that the Security Procedures are not designed to detect error in the transmission or content of communications or transaction initiated by you and that you bear the sole responsibility for detecting and preventing such error.

**2.2.1.** You agree to notify the Financial Institution of any additions, changes or removal of persons authorized to use the Service. You also agree that any Authorized User shall also have the authority on behalf of Customer to electronically accept and approve any and all agreements and amendments to agreements by and between Financial Institution and Customer, including but not limited to this Master Agreement.

**2.2.2.** You agree to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to your authorized representative(s). You agree not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. You also agree that Users shall not share Security Devices with each other. Where you have the ability to change or modify a Security Device from time to time (e.g., a password or User Name), you agree to change Security Devices frequently in order to ensure the security of the Security Device. You agree to notify us immediately, according to notification procedures prescribed by us, if you believe that any Security Procedures or Security Device have been stolen, compromised, or otherwise become known to persons other than you or your authorized representative(s) or if you believe that any transaction or activity is unauthorized or in error. In the event of any actual or threatened breach of security, we may issue you a new Security Device or establish new Security Procedures as soon as reasonably practicable, but we shall not be liable to you or any third party for any delay in taking such actions. You agree to indemnify, defend all claims, and hold Financial Institution harmless from any loss, damages, or expenses, including but not limited to attorney's fees, caused by you, your employees', or agents' failure to keep the Security procedures or Security Device confidential and secure.

**2.2.3.** You agree to notify us immediately, according to notification procedures prescribed by us, if the authority of any authorized representative(s) shall change or be revoked. You shall recover and return to us any Security Devices in the possession of any of your authorized representative(s) whose authority to have the Security Device has been revoked.

**2.2.4.** We reserve the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in our discretion. We will

endeavor to give you reasonable notice of any change in Security Procedures; provided that we may make any change in Security Procedures without advance notice to you if we, in our judgment and discretion, believe such change to be necessary or desirable to protect the security of our systems and assets. Your implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute your agreement to the change and your agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

### **2.3. Access.**

Services are generally accessible 24 hours a day, seven days a week, except that the Services may be inaccessible for a reasonable period on a daily basis for system maintenance. We are not liable under this Master Agreement or any applicable Product Schedule for failure to provide access due to a system failure or due to other unforeseen acts. We may modify, suspend, or terminate access to the Services at any time and for any reason without notice or refund of fees you have paid. The Financial Institution may change the terms and conditions of this Master Agreement or any applicable Product Schedule from time to time to conform with changes or advancements in our services, or as required by law or regulation. All such changes will require users to accept the updated Master Agreement. Use of Online Banking after the effective date of such changes will constitute your consent to the changes.

### **2.4. Equipment Requirements.**

In order to use the Services, you must first obtain your own personal Access Device with Internet connection capability and related equipment (the "Hardware"). You also must provide the type of Internet access required by the Hardware and/or Software and commercially reasonable security. Once the Hardware has been properly connected and any required Internet access has been established, you will be able to access the Services. You are and will remain solely responsible for the purchase, hookup, installation, loading, operation and maintenance of the Hardware, Software, and the Internet access service to your Access Device, and for all related costs. You are solely responsible for virus protection and maintenance of your Access Device. Financial Institution shall have no responsibility for failures, interruption or other defects in the Services, which are occasioned by incompatible, improperly installed or improperly maintained hardware and software. The Financial Institution may add to, modify, or replace software programs used in conjunction with providing the Services under this Master Agreement or any applicable Product Schedule at its sole discretion and without notice, provided Services rendered to you are not substantially negatively affected or obligations altered. From time to time the Financial Institution may deem it necessary to hold training or retraining classes for you. You agree that you will require appropriate personnel to participate in such training. All rights, title and interest in and to (a) any and all software, including, but not limited to, the object and source codes therefore, and any and all updates, upgrades, fixes and enhancements thereto, together with any and all documentation, user guides and instructions pertaining thereto (everything in this clause (a), collectively, "Software"), and (b) any and all users guides, instructions and other documentation provided to, or used by, you in connection with the Services (everything in this clause (b) collectively, the "Documentation") shall be, and remain, the property of Bank or any third party Software provider, as applicable. Unless otherwise expressly authorized, you may not (a) copy, reproduce, transmit, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign, commercially exploit, reverse engineer, reverse compile or create derivative works of, the Software in any form or (b) copy, reproduce, transmit, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign, commercially exploit the Documentation.

## **3. Business Online Access Services.**

### **3.1. Available Services.**

Business Customers may use the Business Online Service to:

1. Make transfers between Accounts you may have with us.
2. Obtain Account balances.
3. Review recent transactions on your Accounts.

4. Transfer money to make loan payments.
5. Transfer money from qualified Line of Credit accounts to transactional accounts.
6. Download account information in various formats.
7. Issue stop payment orders.
8. View check images.
9. Setup and receive alerts on your Accounts.
10. Use the Bill Payment Service.
11. \*Subscribe to and use of ACH Origination Services.
12. \*Subscribe to and use Positive Pay Services.
13. \*Subscribe to and use Remote Deposit Capture Services.
14. \*Subscribe to and use Wire Transfer Services.
15. Utilize other services made available by Financial Institution from time to time

These activities are limited to the extent noted herein and, in the agreements, governing your various accounts with us.

\*You must execute the applicable Product Schedules to use these services.

### **3.2. Additional Services.**

Additional services may be included in an update to this Master Agreement or in other separate agreements to notify you of the existence of any new services available through Online Banking. Information about new services may be obtained from our website at [www.fmub.bank](http://www.fmub.bank). We reserve the right to determine your eligibility for any product or service. By using these services when they become available, you agree to be bound by the terms and conditions and schedule of fees contained in this Master Agreement or separate agreements covering these services.

### **3.3. Restrictions; Limits.**

In most cases you may use Online Banking to gain access to deposit accounts in which you have an unrestricted right to withdraw funds. However, the Financial Institution, as it may determine at any time and from time to time in its sole discretion, may deny Online Banking account access, restrict Online Banking account transactions, or place limits on the specific dollar amount of funds that may be withdrawn or transferred from any account.

### **3.4. Vendor.**

You acknowledge and agree that the Service can be provided by an independent third party service provider ("Vendor") as selected by Financial Institution, and that both the Vendor and the Service are subject to change from time to time without notice to you. You further acknowledge, agree, and stipulate that the Vendor is an independent contractor providing software and data transmission services and is not the agent of you or Financial Institution. Neither the Financial Institution nor the Vendor is responsible for the actions or omissions of the other.

We will use reasonable efforts to make the Service available for your use on a continuous basis. The Service may be unavailable for short periods of time for regular or emergency system maintenance. We will endeavor to have our scheduled maintenance occur during non-peak hours. In addition, accessibility to the Service may be interrupted because of conditions beyond our control, including outages in Internet, cellular or other communications availability. We will use diligent efforts to re-establish the Services as promptly as possible. We do not promise the Service will always be available for your use. We may elect to discontinue this Service at any time. If we choose to discontinue the Service, we will provide you with reasonable notice in advance of that fact. We reserve the right at all times to take actions to protect our systems and information, including denial of access to users of the Service.

## **4. Other Services and Additional Information.**

### **4.1. Account Access.**

Transfers and Payments from your Account will be deducted on the date you instruct us to process them. If the date you schedule a Transfer or Payment falls on a weekend or holiday, we will process your transaction the next Transfer Day. We may refuse to act on your Transfer instructions or Payment request if sufficient funds, including funds available under any overdraft protection plan, are not available in your Account on the date you want us to make the Transfer or Payment.

#### **4.2. Processing Fund Transfers.**

We can process a Transfer until 5:00 p.m., CST on a Transfer Day. If you request a Transfer after the cutoff time, the Transfer will be processed the following Transfer Day. If you schedule a Transfer for a future date, we will process the transaction after the close of business on that date, if that day is a Transfer Day.

You are fully obligated to us to provide sufficient funds for any payments or transfers you make or authorize to be made. If we complete a payment or transfer that you make or authorize and we subsequently learn that you have insufficient funds for the transaction, you agree that we may reverse the transaction or offset the shortage with funds from any other deposit account(s) you have with us to the extent permissible by the applicable law and the terms of any other relevant agreements.

If there are insufficient funds in your Account to make a Transfer or Payment, we may refuse to make the Transfer or Payment or we may make the Transfer or Payment and overdraw your Account. In either event, you are responsible for any non-sufficient funds ("NSF") charges that may apply.

#### **4.3. Canceling Transfers or Payments.**

You may cancel a pending Transfer or Payment transaction. However, to do so, we must receive your instruction to cancel prior to the cutoff time on the Transfer Day the transaction is scheduled to be processed. If we don't receive your instruction to cancel a transaction before that time, we may process the transaction.

#### **4.4. E-Mails.**

The Financial Institution will not immediately receive e-mail that you send. Therefore, you should not rely on e-mail if you need to communicate to the Financial Institution immediately. For example, if you need to stop payment on a check, to report a lost or stolen card, or to report an unauthorized transaction from one of your accounts, you should contact the Financial Institution immediately by calling the Operations Department (see Section 9.6). The Financial Institution will not take actions based on your e-mail requests until the Financial Institution actually receives your message and has a reasonable opportunity to act.

#### **4.5. Overdrafts: Order of Payments, Transfers, and Other Withdrawals.**

If funds are withdrawn from any of your accounts by means of electronic funds transfers, other than through Online Banking on the same business day as an Online Banking transaction, and if the account contains insufficient funds to enable both the electronic funds transfer and the Online Banking transfer to be made, then the electronic funds transfer will have priority and the Online Banking transfer will be refused or will result in an overdraft on your account. This is at the Financial Institution's sole discretion.

#### **4.6 Alerts**

Your enrollment in Farmers & Merchants Union Bank Online Banking and/or Mobile Banking (the "Service") includes enrollment to receive transaction alerts and notifications ("Alerts"). Alerts are electronic notices from us that contain transactional information about your Farmers & Merchants Union Bank account(s). Alerts are provided within the following categories:

- Mandatory Alerts provide you with important account notifications, such as information about changes to your Online Banking password, PIN or login information. You do not have the option to suppress these Mandatory Alerts.

- Account Alerts provide you with notification of important account activities or when certain changes are made to your Service accounts, such as scheduled payments made, scheduled payments cancelled and deposits. These Alerts are automatically activated for you. Although you may suppress these Account Alerts, we strongly recommend that you do not do so because they provide important information related to your Service accounts.

- Additional Alerts must be activated by you to be enabled. These Additional Alerts can be accessed from the Alerts menu within Farmers & Merchants Union Bank Online Banking and Alerts menu within Farmers & Merchants Union Bank Mobile Banking.

Account Alerts and Additional Alerts must be managed and/or added online through the Service. You cannot maintain all Alerts through your mobile device. We may add new Alerts from time to time, or cancel old Alerts. We usually notify you when we cancel Alerts, but are not obligated to do so. Farmers & Merchants Union Bank reserves the right to terminate its Alerts service at any time without prior notice to you.

- 4.6.1** Methods of Delivery. We may provide Alerts through one or more channels ("EndPoints"): (a) a mobile device, by text message, (b) a mobile device, by push notification; (c) an email account, by an e-mail message; or (d) your Farmers & Merchants Union Bank Online Banking message in-box, by an e-mail message. You agree to receive Alerts through these EndPoints, and it is your responsibility to determine that each of the service providers for the EndPoints described in (a) through (c) above supports the email, push notification, and text message Alerts provided through the Alerts service. Please be advised that text or data charges or rates may be imposed by your EndPoint service provider. Alert frequency varies by account and preferences. You agree to provide us a valid mobile phone number or email address so that we may send you Alerts. **If your email address or your mobile device's number changes, you are responsible for informing us of that change. Your Alerts will be updated to reflect the changes that you communicate to us with regard to your primary and secondary email addresses or mobile device number. Alerts will cease if you do not notify us of updated email address or mobile device number.**
- 4.6.2** Alerts via Text Message. To stop Alerts via text message, text "STOP" to 99588 at anytime. Alerts sent to your primary email address will be unaffected by this action. To restore Alerts on your mobile phone, just visit the Alerts tab in Farmers & Merchants Union Bank Online Banking and click the box next to your mobile number for the Alerts you'd like to receive again. For help with SMS text alerts, text "HELP" to 99588. In case of questions please contact customer service at 920-623-4000. Our participating carriers include (but are not limited to) AT&T, SprintPCS, T-Mobile®, U.S. Cellular®, Verizon Wireless, MetroPCS.
- 4.6.3** Limitations. Farmers & Merchants Union Bank provides Alerts as a convenience to you for information purposes only. An Alert does not constitute a bank record for the deposit or credit account to which it pertains. We strive to provide Alerts in a timely manner with accurate information. However, you acknowledge and agree that your receipt of any Alerts may be delayed or prevented by factor(s) affecting your mobile phone service provider, internet service provider(s) and other factors outside Farmers & Merchants Union Bank's control. We neither guarantee the delivery nor the accuracy of the contents of each Alert. You agree to not hold Farmers & Merchants Union Bank, its directors, officers, employees, agents, and service providers liable for losses or damages, including attorneys' fees, that may arise, directly or indirectly, in whole or in part, from (a) a non-delivery, delayed delivery, or the misdirected delivery of an Alert; (b) inaccurate or incomplete content in an Alert; or (c) your reliance on or use of the information provided in an Alert for any purpose.
- 4.6.4** Alert Information. As Alerts delivered via SMS, email and push notifications are not encrypted, we will never include your passcode or full account number. You acknowledge and agree that Alerts may not be encrypted and may include your name and some information about your accounts, and anyone with access to your Alerts will be able to view the contents of these messages.



#### **4.7. Bill Payment Service**

##### **4.7.1. Service Definitions**

- 4.7.1.1.** "Service" means the bill payment service offered by Farmers and Merchants Union Bank through CheckFree Services Corporation.
- 4.7.1.2.** "Agreement" means these terms and conditions of the bill payment service.
- 4.7.1.3.** "Biller" is the person or entity to which you wish a bill payment to be directed or is the person or entity from which you receive electronic bills, as the case may be.
- 4.7.1.4.** "Payment Instruction" is the information provided by you to the Service for a bill payment to be made to the Biller (such as, but not limited to, Biller name, Biller account number, and Scheduled Payment Date).
- 4.7.1.5.** "Payment Account" is the checking account from which bill payments will be debited.
- 4.7.1.6.** "Billing Account" is the checking account from which all Service fees will be automatically debited.
- 4.7.1.7.** "Business Day" is every Monday through Friday, 8:00 am to 5:00 pm, excluding Federal Reserve holidays.
- 4.7.1.8.** "Scheduled Payment Date" is the day you want your Biller to receive your bill payment and is also the day your Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day.
- 4.7.1.9.** "Due Date" is the date reflected on your Biller statement for which the payment is due; it is not the late date or grace period.
- 4.7.1.10.** "Scheduled Payment" is a payment that has been scheduled through the Service but has not begun processing.

##### **4.7.2. Payment Scheduling**

The earliest possible Scheduled Payment Date for each Biller (typically four (4) or fewer Business Days from the current date) will be designated within the application when you are scheduling the payment. Therefore, the application will not permit you to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Biller. When scheduling payments you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Biller statement unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, you must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period.

##### **4.7.3. The Service Guarantee**

Due to circumstances beyond the control of the Service, particularly delays in handling and posting payments by Billers or financial institutions, some transactions may take longer to be credited to your account. The Service will bear responsibility for any late payment related charges up to \$50.00 should a payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in this Agreement.

##### **4.7.4. Payment Authorization and Payment Remittance**

You represent and warrant that you are acting with full authority for the applying entity, and that you are duly authorized to execute this Agreement on behalf of the applying entity. By providing the Service with names and account information of Billers to whom you wish to direct payments, you authorize the Service to follow the Payment Instructions that it receives through the payment system. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Biller directives. When the Service receives a Payment Instruction, you authorize the Service to debit your Payment Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. You also authorize the Service to credit your Payment Account for payments returned to the Service by the United States Postal Service or Biller, or payments remitted to you on behalf of another authorized user of the Service. The Service will use its best efforts to make all your payments properly. However, the Service shall incur no liability and any Service Guarantee shall be void if the Service is unable to complete any payments initiated by you because of the existence of any one or more of the following circumstances:

- 4.7.4.1.** If, through no fault of the Service, your Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of your overdraft account;
- 4.7.4.2.** The payment processing center is not working properly and you know or have been advised by the Service about the malfunction before you execute the transaction;
- 4.7.4.3.** You have not provided the Service with the correct Payment Account information, or the correct name, address, phone number, or account information for the Biller; and/or,
- 4.7.4.4.** Circumstances beyond control of the Service (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and the Service has taken reasonable precautions to avoid those circumstances. Provided none of the foregoing exceptions are applicable, if the Service causes an incorrect amount of funds to be removed from your Payment Account or causes funds from your Payment Account to be directed to a Biller which does not comply with your Payment Instructions, the Service shall be responsible for returning the improperly transferred funds to your Payment Account, and for directing to the proper Biller any previously misdirected transactions, and, if applicable, for any late payment related charges.

#### **4.7.5. Payment Methods**

The Service reserves the right to select the method in which to remit funds on your behalf to your Biller. These payment methods may include, but may not be limited to, an electronic payment, an electronic to check payment, or a laser draft payment (funds remitted to the Biller are deducted from your Payment Account when the laser draft is presented to your financial institution for payment).

#### **4.7.6. Payment Cancellation Requests**

You may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Scheduled Payment if completed before processing begins. Once the Service has begun processing a payment it cannot be cancelled or edited, therefore a stop payment request must be submitted. STOP PAYMENT REQUESTS The Service's ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact Customer Service. Although the Service will make every effort to accommodate your request, the Service will have no liability for failing to do so. The Service may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in the applicable fee schedule.

#### **4.7.7. Prohibited Payments**

Payments to Billers outside of the United States or its territories are prohibited through the Service.

#### **4.7.8. Exception Payments**

Tax payments and court ordered payments may be scheduled through the Service, however such payments are discouraged and must be scheduled at your own risk. In no event shall the Service be liable for any claims or damages resulting from your scheduling of these types of payments. The Service Guarantee as it applies to any late payment related changes is void when these types of payments are scheduled and/or processed by the Service. The Service has no obligation to research or resolve any claim resulting from an exception payment. All research and resolution for any misapplied, mis-posted or misdirected payments will be the sole responsibility of you and not of the Service.

#### **4.7.9. Bill Delivery and Presentment**

This feature is for the presentment of electronic bills only and it is your sole responsibility to contact your Billers directly if you do not receive your statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:

- 4.7.9.1.** Information provided to the Biller - The Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers and e-mail addresses, with the electronic Biller. Any changes will need to be made by contacting the Biller directly.

Additionally it is your responsibility to maintain all usernames and passwords for all electronic Biller sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill. The Service may, at the request of the Biller, provide to the Biller your e-mail address, service address, or other data specifically requested by the Biller at the time of activating the electronic bill for that Biller, for purposes of the Biller informing you about Service and/or bill information.

**4.7.9.2.** Activation - Upon activation of the electronic bill feature the Service may notify the Biller of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Biller to Biller and may take up to sixty (60) days, depending on the billing cycle of each Biller. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Biller. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Biller reserves the right to accept or deny your request to receive electronic bills.

**4.7.9.3.** Authorization to obtain bill data - Your activation of the electronic bill feature for a Biller shall be deemed by us to be your authorization for us to obtain bill data from the Biller on your behalf. For some Billers, you will be asked to provide us with your user name and password for that Biller. By providing us with such information, you authorize us to use the information to obtain your bill data.

**4.7.9.4.** Notification - The Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Service, the Service may send an e-mail notification to the e-mail address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of new electronic bills. The time for notification may vary from Biller to Biller. You are responsible for ensuring timely payment of all bills.

**4.7.9.5.** Cancellation of electronic bill notification - The electronic Biller reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation of your electronic bill presentment may vary from Biller to Biller. It may take up to sixty (60) days, depending on the billing cycle of each Biller. The Service will notify your electronic Biller(s) as to the change in status of your account and it is your sole responsibility to make arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

**4.7.9.6.** Non-Delivery of electronic bill(s) - You agree to hold the Service harmless should the Biller fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Biller directly.

**4.7.9.7.** Accuracy and dispute of electronic bill - The Service is not responsible for the accuracy of your electronic bill(s). The Service is only responsible for presenting the information we receive from the Biller. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Biller directly. This Agreement does not alter your liability or obligations that currently exist between you and your Billers.

**4.7.10.** Exclusions and Warranties

THE SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**4.7.11.** Password and Security

You agree not to give or make available your password or other means to access your account to any unauthorized individuals. You are responsible for all payments you authorize using the Service. If you permit other persons to use the Service or your password or other means to access your account, you are responsible for any transactions they authorize. If you believe that your password or other means to access your account has been lost or stolen or that someone may attempt to use the Service without your consent or has transferred money without your permission, you must notify the Service at once by calling 920-623-4000 during Customer Service hours.

**4.7.12.** Your Liability for Unauthorized Transfers

If you tell us within two (2) Business Days after you discover your password or other means to access your account has been lost or stolen, your liability is no more than \$50.00 should someone access your

account without your permission. If you do not tell us within two (2) Business Days after you learn of such loss or theft, and we can prove that we could have prevented the unauthorized use of your password or other means to access your account if you had told us, you could be liable for as much as \$500.00. If your monthly financial institution statement contains transfers that you did not authorize, you must tell us at once. If you do not tell us within sixty (60) days after the statement was sent to you, you may lose any amount transferred without your authorization after the sixty (60) days if we can prove that we could have stopped someone from taking the money had you told us in time. If a good reason (such as a long trip or a hospital stay) prevented you from telling us, we may extend the period.

#### **4.7.13. Errors and Questions**

In case of errors or questions about your transactions, you should as soon as possible notify us via one of the following:

1. Telephone us at 920-623-4000 during Customer Service hours;
2. Contact us by using the application's e-messaging feature; and/or,
3. Write us at: Farmers and Merchants Union Bank

PO Box 226  
159 West James Street  
Columbus, WI 53925

If you think your statement is incorrect or you need more information about a Service transaction listed on the statement, we must hear from you no later than sixty (60) days after the FIRST statement was sent to you on which the problem or error appears. You must:

1. Tell us your name and Service account number;
2. Describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and,
3. Tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send your complaint in writing within ten (10) Business Days after your verbal notification. We will tell you the results of our investigation within ten (10) Business Days after we hear from you, and will correct any error promptly. However, if we require more time to confirm the nature of your complaint or question, we reserve the right to take up to forty-five (45) days to complete our investigation. If we decide to do this, we will provisionally credit your Payment Account within ten (10) Business Days for the amount you think is in error. If we ask you to submit your complaint or question in writing and we do not receive it within ten (10) Business Days, we may not provisionally credit your Payment Account. If it is determined there was no error we will mail you a written explanation within three (3) Business Days after completion of our investigation. You may ask for copies of documents used in our investigation. The Service may revoke any provisional credit provided to you if we find an error did not occur.

#### **4.7.14. Disclosure of Account Information to Third Parties**

It is our general policy to treat your account information as confidential. However, we will disclose information to third parties about your account or the transactions you make ONLY in the following situations: 1. Where it is necessary for completing transactions; 2. Where it is necessary for activating additional services; 3. In order to verify the existence and condition of your account to a third party, such as a credit bureau or Biller; 4. To a consumer reporting agency for research purposes only; 5. In order to comply with a governmental agency or court orders; or, 6. If you give us your written permission.

#### **4.7.15. Service Fees and Additional Charges**

Any applicable fees will be charged when the Service was used during the billing cycle. There may be a charge for additional transactions and other optional services. You agree to pay such charges and authorize the Service to deduct the calculated amount from your designated Billing Account for these amounts and any additional charges that may be incurred by you. Any financial fees associated with your standard deposit accounts will continue to apply. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone and/or Internet service provider.

#### **4.7.16. Failed or Returned Transactions**

In using the Service, you are requesting the Service to make payments for you from your Payment Account. If we are unable to complete the transaction for any reason associated with your Payment Account (for example, there are insufficient funds in your Payment Account to cover the transaction), the transaction may not be completed. In some instances, you will receive a return notice from the Service. In each such case, you agree that: 1. You will reimburse the Service immediately upon demand the transaction amount that has been returned to the Service; 2. For any amount not reimbursed to the Service within fifteen (15) days of the initial notification, a late charge equal to 1.5% monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed; 3. You will reimburse the Service for any fees imposed by your financial institution as a result of the return; 4. You will reimburse the Service for any fees or costs it incurs in attempting to collect the amount of the return from you; and, 5. The Service is authorized to report the facts concerning the return to any credit reporting agency.

**4.7.17. Alternations and Amendments**

This Agreement, applicable fees and service charges may be altered or amended by the Service from time to time. In such event, the Service shall provide notice to you. Any use of the Service after the Service provides you a notice of change will constitute your agreement to such change(s). Further, the Service may, from time to time, revise or update the applications, services, and/or related material, which may render all such prior versions obsolete. Consequently, the Service reserves the right to terminate this Agreement as to all such prior versions of the applications, services, and/or related material and limit access to only the Service's more recent revisions and updates. In addition, as part of the Service, you agree to receive all legally required notifications via electronic means.

**4.7.18. Address or Banking Changes**

It is your sole responsibility to ensure that the contact information in your user profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and email addresses. Changes can be made either within the application or by contacting Customer Service. Any changes in your Payment Account should also be made in accordance with the procedures outlined within the application's Help files. All changes made are effective immediately for scheduled and future payments paid from the updated Payment Account information. The Service is not responsible for any payment processing errors or fees incurred if you do not provide accurate Payment Account or contact information.

**4.7.19. Service Termination, Cancellation or Suspension**

In the event you wish to cancel the Service, you may have the ability to do so through the product, or you may contact Customer Service via one of the following:

1. Telephone us at 920-623-4000 during Customer Service hours; and/or
2. Write us at: Farmers and Merchants Union Bank

PO Box 226  
159 West James Street  
Columbus, WI 53925

Any payment(s) the Service has already processed before the requested cancellation date will be completed by the Service. All Scheduled Payments including recurring payments will not be processed once the Service is cancelled. The Service may terminate or suspend Service to you at any time. Neither termination nor suspension shall affect your liability or obligations under this Agreement.

**4.7.20. Biller Limitation**

The Service reserves the right to refuse to pay any Biller to whom you may direct a payment. The Service will notify you via email promptly if it decides to refuse to pay a Biller designated by you. This notification is not required if you attempt to make a prohibited payment or an exception payment under this Agreement.

**4.7.21. Returned Payments**

In using the Service, you understand that Billers and/or the United States Postal Service may return payments to the Service for various reasons such as, but not limited to, Biller's forwarding address expired; Biller account number is not valid; Biller is unable to locate account; or Biller account is paid in full. The Service will use its best efforts to research and correct the returned payment and return it to

your Biller, or void the payment and credit your Payment Account. You may receive notification via email from the Service.

**4.7.22. Information Authorization**

Your enrollment in the Service may not be fulfilled if the Service cannot verify your identity or other necessary information. In order to verify ownership of the Payment Account(s) and/or Billing Account, the Service may issue offsetting debits and credits to the Payment Account(s) and/or Billing Account, and require confirmation of such from you. Through your enrollment in the Service, you agree that the Service reserves the right to request a review of your credit rating at its own expense through an authorized bureau. In addition, you agree that the Service reserves the right to obtain financial information regarding your account from a Biller or your financial institution (for example, to resolve payment posting problems or for verification). DISPUTES In the event of a dispute regarding the Service, you and the Service agree to resolve the dispute by looking to this Agreement. You agree that this Agreement is the complete and exclusive statement of the agreement between you and the Service which supersedes any proposal or prior agreement, oral or written, and any other communications between you and the Service relating to the subject matter of this Agreement. If there is a conflict between what an employee of the Service or Customer Service Department says and the terms of this Agreement, the terms of this Agreement will prevail.

**4.7.23. Assignment**

You may not assign this Agreement to any other party. The Service may assign this Agreement to any future, directly or indirectly, affiliated company. The Service may also assign or delegate certain of its rights and responsibilities under this Agreement to independent contractors or other third parties.

**4.7.24. No Waiver**

The Service shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Service. No delay or omission on the part of the Service in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

**4.7.25. Captions**

The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

**4.7.26. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to its conflicts of law's provisions. To the extent that the terms of this Agreement conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by law. Unless expressly stated otherwise, all other terms of this Agreement shall remain in full force and effect.

THE FOREGOING SHALL CONSTITUTE THE SERVICE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL THE SERVICE BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, AND/OR THE SERVICE.

**4.8. Mobile Banking**

**4.8.1.** The Mobile Banking Service is similar to Online Banking Service and refers generally to any service allowing an existing customer to access and view Accounts from a web-enabled mobile phone or device ("Mobile Device") whose network allows secure SSL traffic and supports WAP browsers. We do not guarantee the functionality of the Service on all wireless devices or networks; however, generally, the Service should be compatible with any web-enabled mobile phone or other Mobile Device, regardless of make, model, or mobile service provider. This proprietary solution adapts to any screen size and can change dynamically to present items on any screen in a pleasing format. The Mobile

Banking Service allows you to view Account balances, view account transaction history, transfer funds between Accounts, pay bills to payees, view alerts, and if you have selected the Mobile Remote Deposit (or Remote Deposit) Service, remotely make deposits. In most cases you may use the Service to gain access to deposit accounts in which you have an unrestricted right to withdraw funds.

However,

the Financial Institution, as it may determine at any time and from time to time in its sole discretion, may deny Service account access, restrict Service account transactions, or place limits on the specific dollar amount of funds that may be withdrawn or transferred from any account. We will not be responsible for any errors or failures from any malfunction of your Mobile Device or any malicious software or other problems related to the Mobile Device used with our Services. From time to time, we may develop additional mobile banking services. As we develop such services, you will have the opportunity to add them to your Mobile Banking Service, provided you have compatible wireless hardware and software.

**4.8.2.** To use the Service, you must have an open account at the Financial Institution, register for Online Banking Services, and have a compatible Mobile Device. During the registration process, you will enter your mobile phone number as well as other information we require to authenticate your identity. You will be provided with further instructions on how to access the Service using a software application ("App") or the browser on your Mobile Device. During this registration process, you will be required to provide your Online Banking Service identification credentials ("Access Code") that you must use each time you access the Service.

**4.8.3.** In addition to other Security Procedures provided for in this Agreement, the use of the Access Code, your Mobile Device, and Biometric Logon are security procedure established by Financial Institution to authenticate the identity of the person attempting to gain access to the Service. Biometric Logon is an authentication method to assist in verifying your identity. It collects your facial or fingerprint (image capture), or your voice biometric (audio recording). The security procedure is not designed for the detection of errors. We may require you to change your Access Code from time to time for security reasons. You should keep your Access Code in a secure location. Any person having access to your Access Code or your Biometric Logon will be able to access these Services and perform all transactions, including reviewing Account information and using the Bill Pay Services. With this Access Code, a third party will be able to use your Online Banking Service to add new payees to the Bill Pay Service. You are responsible for safeguarding the Access Codes, including your Biometric Logon, and your Mobile Device. Providing these Access Codes or Biometric Logon to another person effectively constitutes a grant of authority to access your accounts.

**4.8.4.** Because the Mobile Banking Service is similar to Online Banking Service on a PC, there are security risks associated with the use of the Service. The hardware and software that you use in connection with the Service may be subject to unauthorized tracking or other manipulation by spyware or other malicious code. We are not responsible for advising you of the existence or potential effect of such malicious code, and your use of your hardware and software is at your own risk. We will use commercially reasonable efforts to secure the Service to prevent access by unauthorized persons and to prevent the introduction of any malicious code, such as an Access Device virus. However, no security system is failsafe, and despite our efforts the security of the Service could be compromised, or malicious code could be introduced by third parties. We will provide you with notice if your information is the subject of a security breach as required by applicable law.

#### **4.9. Mobile Deposit Service.**

**4.9.1.** If you are enrolled in the Mobile Deposit Service and you have been approved by the Financial Institution to use the Service, the following terms and conditions are applicable to the Mobile Deposit Service. Your use of Financial Institution's Mobile Deposit Service ("Mobile Deposit Service") is governed by the terms of this Agreement. You acknowledge that e-mail and/or messages displayed on your mobile device will be the primary means of communication for the Mobile Deposit Service. You are responsible for maintaining a current e-mail address and you agree that you will, in a timely manner, review messages and notifications you receive from us and check your Account to confirm it reflects recent activity.

- 4.9.2.** The Mobile Deposit Service allows you to use the Mobile Banking Apps to make deposits to your accounts from home or other remote locations; by taking photos of the front and back of original checks and transmitting the digital images ("images") and associated deposit information to us or our processor with your Mobile Device. In order to use the Mobile Deposit Service, you must be designated as an authorized signer or owner of an Account that is eligible for this Mobile Deposit Service or be designated by the Administrator and be approved by the Financial Institution.
- 4.9.3.** We may establish per item transaction, daily, and monthly limits on the dollar amount and/or number of Check Images or Mobile Deposits from time to time. The daily and monthly limits are over Business Days and calculated based on your total Mobile Deposit activity across all of the Accounts that you use with this service. If you attempt to initiate a Mobile Deposit in excess of these limits, we may reject your Mobile Deposit and you may deposit the check(s) in a manner consistent with other methods for making deposits provided by the Financial Institution (such as at a branch or ATM or by mail). If we permit you to make a Mobile Deposit in excess of these limits, such Mobile Deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a Mobile Deposit at other times. Financial Institution reserves the right to change the limits. Any such change shall be effective immediately and may be implemented prior to your receipt of notice thereof.
- 4.9.4.** Upon acceptance of the Mobile Deposit, Financial Institution shall grant your Account Provisional Credit (as herein defined) for the total amount of the Mobile Deposit or the accepted Mobile Deposit, as applicable. As used herein, "Provisional Credit" means that when we post transactions to your account, the credit is made to your Account subject to final payment of the Checks and subject to the terms of the Deposit Agreement. For the purpose of determining availability of funds, Financial Institution may hold funds for the period of time permitted by Financial Institution's funds availability disclosure. Mobile Deposit funds are generally available the next Business Day after the Business Day of your deposit, unless a hold is placed. If a hold is placed, you will be notified.
- 4.9.5.** You hereby agree that you will only scan and deposit a check(s) as that term is defined in Federal Reserve Board Regulation CC ("Reg CC"). You agree that the image of the check that is transmitted to Financial Institution (each such check and other item a "Check" and, if more than one, "Checks") shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code (1990 Official Text). You further agree that you will not use the Mobile Deposit Service to deposit any Checks or other items that: (a) are payable to any person or entity other than you, (b) are prohibited by Financial Institution's then current Procedures pertaining to the Mobile Deposit Service or are in violation of any law, rule or regulation, (c) you know or suspect, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn, (d) have not been previously endorsed by a financial institution and are either "substitute checks" (as defined in Reg CC or other applicable federal law or regulation) or "image replacement documents" that purport to be substitute checks, without Financial Institution's prior express written consent, (e) are drawn on financial institutions that are located outside of the United States or Territories of the United States, and (f) are not acceptable to Financial Institution for deposit into a deposit account as provided in the Deposit Agreement, which is incorporated herein by reference and made a part hereof (Checks described in clauses (a) through (g) each a "Prohibited Check" and, collectively, "Prohibited Checks"). If you deposit a Prohibited Check, you agree to indemnify and reimburse Financial Institution for, and hold Financial Institution harmless from and against, any and all losses, costs and expenses (including reasonable attorneys' fees) Financial Institution may incur associated with any warranty, indemnity or other claim related thereto. Furthermore, if, after first having obtained Financial Institution's express written consent to do so, you provide Financial Institution with an electronic representation of a substitute check for deposit into an Account instead of an original Check, you agree to indemnify and reimburse Financial Institution for, and hold Financial Institution harmless from and against, any and all losses, costs and expenses (including reasonable attorney's fees) Financial Institution incurs because any such substitute check resulting from such electronic representation does not meet applicable substitute check standards and/or causes duplicate payments.
- 4.9.6.** Each image must provide all information on the front and back of the original Check at the time presented to you by the drawer (the person or entity from whose account the Check was written),



including, but not limited to, information about the drawer and the paying financial institution that is preprinted on the original Check, MICR information, signature(s), any required identification written on the front of the original Check and any endorsements applied to the back of the original Check. The image quality must meet the standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.

- 4.9.7.** Endorsements must be made on the back of the Check and include (i) your signature, (ii) your account number and (iii) the following statement: "**MOBILE DEPOSIT AT FMUB ONLY.**"
- 4.9.8.** You acknowledge and agree that you shall be liable to us for any loss we incur caused by a delay or processing error resulting from an irregular endorsement or other markings placed on the Check by you.
- 4.9.9.** All images processed for deposit through Mobile Deposit will be treated as "deposits" under your current Deposit Account Agreement with us and will be subject to all terms of the Deposit Account Agreement and any amendments to such Agreement. To be eligible for processing on the day transmitted, Mobile Deposits must be received and accepted by Financial Institution on or before 5:00 p.m. CST or other cut-off time established by Financial Institution from time to time (the "Cut-Off Time") on a Business Day that the Financial Institution is open. A Mobile Deposit that is received after the cut-off time shall be deemed to have been received on the Business Day following the Business Day on which the Mobile Deposit is actually received by Financial Institution. When we receive an image, we will confirm that you have submitted the image via a message displayed on your Mobile Device. Your submission confirmation does not mean that the image contains no errors or that it has been approved for crediting. A status of "pending" does not indicate that the submitted item has been accepted. You will not receive a subsequent notification that a submitted image has been credited to your Account. You agree that Financial Institution has no obligation to accept a Mobile Deposit and, therefore, we reserve the right to reject any Mobile Deposit or the Images or other information contained therein transmitted through this Service, at our discretion, without liability to you. If your submission is rejected, you will receive an e-mail of such rejection from the Financial Institution. It is your responsibility to check notifications from the Financial Institution for any rejected submissions and contact the Financial Institution to address the reason for such rejection. You acknowledge and agree that Financial Institution shall have no liability to you for failing to provide notice of rejection of a Mobile Deposit. You agree that you shall be solely liable for, and Financial Institution shall not have any liability whatsoever to you for, any Mobile Deposit or the Images or other information contained therein that are not received by Financial Institution. You also agree to be liable for Mobile Deposits or the Images or other information contained therein that are intercepted or altered by an unauthorized third party or dropped during transmission.
- 4.9.10.** Original Checks. After you have received confirmation that your Mobile Deposit has been accepted for deposit, you should mark the Check as having been deposited. You agree to securely store the original Check for a period of ten (10) calendar days from the date of the Image transmission (such period the "Retention Period"). During the Retention Period, you shall take appropriate security measures to ensure that: (a) the information contained on such Checks shall not be disclosed, (b) such Checks will not be duplicated or scanned more than one time and (c) such Checks will not be deposited or negotiated in any form. Upon expiration of the Retention Period, you shall destroy the original Check you transmitted as an Image using a method of destruction that will result in the paper-based Item being un-processable and all sensitive personal and financial information undecipherable. You hereby indemnify Financial Institution for, and hold Financial Institution harmless from and against, any and all claims, demands, actions, causes of action, losses and damages, of whatever nature or kind, and regardless of the theory upon which the same is (are) based, caused directly or indirectly by, arising out of, related to, in connection with or resulting wholly or partially from, the destruction of original Checks by you. During the Retention Period, you agree to promptly provide the original Check to the Financial Institution upon request.
- 4.9.11.** You agree that, in the event you are not able to capture, process, produce or transmit a Mobile Deposit to Financial Institution, or otherwise comply with the terms hereof or of the Procedures,

for any reason, including, but not limited to, communications, equipment or software outages, interruptions or failures, you will make the deposit in a manner consistent with other methods for making deposits provided by Financial Institution such as a branch or atm until such time that the outage, interruption or failure is identified and resolved. You hereby acknowledge and agree that Financial Institution shall not be liable to you for any loss or damage of any nature sustained by you as the result of your inability to use the Mobile Deposit Service. The deposit of original Checks through these other methods shall be governed by the terms and conditions of the Deposit Account Agreement and not by the terms of this Agreement.

**4.9.12.** If Images of Checks deposited by you are dishonored or otherwise returned unpaid by the drawee financial institution, or are returned by a clearing agent for any reason, including, but not limited to, issues relating to the quality of the Image, you understand and agree that, since you either maintain the original Check or have destroyed it in accordance with the Original Check provisions in this agreement, the original Check will not be returned, and Financial Institution may charge back an Image of the Check to your Account. You understand and agree that the Image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by Financial Institution, you agree not to deposit the original Check if an Image or other debit as previously described is charged back to you.

**4.9.13.** Your Warranties. You make the following warranties and representations with respect to each image:

- Checks Deposited. You shall only deposit Checks that are authorized by this Agreement, the Procedures and the Deposit Agreement;
- Image Quality. Each Image transmitted by you to Financial Institution contains an accurate representation of the front and the back of each Check and complies with the requirements of this Agreement;
- Accuracy of Information. All data and other information submitted by you to Financial Institution, including, but not limited to, data contained in the MICR line of each Check is complete and accurate and complies with the requirements of this Agreement;
- No Duplicates. You will not: (i) create duplicate Images of the Checks, (ii) transmit a duplicate Image or File to Financial Institution, or (iii) deposit or otherwise negotiate the original of any Check of which an Image was created. You further warrant that no subsequent transferee, including but not limited to Financial Institution, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the Item(s);
- No Loss. No subsequent transferees of the Item(s), including but not limited to Financial Institution, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original Check;
- Information. All information provided by you to Financial Institution is true, complete and accurate;
- Authority and Legality. (i) This Agreement is valid and enforceable against you in accordance with its terms; and (ii) the entry into, and performance of, this Agreement by you will not violate any law, or conflict with any other agreement, to which you are subject;
- No Litigation. There is no action, suit or proceeding pending or, to your knowledge, threatened, which if decided adversely, would adversely affect your financial condition or operations.
- Transactions. All Checks and transactions are, and will be, bona fide. All signatures on Checks are authentic and authorized.
- Rule Compliance. You submit Images in compliance with this Agreement, the Procedures, applicable law and the Rules.

**4.9.14.** Indemnification and Liability; Third Party Claims. In addition to the other indemnities set forth in this Agreement, you hereby indemnify Financial Institution and each of its parents, subsidiaries and affiliates and their respective officers, directors, employees, members, partners, agents, insurers and

attorneys (each an "Indemnified Party" and, collectively, the "Indemnified Parties") for, and hold each of the Indemnified Parties harmless from and against, all actions, causes of action, claims, damages, liabilities and expenses (including reasonable attorneys' fees) of any nature or kind (including those by third parties) arising out of, or related to, this Agreement, including all actions, causes of action, claims, damages, liabilities and expenses arising out of, related to or resulting from: (a) your (i) failure to report required changes, (ii) transmission of incorrect data to Financial Institution or (iii) failure to maintain compliance with the Rules, (b) (i) Financial Institution's provision of the Service, or (ii) Financial Institution's action or inaction in accordance with, or in reliance upon, any instructions or information received from any person reasonably believed by Financial Institution to be you, (c) your breach of any of your representations, warranties, covenants or other agreements or responsibilities under this Agreement and/or (d) your breach or violation of any Rules; provided, however, you are not obligated to indemnify Financial Institution for any damages solely and proximately caused by Financial Institution's gross negligence or willful misconduct.

## **5. Limitations.**

Your use of these Services is subject to the following limitations:

### **5.1. Dollar Amount.**

There may be a limit on the dollar amount of the transactions you can make using these Services. Security reasons limit the dollar amount of transactions and these limits are subject to change from time to time. Payment can only be made with U.S. currency.

### **5.2. Frequency.**

In addition to the Federal banking regulations that restrict the number of transfers and withdrawals, there may be limits on the number of transactions you can make using these Services. These limits are for security reasons and are subject to change.

### **5.3. Foreign Transactions.**

No Payments may be made to Payees outside the United States, unless the Customer has been specifically approved by the Financial Institution.

### **5.4. Additional Limitations.**

Additional limitations may be contained in this Master Agreement or the applicable Product Schedule. Your ability to initiate transactions may also be limited by the terms of other agreements you have with the Financial Institution or by applicable law.

## **6. Parties' Responsibilities.**

### **6.1. Your Responsibility.**

#### **6.1.1. Physical and Electronic Security.**

**6.1.1.1.** You are solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in your possession or under your control. We are not responsible for any Access Device viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any Access Device viruses, or any related problems that may be associated with the use of an online system. Any material downloaded or otherwise obtained is obtained at your own discretion and risk, and Financial Institution is not responsible for any damage to your Access Device or operating systems or for loss of data that results from the download of any such material, whether due to any Access Device virus or otherwise. You are solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to your operating systems, and for protecting, securing, and backing up any data and information stored in or on your operating systems. Financial Institution is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on your operating systems.

**6.1.1.2.** You acknowledge and agree that it is your responsibility to protect yourself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as “phishing” or “pharming”). You agree to educate your representative(s), agents, and employees as to the risks of such fraud and to train persons to avoid such risks. You acknowledge that Financial Institution will never contact you by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information, and will never provide links to websites in e-mails that Financial Institution transmits to you. In the event you receive an e-mail or other electronic communication that you believe, or has reason to believe, is fraudulent, you agree that you shall not respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. To the extent allowed by law, you agree that Financial Institution is not responsible for any losses, injuries, or harm incurred by you as a result of any electronic, e-mail, or internet fraud.

**6.1.1.3.** In the event of a breach of the Security Procedure, you agree to assist Financial Institution in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing Financial Institution or Financial Institution’s agent access to your hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. You further agree to provide to Financial Institution any analysis of such equipment, device, or software or any report of such analysis performed by you, your agents, law enforcement agencies, or any other third party. Your failure to assist Financial Institution shall be an admission by you that the breach of the Security Procedure was caused by a person who obtained access to your transmitting facilities or who obtained information facilitating the breach of the Security Procedure from you and not from a source controlled by Financial Institution.

**6.1.2. Reporting Unauthorized Transactions.**

You should notify us immediately if you believe your User Name or Password have been lost or stolen, that someone has gained access to the Security Procedure, or that someone has transferred or may transfer money from your Account without your permission or if you suspect any fraudulent activity on your Account. To notify us, call us at the number provided in Section 9.6 between 8:00 a.m. and 5:00 p.m. CST during a Business Day.

**6.1.3. Duty to Inspect.**

You shall inspect all transaction history, reports, journals, and other material evidencing the output of the Service(s) performed by Financial Institution. You must report all errors to the Financial Institution for Services performed and indicated in the transaction history, reports, journals, and other material evidencing the output of the Service(s) or otherwise reported to you daily by the close of business on the banking day following the day on which the Service(s) is rendered. You must report all other errors within a reasonable time not to exceed thirty (30) days from the date that the error is made. Failure of you to promptly report errors within such specified time shall preclude you from asserting against the Financial Institution any claims arising from the error or any loss caused by the error.

**6.1.4. Financial Information.**

Financial Institution may from time to time request information from you in order to evaluate a continuation of the Service(s) to be provided by Financial Institution hereunder and/or adjustment of any limits set by this Master Agreement or any applicable Product Schedule. You agree to provide the requested financial information immediately upon request by Financial Institution, in the form required by Financial Institution. If you refuse to provide the requested financial information, or if Financial Institution concludes in its sole discretion that the credit risk of you is unacceptable, Financial Institution may terminate the Service according to the provisions hereof. You authorize Financial Institution to investigate or re-investigate at any time any information provided by you in

connection with this Master Agreement or any applicable Product Schedule or any Services and to request reports from credit bureaus and reporting agencies for such purpose.

**6.1.5. Deadlines.**

You shall deliver or transmit all data or information to Financial Institution by the deadline(s) specified in this Master Agreement or any applicable Product Schedule and the Operating Instructions. Financial Institution shall have no obligation to process data or perform the Service if the data is not received by the Financial Institution by the specified deadline.

**6.1.6. Payment for Services.**

**6.1.6.1.** You agree to pay Financial Institution the fees established by Financial Institution for rendering the Services under the terms of this Master Agreement or any applicable Product Schedule. Depending on which Online Banking services you subscribe to, you will be charged the applicable Online Banking fees as set forth in our General Information and Fee Schedule hereby incorporated by reference and made a part hereof. Once you have subscribed, you will be charged the applicable Monthly Fee(s).

**6.1.6.2.** The Financial Institution may change or add any fees for Online Banking by amending this Master Agreement. Fees charged for Online Banking under this Master Agreement are in addition to any service charges or fees that apply to your accounts with us.

**6.1.6.3.** You authorize the Financial Institution to deduct all applicable Monthly Fees from any Account listed on the Authorization Form. If you close the Account(s) associated with the Service, Fees may be deducted from any other account you maintain with us or any of our affiliates. Furthermore, Financial Institution may set off against any amount it owes to you in order to obtain payment of your obligations under this Master Agreement or any applicable Product Schedule.

**6.1.6.4.** In addition to the Service fees, you agree to pay for all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Service, this Master Agreement, and/or the software or equipment made available to you (excluding any income tax payable by Financial Institution). You are also responsible for the costs of any communication lines and any data processing charges payable to third parties.

**6.1.7. Data and Information Supplied by You.**

You shall transmit or deliver data and other information in the format and on the media as provided for in the Product Schedule and the Operating Instructions if applicable or as otherwise required by the Financial Institution in conjunction with rendering the Service(s) selected by you. You shall have the sole responsibility of ensuring the accuracy and correctness of the data transmitted. You acknowledge and agree that Financial Institution shall not examine the data for correctness and the Financial Institution shall not have any responsibility for detecting errors in the data transmitted by you.

The data transmitted by you must be legible, correct and complete. Financial Institution shall not process, and Financial Institution shall not be liable to you for failure to process, the data if it is not in the format specified by Financial Institution or if the data is incomplete. Financial Institution shall not be liable for errors or omissions caused by data that is rejected as the result of your failure to provide the data in accordance with the standards specified in the Master Agreement or any applicable Product Schedule and the Operating Instructions.

**6.1.8. Remotely Created Checks.**

If you use a Service wherein you create or deposit a Remotely Created Check, as that term is defined in Federal Reserve Board Regulation CC, you warrant to Financial Institution that the person on whose

account the Remotely Created Check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check.

#### **6.1.9. Use of Services.**

You will use the Services only for your own internal business use in accordance with the terms of this Master Agreement. Without limiting the generality of the foregoing, you agree not to make the Services available or allow use of the Services in a computer bureau service business, time-sharing, or otherwise disclose or allow use of the Service by or for the benefit of any third party. FURTHER, YOU REPRESENT AND WARRANT THAT NONE OF THE ACCOUNTS HAVE BEEN ESTABLISHED OR ARE BEING OR WILL BE USED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES AND THAT YOU ARE NOT A "CONSUMER" UNDER REGULATION E - ELECTRONIC FUNDS TRANSFER ACT (HEREIN, "REG. E").

#### **6.1.10. Prohibited Transactions.**

You agree not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which you are bound, or (c) to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, (d) to engage in any activity or business that would result in you being or becoming a "money service business" as defined in the Bank Secrecy Act and its implementing regulations, or (e) to engage in any transaction or activity that is not specifically authorized and permitted by this Agreement. You acknowledge and agree that Financial Institution has no obligation to monitor your use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that Financial Institution reserves the right to decline to execute any transaction or activity that Financial Institution believes violates the terms of this Agreement.

#### **6.1.11. Other Customer Requirements.**

**6.1.11.1. Beneficial Ownership Reporting and Certification.** Customer represents and warrants to Financial Institution that the beneficial ownership (as that term is defined in the Anti-Money Laundering Act of 2020, Public Law No. 116-283, §6403) of Customer as identified in the Deposit Account opening process remains true and correct as of the date Customer enters into this Master Agreement or that Customer has provided Bank with written confirmation of the current beneficial ownership information. Further, Customer represents and warrants that Customer shall immediately notify Financial Institution in writing of any changes, and to complete any and all forms requested by Financial Institution, regarding a change in substantial control of Customer and/or any change of ownership or control of 25% or more of the ownership interests in Customer.

**6.1.11.2. Data Security and Personally Identifiable Information.** To the extent you come into possession, custody or control of any Personally Identifiable Information or other non-public information, including information (1) provided by a consumer to you, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by you with regard to a consumer, including account information (collectively "PII"), you represent and warrant to Financial Institution and its Vendors that you will protect such PII by rendering it unreadable and inaccessible by persons who do not have legal authority to access such PII.

#### **6.2. The Financial Institution's Responsibilities.**

Financial Institution agrees to use ordinary care in rendering Services under this Master Agreement and any applicable Product Schedule. You recognize and agree that ordinary care does not mean error free. You agree to pay all attorneys' fees, costs and expenses Financial Institution may incur in collecting any sums you owe to Financial Institution for overdrafts, service charges or otherwise or in enforcing any rights Financial Institution may have under the terms of this Master Agreement and any applicable Product Schedule or applicable law, rule or regulation applicable to your account(s) or the Services rendered by

Financial Institution under this Master Agreement and any applicable Product Schedule. You also agree to pay all attorneys' fees, costs and expenses that Financial Institution may incur as the result of defending any claim or action made against Financial Institution by you, or on your behalf where Financial Institution is found not to be liable for such claim. In no event shall Financial Institution be liable to you for attorneys' fees incurred by you in any action brought by you against Financial Institution.

Our sole responsibility for an error in a transfer will be to correct the error. Without limiting the generality of the forgoing, we will not be responsible for the following matters, or for errors or failures of our Services as result of:

- Access. We will not be liable under this Master Agreement or any applicable Product Schedule for failure to provide access or for interruptions in access to our Services due to a system failure or due to other unforeseen acts or circumstances.
- Your Access Device Equipment & Your Software. We will not be responsible for any errors or failures from any malfunction of your Access Device or any virus or other problems related to your computer equipment used with our Services. We are not responsible for any error, damages or other loss you may suffer due to malfunction or misapplication of any system you use, including your browser (Mozilla Firefox®, Microsoft Internet Explorer®, or otherwise), your Internet service provider, your personal financial management or other software (such as Quicken® or Microsoft Money®), or any equipment you may use (including your telecommunications facilities, Access Device hardware and modem) to access or communicate with the Online Banking Services.
- Any Transaction or Instruction. We will not honor a request for a Transfer if:
  - (a) it exceeds your collected and available funds on deposit with the Financial Institution;
  - (b) it is not in accordance with any condition indicated by you and agreed to by the Financial Institution;
  - (c) the Financial Institution has reason to believe it may not be authorized by you;
  - (d) it involves funds subject to hold, dispute, or legal process preventing their withdrawal;
  - (e) it would violate any provision of any present or future risk control program of the Federal Reserve or any current or future rule or regulation of any other federal or state regulatory authority;
  - (f) it is not in accordance with any other requirement stated in this Master Agreement or any Financial Institution policy, procedure or practice; or,
  - (g) it is for the protection of the Financial Institution or you, the Financial Institution has reasonable cause not to honor.

## **Privacy and Confidentiality.**

### **6.3. Privacy/Information Sharing.**

The importance of maintaining the confidentiality and privacy of the information provided by you is one of our highest priorities. We may disclose information about your Accounts or the Transfers you make: (a) where it is necessary for completing the transfers or processing or maintaining your Accounts; (b) in order to verify the existence or condition of your Accounts for a third party such as a credit bureau or merchant; (c) in order to comply with legal process, government agency or court orders; (d) to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements; or (e) otherwise as permitted by law. An explanation of our privacy policy will be provided to you separately in the manner required by applicable law. Please review it carefully. Our privacy policy may change from time to time and is always available on our website and at our Financial Institution locations.

#### **6.4. Confidential Information.**

All information of a business nature relating to the assets, liabilities or other business affairs disclosed to the Financial Institution by you and your customers in connection with this Master Agreement and any applicable Product Schedule is confidential. Financial Institution shall not, without the express written consent of you, disclose or permit access to any such information by any person, firm or corporation and Financial Institution shall cause its officers, employees, and agents to take such action as shall be necessary or advisable,

to preserve and protect the confidentiality of disclosing such information to persons required to have access thereto for the performance of this Master Agreement and any applicable Product Schedule, or to any other party to which the Financial Institution may be required by law to report such information. You agree to hold confidential and to use only in connection with the Service provided under this Master Agreement and any applicable Product Schedule all information furnished to you by Financial Institution or by third parties from whom Financial Institution has secured the right to use the Service, including, but not limited to, Financial Institution's product and service pricing structure, system design, programming techniques or other unique techniques. In addition, should you at any time receive or acquire any information relating to another customer of the Financial Institution, you shall promptly return such information to Financial Institution and not reveal such information to any other party and shall not make use of such information for your own benefit. Financial Institution and your obligations and agreements under this paragraph shall not apply to any information supplied that was known to either party prior to the disclosure by the other, or is or becomes generally available to the public other than by breach of this Agreement, or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Notwithstanding anything to the contrary contained herein, it is authorized and agreed by the parties hereto that the performance of said Service is or might be subject to regulation and examination by authorized representatives of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and/or a State regulatory agency and you agree to the release of your reports, information, assurances, or other data as may be required by them under applicable laws and regulations. You agree that any specifications or programs developed by the Financial Institution in connection with this Master Agreement and any applicable Product Schedule or supplied or made available to you by Financial Institution are the exclusive property of Financial Institution, its agents, suppliers, or contractors, and further agrees that such material shall not be copied or used in any manner or for any purpose without the express written consent of Financial Institution.

This clause shall survive the termination of this Master Agreement.

#### **7. Termination.**

##### **7.1. Termination Upon Written Notice.**

Either you or the Financial Institution may terminate this Master Agreement, any applicable Product Schedule, and your Online Banking subscription at any time upon giving at least Thirty (30) days prior written notice of the termination to the other party. If you terminate Online Banking, you authorize the Financial Institution to continue making transfers you have previously authorized and continue to charge monthly fees until such time as the Financial Institution has had a reasonable opportunity to act upon your termination notice. Once the Financial Institution has acted upon your termination notice, the Financial Institution will make no further transfers from your accounts, including any transfers you have previously authorized. If the Financial Institution terminates your use of Online Banking, the Financial Institution reserves the right to make no further transfers from your accounts, including any transactions you have previously authorized.

##### **7.2. Immediate Termination.**

Either party shall have the right to terminate this Master Agreement, any applicable Product Schedule, and your Online Banking subscription immediately by giving written notice to the other if such other party: (i) ceases to conduct its business in the ordinary sense, (ii) has any substantial part of its property become subject to any levy, seizure, assignment or application for sale for, or by, any creditor or government agency, (iii) is a party to an acquisition or (iv) in the reasonable judgment of the party seeking termination, experiences an adverse change in its financial condition or business which impairs the ability of such party to



perform its obligations under this Master Agreement or any applicable Product Schedule, (v) fails to perform its obligations under this Master Agreement or any applicable Product Schedule or defaults under any other agreement between the parties or (vi) makes any warranty or representation which proves to be false or misleading.

Notwithstanding the foregoing or Section 8.1, Financial Institution may immediately terminate this Master Agreement and/or any applicable Product Schedule without notice if, (a) you or we close your Account(s), or (b) in Financial Institution's sole discretion, Financial Institution determines that you have abused the Online Banking Service or Financial Institution believes that it will suffer a loss or other damage if the Master Agreement and/or applicable Product Schedule is not terminated.

### **7.3. Rights Cumulative.**

Financial Institution's election to terminate this Master Agreement and/or any applicable Product Schedule is in addition to any and all other remedies that may be available to Financial Institution and will not affect any obligations you may have to Financial Institution. Any reinstatement of the Service under this Master Agreement and/or any applicable Product Schedule will be at Financial Institution's sole discretion and must be agreed upon in writing by an authorized representative of Financial Institution.

### **7.4. Rights/Duties Upon Termination.**

Upon termination of this Master Agreement and/or any applicable Product Schedule, any property or rights of a party in the possession of the other party, tangible or intangible, shall be returned to owner thereof within thirty (30) days after the later to occur of (i) termination of the Master Agreement and/or any applicable Product Schedule or (ii) the last date that such party receives any such property or rights.

Upon termination of this Master Agreement and/or any applicable Product Schedule, (i) you will promptly pay to Financial Institution all sums due or to become due under this Master Agreement and/or applicable Product Schedule, and (ii) you shall have no further right to make use of the Service or any system or software which may have been provided in connection with the Service.

## **8. Changes in Terms and other Amendments.**

The Financial Institution may amend the terms of this Master Agreement and any applicable Product Schedule alter, change, or modify the Services provided under the terms of this Master Agreement and any applicable Product Schedule (including the fees and charges for Services listed) or any supplemental agreement at any time in its sole discretion by giving written notice to you. If required by agreement or by applicable law, notice will be given for the required applicable number of days in advance of such amendments by mailing a copy of the amendment to you at your most recent address shown on our records or, if you have previously agreed, by providing notice delivered to the last email address you have provided us. Your continued use of the Services shall constitute your agreement to such amendment. No amendments requested by you shall be effective unless received in writing by Financial Institution and agreed to by the Financial Institution in writing.

## **9. Other Provisions.**

### **9.1. Electronic Notices.**

We may deliver to you any required disclosures and other notices concerning these Services or your Accounts by e-mail or other appropriate electronic means in accordance with Financial Institution's Business Online Enrollment Forms.

You may use e-mail to contact us about inquiries, maintenance and/or some problem resolution issues. E-mail may not be a secure method of communication. Thus we recommend you do not send confidential personal or financial information by e-mail. There may be times when you need to speak with someone immediately (especially to report a lost or stolen Password, or to stop a payment). In these cases, **do not use e-mail**. Instead, you should call us at the number provided in Section 9.6.

**9.2. Hours of Operation.**

Our representatives are available to assist you from the hours of 8:00 a.m. to 5:00 p.m. CST, Monday through Friday, except holidays, by calling the number provided in Section 9.6.

**9.3. Ownership of Website.**

The content, information and offers on our website are copyrighted by Financial Institution and/or Vendor and the unauthorized use, reproduction, linking or distribution of any portions is strictly prohibited. You agree not to copy, display, distribute, download, license, sub-license, modify, publish, repost, reproduce, reuse, sell, transmit, create a derivative work from or otherwise use for public or commercial purposes, the information and materials on the Sites, except as provided in this Master Agreement, without our express written permission. Unless otherwise noted, all other trademarks, service marks, and logos used on the Financial Institution's sites are the trademarks, service marks or logos of Financial Institution, or others as indicated.

**9.4. Web-linking Practices.**

Financial Institution may provide access to information, products or services offered on other third party web sites. The Financial Institution is not responsible for, nor does control, the content, products, or services provided by linked sites. The Financial Institution does not endorse or guarantee the products, information or recommendations provided by linked sites, and is not liable for any failure of products or services advertised on those sites. In addition, each third-party site may provide less security than the Financial Institution and have a privacy policy different than that of the Financial Institution. Your access, use and reliance upon such content, products or services is at your own risk.

**9.5. Geographic Restrictions.**

The Services described in this Master Agreement and any application for credit and deposit services available at our web site are solely offered to citizens and residents of the United States of America residing within the United States of America. Citizens and residents may not be able to access these Services outside the United States of America.

**9.6. Contact Information.**

In case of questions about your electronic transactions contact customer service at:

Farmers & Merchants Union Bank  
Attn: Operations Department  
PO Box 226  
Columbus, WI 53925  
Phone: (920) 623-7112  
Fax: (920) 623-7138

Customer shall provide its current contact information to Financial Institution on Business Online Enrollment Forms and Customer shall immediately notify Financial Institution if such contact information changes. Any notice provided to Customer by Financial Institution to the address on file, as amended from time to time, or to the address for any of Customer's accounts with Financial Institution shall be deemed effective on the date such notice is sent by Financial Institution.

**9.7. Deposit Account Agreement.**

You acknowledge and agree that your demand deposit account maintained with Financial Institution is an integral part of the Services offered by Financial Institution and that all transactions and Services initiated or processed pursuant to this Master Agreement are subject to the terms and conditions of the rules, regulations and agreement ("Deposit Account Agreement") governing accounts in effect from time to time between you and Financial Institution. The Deposit Account Agreement is expressly incorporated herein by

reference. The terms and conditions of this Master Agreement shall control over any inconsistent terms and conditions of the Deposit Account Agreement. You acknowledge that you have signed and executed all agreements, resolutions, signature cards and forms governing your demand deposit account required by Financial Institution. If you have not signed the foregoing forms required by Financial Institution, by signing this Master Agreement, you acknowledge that you have read the contents of and agree to be bound by the terms of those forms, agreements and documents, and adopt and ratify, as an authorized signatory(s), the signature(s) of any person(s) who has signed a signature card or any check on your account. You also agree to establish all accounts that must be opened in conjunction with the Service provided by Financial Institution.

**9.8. Security Interest.**

To secure the payment and performance of your obligations set forth herein and under any Service Agreement(s), you grant to Financial Institution a security interest in and pledges and assigns to Financial Institution all of your right, title, and interest in the following described property, whether now owned or hereafter existing or acquired and wherever located: (a) All your monies, instruments, savings, checking and other accounts (excluding IRA, Keogh, trust accounts and other accounts subject to tax penalties if so assigned) that are now or in the future in Financial Institution's custody or control; (b) any other collateral described in any security instrument securing your obligations to Financial Institution under this Agreement or any other obligation of Third-Party to Financial Institution; and (c) all proceeds and products of the property as well as any replacements, accessions, substitutions, and additions to any of the above.

**9.9. Effective Dates.**

The effective date of this Master Agreement and any applicable Product Schedule shall be the date upon which the Agreement is executed by you and accepted by Financial Institution.

**9.10. Internet Disclaimer.**

For any Service(s) described in the Agreement utilizing the Internet, Financial Institution does not and cannot control the flow of data to or from Financial Institution's network and other portions of the Internet. Such flow depends in large part on the performance of Internet Services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt your connections to the Internet (or portions thereof). Financial Institution cannot guarantee that such events will not occur. Accordingly, Financial Institution disclaims any and all liability resulting from or related to such events and in no event shall Financial Institution be liable for any damages (whether in contract or in tort) that are attributable to the public Internet infrastructure, your ability to connect to the Internet, or Financial Institution's ability to connect to the Internet on your behalf.

**9.11. Recording and Use of Communications.**

Customer and Financial Institution agree that all telephone conversations or data transmissions between it or its agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. Financial Institution shall not be obligated to make such recordings.

**9.12. Limitation of Liability.**

**9.12.1.** YOU AGREE THAT FINANCIAL INSTITUTION SHALL NOT BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, SPECIAL EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF THE USE BY YOU OF ANY SERVICE EVEN IF YOU, FINANCIAL INSTITUTION OR FINANCIAL INSTITUTION'S SERVICE PROVIDER HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.12.2.** TO THE FULLEST EXTENT ALLOWED BY LAW, FINANCIAL INSTITUTION'S LIABILITY TO YOU UNDER THIS MASTER AGREEMENT OR ANY APPLICABLE PRODUCT SCHEDULE SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM FINANCIAL INSTITUTION'S FAILURE TO EXERCISE ORDINARY CARE OR TO ACT IN GOOD FAITH. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO

EVENT WILL FINANCIAL INSTITUTION BE LIABLE TO YOU FOR AN AMOUNT GREATER THAN THE FEES ACTUALLY PAID BY YOU AND RECEIVED BY FINANCIAL INSTITUTION DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED, WHICH SHALL BE DETERMINED BY THE EARLIER OF THE DATE WHEN YOU FIRST BECAME AWARE OF THE CLAIM OR THE DATE WHEN, THROUGH THE EXERCISE OF REASONABLE CARE, YOU REASONABLY SHOULD HAVE BECOME AWARE OF THE CLAIM.

**9.12.3.** YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICES SHALL BE AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED BY FINANCIAL INSTITUTION ON AN "AS IS" BASIS.

**9.12.4.** EXCEPT AS EXPRESSLY SET FORTH IN THIS MASTER AGREEMENT, FINANCIAL INSTITUTION MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, WHATSOEVER TO YOU OR TO ANY OTHER PERSON AS TO THE SERVICES OR ANY ASPECT THEREOF, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY. YOU AGREE THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY FINANCIAL INSTITUTION EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS MASTER AGREEMENT OR ANY SERVICES TO BE PERFORMED PURSUANT HERETO.

**9.12.5.** FINANCIAL INSTITUTION MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU AS TO ANY ACCESS DEVICE HARDWARE, SOFTWARE, OR EQUIPMENT USED IN CONNECTION WITH THE SERVICES (INCLUDING, WITHOUT LIMITATION, YOUR ACCESS DEVICE SYSTEMS OR RELATED EQUIPMENT, YOUR SOFTWARE, OR YOUR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT), OR AS TO THE SUITABILITY OR COMPATIBILITY OF FINANCIAL INSTITUTION'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT YOU USE, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICE WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING (BUT NOT LIMITED TO) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**9.12.6.** FINANCIAL INSTITUTION SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN OR MALFUNCTIONS OF YOUR ACCESS DEVICE HARDWARE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY ACCESS DEVICE SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY FINANCIAL INSTITUTION TO YOU IN CONNECTION WITH THIS MASTER AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM YOU TO FINANCIAL INSTITUTION OR FROM FINANCIAL INSTITUTION TO YOU. FINANCIAL INSTITUTION SHALL NOT BE RESPONSIBLE FOR NOTIFYING YOU OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF YOUR ACCESS DEVICE HARDWARE OR SOFTWARE.

**9.13. Relationship of Parties.**

Customer and Financial Institution acknowledge and agree that the relationship between Financial Institution and Customer is that of an independent contractor and that this Master Agreement does not establish or create a general agency, joint venture, partnership, or employment relationship between them.

**9.14. Force Majeure.**

The Financial Institution shall not be responsible for any liability, loss, or damage resulting from Financial Institution's failure to perform any Service or to perform any other obligations under this Master Agreement and any applicable Product Schedule which is caused by an act of God, fire, floods, adverse weather or atmospheric conditions or other catastrophes; war, sabotage, riots, acts of public enemy, or acts of governmental authority or the Board of Governors of the Federal Reserve; labor difficulties; equipment or Access Device failure or destruction or the unavailability, interruption, or malfunction of communications facilities or utilities; delays or failure to act by you or third parties and their personnel; criminal acts; or generally any cause reasonably beyond the Financial Institution's control.

**9.15. Reimbursement.**

Any reimbursement by Financial Institution for any liability hereunder may be made either directly to you or by adjustment of the aggregate ledger and collected balances of your accounts.

**9.16. Indemnification.**

In addition to other indemnification and liability provisions elsewhere in this Master Agreement and any applicable Product Schedule, to the fullest extent allowed by law, you will be liable for, hold harmless, and will indemnify Financial Institution, and their employees and agents from and against all claims of any sort by third parties or others arising out of this Master Agreement and any applicable Product Schedule, including all losses and expenses incurred by Financial Institution arising out of your failure to report required changes, transmission of incorrect data to Financial Institution, or failure to maintain compliance with all laws, regulations and rules. Except for those losses caused directly by Financial Institution's failure to exercise ordinary care or to act in good faith, you agree to indemnify and hold Financial Institution, its officers, directors, shareholders, agents, employees, and affiliates, and their respective officers, directors, agents and employees, harmless from and against any and all losses, costs, suits, damages, claims, liabilities and expenses (including reasonable attorneys' fees) arising from or related in any way to (i) any Services performed in connection with this Master Agreement and any applicable Product Schedule, (ii) Financial Institution's action or inaction in accordance with or reliance upon any instructions or information received from any person reasonably believed by Financial Institution to be an authorized representative of you or Authorized User, (iii) your breach of any of your covenants, agreements, responsibilities, representations or warranties under this Master Agreement and any applicable Product Schedule, and/or (iv) your breach of applicable laws, rules or regulations.

**9.17. ARBITRATION AND WAIVER OF JURY TRIAL.**

**YOU AND FINANCIAL INSTITUTION AGREE THAT THE TRANSACTIONS PROCESSED UNDER THIS MASTER AGREEMENT OR ANY PRODUCT SCHEDULE INVOLVES "COMMERCE" UNDER THE FEDERAL ARBITRATION ACT ("FAA"). ANY CONTROVERSY OR CLAIM BETWEEN YOU AND FINANCIAL INSTITUTION, OR BETWEEN YOU AND ANY OF FINANCIAL INSTITUTION'S OFFICERS, EMPLOYEES, AGENTS OR AFFILIATED ENTITIES, THAT ARISES OUT OF OR IS RELATED TO ANY SERVICE PROVIDED UNDER THIS MASTER AGREEMENT OR ANY PRODUCT SCHEDULE, WHETHER BASED ON CONTRACT OR IN TORT OR ANY OTHER LEGAL THEORY, INCLUDING CLAIMS OF FRAUD, SUPPRESSION, MISREPRESENTATION AND FRAUD IN THE INDUCEMENT (COLLECTIVELY, ANY "CLAIM"), WILL BE SETTLED BY BINDING ARBITRATION UNDER THE FAA. THE PARTIES SHALL WORK IN GOOD FAITH TO SELECT AND AGREE UPON AN ARBITRATOR WITHIN THIRTY (30) DAYS AFTER A DEMAND FOR ARBITRATION BY EITHER PARTY. THE ARBITRATOR SHALL HAVE SOLE DISCRETION TO USE ANY COMMERCIAL ARBITRATION RULES, UNLESS OTHERWISE AGREED TO IN WRITING BY THE PARTIES; PROVIDED, HOWEVER, THAT TO THE EXTENT THE ARBITRATION RULES CONTAIN PROVISIONS REGARDING THE USE OF ANY CONSUMER ARBITRATION RULES, THE FORUM OF ANY SUCH ARBITRATION, THE ALLOCATION OF FEES FOR ANY SUCH ARBITRATION AND/OR ANY OTHER PROVISIONS CONTRARY TO THIS MASTER AGREEMENT, THOSE RULES ARE DELETED AND/OR EXPRESSLY SUPERSEDED BY THIS MASTER AGREEMENT. TO THE EXTENT ANY AMBIGUITY EXISTS BETWEEN THE ARBITRATION RULES AND THIS MASTER AGREEMENT, THIS MASTER AGREEMENT SHALL CONTROL. IF THE PARTIES CANNOT AGREE UPON AN ARBITRATOR, THEN EACH PARTY SHALL DESIGNATE AN ARBITRATOR REPRESENTATIVE AND THE ARBITRATOR REPRESENTATIVES SHALL SELECT THE ARBITRATOR. IF A CLAIM IS SUBMITTED TO ARBITRATION, (A) YOU WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL; (B) YOU WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE ARBITRATION RULES; (C) YOU WILL NOT HAVE THE RIGHT TO HAVE ANY CLAIM ARBITRATED AS A CLASS ACTION UNDER THE ARBITRATION RULES OR UNDER ANY OTHER RULES OF CIVIL PROCEDURE; (D) THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING WITH LIMITED RIGHTS TO APPEAL; AND (E) THIS MASTER AGREEMENT SUPERSEDES ANY PRIOR ALTERNATIVE DISPUTE RESOLUTION AND/OR ARBITRATION AGREEMENT THAT MAY EXIST BETWEEN YOU AND FINANCIAL INSTITUTION. THIS AGREEMENT TO ARBITRATE DISPUTES WILL SURVIVE THE CLOSING OF YOUR ACCOUNT AND THE TERMINATION OF THIS MASTER AGREEMENT OR ANY PRODUCT SCHEDULE. ANY ARBITRATION TAKING PLACE UNDER THIS AGREEMENT SHALL BE CONDUCTED IN COLUMBUS, WISCONSIN, OR SUCH OTHER LOCATION AGREED UPON IN WRITING BY THE PARTIES.**

**9.18. Governing Law.**

These terms and conditions of this Master Agreement and any applicable Product Schedule shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to its conflict of law provisions and without regard to your state of residence.

**9.19. Enforcement.**

The prevailing party in any such action shall be entitled, subject to applicable law, to payment by the other party of its reasonable attorney's fees (which may be or include the allocatable cost of in-house counsel) and costs, including fees for any litigation, arbitration, mediation, appeal, or bankruptcy proceedings, and any post-judgment collection actions, if applicable.

**9.20. Compliance with Laws, Rules, and Regulations.**

You agree to comply with all existing and future instructions used by the Financial Institution for processing of transactions. You further agree to comply with and be bound by all applicable state or federal laws, rules and regulations affecting the use of checks, drafts, fund transfers, and ACH transactions, including but not limited to, rules and procedural guidelines established by the Federal Trade Commission ("FTC"), the Board of Governors of the Federal Reserve, the National Automated Clearing House Association ("NACHA") and any other clearinghouse or other organization in which Financial Institution is a member or to which rules Financial Institution has agreed to be bound. These laws, procedures, rules, regulations, and definitions shall be incorporated herein by reference.

**9.21. Miscellaneous Provisions.**

**9.21.1. Headings.** The headings and captions contained in this Master Agreement and any applicable Product Schedule are included only for convenience of reference and do not define, limit, explain, or modify this Master Agreement and any applicable Product Schedule or its interpretation, construction, or meaning.

**9.21.2. Severability.** The holding of any provision of this Master Agreement and any applicable Product Schedule as invalid, illegal, or unenforceable, in whole or in part, shall not affect the other provisions of this Master Agreement and any applicable Product Schedule, which shall remain in full force and effect.

**9.21.3. Waiver.** No waiver by the Financial Institution (whether or not in writing) of any term, condition, or obligation of you under this Master Agreement and any applicable Product Schedule shall bind the Financial Institution to waive the same term, condition, or obligation again, nor shall any other provision, condition, term, or obligation hereof be affected by such a waiver.

**9.21.4. Binding Effect.** This Master Agreement and any applicable Product Schedule shall inure to the benefit of and be binding upon the successors, heirs, trustees, and permitted assigns of the parties hereto.

**9.21.5. Entire Agreement.** This Master Agreement and any applicable Product Schedule constitutes the entire agreement between the parties hereto concerning the subject matter hereof. All contemporaneous agreements or understandings concerning the subject matter hereof, whether oral or written, are merged into this Master Agreement.

**9.21.6. Transfers and Assignments.** You cannot transfer or assign any rights or obligations under this Master Agreement and any applicable Product Schedule without Financial Institution's written consent.

The Financial Institution may assign its rights and delegate its duties under this Master Agreement and any applicable Product Schedule to a company affiliated with the Financial Institution or to any other party.

## Appendix A

### Schedule of Fees

Fees charged are based on the type of business checking account.

#### Business Analyzed Checking

1. ACH Origination
  - a. ACH Origination fees is based on your transaction volume  
*(customer will be charged one of the following ways based on average monthly volume;  
volume reviewed annually or at customer's request)*
    - i. \$10.00 per file and \$.10 per item (for files with 10 items or more)  
OR
    - ii. \$1.00 per item (for files with 10 items or less)
  - b. ACH Same Day Fee - \$2.00 per item
  - c. International ACH(IAT) - \$10.00 per item
2. Positive Pay - \$50.00 per month
3. Remote Deposit Capture - \$40.00 per month

The above charges are analyzed and offset against the earnings credit earned on the account each month.

#### Business Interest Checking

1. ACH Origination
  - a. ACH Origination fees is based on your transaction volume  
*(customer will be charged one of the following ways based on average monthly volume;  
volume reviewed annually or at customer's request)*
    - i. \$10.00 per file and \$.10 per item (for files with 10 items or more)  
OR
    - ii. \$1.00 per item (for files with 10 items or less)
  - b. ACH Same Day Fee - \$2.00 per item
  - c. International ACH(IAT) - \$10.00 per item
2. Positive Pay - \$50.00 per month
3. Remote Deposit Capture - \$40.00 per month

The above charges are charged to your account each month.

#### Other Service Charges

The following services are available regardless of account type. Fees for these services are listed below and charged to your account each month.

1. Business Bill Payment - \$2.00 per item
2. Stop Payment on a Business Bill Payment - \$30.00
3. NSF Return on a Business Bill Payment - \$50.00
4. ACH Origination Returns and Notifications of Change - \$5.00
5. ACH Origination – Processing a Late ACH File - \$50.00
6. Wire Manager - See current fee schedule for applicable charges

#### Other Services Available at No Charge

The following services are available at no charge, regardless of account type:

1. Business Online Banking
2. Business Mobile App
3. Business Debit Card
4. eStatements for Business Accounts
5. Business Account Alerts
6. Business Online QuickBooks Download

## Appendix B

### ACH Origination Product Schedule

This ACH Origination Product Schedule is entered by and between Farmers & Merchants Union Bank ("Financial Institution") and you ("collectively, "**Customer**", "you", "your", "yours"), as a Product Schedule under the Business Online Banking and Master Cash Management Agreement ("Master Agreement") and sets forth the terms and conditions pursuant to which Financial Institution will provide to Customer the ACH Origination Services outlined herein ("**Services**").

Company wishes to initiate credit and/or debit Entries through the Financial Institution to accounts maintained at Financial Institution and in other depository financial institutions by means of the Automated Clearing House Network ("ACH") pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("NACHA") and Financial Institution's operating rules and procedures for electronic entries, including any exhibits or appendices thereto now in effect, or as may be amended from time to time, (the "Rules"), and Financial Institution is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. This Agreement sets forth the terms and conditions pursuant to which Financial Institution will provide to Company the ACH Services outlined herein ("Services"). Company hereby requests Financial Institution to provide the Service described in this Agreement. Financial Institution and Customer agree that by executing this Product Schedule, Customer acknowledges receipt of and agrees to the terms of the Master Agreement and that this Product Schedule becomes part of the Master Agreement. Terms not otherwise defined in this Product Schedule shall have the meaning ascribed to those terms in the Master Agreement. In the event of inconsistency between a provision of this Product Schedule, the Uniform Commercial Code as in effect in the State of Wisconsin (the "**UCC**"), and/or the Master Agreement, the provisions of this Product Schedule shall prevail. Terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the Rules. The term "Entry" shall have the meaning provided in the Rules and shall also mean the data received from Company hereunder from which Financial Institution initiates each Entry.

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Financial Institution and Company, intending to be legally bound, do hereby agree as follows:

#### **AGREEMENT**

- 1. COMPLIANCE WITH RULES AND LAWS.** Company acknowledges it has a copy or has access to a copy of the **Rules**. The Rules may also be purchased online at [www.nacha.org](http://www.nacha.org). Company agrees to comply with and be subject to the Rules of NACHA in existence at the date of this Agreement, and any amendments to these Rules made from time to time. It shall be the responsibility of the Company that the origination of ACH transactions complies with U.S. law, including but is not limited to sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It shall further be the responsibility of the Company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC). Financial Institution will charge the Company with any fines or penalties imposed by OFAC, NACHA or any organization which are incurred as a result of non-compliance by the Company and the Company agrees to fully reimburse and/or indemnify Financial Institution for such charges or fines. The specific duties of the Company provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking. The duties of the Company set forth in the following paragraphs of this Agreement in no way limit the requirement of complying with the Rules. Financial Institution may terminate or suspend this Agreement upon written notice and identification of a material breach by Company of the Rules. Furthermore, Financial Institution shall have the right to initiate an audit of Company procedures for compliance with this Agreement and the Rules, upon written notification to Company.
- 2. CREDIT APPROVAL.** Financial Institution must approve all ACH Agreements and may request financial information from Company and/or a separate credit agreement. Financial Institution shall also be authorized to obtain a credit report(s) on Company as may be necessary from time to time. Financial Institution may also assign Company a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Company each day ("Exposure Limit"). Company acknowledges that the Exposure Limit is solely for the protection of Financial Institution and its assets. Company understands that daily requests for Entries exceeding this amount are honored



solely at the discretion of the Financial Institution. Requests not honored would be communicated to the Company or the Company's designated representative.

**3. SECURITY INTEREST.** No security interest provided by this agreement.

**4. DESIGNATION OF ADMINISTRATOR.** In order to originate ACH Entries, Company must designate at least one Administrator. Administrator(s) shall be responsible for designating "Users" who Company authorizes to issue Entries on its behalf. For the purposes of this Agreement, the term User shall also include the Administrator. The Financial Institution shall be entitled to rely on the designations made by the Company's Administrator(s) and shall not be responsible for matching the names of the company Users designated by the Administrator(s) to names or titles listed in Company's banking resolutions. Company agrees that any such online Entries shall comply with Financial Institution's Security Procedures, which are subject to change without notice to Company. Although Financial Institution is only required to act upon the instructions of the Users(s), the Financial Institution may, in its sole discretion, execute debit or credit Entries initiated by any individuals authorized by Company to sign checks on Company accounts. The signature cards establishing the authorized signatories for Company deposit accounts are hereby incorporated by reference and made a part hereof.

**5. TRANSMISSION OF ENTRIES BY COMPANY.** User(s) shall initiate the debit or credit Entries in the Business Online Enrollment forms on behalf of and selected by Company. Financial Institution shall be entitled to deem any person having knowledge of any Security Procedure, defined below in Section 7 of this Agreement and required to initiate Entries under this Agreement, to be a User. User(s) shall transmit Entries to Financial Institution in computer readable form in compliance with the formatting and other requirements set forth in the NACHA file specifications or as otherwise specified by Financial Institution. Entries shall be transmitted to Financial Institution no later than the time and the number of days prior to the Effective Entry Date specified in the Processing Schedule as defined in the Business Online Enrollment Forms. For the purposes of this Agreement, "Business Day" means Monday through Friday, excluding federal holidays. The federal holiday schedule is as defined in the Business Online Enrollment Forms. Entries received after the cut off time shall be deemed to have been received on the next Business Day. The total dollar amount of Entries transmitted by Company to Financial Institution on any one Business Day shall not exceed the lesser of the amount of collected funds in Company's account or the Exposure Limit set forth in the Business Online Enrollment Forms. Company may not reinitiate entries except as prescribed by the Rules.

**6. THIRD PARTY SERVICE PROVIDERS.** Company may be using special equipment, services or software provided by a third party to assist it in processing Files hereunder ("Service Provider"). Company agrees not to use a Service Provider to transmit files to Financial Institution without first entering into Financial Institution's Third Party Service Provider Agreement. If Company uses Service Provider to transmit Files to Financial Institution and Company and Service Provider have not entered into a Third Party Service Provider Agreement, Company (a) agrees that Service Provider is acting as Company's agent in the delivery of Files to Financial Institution, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with the laws of the United States, the Rules and this Agreement. Financial Institution will not be liable for any losses or additional costs incurred by Company as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Company is solely responsible for maintaining compliance with the requirements of Service Provider, including obtaining any software updates. Financial Institution's sole responsibility shall be to transmit Financial Institution approved transactions to the ACH Operator and Financial Institution shall not have any responsibility for any File handled by Service Provider until that point in time when Financial Institution accepts and approves a File from such Service Provider for processing. If Financial Institution authorizes Company to use a Service Provider, the terms and conditions governing the relationship between Company and the Service Provider shall be governed by a separate agreement between Company and Service Provider ("Service Provider Agreement"). All of Company's obligations and responsibilities under this Agreement will apply to the Service Provider, and Company's separate agreement with the Service Provider must so provide. At Financial Institution's request, Company will provide to Financial Institution a true and exact copy of such agreement. Company shall designate the Service Provider as a User and the Service Provider must also enter into a Service Provider Agreement before the Service Provider sends Files to Financial Institution. Notwithstanding the foregoing, Company hereby authorizes Financial Institution to accept any File submitted by the Service Provider even if the Service Provider has not been designated as a User or if the Third Party Service Provider has not executed the Service Provider agreement. Company hereby indemnifies and holds Financial Institution harmless for any losses, damages, fines, assessments, costs and expenses incurred or suffered by Financial Institution or any other person as a result of or arising from Company's use of Service Provider, including fines or assessments incurred under or pursuant to the Rules and attorneys' fees.

**7. SECURITY PROCEDURES.**

(a) The Company shall comply with the "Security Procedures" described in Schedule A attached hereto and made a part hereof, and Company acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification number, user identification technology, token, certificate, or other element, means, method used to verify authenticity of telecommunicated data, or method of authentication or identification used in connection with a Security Procedure ("Security Devices") used in connection therewith, constitute commercially reasonable security procedures under applicable law for the initiation of ACH entries. Company authorizes Financial Institution to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until Company has notified Financial Institution, according to notification procedures prescribed by Financial Institution, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) and until Financial Institution has had a reasonable opportunity to act upon such notice. Company agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for Financial Institution to execute such transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Company's deposit account maintained with Financial Institution, and Company agrees and intends that the submission of transaction orders and instructions using the Security Procedures shall be considered the same as Company's written signature in authorizing Financial Institution to execute such transaction. Company acknowledges and agrees that Company shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by User(s), to the fullest extent allowed by law. Company further acknowledges and agrees (i) that the Security Procedures are not designed to detect error in the transmission or content of communications or Entries initiated by Company; (ii) that no security practice or procedure for the detection of any such error has been agreed upon between Financial Institution and Company; and (iii) that Company bears the sole responsibility for detecting and preventing such error.

(b) Company agrees to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to User(s). Company agrees to instruct each User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. Financial Institution shall distribute Security Devices to the Administrator and Financial Institution shall otherwise communicate with the Administrator regarding Security Procedures. Company's Administrator shall have responsibility to distribute Security Devices to User(s) and to ensure the proper implementation and use of the Security Procedures by User(s). Where Company has the ability to change or modify a Security Device from time to time (e.g., a password or PIN), Company agrees to change Security Devices frequently in order to ensure the security of the Security Device. Company agrees to notify Financial Institution immediately, according to notification procedures prescribed by Financial Institution, if Company believes that any Security Procedures or Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) or if Company believes that any ACH transaction or activity is unauthorized or in error. In the event of any actual or threatened breach of security, Financial Institution may issue Company a new Security Device or establish new Security Procedures as soon as reasonably practicable, but Financial Institution shall not be liable to Company or any third party for any delay in taking such actions.

(c) Company agrees to notify Financial Institution immediately, according to notification procedures prescribed by Financial Institution, if the authority of any Administrator(s) shall change or be revoked. Company shall recover and return to Financial Institution any Security Devices in the possession of any User(s) whose authority to have the Security Device has been revoked.

(d) Financial Institution reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in Financial Institution's discretion. Financial Institution will endeavor to give Company reasonable notice of any change in Security Procedures; provided that Financial Institution may make any change in Security Procedures without advance notice to Company if Financial Institution, in its judgment and discretion, believes such change to be necessary or desirable to protect the security of Financial Institution's systems and assets. Company's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Company's agreement to the change and Company's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

**8. PHYSICAL AND ELECTRONIC SECURITY.**

(a) Company is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Company's possession or under Company's control. Financial Institution is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at Company's own discretion and risk, and Financial Institution is not responsible for any damage to Company's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise.

Company's computer should run a supported operating system that is patched with critical vendor updates. Company is solely responsible for maintaining and applying anti-virus software, security patches, firewalls and other security measures with respect to Company's operating systems, and for protecting, securing, and backing up any data and information stored in or on Company's operating systems. Financial Institution is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Company's operating systems or accessed through an Internet connection.

(b) Company acknowledges and agrees that it is Company's responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). Company agrees to educate User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. Company acknowledges that Financial Institution will never contact Company by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event Company receives an e-mail or other electronic communication that Company believes, or has reason to believe, is fraudulent, Company agrees that neither Company nor its User(s), agents, and employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. Company agrees that Financial Institution is not responsible for any losses, injuries, or harm incurred by Company as a result of any electronic, e-mail or Internet fraud.

(c) In the event of a breach of the Security Procedure, Company agrees to assist Financial Institution in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing Financial Institution or Financial Institution's agent access to Company's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Company further agrees to provide to Financial Institution any analysis of such equipment, device, or software or any report of such analysis performed by Company, Company's agents, law enforcement agencies, or any other third party. Failure of Company to assist Financial Institution shall be an admission by Company that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of Company or who obtained information facilitating the breach of the Security Procedure from Company and not from a source controlled by Financial Institution.

**9. INTERNATIONAL ACH TRANSACTIONS ("IAT").** Company shall not initiate any IAT Entries without Financial Institution's prior approval. If approved by Financial Institution, the following provisions apply to IAT Entries originated by Company:

- (a) IAT Entries are transmitted by Financial Institution in U.S. dollars and converted to the local currency for receipt in the foreign country at the exchange rate determined by Financial Institution's processor on the date determined by Financial Institution's processor. All risk of fluctuation in the applicable exchange rate is borne by Company and Company agrees and acknowledges that Financial Institution shall not be liable to Company for any loss or charge incurred by Company as a result of the application of any foreign currency exchange criteria imposed by any institution or agency outside of the United States.
- (b) In the event of a returned IAT Entry, consumer payments will be credited to Company at the originated U.S. dollar amount; corporate payments will be credited to Company at the exchange rate determined by Financial Institution's processor at the time of return.
- (c) In the event of an error in an Entry or duplicate entries, Company acknowledges and agrees that Company shall be liable for any and all losses caused by and a direct or indirect result from the error or duplicate Entry.
- (d) Company shall originate all International ACH Transactions, as that term is defined in the Rules, with an IAT SEC code and Company hereby agrees to abide by all of the Rules related to IAT Entries.

- (e) Company agrees that in the case of a non-Consumer Account, Company shall enter into an agreement with the Receiver whereby the Receiver agrees to abide by the Rules in effect from time to time.
- (f) Company acknowledges that it has reviewed and understands the section of the NACHA Rules entitled "Exceptions for Outbound IAT Entries" and Company understands and agrees that laws, regulations, and rules of the country in which the Receiver is located shall govern the matters listed within that subsection. Company further acknowledges that Company understands how such laws, regulations and rules differ from the Rules.
- (g) Company hereby indemnifies Financial Institution from and against any and all resulting claims, demands, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from Company's origination of an IAT Entry.
- (h) Customer agrees and acknowledges that any assistance by Financial Institution does not in any manner obligate Financial Institution for the accuracy or enforceability of the Entry in any country outside the United States.
- (i) Customer bears the risk of any loss caused by any delay, tax, cost, tariff, fee, or other charge incurred on account of the Entry in any country outside the United States.
- (j) If the settlement of any IAT Entry involves clearing of the Entry in more than one country outside the United States, Financial Institution shall be permitted to rely upon any advice or instruction received by Financial Institution from the financial institution or financial agency located in the first country outside the United States to which the Entry is directed.
- (k) IAT Entries must be authorized as provided in the Rules. The form and content of the authorization, including whether such authorization may be oral, electronic, or written, shall be governed by the laws and payment system rules of the receiving country.

**10. CREDIT AND DEBIT ENTRIES; RECORDS RETENTION.** Company shall obtain an authorization substantially similar to the samples set forth in Schedule B ("Authorization Agreement") as required by the Rules from the person or entity whose account will be debited or credited as the result of a debit or credit Entry initiated by Company and Company shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Company shall furnish the person or entity executing the Authorization Agreement with a copy of the same. Upon request, Company shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules.

**11. RECORDING AND USE OF COMMUNICATIONS.** Company and Financial Institution agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. Financial Institution shall not be obligated to make such recordings.

**12. PROCESSING, TRANSMITTAL, AND SETTLEMENT BY FINANCIAL INSTITUTION.** Except as otherwise provided for in this Agreement and if Financial Institution elects to accept Entries, Financial Institution shall:

- (a)
  - (i) use commercially reasonable efforts to comply with the instructions of Company,
  - (ii) process Entries received from Company to conform with the file specifications set forth in the Rules, (iii) transmit such Entries as an ODFI to the "ACH" processor selected by Financial Institution,
  - (iv) settle for such Entries as provided in the Rules, and (v) in the case of a credit Entry received for credit to an account with Financial Institution ("On-Us Entry"), Financial Institution shall credit the Receiver's account in the amount of such credit Entry on the Effective Entry Date contained in such credit Entry provided such credit Entry is received by Financial Institution at the time and in the form prescribed by Financial Institution in Section 5.
- (b) transmit such Entries to the ACH processor by the deposit deadline of the ACH processor, provided:
  - (i) such Entries are completely received by Financial Institution's cut-off time at the location specified by Financial Institution to Company from time to time; (ii) the Effective Entry Date satisfies the criteria provided by Financial Institution to Company; and (iii) the ACH processor is open for business on such Business Day. Company agrees that the ACH processor selected by Financial Institution shall be considered to have been selected by and designated by Company. The Company will receive immediately available funds for any electronic debit entry initiated by it on the Settlement Date applicable thereto.

**13. PAYMENT FOR CREDIT ENTRIES AND RETURNED DEBIT ENTRIES.** Company agrees to settle for all credit Entries issued by Company, User(s), or credit Entries otherwise made effective against Company. Company shall make payment to Financial Institution on the date as determined by Financial Institution, in its discretion ("Payment Date") Company shall pay Financial Institution for the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") or debit Entry dishonored by Financial Institution.

Payment shall be made by Company to Financial Institution in any manner specified by Financial Institution.

Notwithstanding the foregoing, Financial Institution is hereby authorized to charge the account(s)

("Authorized Account(s)") designated in the Business Online Enrollment Forms, as payment for all payments due

under this Agreement. Company shall maintain sufficient collected funds in the Authorized Account(s) to pay for all payments due Financial Institution under this Agreement on the Payment Date. In the event the Authorized Account or any other Company Financial Institution account does not have collected funds sufficient on the Payment Date to cover the total amount of all Entries to be paid on such Payment Date, Financial Institution may take any of the following actions:

(a) Refuse to process all Entries, in which event Financial Institution shall return the data relating to such credit Entries to Company, whereupon Financial Institution shall have no liability to Company or to any third party as a result thereof; or

(b) Process that portion of the credit Entries as Company has sufficient collected funds in the Authorized Account to cover, in whatever order Financial Institution in its sole discretion shall elect to process, in which event Financial Institution shall return the data relating to such credit Entries as are not processed to Company, whereupon Financial Institution shall have no liability to Company or any third party as a result thereof; or

(c) Process all credit Entries. In the event Financial Institution elects to process credit Entries initiated by Company and Company has not maintained sufficient collected funds in the Authorized Account with Financial Institution to cover them, the total amount of the insufficiency advanced by Financial Institution on behalf of Company shall be immediately due and payable by Company to Financial Institution without any further demand from Financial Institution. If Financial Institution elects to pay Company's account in the overdraft on any one or more occasions, it shall not be considered a waiver of Financial Institution's rights to refuse to do so at any other time nor shall it be an agreement by Financial Institution to pay other items in the overdraft.

**14. PRE-FUNDING.** Financial Institution reserves the right to require Company to pre-fund an Account maintained at Financial Institution prior to the Settlement Date of the ACH file. Financial Institution shall determine whether pre-funding is required based on criteria established from time to time by Financial Institution. Financial Institution will communicate directly to Company if pre-funding is required and, if requested by Company, will provide Company with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, Company will provide immediately available and collected funds sufficient to pay all Entries initiated by Company (a) not later than 8:00 a.m. CST 2 banking days before each Settlement Date, and (b) prior to initiating any Entries for which pre-funding is required.

**15. ON-US ENTRIES.** Except as provided in Section 16, Rejection of Entries, in the case of an Entry received for credit to an account maintained with Financial Institution (an "On-Us Entry"), the Financial Institution 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 Section 12(b) (i), (ii), and (iii) are met. If any of those requirements are not met, the Financial Institution shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

**16. REJECTION OF ENTRIES.** Company agrees that Financial Institution has no obligation to accept Entries and therefore may reject any Entry issued by Company. Financial Institution has no obligation to notify Company of the rejection of an Entry but Financial Institution may do so at its option. Financial Institution shall have no liability to Company for rejection of an Entry and shall not be liable to pay interest to Company even if the amount of Company's payment order is fully covered by a withdrawable credit balance in an Authorized Account of Company or the Financial Institution has otherwise received full payment from Company.

**17. CANCELLATION OR AMENDMENT BY COMPANY.** Company shall have no right to cancel or amend any Entry after its receipt by Financial Institution. However, Financial Institution may, at its option, accept a cancellation or amendment by Company. If Financial Institution accepts a cancellation or amendment of an Entry, Company must comply with the Security Procedures provided in Section 7 of this Agreement. If such a request is received by the

Financial Institution before the affected Entry has been transmitted to the ACH (or, in the case of an On-Us Entry, before the Receiver's account has been credited or debited), the Financial Institution will use reasonable efforts to cancel or amend the Entry as requested, but the Financial Institution shall have no liability if the cancellation or amendment is not effected. If Financial Institution accepts a cancellation or amendment of an Entry, Company hereby agrees to indemnify, defend all claims and hold Financial Institution harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Financial Institution as the result of its acceptance of the cancellation or amendment.

**18. REVERSALS OF ENTRIES.**

(a) General Procedure. Upon proper and timely request by the Company, the Financial Institution will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Banking Days of the Effective Entry Date for the Entry or File to be reversed; and (ii) be accompanied by a Reversal/Cancellation Request form and comply with all of the Rules. In addition, if the Company requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the Company Account an amount equal to that Entry or File. The Company shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry.

(b) No Liability: Reimbursement to the Financial Institution. Under no circumstances shall the Financial Institution be liable for interest or related losses if the requested reversal of an Entry is not effected. The Company shall reimburse the Financial Institution for any expenses, losses or damages it incurs in effecting or attempting to effect the Company's request for reversal of an Entry.

**19. ERROR DETECTION.** Financial Institution has no obligation to discover and shall not be liable to Company for errors made by Company, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Financial Institution shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Company. Notwithstanding the foregoing, if the Company discovers that any Entry it has initiated was in error, it shall notify the Financial Institution of such error. If such notice is received no later than four (4) hours prior to the ACH receiving deadline, the Financial Institution will utilize reasonable efforts to initiate an adjusting Entry or stop payment of any On-Us" credit Entry within the time limits provided by the Rules. In the event that Company makes an error or issues a duplicate Entry, Company shall indemnify, defend all claims, and hold Financial Institution harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Financial Institution as result of the error or issuance of duplicate Entries.

**20. PROHIBITED TRANSACTIONS.** Company agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Company is bound, (c) to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, (d) to engage in any activity or business that would result in Company being or becoming a "money service business" as defined in the Bank Secrecy Act and its implementing regulations, or (e) to engage in any transaction or activity that is not specifically authorized and permitted by this Agreement. Company acknowledges and agrees that Financial Institution has no obligation to monitor Company's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that Financial Institution reserves the right to decline to execute any transaction or activity that Financial Institution believes violates the terms of this Agreement.

**21. PRENOTIFICATION.** Company, at its option, may send prenotification that it intends to initiate an Entry or Entries to a particular account within the time limits prescribed for such notice in the Rules. Such notice shall be provided to the Financial Institution in the format and on the medium provided in the media format section of such Rules. If Company receives notice that such prenotification has been rejected by an RDFI within the prescribed period, or that an RDFI will not receive Entries without having first received a copy of the Authorization signed by its customer, Company will not initiate any corresponding Entries to such accounts until the cause for rejection has been corrected or until providing the RDFI with such authorization within the time limits provided by the Rules.

**22. NOTICE OF RETURNED ENTRIES AND NOTIFICATIONS OF CHANGE.** Financial Institution shall notify Company by e-mail, facsimile transmission, US mail, or other means of the receipt of a returned Entry from the ACH Operator. Except for an Entry retransmitted by Company in accordance with the requirements of Section 5, Financial Institution shall have no obligation to retransmit a returned Entry to the ACH Operator if Financial

**Institution complied with the terms of this Agreement with respect to the original Entry.** Company shall notify the Receiver by phone or electronic transmission of receipt of each return Entry no later than one Business Day after the Business Day of receiving such notification from Financial Institution. Financial Institution shall provide Company all information, via encrypted email or facsimile transmission to User, as required by the Rules, with respect to each Notification of Change (“NOC”) Entry, Refused Notification of Change, or Corrected Notification of Change (“Corrected NOC”) Entry received by Financial Institution relating to Entries transmitted by Company. Financial Institution must provide such information to Company within two (2) banking days of the Settlement Date of each NOC or Corrected NOC Entry. Company shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of Company's receipt of the NOC information from Financial Institution or prior to initiating another Entry to the Receiver's account, whichever is later.

**23. ENTRIES RETURNED AS UNAUTHORIZED; UNAUTHORIZED RATE.**

(a) In the event that an Entry is returned as unauthorized or authorization revoked, Company will contact the necessary parties and resolve any dispute. During this process Company may ask Financial Institution to request from the RDFI a copy of the “Written Statement of Unauthorized Debit (WSUD).” Financial Institution will make its best effort to obtain the form and will deliver it to the Company when received. Company agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless and until the Receiver reauthorizes the Entry or Entry stream.

(b) In the event the rate of unauthorized transactions exceeds the permissible limit based on the calculations noted in the Rules, Company will share the data requested by Financial Institution based on the Rules and will immediately begin the process of bringing the rate below that threshold.

**24. ACCOUNT RECONCILIATION.** The Company agrees to notify the Financial Institution promptly of any discrepancy between the Company's records and the information shown on any periodic statement. If the Company fails to notify the Financial Institution within ten (10) calendar days of receipt of a periodic statement containing such information; the Company agrees that the Financial Institution shall not be liable for any other losses resulting from the Company's failure to give such notice or any loss of interest or any interest equivalent with respect to any Entry shown on such periodic statement. If the Company fails to notify the Financial Institution within thirty (30) calendar days of receipt of such periodic statement, the Company shall be precluded from asserting any discrepancy against the Financial Institution.

**25. PROVISIONAL SETTLEMENT.** Company shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and Company acknowledges that it has received notice of that Rule and or 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 Company shall not be deemed to have paid the Receiver the amount of the Entry.

**26. COMPANY REPRESENTATIONS AND WARRANTIES; INDEMNITY.** With respect to each and every Entry transmitted by Company, Company represents and warrants to Financial Institution and agrees that (a) each person or entity shown as the Receiver on an Entry received by Financial Institution from Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting or debiting by Financial Institution as provided herein, (c) Entries transmitted to Financial Institution by Company are limited to those types of credit and debit Entries set forth in the Business Online Enrollment Forms, (d) Company shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, (e) Company shall be bound by and comply with the provision of the *Rules* (among other provisions of the *Rules*) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and (f) Company shall ensure that any and all non-public personal information provided by Company to Bank shall be secure and will not be disclosed to any unauthorized person. Company 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 Company shall not be deemed to have paid the Receiver the amount of the Entry. The Company shall defend, indemnify, and hold harmless the Financial Institution, and its officers, directors, agents, and employees, from and

against any and all actions, costs, claims, losses, damages, or expenses, including attorney's fees and expenses, resulting from or arising out of (aa) any breach of any of the agreements, representations or warranties of the Company contained in this Agreement; or (bb) any act or omission of the Company or any other person acting on the Company's behalf.

**27. ADDITIONAL COMPANY WARRANTIES FOR SELECTED STANDARD ENTRY CLASSES.** NACHA, in its role of ensuring the safety, security, and viability of the ACH network, has determined that certain single-use or limited-use consumer authorizations have the potential to increase risk in the ACH system and compromise system effectiveness by increasing the incidence of returned Entries. Therefore, to qualify as an Originator of such Entries, Company hereby warrants to Financial Institution that for each such ACH Entry submitted for processing, Company has obtained all authorizations from the Receiver as required by the Rules, by Regulation E or other applicable law, and this Agreement. Company also makes the additional warranties to Financial Institution that Financial Institution makes to each RDFI and ACH Operator under the Rules for the respective SEC codes for Entries originated by Company. Company indemnifies and holds Financial Institution harmless from any liability arising out of Company's breach of these warranties.

**28. FINANCIAL INFORMATION AND AUDIT.** Financial Institution may from time to time request information from Company in order to evaluate a continuation of the Service to be provided by Financial Institution hereunder and/or adjustment of any limits set by this Agreement. Company agrees to provide the requested financial information immediately upon request by Financial Institution, in the form required by Financial Institution. Company authorizes Financial Institution to investigate or reinvestigate at any time any information provided by Company in connection with this Agreement or the Service. Upon request by Financial Institution, Company hereby authorizes Financial Institution to enter Company's business premises for the purpose of ensuring that Company is in compliance with this Agreement and Company specifically authorizes Financial Institution to perform an audit of Company's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Company hereby acknowledges and agrees that Financial Institution shall have the right to mandate specific internal controls at Company's location(s) and Company shall comply with any such mandate. In addition, Company hereby agrees to allow Financial Institution to review available reports of independent audits performed at the Company location related to information technology, the Service and any associated operational processes. Company agrees that if requested by Financial Institution, Company will complete a self-assessment of Company's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by Financial Institution in an audit of Company. If Company refuses to provide the requested financial information, or if Financial Institution concludes, in its sole discretion, that the risk of Company is unacceptable, if Company violates this Agreement or the Rules, or if Company refuses to give Financial Institution access to Company's premises, Financial Institution may terminate the Service and this Agreement according to the provisions hereof.

**29. LIMITATION OF LIABILITY.**

**(a) IN THE PERFORMANCE OF THE SERVICES REQUIRED BY THIS AGREEMENT, FINANCIAL INSTITUTION SHALL BE ENTITLED TO RELY SOLELY ON THE INFORMATION, REPRESENTATIONS, AND WARRANTIES PROVIDED BY COMPANY PURSUANT TO THIS AGREEMENT, AND SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS THEREOF. FINANCIAL INSTITUTION SHALL BE RESPONSIBLE ONLY FOR PERFORMING THE SERVICES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, AND SHALL BE LIABLE ONLY FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING THOSE SERVICES. FINANCIAL INSTITUTION SHALL NOT BE RESPONSIBLE FOR COMPANY'S ACTS OR OMISSIONS (INCLUDING, WITHOUT LIMITATION, THE AMOUNT, ACCURACY, TIMELINESS OF TRANSMITTAL OR AUTHORIZATION OF ANY ENTRY RECEIVED FROM COMPANY) OR THOSE OF ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY FEDERAL RESERVE BANK, ACH OPERATOR OR TRANSMISSION OR COMMUNICATIONS FACILITY, ANY RECEIVER OR RDFI (INCLUDING, WITHOUT LIMITATION, THE RETURN OF ANY ENTRY BY SUCH RECEIVER OR RDFI), AND NO SUCH PERSON SHALL BE DEEMED FINANCIAL INSTITUTION'S AGENT. COMPANY AGREES TO INDEMNIFY FINANCIAL INSTITUTION AGAINST ANY LOSS, LIABILITY OR EXPENSE (INCLUDING ATTORNEYS' FEES AND COSTS) RESULTING FROM OR ARISING OUT OF ANY CLAIM OF ANY PERSON THAT THE FINANCIAL INSTITUTION IS RESPONSIBLE FOR ANY ACT OR OMISSION OF COMPANY OR ANY OTHER PERSON DESCRIBED IN THIS SECTION 29(a).**

**(b) FINANCIAL INSTITUTION SHALL BE LIABLE FOR COMPANY'S ACTUAL DAMAGES DUE TO CLAIMS ARISING SOLELY FROM FINANCIAL INSTITUTION'S OBLIGATIONS TO COMPANY WITH RESPECT TO ENTRIES TRANSMITTED**



PURSUANT TO THIS AGREEMENT OR; IN NO EVENT SHALL FINANCIAL INSTITUTION BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH COMPANY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE FINANCIAL INSTITUTION AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY WHICH COMPANY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM FINANCIAL INSTITUTION'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS, FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION'S CONTROL. IN ADDITION, FINANCIAL INSTITUTION SHALL BE EXCUSED FROM FAILING TO TRANSMIT OR DELAY IN TRANSMITTING AN ENTRY IF SUCH TRANSMITTAL WOULD RESULT IN FINANCIAL INSTITUTION'S HAVING EXCEEDED ANY LIMITATION UPON ITS INTRA-DAY NET FUNDS POSITION ESTABLISHED PURSUANT TO PRESENT OR FUTURE FEDERAL RESERVE GUIDELINES OR IN FINANCIAL INSTITUTION'S REASONABLE JUDGMENT OTHERWISE WOULD VIOLATE ANY PROVISION OF ANY PRESENT OR FUTURE RISK CONTROL PROGRAM OF THE FEDERAL RESERVE OR ANY RULE OR REGULATION OF ANY OTHER U.S. GOVERNMENTAL REGULATORY AUTHORITY.

(d) SUBJECT TO THE FOREGOING LIMITATIONS, FINANCIAL INSTITUTION'S LIABILITY FOR LOSS OF INTEREST RESULTING FROM ITS ERROR OR DELAY SHALL BE CALCULATED BY USING A RATE EQUAL TO THE AVERAGE FEDERAL FUNDS RATE AT THE FEDERAL RESERVE BANK OF NEW YORK FOR THE PERIOD INVOLVED. AT FINANCIAL INSTITUTION'S OPTION, PAYMENT OF SUCH INTEREST MAY BE MADE BY CREDITING THE ACCOUNT.

**30. INCONSISTENCY OF NAME AND ACCOUNT NUMBER.** The Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by the Financial Institution to the RDFI may be made by the RDFI (or by the Financial Institution in the case of an On-Us Entry) on the basis of the account number supplied by the Company, even if it identifies a person different from the named Receiver, and that the Company's obligation to pay the amount of the Entry to the Financial Institution is not excused in such circumstances. Company is liable for and must settle with Financial Institution for any Entry initiated by Company that identifies the Receiver by account or identifying number or by name and account or identifying number.

**31. PAYMENT FOR SERVICES.** The Company shall pay the Financial Institution the charges for the services provided in connection with this Agreement, as set forth in the Business Online Enrollment Forms. All fees and services are subject to change upon thirty (30) days prior written notice from the Financial Institution. Such charges do not include, and the Company shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Depository Agreement between the Financial Institution and the Company with respect to the Account.

**32. AMENDMENTS.** Except as provided in Section 31, the Financial Institution may amend this agreement from time to time upon written notice to the Company. In the event that performance of services under this Agreement would result in a violation of any present or future statute, regulation or governmental policy to which the Financial Institution is subject, then this Agreement shall be amended to the extent necessary to comply with such statute, regulation or policy. Alternatively, the Financial Institution may terminate this Agreement if it deems such action necessary or appropriate under the circumstances. The Financial Institution shall have no liability to the Company as a result of any such violation, amendment or termination. Any practices or course of dealings between the Financial Institution and the Company, or any procedures or operational alterations used by them, shall not constitute a modification of this Agreement or the Rules, nor shall they be construed as an amendment to this Agreement or the Rules.

**33. NOTICES, INSTRUCTIONS, ETC.**

(a) Except as stated herein, the Financial Institution shall not be required to act upon any notice or instruction received from the Company or any other person, or to provide any notice or advice to the Company or any other person with respect to any matter.

(b) The Financial Institution shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an authorized representative of Company, and any such communication shall be deemed to have been signed by such person. Such notice shall be effective on the second Business Day following the day received by the Financial Institution.

(c) Except as stated herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered or sent by US mail, if to Company, at the address of Company on the books of Financial Institution and if to Financial Institution, at the following address:

**Farmers & Merchants Union Bank  
Attn: Operations Department  
159 West James Street, PO Box 226  
Columbus, WI 53925**

unless another address is substituted by notice delivered or sent as provided hereon. Except as otherwise stated herein, any such notice shall be deemed given when received.

**34. DATA RETENTION.** The Company shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by the Financial Institution as provided herein, and shall provide such Data to the Financial Institution upon its request.

**35. TAPES AND RECORDS.** All magnetic tapes, Entries, security procedures and related records used by the Financial Institution for transactions contemplated by this Agreement shall be and remain the Financial Institution's property. The Financial Institution may, at its sole discretion, make available such information upon the Company's request. Any expenses incurred by the Financial Institution in making such information available to the Company shall be paid by the Company.

**36. COOPERATION IN LOSS RECOVERY EFFORTS.** In the event of any damages for which Financial Institution or Company may be liable to each other or to a third party pursuant to the services provided under this Agreement, Financial Institution and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

**37. TERMINATION.** Company may terminate this Agreement at any time. Such termination shall be effective on the second business day following the day of Financial Institution's receipt of written notice of such termination or such later date as is specified in that notice. Financial Institution reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Financial Institution's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Financial Institution prior to termination, or any other obligations that survive termination of this Agreement.

**38. ENTIRE AGREEMENT.** This Agreement (including the Schedules attached) together with the Depository Agreement and Business Online Banking and Master Cash Management Agreement, is the complete and exclusive statement of the agreement between the Financial Institution and the Company with respect to the subject matter hereof and supersedes any prior agreement(s) between the Financial Institution with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Depository Agreement and/or the Business Online Banking and Master Cash Management Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the Financial Institution is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and the Financial Institution shall incur no liability to the Company as a result of such violation or amendment. No course of dealing between the Financial Institution and the Company will constitute a modification of this Agreement, the Rules, or the security procedures, or constitute an agreement between the Financial Institution and the Company regardless of whatever practices and procedures the Financial Institution and the Company may use.

**39. NON-ASSIGNMENT.** The Company may not assign this Agreement or any of the rights or duties hereunder to any person without the Financial Institution's prior written consent.

**40. WAIVER.** The Financial Institution may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the Financial Institution's rights with respect to any other transaction or modify the terms of this Agreement.

**41. BINDING AGREEMENT; BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Financial Institution or the Company hereunder.

**42. HEADINGS.** Headings are used for reference purposes only and shall not be deemed part of this Agreement.

**43. SEVERABILITY.** In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**44. GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Wisconsin, without reference to its conflict of laws provisions, and applicable federal law.

**This Product Schedule must be signed on behalf of Customer by an Authorized Customer Representative on the Business Online Enrollment Forms.**

## Schedule A

### Security Procedures

- A.** The following sets forth the Security Procedure with which the Company agrees to comply when transmitting or delivering Entries to the Financial Institution:

**Company utilizes an Electronic method via an Internet banking application to send ACH files to the Financial Institution**

1. Entries transmitted by Company to the Financial Institution shall be encrypted by commercially reasonable encryption.
2. Company shall utilize a multi-factor authentication method as prescribed by Financial Institution.

**Company sends a Facsimile which includes ACH items to be originated by the Financial Institution**

1. Company will send a Fax transmission for entries to be created, which includes file total, item count, effective entry date and an authorized signature.

- B.** The Company agrees that the Security Procedure set forth above in Section A is commercially reasonable.

- C.** If the Company uses any method other than the Security Procedure set forth above in Section A to communicate, deliver, or transmit an Entry to the Financial Institution, by doing so the Company rejects the Security Procedure set forth in Section A, chooses an alternative security procedure, agrees that such alternative security procedure may not be found to be commercially reasonable, and agrees to be bound by any Entry, whether or not authorized, that was issued in the Company's name and accepted by the Financial Institution using the alternative security procedure selected by the Company.

Schedule B

Sample ACH Authorization Agreements

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS)

Company Name \_\_\_\_\_ Company ID Number \_\_\_\_\_

I (we) hereby authorize \_\_\_\_\_, hereinafter called COMPANY, to initiate debit entries to my (our)  Checking Account/  Savings Account (select one) indicated below at the depository financial institution named below, hereinafter called DEPOSITORY, and to debit the same to such account.

I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository Name \_\_\_\_\_ Branch \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Routing Number \_\_\_\_\_ Account Number \_\_\_\_\_

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name(s) \_\_\_\_\_ ID Number \_\_\_\_\_  
Date \_\_\_\_\_ Signature \_\_\_\_\_

NOTE: ALL WRITTEN DEBIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.

Schedule B  
(Continued)

AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS (ACH CREDITS)

Company Name \_\_\_\_\_

Company ID Number \_\_\_\_\_

I (we) hereby authorize \_\_\_\_\_, hereinafter called COMPANY, to credit entries to my (our)  Checking Account/  Savings Account (select one) indicated below at the depository financial institution named below, hereinafter called DEPOSITORY, and to credit the same to such account.

I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository

Name \_\_\_\_\_

Branch \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Routing  
Number \_\_\_\_\_

Account  
Number \_\_\_\_\_

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name(s) \_\_\_\_\_

ID Number \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

NOTE: ALL WRITTEN CREDIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.

## Appendix C

### Check and ACH Positive Pay Product Schedule

#### Part 1: Check Positive Pay Schedule

This Positive Pay Product Schedule is entered into by and between Farmers & Merchants Union Bank (“**Financial Institution**”) and you (“collectively, “**Customer**”, “you”, “your”, “yours”), as a Product Schedule under the Business Online Banking and Master Cash Management Agreement (“**Master Agreement**”) and sets forth the terms and conditions pursuant to which Financial Institution will provide to Customer the Positive Pay Services outlined herein (“**Services**”). Financial Institution and Customer agree that by executing this Product Schedule, Customer acknowledges receipt of and agrees to the terms of the Master Agreement and that this Product Schedule becomes part of the Master Agreement. Terms not otherwise defined in this Product Schedule shall have the meaning ascribed to those terms in the Master Agreement. In the event of inconsistency between a provision of this Product Schedule, the Uniform Commercial Code as in effect in the State of Wisconsin (the “**UCC**”), and/or the Master Agreement, the provisions of this Product Schedule shall prevail.

**1. ACCOUNT SERVICES.** Customer requests and agrees to accept from Financial Institution, and Financial Institution agrees to provide Positive Pay Services to Customer. The Services shall apply to the accounts of Customer listed in the Business Online Enrollment Forms (“**Enrollment Forms**”) and incorporated herein by reference (“**Authorized Accounts**”).

**2. POSITIVE PAY SERVICES.**

**A. Description of Positive Pay Services.**

Customer shall electronically transmit to Financial Institution, by manual entry or by importing into Business Online Banking, a file (the “**Issue File**”) which accurately identifies the check number, exact amount, and issue date of the checks issued by Customer (each such check referred to herein as an “**Item**”) which are to be presented for payment to Financial Institution. The parties intend that the Issue File transmitted to Financial Institution constitutes the signature of Customer for purposes of determining whether a Presented Check is properly payable.

“**Presented Check**” means a check drawn on an Authorized Account and presented to Financial Institution for payment. By transmitting the Issue File, Customer expressly warrants that all Presented Checks that match the information in the Issue File are properly payable. Customer acknowledges that Financial Institution is not responsible for detecting any Customer error contained in any Check Issue File sent by Customer to Financial Institution. Customer shall update the Issue File upon issuance of each Item through Business Online Banking. If Financial Institution is unable to process/load the Issue File for any reason, Financial Institution will contact Customer via email or phone and request the Issue File be modified and re-issued.

Except as provided in this Product Schedule, Financial Institution shall pay a Presented Check only if it matches the check number and exact amount of an Item included in the Issue File (“**Matched Check**”). A Presented Check which does not match the check number and exact amount of the Item provided in the Issue File will be identified by Financial Institution as an “**Exception Item**” subject to further review. Customer will be notified via email, text or phone of all Exception Items through Business Online Banking. Customer agrees and acknowledges that Financial Institution will not review or attempt to match the payee on the check even if Customer has provided Financial Institution with the payee information unless enrolled in payee match. Customer has total responsibility for matching the payee on the check as provided by Customer in the Issue File. Financial Institution’s liability to Customer for any Presented Check erroneously paid by Financial Institution in breach of this Product Schedule (“**Financial Institution’s Wrongful Honor**”) shall be limited to the lesser of the amount of the wrongfully paid Presented Check or Customer’s actual damages resulting from Financial Institution’s payment of the Presented Check.

Financial Institution retains the right to assert the defense that Customer has sustained no actual damages because Financial Institution’s Wrongful Honor discharged for value an indebtedness of Customer. Financial Institution also retains the right to assert Customer’s failure to exercise reasonable promptness or ordinary care under the UCC. Nothing herein shall constitute a waiver or limitation of the rights of Financial Institution under the UCC.

Financial Institution’s liability for wrongful dishonor of a Presented Check shall be limited to the damages for wrongful

dishonor recoverable under UCC Articles 3 and 4; provided, however, that Financial Institution shall have no liability to Customer for wrongful dishonor when Financial Institution, acting in good faith, returns a Presented Check: (i) that it reasonably believed was not properly payable; or (ii) if required to do so by the service of legal process on Financial Institution or the instructions of regulatory or government authorities or courts. Customer agrees that Financial Institution exercises ordinary care whenever it pays or returns a Presented Check consistent with the provisions of this Product Schedule.

Financial Institution shall not pay any Presented Check for which Financial Institution has received from Customer a "stop payment" order requested consistent with the Terms and Conditions agreement between the parties governing the Authorized Accounts.

If a Presented Check is personally presented by an individual over the counter to Financial Institution, the Financial Institution may negotiate any check that does not appear on an Issue file. Additionally, Financial Institution shall have no obligation to notify Customer of any such Presented Check.

Customer agrees and understands that the Services apply only to magnetic ink character recognition (MICR) encoded paper checks and documents. Therefore, the Services and this Product Schedule shall not apply to any electronic funds transfer (EFT), Automated Clearing House (ACH) transaction, or check that has been converted to an ACH transaction that does not contain a serial number. Accordingly, this Product Schedule shall have no effect with respect to any such transactions on Financial Institution's or Customer's respective rights, obligations, duties or responsibilities under any other agreement between the parties or applicable law or regulation.

#### **B. Customer's Obligations.**

Financial Institution will notify Customer of Exception Items by listing each item on Business Online Banking. Upon notification, Customer shall review the Exception Items and either confirm the validity of the Exception Item (in which case Financial Institution will pay the Exception Item, provided Customer responds within the time specified below), or will instruct the Financial Institution to dishonor (return) the Exception Item. Customer agrees that any User designated by an Administrator will respond to Financial Institution concerning each Exception Item via Business Online Banking, or if the electronic service is unavailable, then response to Financial Institution shall be by facsimile transmission signed by a User, following the schedule on the Business Online Enrollment Forms. If Financial Institution does not receive Customer's response by the scheduled cut-off time on the same business day that Financial Institution provides Customer notification of the Exception Item, Customer authorizes and directs Financial Institution to pay the Exception Item. Customer agrees that for each Exception Item which Customer has instructed Financial Institution to pay, or which Financial Institution has paid in accordance with this Product Schedule, that Financial Institution will add such check to the Issue File as an Approved Item.

**3. Over the counter presented checks.** The Services and this Product Schedule shall not apply to any Presented Check that is personally presented by an individual to Financial Institution during such time that Financial Institution is experiencing an interruption or failure of communications or data processing facilities or systems, emergency conditions, or any other difficulties beyond the control of Financial Institution affecting the Services. Accordingly, this Product Schedule shall have no effect with respect to any such transactions on Financial Institution's or Customer's respective rights, obligations, duties or responsibilities under any other agreement between the parties or applicable law or regulation.

**4. LIMITATION OF LIABILITY AND INDEMNIFICATION.** Each Presented Check which Financial Institution pays in accordance with this Product Schedule will be deemed to be properly payable. Each Matching Check or other check Customer authorized Financial Institution to pay in accordance with this Service will be paid without Financial Institution performing its customary (or any other) check verification procedures, and Financial Institution will have no liability whatsoever for paying the check if its serial number or amount is altered, or if it is counterfeit, bears a forged or unauthorized signature or was otherwise not validly issued. Each check which is not a Matching Check and which Financial Institution returns pursuant to the terms of this Product Schedule will be deemed not to be properly payable. Customer (i) agrees to indemnify and hold Financial Institution harmless from any losses or liabilities it may suffer or incur as a result of its payment of a Matching Check or other check at Customer's instruction, and (ii) releases and forever discharges Financial Institution, and its parent, subsidiaries, affiliates, successors, officers, directors, employees and agents, from any and all manner of action or actions, suits, claims, damages, judgments, levies, executions, expenses, costs, interest, attorneys' fees and legal expenses, whether known or unknown,



liquidated or not liquidated, fixed, contingent, direct or indirect, which Customer has, or ever can, may or shall have or claim to have against Financial Institution regarding or relating to the return or payment of any check pursuant to provisions of this Agreement.

**5. STOP PAYMENT AND RETURN DECISIONS.** The Service will not be used as a substitute for Financial Institution's stop payment service. Customer will follow Financial Institution's standard stop payment procedures if it desires to return a Matching Check or other check that was validly issued. Nothing in this Product Schedule will limit Customer's right to stop payment on any Matching Check or other check or Financial Institution's right to return any Matching Check or other check that Customer has authorized Financial Institution to pay in accordance with this Product Schedule if Financial Institution determines in its sole discretion that the check is not properly payable for any reason (without Financial Institution's agreeing to, or being required to, make such determination in any circumstance) or that there are insufficient collected and available funds in the Account to pay it.

**6. FEES AND CHARGES.** Customer agrees to pay for the services described in this Service Agreement at the rates set forth in the Schedule of Fees on the Business Online Enrollment Forms. Customer's payment of such fees shall be at the time and in the manner as set forth in the Business Online Enrollment Forms. Customer acknowledges that Financial Institution may amend or change the Fee Schedule from time to time.

**7. NOTICE. Please direct all inquiries or notices to:**

In case of questions about your electronic transactions contact customer service at:

Farmers & Merchants Union Bank

Attn: Operations Department

PO Box 226

Columbus, WI 53925

Phone: (920) 623-7112

Fax: (920) 623-7138

**8. SURVIVAL.** Section 4 of this Product Schedule will survive termination of the Service.

**9. TERMINATION.** This Product Schedule may be terminated by Financial Institution or Customer upon thirty (30) days' written notice. The Service will automatically terminate if the Account is closed for any reason. Termination of the Service will not terminate Customer's or Financial Institution's rights or obligations under this Product Schedule with respect to events or actions that occurred before termination.

## Part 2: ACH Positive Pay Product Schedule

By signing this ACH Positive Pay Product Schedule ("Product Schedule") you ("Customer") hereby requests Farmers & Merchants Union Bank ("Financial Institution") to provide the Service described in this Product Schedule.

Customer agrees that this Product Schedule sets forth the terms and conditions pursuant to which Financial Institution will provide to Customer the Service outlined herein, and is entered into as a Product Schedule under the Business Online Banking and Master Cash Management Agreement ("Master Agreement"). Financial Institution and Customer agree that by executing this Product Schedule, Customer acknowledges receipt of and agrees to the terms of the Master Agreement. Terms not otherwise defined in this Product Schedule shall have the meaning ascribed to those terms in the Master Agreement. In the event of inconsistency between a provision of this Product Schedule, the Uniform Commercial Code (the "UCC"), the Master Agreement, and/or the Depository Agreement, the provisions of this Product Schedule shall prevail.

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Financial Institution and Customer, intending to be legally bound, do hereby agree as follows:

1. **Description of Service.** Subject to the terms and conditions of this Service Agreement, Financial Institution shall provide the Service to Customer, which allows Customer to authorize or block Automated Clearing House ("ACH") transfers to or from Customer's deposit accounts at Financial Institution. As used herein, "ACH Transaction(s)" shall refer to certain electronic funds transfers which settle within a financial institution or between financial institutions according to specified rules and procedures governed by the Federal Reserve Bank and the National Automated Clearing House Association ("NACHA"). "Debit Entry" shall refer to any ACH Transaction which has the intended result of removing funds from Customer's demand deposit account(s). "Credit Entry" shall refer to any ACH Transaction which has the intended effect of depositing funds to Customer's demand deposit account(s). Customer acknowledges and agrees that by instructing Financial Institution to block designated ACH Entries, Financial Institution shall dishonor and return all such blocked ACH Entries.
2. **Transmitting and Processing ACH Block/Filter Instructions.** Customer, or its authorized representative or agent, shall provide ACH Block/Filter instructions ("Operating Instructions"), via Business Online. Amendments of the Operating Instructions shall be by such method and in such format as Financial Institution shall specify. Financial Institution shall process Operating Instructions received from Customer in accordance with the procedures and requirements set forth herein. Financial Institution shall be allowed a reasonable period of time in which to process the Operating Instructions following their receipt from Customer. Financial Institution shall not be obligated to process Operating Instructions unless all of Financial Institution's specified requirements and conditions have first been satisfied or waived by Financial Institution, in its sole and absolute discretion.
3. **Form of ACH Block/Filter Instructions.** Instructions may include any one or more of the following actions:
  - a) Customer may block all ACH Debit and/or Credit Entries on its Account(s) for a specified period of time.
  - b) Customer may authorize specified ACH Debit and/or Credit Entries to post against its Account(s) and block all others.
  - c) Customer may block all ACH Debit and/or Credit Entries to its Account(s) (i) greater than a specified amount, (ii) from specified accounts, (iii) Customer ID, and/or (iii) specified SEC Codes.
  - d) Customer may authorize specified ACH Debit and/or Credit Entries to post on a single or recurring occasion.
4. **Limit of Liability.**
  - a) **Dispute over Return of ACH Debit Entry.** Customer acknowledges that the return of an ACH Debit Entry is subject to dispute on the part of the Sender. In the event of such a dispute the Financial Institution must act according to applicable laws, regulations, and the rules, including any attachments or appendices thereto now in effect, or as may be amended from time to time, of the National Automated Clearing House Association governing ACH transactions ("Rules"). Customer hereby indemnifies and holds Financial Institution, its officers, directors, shareholders, agents, employees, and Affiliates, and their respective officers, directors, agents and employees, harmless from and against any and all losses,

costs, suits, damages, claims, liabilities and expenses (including reasonable attorneys' fees) arising from or related in any way to the use of the Service by Customer.

- b) **Identification of ACH Transactions to Block.** Customer and Financial Institution acknowledge that ACH transactions are originated according to certain processing Rules which require the use of an Originator Name and Originator Identification Number imbedded in the transaction to identify its source, and this imbedded data is a critical component of Financial Institution's ability to monitor for transactions which Customer desires to block. Financial Institution shall act in good faith to process Customer's Operating Instructions. However, if the identifying information in the transaction is inconsistent or is described inconsistently by Customer in Operating Instructions, Financial Institution shall be held harmless for posting an ACH transaction to Customer's account and any dispute related to such a transaction shall be between Customer and the Originator of the transaction.
- c) **No Change in the Agreement Limits of Liability.** This Section 4 supplements the limits of Financial Institution's liability described in the Master Agreement, which remain in full force and effect without change.
- d) **Right to Suspend Services.** Without liability to any party, and without limiting any other right or remedy available to Financial Institution, Financial Institution shall be entitled to cease or suspend the Service, in whole or in part, in Financial Institution's sole and absolute discretion and with or without notice to Customer if Customer shall fail to properly perform its duties, obligations, and responsibilities in connection with the Service, or commit any act or omission which impairs Financial Institution's ability to provide or prevents Financial Institution from providing the Service.
- e) **Examination of Account Statements.** Nothing in this Service Agreement shall be construed as relieving Customer of its normal due diligence responsibilities regarding the examination of account statements and individual ACH Debit Transactions to detect exceptions outside the scope of the Service provided to Customer hereunder. Financial Institution shall not be liable for any loss arising from Customer's failure to exercise due diligence.
- f) **Hold Harmless.** Customer shall accept liability to any party and hold the Financial Institution harmless for any damages, losses, fines, fees, taxes, legal expenses, or actions at law arising from the return (dishonor) of any ACH Debit Transaction if such return resulted from the correct application of the Customer's pay/return instructions.
- g) **Properly Payable Debit.** Any ACH Debit Transaction that is paid in accordance with the Service shall be considered properly payable and Customer agrees that Financial Institution shall have no liability to Customer for paying ACH Debit Transactions in accordance with the Service.

5. **Security Procedures.**

- a) In its sole and absolute discretion, Financial Institution may elect to specify Security Procedures which relate to this Service. When such procedures are specified, Customer agrees that the purpose of the Security Procedures is to verify the authenticity of the Operating Instructions submitted to Financial Institution by Customer. Customer's continued use of this Service following receipt of any Security Procedure specifications from Financial Institution constitutes Customer's acceptance of the Security Procedure, Customer's acknowledgement that the Security Procedures are commercially reasonable, and Customer's agreement that all Operating Instructions communicated by Customer hereunder will comply with the Security Procedures.
- b) Customer agrees to establish and maintain internal procedures to adequately safeguard against unauthorized Operating Instructions, and to limit access to the ACH Block/Filter procedures to only those individuals whom Customer has authorized to act on their behalf with respect to this Service. Any Operating Instruction (including a request for cancellation, amendment, or reversal of an Operating Instruction) or other communication delivered to Financial Institution that purports to have been submitted or authorized by Customer in accordance with this Service Agreement shall be effective and binding upon Customer even if the Operating Instruction was not in fact authorized by Customer, provided Financial Institution has acted in good faith.
- c) If Customer believes the Security Procedures have been compromised or that confidential information regarding the use of this Service has become known to any individual who might initiate unauthorized Operating Instructions, Customer agrees to promptly notify Financial Institution to initiate such corrective action as might be necessary to prevent unauthorized access to the Service.

**6. Fees and Charges.**

Customer agrees to pay for the services described in this Service Agreement at the rates set forth in the Schedule of Fees on the Business Online Master Agreement. Customer's payment of such fees shall be at the time and in the manner as set forth in the Master Agreement. Customer acknowledges that Financial Institution may amend or change the Fee Schedule from time to time.

**7. NOTICE. Please direct all inquiries or notices to:**

Farmers & Merchants Union Bank  
Attn: Operations Department  
PO Box 226  
Columbus, WI 53925  
Phone: (920) 623-7112  
Fax: (920) 623-7138

**8. SURVIVAL.**

Section 4 of this Product Schedule will survive termination of the Service.

**9. TERMINATION.**

This Product Schedule may be terminated by Financial Institution or Customer upon thirty (30) days' written notice. The Service will automatically terminate if the Account is closed for any reason. Termination of the Service will not terminate Customer's or Financial Institution's rights or obligations under this Product Schedule with respect to events or actions that occurred before termination.

**This Product Schedule must be signed on behalf of Customer by an Authorized Customer Representative on the Business Online Enrollment Forms.**

## Appendix D Remote Deposit Capture Product Schedule

This Remote Deposit Capture Product Schedule (this "Agreement") is entered into by and between Farmers & Merchants Union Bank ("**Financial Institution**") and you ("collectively, "**Customer**", "you", "your", "yours"), as a Product Schedule under the Business Online Banking and Master Cash Management Agreement ("Master Agreement") and sets forth the terms and conditions pursuant to which Financial Institution will provide to Customer the Remote Deposit Capture Services outlined herein ("**Services**"). Financial Institution and Customer agree that by executing this Product Schedule, Customer acknowledges receipt of and agrees to the terms of the Master Agreement and that this Product Schedule becomes part of the Master Agreement.

Terms not otherwise defined in this Product Schedule shall have the meaning ascribed to those terms in the Master Agreement. In the event of inconsistency between a provision of this Product Schedule, the Uniform Commercial Code as in effect in the State of Wisconsin (the "**UCC**"), and/or the Master Agreement, the provisions of this Product Schedule shall prevail.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Bank and Customer agree as follows:

**1. Background.** Bank offers the Program for the electronic clearing of checks, which enables Customer to convert checks to electronic items and to transmit those items electronically for deposit into Customer's Account at the Bank. Customer desires to use the Program to electronically transmit and process checks for deposit and collection purposes.

**2. Definitions.** Capitalized terms used in this Agreement shall have the meanings indicated herein (including in Exhibit A).

**3. Services.** The Bank shall provide to Customer the Services described in this Agreement to enable Customer to use the Program to convert Checks to Electronic Items for the processing of such Checks electronically. Customer and the Bank shall comply with the terms and provisions of Exhibit B with respect to performance of the Services.

**4. License.** Subject to the terms and conditions of this Agreement, the Bank hereby grants Customer a non-exclusive, non-transferable license to: (i) use the Software for those portions of the Program selected by Customer, solely for processing Checks in connection with Customer's own business operations, in accordance with the Documentation and solely on Authorized Equipment; (ii) copy and use the Documentation solely to support Customer's authorized use of the Software; and (iii) copy any Software actually delivered to Customer solely for archival or backup purposes. Customer agrees to abide by the provisions of Exhibit C with respect to the Software and Documentation.

**5. Customer Obligations.** Customer represents and warrants that with respect to each Check processed by Customer hereunder and the corresponding Electronic Item: (i) the Electronic Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Customer converted the Check to an Electronic Item; (ii) the Electronic Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and (iii) all transfer and presentment warranties made under applicable law and the Account Agreement. If Customer captures a digital image of a previously truncated and reconverted Substitute Check for processing, Customer shall ensure that such Substitute Check meets the requirements for legal equivalency under Regulation CC and the identifications of previous truncating and reconvert bank(s) (as such terms are defined in Regulation CC) are preserved.

**6. Fees.** Customer will pay the Bank the license and service fees as set forth in the Bank's schedule of fees. The Bank reserves the right to change fees from time to time upon 30 days prior written notice. Customer shall be responsible for and pay all sales and other taxes applicable to this Agreement and imposed by any governmental authority, including without limitation any sales, use, and other taxes associated with the Program or Authorized Equipment, except income taxes of the Bank, including all applicable excise, property, value-added, sales or use, or similar taxes, any withholding taxes, national pension or other welfare taxes, customs, import, export, or other duties, levies, tariffs, taxes, or other similar charges. The Bank may charge to the Account all fees and taxes imposed on the Bank that are the responsibility of Customer.

## 7. Term and Termination.

**7.1** The term of this Agreement shall commence upon execution hereof and shall continue thereafter until terminated as follows: (i) by either party upon 30 days written notice to the other party, for any reason; (ii) by the Bank upon 10 days written notice to Customer for Customer's failure to (a) pay the Bank any amount due to the Bank under this Agreement, or (b) install and use any changes or updates to the Software as required herein, if such breach is not cured within such 10 day period; or (iii) by the Bank immediately upon written notice to Customer if the Bank discovers any willful misconduct (including bad checks or fraudulent activities) on the part of Customer or any other party with respect to Checks or Electronic Items processed by Customer.

**7.2** Any termination will not affect obligations arising prior to termination, such as the obligation to process any Checks and Electronic Items, including returned Electronic Items that were in the process of being transmitted or collected prior to the termination date. Within 30 days after termination of this Agreement, Customer will return or destroy all copies of the Software and Documentation in its possession or under its control, and will, upon request, certify in writing that it has returned or destroyed all such copies. In addition, Customer will keep its Account at the Bank open until the later of (i) 60 days after the date of termination, or (ii) final payment with respect to all processing fees, and will keep in such Account an amount sufficient to cover any remaining outstanding checks. If any such outstanding checks or returned items exceed the amount in the Account, Customer will pay such excess to the Bank upon demand. Customer will also continue to retain Checks and forward Checks to the Bank as provided in Exhibit B of this Agreement. Customer agrees not to develop a product substantially similar to the Program during the term hereof or within three years after termination of this Agreement.

**7.3** All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 5, 7, 8, 9, 10, 11, 13, 14, 16, 18 and 21, will survive any termination of this Agreement.

**8. Confidential Information.** The Bank acknowledges that it may obtain or have access to non-public personal information regarding Customer or its customers, and agrees to (i) maintain the confidentiality, integrity and security of such information, (ii) use such information only for the purposes set forth in this Agreement and the Account Agreement, including without limitation for the performance of its obligations and exercise of its rights hereunder, (iii) disclose such information only to its employees, agents, auditors, accountants, attorneys and regulators, and only as necessary to perform its obligations and exercise its rights hereunder, or as otherwise permitted by law, and (iv) maintain physical, technical, procedural and administrative controls and safeguards reasonably designed (taking into account the nature and circumstances of the Bank's business) to ensure the security, integrity and confidentiality of such information, and to protect against any anticipated threats or hazards to the security or integrity of, or unauthorized access to, such information.

**9. Customer Indemnity.** Customer will indemnify and hold harmless the Bank, its licensors and providers of the Services, and their respective directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses resulting from (i) the wrongful acts or omissions of Customer, or any person acting on Customer's behalf, arising in connection with Customer's use of the Program or processing of Checks hereunder, including without limitation (a) a breach by Customer of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Customer, its customers, or any third party on behalf of Customer, (c) any modifications or changes to the Software made by Customer or any third party within the control or on behalf of Customer, (d) any misuse of the Program by Customer or any third party within the control or on behalf of Customer, or (e) the failure by Customer to comply with applicable state and federal laws and regulations; (ii) any act or omission of the Bank that is in accordance with this Agreement or instructions from Customer; (iii) actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of an Electronic Item to the Bank; or (iv) any claim by any recipient of a Substitute Check corresponding to a Check processed by Customer hereunder, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check.

**10. The Bank's Liability.**

**10.1** The Bank will not be liable to Customer for any of the following, unless liability or loss is a result of the Bank's breach of this Agreement or the gross negligence or willful misconduct of the Bank or its employees or agents: (i) any damages, costs or other consequences caused by or related to the Bank's actions that are based on information or instructions that Customer provides to the Bank; (ii) any unauthorized actions initiated or caused by Customer or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom the Bank has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Electronic Item or Substitute Check for any reason (other than the breach of contract, negligence or willful misconduct of the Bank), including without limitation that the Check, Electronic Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) any other party's lack of access to the Internet or inability to transmit or receive data; (vi) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems, or (vii) any of the matters described in Section 9 above.

**10.2** The Bank's liability for errors or omissions with respect to the data transmitted or printed by the Bank will be limited to correcting the errors or omissions. Corrections will be limited to reprinting and/or representing Substitute Checks or Electronic Items to the Payor Financial Institution.

**10.3** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE BANK'S AGGREGATE LIABILITY TO CUSTOMER FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER FOR BREACH, NEGLIGENCE, INFRINGEMENT, IN TORT OR OTHERWISE, AND ARISING DURING ANY TWELVE MONTH PERIOD SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID BY CUSTOMER TO THE BANK FOR SUCH TWELVE MONTH PERIOD.

**10.4** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS OR LOSS OF ANY OPPORTUNITY OR GOOD WILL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.5** THE BANK AND CUSTOMER ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE A BARGAINED FOR ALLOCATION OF RISK AND LIABILITY, AND AGREE TO RESPECT SUCH ALLOCATION OF RISK AND LIABILITY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE OTHER PARTY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION.

**11. Disclaimer.** THE BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. THE SOFTWARE IS PROVIDED BY THE BANK AND ITS LICENSORS "AS IS". THE BANK AND ITS LICENSORS AND CUSTOMER HEREBY WAIVE AND RELEASE THE BANK AND ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS, AND EMPLOYEES FROM, ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS, AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AUTHORIZED EQUIPMENT AND ANY AND ALL MATTERS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION:

- (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY;
  - (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE;
  - (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND
  - (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR.
- WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER THE BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE SOFTWARE OR THE AUTHORIZED EQUIPMENT WILL BE ERROR-FREE OR UNINTERRUPTED.

**12. Amendments.** The Bank may (i) amend the provisions of this Agreement that govern the procedures and functions of the Program, and any such amendment will become effective (a) 30 days after Customer's receipt of notification, (b) upon such later date as may be specified in such notification, or (c) at such earlier date as the Bank may reasonably require if such amendment is necessary or advisable in connection with statutory or regulatory changes or to protect the integrity, security or operability of the Program; and (ii) amend this Agreement as otherwise provided herein. No other amendment to this Agreement shall be effective until signed by both parties to this Agreement.

**13. Applicable Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the state of Wisconsin, excluding its conflict of law principals. The parties shall submit to venue in and jurisdiction of the courts as provided in the Deposit Account Agreement.

**14. Arbitration.** Any dispute, controversy or claim arising out of or based upon the terms of this Agreement or the transactions contemplated hereby shall be resolved by arbitration pursuant to the terms of the Deposit Account Agreement; provided, however, that any dispute, controversy or claim relating to intellectual property rights with respect to the Software or Documentation shall not be subject to resolution by arbitration.

**15. Assignment.** Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Bank may assign this Agreement to an affiliate or subsidiary without Customer's prior consent, provided that the Bank remains primarily liable for the performance of its obligations under this Agreement. Any attempted assignment or delegation without the required consent will be void.

**16. Attorney's Fees.** If any action is brought by either party against the other regarding the subject matter of this Agreement, including any court action or arbitration proceeding, the prevailing party shall be entitled to recover, in addition to any relief granted, reasonable attorney's fees, costs of court, expert witness fees and other expenses of action.

**17. Compliance with Laws.** Each party will comply with all applicable federal, state and local laws and regulations with respect to this Agreement and such party's activities covered by or related to this Agreement.

**18. Construction and Interpretation.** Section headings used herein are for the convenience of reference only, and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be deemed to have been drafted by both parties, and in the event of dispute, no party shall be entitled to claim that any provision hereof should be construed against the other party by reason of the fact that it was drafted by any particular party. The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach shall not be considered a waiver of that right or breach unless the waiver has been reduced to writing and signed by the waiving party. If a party effectively waives a right or breach, that waiver will not constitute a waiver of any other right or breach or of a subsequent breach of the same obligation. If any provision of this Agreement is held invalid, illegal or unenforceable in any particular jurisdiction or circumstance, the remaining provisions of this Agreement shall remain valid and enforceable in such jurisdiction or circumstance, and such provision shall remain valid and enforceable in any other jurisdiction or circumstance.

**19. Entire Agreement.** This Agreement supplements the terms of the Deposit Account Agreement. This Agreement, the Exhibits and schedules to this Agreement (as may be amended from time-to-time), and the Deposit Account Agreement constitute the entire agreement between Customer and the Bank with respect to the subject matter hereof, supersede any prior agreements between the Bank and Customer with respect to the subject matter hereof, and shall be binding upon the Bank, Customer and their respective successors and permissible assigns. In the event of any inconsistency between this Agreement and the Documentation or any Account Agreement, this Agreement will govern.



**20. Force Majeure.** Except for the obligation to make payments, non-performance by either party will be excused to the extent performance is prevented or delayed due to causes beyond such party's reasonable control and without its negligent or willful misconduct, including without limitation acts of God, natural disasters, terrorist acts, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations, third party non-performance or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.

**21. Injunctive Relief.** Notwithstanding Section 14 of this Agreement, each party acknowledges that its violation of Sections 4, 8 or 17 of this Agreement may cause irreparable injury to the other party, and agrees that the other party shall be entitled to seek temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation.

**22. Notices.** All notices permitted or required under this Agreement will be in writing and will be deemed given upon actual delivery. Any notice will be addressed to the party as follows:

If to the Bank: Farmers & Merchants Union Bank  
PO Box 226  
Columbus, WI 53925  
Phone Number: 920-623-4000  
Fax Number: 920-623-4010

If to Customer: The address or facsimile number set forth in the Business Online Enrollment forms and Remote Deposit Capture Application.

**23. Relationship Between Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

**24. Security Interest.** Customer grants the Bank a security interest in the Account, including any present and future principal and interest, as collateral security for the Performance of Customer hereunder.

**25. Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the Bank and Customer and is not intended to benefit any third party, except the Bank's licensors. Customer and the Bank acknowledge and agree that any party that licenses the Software to the Bank, directly or indirectly through one or more sublicenses, is a third party beneficiary to this Agreement with respect to those provisions dealing with use and protection of intellectual property.

**EXHIBIT A**  
**Definitions**

Account means Customer's account at the Bank into which Checks transmitted electronically will be deposited.

Account Agreement with respect to any Account means the Bank's standard deposit agreements and disclosures governing the Account, as they may be amended from time-to-time.

Authorized Equipment means equipment that has been approved by the Bank for use with the Software.

Check means a draft that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks and Substitute Checks. Such term does not include Non-cash Items or items payable in a medium other than United States money. [Note: The Bank's processing of items that do not meet this definition shall not constitute a waiver by the Bank or obligate it to process nonconforming items in the future. The Bank may discontinue processing of nonconforming items at any time, without cause or prior notice.]

Documentation means all documentation, manuals and instructions relating to the Program or the Authorized Equipment, which the Bank provides to Customer from time-to-time pursuant to this Agreement, including without limitation documentation regarding installation and use of the Software.

Electronic Item means a digitized image of a Check, an Image Exchange Item, or any other electronic version of a Check or other electronic item (such as items processable through the automated clearing house (ACH) system) approved by the Bank for processing through the Program.

Image Exchange Item means a digitized image of a Check cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

Noncash Item means an item that would otherwise be a Check, 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 a Check that qualifies for handling by automated check processing equipment; or (iv) it has not been pre-printed or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

Original Check means the first paper Check issued with respect to a particular payment transaction.

Payor Financial Institution means the United States Financial Institution ordered in a Check to make payment to the payee(s) named on the Check.

Program means collectively the procedures, protocols and software used by the Bank and its licensors and contractors in connection with the electronic processing of Checks, and includes without limitation the Software and the Services.

Regulation CC means 12 C.F.R. Part 229, as it may be amended from time-to-time.

Services means the services described in Exhibit B to be provided by the Bank, or an agent or designee of the Bank, to enable Customer to process Checks digitally and through Substitute Checks.

Software means that portion of the software developed, licensed and/or provided by the Bank and its licensors for operation of the Program, that the Bank delivers or provides to Customer hereunder.

Substitute Check means a paper reproduction of a Check that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

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.

## **EXHIBIT B**

### **SERVICE TERMS AND CONDITIONS**

#### **1. The Bank's Responsibilities.**

**1.1** The Bank will deliver to Customer, or otherwise provide access to, the Software.

**1.2** The Bank will provide installation and training support as reasonably required for Customer's implementation of the Program. Any onsite installation or training support shall be on such terms and conditions as the parties agree, including reimbursement for the Bank's reasonable travel costs.

**1.3** The Bank will provide maintenance and support for the Software as reasonably necessary to permit Customer's processing of Checks through the Program. Such maintenance and support shall include (i) corrections, work arounds and bug fixes, (ii) such modifications, enhancements and updates as the Bank elects to make generally available to its customers without additional license fees, and (iii) telephone support to Customer during the Bank's regular business hours.

**1.4** The Bank will accept for deposit to the designated Account digitized images of Checks that are transmitted to the Bank in compliance with this Agreement. Digitized images/anytime shall be deemed received upon successful receipt of the transmission of such images/anytime that are complete, usable, and adhere to the data specifications set forth in the Documentation. If the digitized images are not complete, are not useable, or do not adhere to such data specifications, the images may not be processed by the Bank or its agents, in which event Customer's deposit will be adjusted and notification will be provided.

**1.5** The Bank will provide Customer an e-mail notification of Customer's transmission of digitized images as outlined in the Documentation.

**1.6** Customer's digitized images will be processed after the Bank has received Customer's transmission of the digitized images. The Bank will use commercially reasonable efforts to present Image Exchange Items and Substitute Checks for collection. Unless the Bank notifies Customer otherwise, the Bank will provide same day credit to the Account for all items transmitted by Customer and received by the Bank in accordance with the requirements of this Agreement and the Documentation, and within the timeliness established by the Bank.

**1.7** If a Payor Financial Institution returns an item to the Bank, the Bank will charge the Account for such returned item, and may either (i) return the item to Customer, or (ii) re-present it to the Payor Financial Institution before returning it to Customer. Items may be returned as Image Exchange Items, rather than Substitute Checks, as agreed by the parties. If a Payor Financial Institution or other third party makes a claim against the Bank or seeks a recredit with respect to any Check processed hereunder, the Bank may provisionally freeze or hold aside a like amount in the Account pending investigation and resolution of the claim.

**1.8** The Bank may suspend immediately the Services or the processing of any Check or corresponding Electronic Item if the Bank has reason to believe that there has been a breach in the security of the Program, fraud involving Customer's Account or such Check, or any uncertainty as to the authorization or accuracy of Electronic Items. The Bank reserves the right at any time to process Electronic Items on a collection basis.

## **2. Customer Responsibilities.**

- 2.1** Customer will maintain an Account at the Bank for the receipt of deposits of digitized images of Checks, in accordance with applicable Account Agreement.
- 2.2** Customer will install the Software in accordance with the Documentation, and will install and implement any changes and upgrades to the Software as the Bank may require, within 30 days of receipt of such change or upgrade, or within such shorter time frame as the Bank may reasonably require in the event such change or upgrade is necessary to comply with statutory or regulatory changes or developments, or to protect the integrity and security of the Program.
- 2.3** Customer may use only Authorized Equipment in connection with the Software. Unless otherwise provided in an addendum to this Agreement or in a separate agreement, Customer, and not the Bank, shall be responsible for ordering, obtaining and maintaining all Authorized Equipment.
- 2.4** Customer will use the Authorized Equipment and the Software, including the entering, processing and transmittal of items, in accordance with the Documentation. Without limiting the foregoing, Customer will comply with all security procedures described in the Documentation, and will not bypass, override or disable any security mechanisms in the Authorized Equipment or Software.
- 2.5** Customer will ensure the Authorized Equipment is clean and operating properly, and inspect and verify the quality of images/anytime and that the digitized images/anytime of Checks are legible for all posting and clearing purposes.
- 2.6** Customer will be responsible for training its employees in the use of the Program, and for supervising and auditing their use of the Program.
- 2.7** Customer will ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser with respect to a Check processed by Customer will receive presentment or return of, or otherwise be charged for, the Check (including the Original Check or Substitute Check), corresponding Electronic Item, and/or other paper or electronic representation of the Check such that such person will be asked to make payment based on an item that it already has paid.
- 2.8** Customer will retain each Check for a reasonable period of time, but in no event fewer than 75 days after such Check has been digitized and processed. Customer will promptly provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to the Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check. Customer will use a commercially reasonable method approved by the Bank to destroy Checks after the Customer's retention period has expired.
- 2.9** Customer will retain all information about its digitizing of Checks as created by the Software for no less than 7 days. In the event of lost, mistaken, incomplete or unusable Electronic Items, or in the event of claims of fraud, alteration, counterfeit or otherwise, Customer shall cooperate fully with the Bank in providing information, including access to such records.

**EXHIBIT C**  
**INTELLECTUAL PROPERTY PROVISIONS**

1. Protection and Security of Software and Documentation.

**1.1** Customer will establish reasonable precautions and use commercially reasonable efforts, no less rigorous than those Customer uses to protect its own confidential information to protect and maintain the confidentiality and security of the Software and the Documentation. Without limiting the generality of the foregoing, Customer will use reasonable measures to protect the Software and Documentation from unauthorized copying, dissemination, disclosure or other unauthorized use.

**1.2** Customer will not, and will not permit any third party to, (i) copy or use the Software or Documentation except as expressly authorized by this Agreement (including this Schedule); (ii) sublicense, rent, distribute, transfer, publish, disclose, display or otherwise make available the Software to others; (iii) use the Software or Documentation for third-party training, commercial time-sharing or service bureau use; or (iv) alter, change, modify or otherwise create derivative works of the Software or Documentation.

**1.3** Customer will not, and will not permit any third party to, reverse engineer, disassemble or decompile any Software, except to the extent expressly permitted by applicable law. If Customer intends or begins to take any such action based on any applicable law, Customer shall notify the Bank and the Bank shall have the right to immediately terminate this Agreement and/or the license to the Software upon notice to Customer.

**1.4** Customer will maintain a complete and accurate list of all locations where Customer has loaded and maintains the Software, and make such list available to the Bank upon the Bank's request.

2. Ownership of Intellectual Property.

**2.1** Customer acknowledges and agrees that all right, title and interest in and to the Software and the Documentation, together with modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents and trade secrets, pertaining to the Software and the Documentation, (i) are and shall remain owned exclusively throughout the universe by the Bank and its licensors, (ii) represent or contain valuable rights of the Bank and its licensors, and (iii) are protected under United States patent, copyright, trademark and trade secret laws of general applicability. This Agreement does not create in Customer any rights to, and does not constitute an assignment of any rights of the Bank or its licensors in and to, any copyrights, trade secrets, patents or other intellectual property rights of the Bank or such licensors. Other than the license set forth above in this Schedule, no other license or interest in the Software or Documentation, either express or implied, is granted under this Agreement.

**2.2** Customer will not at any time, either directly or indirectly, (i) put to issue the scope, validity or ownership of the Bank's or its licensors' intellectual property rights in the Software and Documentation; (ii) do any act which could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights, or (iii) assert any ownership rights to the Software or Documentation. Customer acknowledges and agrees that this Agreement does not grant or convey to Customer (i) an interest in or to the Software or Documentation, but only a limited right of use, revocable in accordance with the terms hereof; or (ii) any right, title, interest or license in or to any trademark of the Bank or its licensors.

**2.3** Customer hereby assigns to the Bank and/or its licensors, as directed by the Bank, any rights, including any patent, copyright, mask work rights, trademarks and trade secrets, which Customer may now have or which it may acquire at anytime in the future to the Software or the intellectual property rights to the Software, and any other computer code using any of the Software.

**2.4** Customer shall not remove or alter any copyright, trademark or other intellectual property or proprietary right notices, legends, symbols or labels appearing on or in the Software, Documentation or any packaging, and shall include on any copy of the Software or Documentation any copyright, trademark, or other intellectual property or proprietary right notices contained on the original.

**2.5** Customer will (i) cooperate with the Bank and its licensors to protect the Software, including in connection with any lawsuits or disputes involving the Software; (ii) promptly notify the Bank and provide to it relevant background and other facts upon becoming aware of any actual or potential claim made by a third party regarding infringement, misappropriation, imitation, illegal use or misuse or reasonable likelihood thereof, by the Software; and (iii) in the event of any actual or potential infringement, misappropriation, imitation, illegal use or misuse or reasonable likelihood thereof of the Software by others, (a) grant to the Bank and its licensors the sole right to determine the course of action with respect to such infringement and to bring any proceeding with respect thereto, and to settle, and collect any settlement amount or judgment for any such proceeding, and (b) agree that such licensors shall be solely entitled to any proceeds of any such proceeding, including without limitation any settlement proceeds, insurance proceeds, arbitration award, judgment or other consideration in any form.

### 3. Termination.

Customer acknowledges and agrees that its license to the Software and Documentation will terminate upon the earlier to occur of (i) termination of this Agreement, or (ii) termination of the Bank's license to the Software and Documentation.

### 4. Limitation on Liability.

THE BANK'S LICENSORS SHALL HAVE NO LIABILITY OF ANY NATURE TO CUSTOMER, OR ANY THIRD PARTY, FOR DAMAGES, LIABILITIES OR CLAIMS, WHETHER IN CONTRACT, TORT, FOR NEGLIGENCE, INFRINGEMENT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, DAMAGES, LIABILITIES OR CLAIMS ARISING FROM OR UNDER THIS AGREEMENT, ERROR IN THE SOFTWARE, OR FOR ANY INJURY, DAMAGE OR LOSS RESULTING FROM SUCH ERROR, OR FROM ANY USE OF THE SOFTWARE. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL SUCH LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS OR LOSS OF ANY OPPORTUNITY OR GOOD WILL, EVEN IF SUCH LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH.

### 5. Compliance with Law.

Customer shall not export, re-export or otherwise transfer, directly or indirectly, the Software or any portion thereof to any location outside the United States without first complying with all applicable foreign and United States federal, state and local laws, rules, regulations or controls (including without limitation those regarding import, export, marketing, distribution or use of software programs).

### 6. Assignment.

Customer may not assign the license granted hereunder to any party whatsoever, except in connection with an assignment of the entire Agreement, subject to the terms of the Agreement. Any attempted assignment of the license in violation of this Section shall be void.

7. Further Assurances.

Customer will, at its expense, promptly execute and deliver such further documents and take any and all other actions reasonably requested by the Bank from time-to-time, for the purpose of fully effectuating the intent and purposes of this Schedule, and to protect the interests of the Bank, its licensors, and their respective successors and assignees.

8. Injunctive Relief.

Customer acknowledges that violation of its commitments regarding the Software, as outlined in Sections 2.4, 2.5 and 6 of this Schedule, may cause irreparable injury to the Bank and/or its licensors, and agrees that the Bank shall be entitled to seek and obtain temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation.

9. Survival.

Customer agrees that the provisions of Sections 2, 4, 5, 7, 8, and 9 of this Schedule shall survive termination of the license granted hereunder and the termination of this Agreement.

Please copy this contract for your records.

For assistance please call **920-623-4000**.

## **EXHIBIT D**

### **DISPOSAL OF CONSUMER REPORTS AND INFORMATION**

#### **1. Definitions:**

(a) In general. Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(b) "Consumer information" means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(c) "Dispose." "disposing." or "disposal" means:

- (1) the discarding or abandonment of consumer information, or
- (2) the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

#### **2. Purpose and scope:**

(a) Purpose. This part ("rule") implements section 216 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information.

(b) Scope. This rule applies to any person over which the Federal Trade Commission has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information.

#### **3. Proper disposal of consumer information:**

(a) Standard. Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(b) Examples. Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with this rule.

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.

(3) After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule. In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information



security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.

(4) For persons or entities who maintain or otherwise possess consumer information through their provision of services directly to a person subject to this part, implementing and monitoring compliance with policies and procedures that protect against unauthorized or unintentional disposal of consumer information, and disposing of such information in accordance with examples (1) and (2) above.

(5) For persons subject to the Gramm-Leach-Bliley Act, 15 U.S.C. 6081~~et seq.~~, and the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR Part 314 ("Safeguards Rule"), incorporating the proper disposal of consumer information as required by this rule into the information security program required by the Safeguards Rule.

#### 4. Relation to other laws:

Nothing in this rule shall be construed:

(a) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

(b) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

#### Subpart D – Sections 226.54 – 226.55

#### EXPEDITED RECREDIT FOR CONSUMERS.

##### (a) RECREDIT CLAIMS.—

(1) IN GENERAL.—A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that—

(A) the bank charged the consumer's account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer's account; or

(ii) the consumer has a warranty claim with respect to such substitute check;

(C) the consumer suffered a resulting loss; and

(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).

(2) 40-DAY PERIOD.—Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of—

(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

(B) the date on which the substitute check is made available to the consumer.

(3) EXTENSION UNDER EXTENUATING CIRCUMSTANCES.—If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.

**(b) PROCEDURES FOR CLAIMS.—**

**(1) IN GENERAL.—**To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer—

- (A)** a description of the claim, including an explanation of—
  - (i)** why the substitute check was not properly charged to the consumer's account; or
  - (ii)** the warranty claim with respect to such check;
- (B)** a statement that the consumer suffered a loss and an estimate of the amount of the loss;
- (C)** the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer's account or the warranty claim; and
- (D)** sufficient information to identify the substitute check and to investigate the claim.

**(2) CLAIM IN WRITING.—**

**(A) IN GENERAL.—**The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.

**(B) MEANS OF SUBMISSION.—**A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.

**(c) RECREDIT TO CONSUMER.—**

**(1) CONDITIONS FOR RECREDIT.—**The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if—

- (A)** a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and
- (B)** the bank has not—
  - (i)** provided to the consumer—
    - (I)** the original check; or
    - (II)** a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated; and
  - (ii)** demonstrated to the consumer that the substitute check was properly charged to the consumer account.

**(2) TIMING OF RECREDIT.—**

**(A) IN GENERAL.—**The bank shall recredit the consumer's account for the amount described in paragraph (1) no later than the end of the business day following the business day on which the bank determines the consumer's claim is valid.

**(B) RECREDIT PENDING INVESTIGATION.—**If the bank has not yet determined that the consumer's claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer's account for—

- (i)** the lesser of the amount of the substitute check that was charged against the consumer account, or \$2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and
- (ii)** the remaining amount of the substitute check that was charged against the consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.

**(d) AVAILABILITY OF RECREDIT.—**

**(1) NEXT BUSINESS DAY AVAILABILITY.**—Except as provided in paragraph (2), a bank that provides a recredit to a consumer account under subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after the business day on which the bank recredits the consumer's account under subsection (c).

**(2) SAFEGUARD EXCEPTIONS.**—A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:

**(A) NEW ACCOUNTS.**—The claim is made during the 30-day period beginning on the business day the consumer account was established.

**(B) REPEATED OVERDRAFTS.**—Without regard to the charge that is the subject of the claim for which the recredit was made—

**(i)** on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

**(ii)** on 2 or more business days during such 6-month period, the balance in the consumer account was negative or would have become negative in the amount of \$5,000 or more if checks or other charges to the account had been paid.

**(C) PREVENTION OF FRAUD LOSSES.**—The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.

**(3) OVERDRAFT FEES.**—No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recredited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.

**(e) REVERSAL OF RECREDIT.**—A bank may reverse a recredit to a consumer account if the bank—

**(1)** determines that a substitute check for which the bank recredited a consumer account under subsection (c) was in fact properly charged to the consumer account; and

**(2)** notifies the consumer in accordance with subsection(f)(3).

**(f) NOTICE TO CONSUMER.**—

**(1) NOTICE IF CONSUMER CLAIM NOT VALID.**— If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination—

**(A)** the original check or a copy of the original check (including an image or a substitute check) that—

**(i)** accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

**(ii)** is otherwise sufficient to determine whether or not the consumer's claim is valid; and

**(B)** an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request copies of any information or documents on which the bank relied in making the determination.

**(2) NOTICE OF RECREDIT.**—If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of—

- (A)** the amount of the recredit; and
- (B)** the date the recredited funds will be available for withdrawal.

**(3) NOTICE OF REVERSAL OF RECREDIT.**—In addition to the notice required under paragraph (1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of—

- (A)** the amount of the reversal; and 117 STAT. 1186 PUBLIC LAW 108-100—OCT. 28, 2003
- (B)** the date the recredit was reversed.

**(4) MODE OF DELIVERY.**—A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information (such as email.)

**(g) OTHER CLAIMS NOT AFFECTED.**—Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 6 or 10.

**(h) CLARIFICATION CONCERNING CONSUMER POSSESSION.**—A consumer who was provided a substitute check may make a claim for an expedited recredit under this section with regard to a transaction involving the substitute check whether or not the consumer is in possession of the substitute check. Applicability,

**(i) SCOPE OF APPLICATION.**—This section shall only apply to customers who are consumers.

## **EXPEDITED RECREDIT PROCEDURES FOR BANKS & MERCHANT CAPTURE CUSTOMERS**

**(a) RECREDIT CLAIMS.**—

**(1) IN GENERAL.**—A bank may make a claim against an indemnifying bank for expedited recredit for which that bank is indemnified if—

- (A)** the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 7 with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;
- (B)** the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 7 with respect to such substitute check; and
- (C)** production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.

**(2) 120-DAY PERIOD.**—Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day period beginning on the date of the transaction that gave rise to the claim.

**(b) PROCEDURES FOR CLAIMS.**—

**(1) IN GENERAL.**—To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank—

- (A)** a description of—
  - (i)** the claim, including an explanation of why the substitute check cannot be properly charged to

the consumer account; or

(ii) the warranty claim;

(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 7, together with an estimate of the amount of the loss or recredit;

(C) the reason why production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the consumer account or the warranty claim; and

(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.

(2) REQUIREMENTS RELATING TO COPIES OF SUBSTITUTE CHECKS.—If the information submitted by a claimant bank pursuant to paragraph

(1) in connection with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be—

(A) mistaken for the legal equivalent of the check under section 4(b); or

(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.

(3) CLAIM IN WRITING.—

(A) IN GENERAL.—An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph

(1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 7(b).

(B) MEANS OF SUBMISSION.—An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.

(c) RECREDIT BY INDEMNIFYING BANK.—

(1) PROMPT ACTION REQUIRED.—No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall—

(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine the bank's claim is not valid; and

(B) recredit the claimant bank for the amount of the claim up to the amount of the substitute check, plus interest if applicable; or

(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).

(2) RECREDIT DOES NOT ABROGATE OTHER LIABILITIES.— Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 6 or 10 with respect to such check.

(3) REFUND TO INDEMNIFYING BANK.—If a claimant bank reverses, in accordance with section 7(e), a recredit previously made to a consumer account under section 7(c), or otherwise receives a credit or recredit with regard to such substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check. (d) PRODUCTION OF

ORIGINAL CHECK OR A SUFFICIENT COPY GOVERNED BY SECTION 6(d).—If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 6(d) shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has reccredited to the claimant bank pursuant to subsection (c).

#### **DELAYS IN AN EMERGENCY.**

A delay by a bank beyond the time limits prescribed or permitted by this Act shall be excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.

#### **MEASURE OF DAMAGES.**

##### **(a) LIABILITY.—**

**(1) IN GENERAL.—**Except as provided in section 6, any person who, in connection with a substitute check, breaches any warranty under this Act or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this Act with respect to any other person shall be liable to such person in an amount equal to the sum of—

**(A)** the lesser of—

- (i)** the amount of the loss suffered by the other person as a result of the breach or failure; or
- (ii)** the amount of the substitute check; and

**(B)** interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

**(2) OFFSET OF RECREBITS.—**The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a reaccredit under section 7 or 8.

##### **(b) COMPARATIVE NEGLIGENCE.—**

**(1) IN GENERAL.—**If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

**(2) RULE OF CONSTRUCTION.—**Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

For the full Check 21 ruling please refer to the FDIC.

**This Product Schedule must be signed on behalf of Customer by an Authorized Customer Representative on the Business Online Enrollment Forms.**

**February 1, 2022 Update**

With this update, customers enrolled in ACH Origination can now request access to complete international ACH transactions(IAT). This service allows a business to pay vendors that qualify for international ACH. International ACH includes but are not limited to Canada, Mexico and most European countries.

Update to the Fees on page 31 – Added the International ACH transaction fee to the schedule

Update to Section 9. International ACH(IAT) on pages 35-36 – Added points g through k to this section