



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

July 6, 2022

To: Jerome D. Schad, Chair  
Peggy A. LaGree, Vice Chair  
Michele M. Iannello, Treasurer

From: Karen A. Prendergast, Chief Financial Officer *KAP*

Subject: Cash Management Service Agreement

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At their February 10<sup>th</sup> meeting, the Board authorized a Request for Proposal (RFP) for Banking Services. The scope of services included trust services for our debt issuances, lockbox services to process payments from customers, and the maintenance of operating accounts from which we pay our vendors.

At the May 19<sup>th</sup> meeting, the Finance Department recommended the Authority reject all RFP responses and maintain its current banking relationships with KeyBank and M&T Bank.

KeyBanks response to the RFP included updated unit pricing, consistent with our current pricing and including two lockbox services not included in the 2012 contract. An updated Cash Management Services Agreement with KeyBank has been included for your consideration at the July 21, 2022 meeting.

If you have any questions, please contact me.

cc J. Tomaka  
T. McCracken  
J. Brown

ERIE COUNTY WATER AUTHORITY  
AUTHORIZATION FORM  
For Approval/Execution of Documents  
(check which apply)

**Contract:** \_\_\_\_\_ **Project No.:** \_\_\_\_\_  
**Project Description:** Cash Management Services Agreement - KeyBank

**Item Description:**


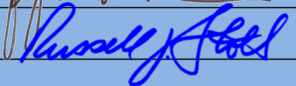
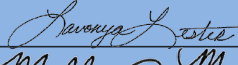
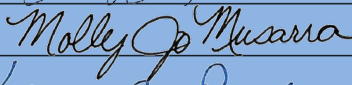


<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> Request for Proposals			
<input type="checkbox"/> Other _____			

**Action Requested:**


<input type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input checked="" type="checkbox"/> Board Authorization to Award	<input type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other _____	

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input checked="" type="checkbox"/> Comptroller	<u></u>	Date: <u>07/07/2022</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u></u>	Date: <u>7/7/2022</u>
<input type="checkbox"/> Executive Engineer	_____	Date: _____
<input checked="" type="checkbox"/> Director of Administration	<u></u>	Date: <u>07/07/2022</u>
<input checked="" type="checkbox"/> Risk Manager	<u></u>	Date: <u>07/07/2022</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u></u>	Date: <u>07/07/2022</u>
<input checked="" type="checkbox"/> Legal	<u></u>	Date: <u>7/7/2022</u>

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority	<u></u>	Date: <u>7/11/22</u>
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**Remarks:** \_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_



March 30, 2022

# Erie County Water Authority Request for Proposals (RFP) for Banking and Trust Services ECWA Project No. 202100245

**Presented by:**

**Brendan E Baxter**  
Sr. Relationship Manager  
Public Sector  
518 257 8501  
brendan\_e\_baxter@key.com

**Amanda J Earnshaw**  
Sr. Payments Advisor  
Enterprise Payments  
518 257 8754  
Amanda\_J\_Earnshaw@Keybank.com

**KeyBank, N.A.**  
66 South Pearl Street  
Albany, New York 1  
Keybank.com

March 30, 2022

Joyce A. Tomaka, Comptroller Erie County Water Authority  
295 Main Street  
Buffalo New York 14203  
Email: [jtomaka@ecwa.org](mailto:jtomaka@ecwa.org)  
Solicitation # 202100245

Dear Joyce:

The Erie County Water Authority (ECWA or the Authority) is an important relationship for KeyBank (Key) and one that we will continue to develop and grow. We are proud to have been your banking services provider for the last decade and are grateful for the relationship we have built together. Although the Authority is already familiar with our commitment and consultative service, a few of our *key advantages* are listed below:

- **Local Presence, Dedicated Public Sector Support.** Key is your dedicated, local bank. Your New York-based relationship team brings years of experience working with Western-New York public entities including the Authority, the City of Buffalo, Erie County, and dozens of other government clients. Key has deep roots in Buffalo and the greater Erie County Region; Key's northeast headquarters are in Larkinville and more than 500 employees call Western New York home. Your relationship team is committed to ensuring the Authority has the most efficient, cost-effective treasury services to meet your needs. Your trusted relationship team has an unmatched familiarity and expertise of the Authority's organization.
- **Extensive Experience.** Key's Public Sector group includes your daily contacts Brendan Baxter, Amanda Earnshaw, and Mandy Sorriento. The Authority's relationship team has more than 60 years of combined experience interacting with almost every agency within the State. Our extensive experience includes banking services for dozens of state agencies and more than 100 municipalities across New York.
- **Eliminate Conversion Cost and Risk.** By choosing to remain with Key as your existing banking services provider, the Authority will avoid service disruptions, burdensome procedural and administrative changes and paperwork caused by transitioning to a new provider. The Authority's current processes will not change. You will avoid a time-consuming conversion process – empowering the Authority's staff to focus on efficient fiscal management – ultimately saving you significant money, work, time, and effort.

Thank you for the opportunity to submit our proposal. We acknowledge the Addendum Q&A sent on March 17<sup>th</sup> and 18<sup>th</sup>. We are excited to continue partnering with the Authority and we can assure you that your Key team is committed to working hard to earn your business each day.

Sincerely,



**Brendan E Baxter**  
Sr. Relationship Manager  
Public Sector  
518 257 8501  
[brendan\\_e\\_baxter@key.com](mailto:brendan_e_baxter@key.com)



**Amanda J Earnshaw**  
Sr. Payments Advisor  
Enterprise Payments  
518 257 8754  
[Amanda\\_J\\_Earnshaw@Keybank.com](mailto:Amanda_J_Earnshaw@Keybank.com)



**For Bank Use Only**

TIN # (required):

Account # (optional):

Document Type: Treasury Services Agreement

Aux Doc Type: Client Master Agreement

Contact Name:

Phone:

Agreement Modified  Yes or  No

## CASH MANAGEMENT SERVICES MASTER AGREEMENT

### KEYBANK NATIONAL ASSOCIATION ("Bank")

127 Public Square  
Cleveland, Ohio 44114

Client Name ("Client"):

Client Street Address:

City, State, ZIP:

Bank, or any Bank Affiliate(s), as the case may be, agree to perform, and Client agrees to purchase, cash management Service(s), as defined below. Client understands and agrees that Bank, in providing Services to Client from time to time, is relying on Client's representations, warranties and agreements herein, and all Services shall be and remain subject to this Cash Management Services Master Agreement (this "**Agreement**") whether Services were purchased prior to the date hereof, on the date hereof, or after the date hereof. Client and Bank agree to the terms and conditions below.

#### 1. Definitions.

(a) "Bank" shall mean KeyBank National Association and any Bank Affiliate(s), which may, from time to time, provide Service(s) for the Client.

(b) "Bank Affiliate(s)" shall mean any direct or indirect subsidiary (other than the Bank) of KeyCorp and its successors.

(c) "Banking day" shall mean any day other than a Saturday, Sunday, or a day on which Bank is authorized or required to close according to applicable law.

(d) "Client" shall mean the entity identified above as "Client" and shall include all entities listed on Exhibit A attached hereto and made a part hereof.

(e) "Client Affiliate" shall mean any entity that is a subsidiary of, or is affiliated with, Client, as identified on Exhibit A attached hereto and made a part hereof.

(f) "Deposit Account Agreement" shall mean the Deposit Account Agreement and Funds Availability Policy and Deposit Account Fees and Disclosures as amended from time to time governing the Client's deposit account with the Bank.

(g) "Internet" means the global, publicly accessible, network of interconnected computer networks that transmit data using the standard internet protocol.

(h) "Master Agreement" shall mean this Master Agreement, any Service Schedules and the Deposit Account Agreement.

(i) "MICR" shall mean magnetic ink character recognition.

(j) "Service(s)" shall mean any cash management services undertaken by the Bank for the Client, now or in

the future, including, without limitation, services with separate Service Schedules, and services without separate documentation.

(k) "Service Schedule(s)" shall mean a written agreement other than the Master Agreement, including without limitation service agreements or schedules by which Bank undertakes to provide Services to the Client, regardless of whether such Service Schedule is executed at the same time as this Master Agreement or at an earlier or later date.

(l) "Setup Documentation" shall mean, collectively, Client's selections, designations, authorizations and/or other instructions set forth in Bank's standard set-up documentation for any of the Services, either delivered by Client to Bank or completed by Bank based upon Client's instructions to Bank, or otherwise, from time to time.

**2. Account Documentation.** Client will execute and deliver to Bank such account documentation as Bank deems necessary. Bank will, in its sole discretion, determine the adequacy of such documentation, and may refuse to provide the Service(s) until such documentation is received by Bank. Client agrees to promptly notify Bank of (a) any material change to any information presented by Client in any documentation relating to the Services promptly and in any event within five (5) calendar days of any of such material change (e.g., without limitation, removal of a financial officer or account signatory), and (b) any non-material change to any information presented by Client in any documentation relating to the Services (e.g., without limitation, a street address change respecting any Client Affiliate), within thirty (30) days of any such change. Client has received a copy of Bank's Deposit Account Agreement and agrees that such terms shall govern the deposit account servicing provided by Bank.



**3. Client's Records and Media.** Prior to the implementation of the Service(s), Client agrees to provide to Bank all records and data processing media necessary to perform the Service(s). The records will be legible, correct, complete and in the format specified in the Service Schedule(s), service manual(s) and related schedules. Checks will be MICR encoded according to the Bank's specifications. Bank will, in its sole discretion, determine the adequacy of the information and the format in which it is submitted, and may refuse to provide the Service(s) until such information and/or format is deemed satisfactory.

**4. Software Provided in Connection with Performance of Service(s).** All software, specifications, tapes or other media, programs and procedures owned by the Bank or its service providers and used in connection with the performance of the Service(s), will be and remain the sole property of the Bank and will not be modified or altered in any way or used for any other purpose by the Client. The terms of all license and copyright notice requirements shall be complied with by the Client.

**5. Client Failure to Furnish Satisfactory Records and Media.** The Bank's performance under this Master Agreement is subject to the Bank's receiving timely, accurate and complete data for each Service, in form and on media specified by the Bank. If any of these requirements are not met by Client, the Bank shall:

a) no longer be bound to any delivery schedule set forth in the Service Schedule(s), and b) be authorized to deliver as complete and finished whatever portion of the Service(s) that can be performed with the data available.

**6. Client's Duty to Inspect.** Client must inspect all Service(s) performed and notify the Bank within thirty (30) days after the material containing the error or of a report or statement reflecting the error is mailed or otherwise made available. Except to the extent required by law, failure to notify the Bank of errors within this time will relieve the Bank of any and all liability.

## **7. Confidentiality.**

(a) Confidentiality of Client Information. Bank acknowledges that Bank may receive certain non-public information, material, or data of a confidential nature in connection with the Service(s) that Bank provides to the Client under the terms of this Agreement, and Bank will maintain the confidentiality of such information in accordance with Bank's normal procedures for safeguarding customer information in effect from time to time. Notwithstanding the foregoing, ; the following Client information shall be deemed to be non-confidential and shall be excluded from this Section 7(a): (i) any information which at the time disclosed by the Client to Bank is in the Bank's possession or in the possession of any of Bank Affiliates, or already known to Bank or to any of Bank Affiliates; (ii) any information which was or is already in the public domain at the time of disclosure, or subsequently becomes part of the public domain other than through the gross negligence or willful misconduct of Bank or any its authorized representatives; (iii) any information which is used or disclosed by Bank or any of Bank Affiliates with the prior written approval or consent of Client; (iv) any information which was received by Bank from a third party (other than Client), and, at the time of such receipt, such third party was not known by Bank to have any confidentiality obligations to the Client with respect thereto; (v) any information which was independently developed by Bank or any of Bank Affiliates; (f) any information which is required to be disclosed by Bank to any state or federal regulator or examiner or regulatory body pursuant to any state or federal statute, rule or regulation, or is required to be disclosed by Bank under applicable law or by a subpoena or by any judicial or governmental order, decree, regulation or rule; (vi) any information which is disclosed to (A) any of Bank Affiliates, (B) any officers, directors, employees or authorized representatives or agents of Bank or any of Bank Affiliates, or

(C) any independent attorneys, advisors, consultants, auditors or accountants of Bank or any of Bank Affiliates or any of their respective employees, not employed by or affiliated with Bank, who in each case, (A), (B) and (C), have, in Bank's sole determination, a need to know such information to assist Bank in communications with Client or the evaluation of any such information, and who have been advised of the confidential nature of such information and the terms and restrictions provided for in this Agreement; or (v) which is used or disclosed as and to the extent considered necessary by Bank or any of Bank Affiliates in connection with Bank's enforcement or collection of any loans, extensions of credit or other financial accommodations made by Bank or any of Bank Affiliates, on the one hand, to Client or any of its affiliates, on the other.

(b) Confidentiality of Bank Information. Client understands and acknowledges that (i) Client may gain access to software or documentation owned or licensed by, or to certain information, material or data of a confidential nature, including, without limitation, Bank trade secrets relating to, Bank or its businesses or operations, and (ii) all such information, materials, and data are strictly confidential, material and important, and that such confidentiality substantially affects the effective and successful conduct of the business of the Bank. Client agrees to keep all such information, materials, and data confidential, and to limit use thereof and access thereto as provided in the Master Agreement. Client further acknowledges that any breach or threatened breach with respect to this Section 7(b) or any other confidentiality provision contained in the Master Agreement will cause immediate irreparable injury to Bank and that the remedies at law for such breach will be inadequate, and the Client agrees not to assert to the contrary in any action for preliminary or other injunctive relief brought by Bank. Client shall not use Bank's name, trademark or service mark, or refer to Bank directly or indirectly, in any solicitation, marketing material, advertisement, news release or other release to any publication, without receiving Bank's specific prior written approval or consent for each such use or release.

(c) Notwithstanding anything herein or in any confidentiality and/or non-disclosure agreement between Bank and Client (or any of Client Affiliates) to the contrary, the provisions of this Section 7 hereby replace and supersede any such confidentiality and/or non-disclosure agreement in its entirety.

**8. Limitation of Liability; Disclaimer of Warranties.** Except to the extent required by law, the Bank's duties and liabilities will be limited to those set forth herein. The Bank will exercise reasonable care in providing the Services. The Bank's liability shall be limited to actual damages sustained by Client and only to the extent such damages are a direct result of the Bank's gross negligence or willful misconduct. The liability of the Bank in all these instances shall not exceed the recovery of funds erroneously processed or not processed. The Bank shall not be liable for damages caused by any act or omission of any third party, or for any charges imposed by any third party. In no event shall the Bank be liable for special, incidental, punitive or consequential loss or damage of any kind including, but not limited to, lost profits (whether or not the Bank has been advised of the possibility of such loss or damage). Bank shall have no liability hereunder to any third party. The Bank shall be relieved of liability where the Bank performs any Service in accordance with any instruction or information provided by Client hereunder or under any Service Schedule(s), and the Bank may rely on the accuracy of any information set forth in the Service Schedule(s). Bank does not make any warranties, expressed or implied, with respect to the Service(s), Client's direct access thereto, or the software, components, systems, specifications, programs, documentation, manuals and accessories used in conjunction therewith.

BANK HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO CLIENT OR ANY OTHER PARTY.

**9. Fees; Expenses.** Client shall compensate the Bank for Service(s) in accordance with the Bank's standard fee schedule, unless otherwise agreed in writing, and shall be liable for all taxes applicable to the Service(s). The Bank may amend the fee schedule at any time and will give written notice to Client of changes in fees for Service(s) then used by Client. Client shall pay, upon demand by Bank, all costs and expenses of Bank of any kind (including, without limitation, the reasonable fees and disbursements of Bank's counsel) incurred by Bank in connection with this Master Agreement, any Service Schedule(s), any of the Setup Documentation, any of the Deposit Accounts or any of the Services. Bank may debit Client's account for payment of any such fees, charges or expenses then due unless Client arranges for another payment procedure acceptable to Bank.

**10. Overdrafts; Set-off.** In the event any actions by Client should result in an overdraft in any of its accounts, Client is responsible for repaying the overdraft immediately, without notice or demand, together with interest thereon at a rate determined in accordance with Bank's fee schedule in effect from time to time. Bank has the right, in addition to all other rights and remedies available to it, to set off the unpaid balance of any amount owed it in connection with the Service(s) against any debt or deposit owing to the Client by the Bank or any Bank Affiliate, or property of Client in Bank's or Bank Affiliate's possession or control.

**11. Financial Condition and Credit Limits.** The Client shall, upon any request by the Bank provide Bank with financial statements (the quality of which to be defined by the Bank) for any time period requested by the Bank. The Client also authorizes the Bank to obtain credit reports on the Client at any time. In the event the Service(s) selected by Client result in unacceptable credit exposures to the Bank or affect the amount of capital required or expected to be maintained by the Bank or its parent under any law, regulation, guideline, or request from any central bank or governmental authority; or if the Client fails to provide the Bank with any credit, financial or other information the Bank may require from time to time, the Bank may, in its discretion, immediately cancel the Services contemplated herein, or limit Client's transaction volume or dollar amount. Any limits established by Bank under this Section 11 shall be at Bank's sole and absolute discretion and shall be communicated by Bank to Client within a commercially reasonable time-period following Bank's determination that such limits are required.

**12. Security Procedures.** If the Service(s) are subject to security procedures described herein or in the applicable Service Schedules and/or the Setup Documentation, Client agrees that it shall be solely responsible to assure that such security procedures are followed by Client, as they may be amended from time to time. If such procedures are violated or breached, Client agrees to promptly (and in any event within one (1) Business Day of any such violation or breach) notify Bank of any such violation or breach. Client acknowledges that it has reviewed all applicable security procedures provided, or otherwise made available, to Client herein or in the applicable Service Schedules and/or the Setup Documentation, has selected its preferred security procedure where applicable, and has determined that such procedures are commercially reasonable. Client agrees that it will keep the security procedures strictly confidential and will take all steps to make sure neither Client nor any agent, employee, representative or any other affiliated party of Client reveals or provides access to

any confidential information or security procedures to anyone other than Client's authorized users, and then only within Client's use of the Services for purposes of conducting transactions. Client shall be responsible for any unauthorized use or disclosure of any security procedures and all security procedure materials entrusted to it. Client agrees to regularly read the security messages on the Bank's websites (including without limitation KeyNavigator<sup>SM</sup> and to implement and maintain safe and secure computing practices. Bank shall not be liable for any loss, damage, or liability which may arise from the unauthorized use of the security procedure. Client shall notify Bank immediately if Client or any of its agents have reason to believe that any security procedure has or may become known to an unauthorized person.

**13. Third Party Provider.** Client agrees that Bank may arrange for some or all of the Services and/or software to be provided or performed by third party providers including Bank Affiliates (each a "Provider"). The use of a Provider to perform Services shall not relieve Bank of its obligations under this Agreement.

**14. Client Liability; Indemnification.**

(a) Client will be liable to Bank for any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of Bank's counsel) incurred by the Bank relating to or arising out of this Master Agreement, any Service Schedule(s), any of the Setup Documentation, any of the Deposit Accounts or any of the Services, in each case except to the extent any such claim, demand, liability, loss, damage, cost or expense is directly caused by the Bank's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(b) The Client shall defend, indemnify and hold the Bank harmless from any and all claims, demands, liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of Bank's counsel) asserted by a third party relating to or arising out of this Master Agreement, any Service Schedule(s), any of the Setup Documentation, any of the Deposit Accounts or any of the Services, in each case except to the extent any such claim, demand, liability, loss, damage, cost or expense is directly caused by the Bank's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(c) Notwithstanding anything in this Section 14 to the contrary, Bank may at all times select its own legal counsel to represent its interests and will control all aspects of its own defense, and Client shall: (i) reimburse Bank for its reasonable attorneys' fees and costs immediately upon request as they are incurred; (ii) remain responsible to Bank for any losses, claims, liabilities, costs and expenses (including, without limitation, Bank's attorneys' fees) indemnified under this Section, and (iii) in the case of a third party claim, reasonably participate and cooperate in the Bank's defense.

**15. Client Internet Use and Security.** Certain of the Services or functionality of the Services may be provided through the Internet. Client acknowledges that Bank does not control the Internet or other information systems operated or controlled by a third party. In no event will Bank have any liability in connection with and shall not be responsible for Client's inability to connect to or use any Service via the Internet or inability to communicate with Bank via the Internet or any website resulting from any failures, acts, or omissions of any third party or any failure of, defects in, or malfunctions of, Client's systems, or otherwise.

Client shall be solely responsible for maintaining and applying appropriate security measures for Internet use, including,



without limitation, anti-virus software, security patches, firewalls, and other security measures with respect to Client's operating systems, hardware, and software, and for protecting, securing, and backing up any data and information stored in or on Client's operating systems. In no event will Bank have any liability in connection with and shall not be responsible for (a) any unauthorized interception of, or access to, alteration, theft, or destruction of Client's information, data or transactions resulting from any failures, acts, or omissions of any third party or any failure of, defects in, or malfunctions of, Client's systems, or otherwise, (b) any malicious software or computer viruses (including programs commonly referred to as "Trojan horses," "malware," "keystroke loggers," and/or "spyware") installed on, infecting or otherwise affecting Client's systems, any problems or malfunctions resulting from any such malicious software or computer viruses, or any related problems in connection with the use of the Internet, or (c) any failures or errors resulting from any failure of, defects in, or malfunctions of, Client's systems.

**16. KeyNavigator<sup>SM</sup>.** KeyNavigator<sup>SM</sup> is Bank's online banking system ("KeyNavigator<sup>SM</sup>"). After completion of the appropriate Setup Documentation, acceptance of applicable online agreements, and upon notice from Bank, Client may communicate instructions and other information, enter into transactions and access Services by accessing the Internet. Client acknowledges receipt of the security procedures for KeyNavigator<sup>SM</sup> provided, or otherwise made available, to Client herein, in the applicable Service Schedules, in the Setup Documentation, or on KeyNavigator<sup>SM</sup>, and agrees that such security procedures are commercially reasonable for the instructions, transactions, communications and Services accessed by Client using KeyNavigator<sup>SM</sup>. Client agrees that it is responsible for each request, transaction, or other communication initiated using Client identifiers and security procedures issued by Bank to Client. Client covenants and agrees that Client may only use KeyNavigator<sup>SM</sup> to initiate funds transfers on its own behalf and in Client's own name. Client will not use KeyNavigator<sup>SM</sup> to initiate funds transfers on behalf of Client's customers or other third parties.

**17. E-mail.** Client acknowledges that Bank may provide email notifications relating to Client's use of KeyNavigator<sup>SM</sup> or otherwise regarding the Services ("E-mail Notices"). Except as set forth in Section 30 regarding Electronic Records Disclosures below, Client agrees that Bank provides E-mail Notices as a courtesy only to Client. Client waives any claim based on any erroneous or incomplete E-mail Notice, Client's failure to receive an E-mail Notice, or Bank's failure to send any E-mail Notice. Client agrees that it is Client's responsibility to access KeyNavigator<sup>SM</sup> in order to view transactions and information regarding activity in KeyNavigator<sup>SM</sup> and to monitor Client's Services and accounts hereunder. Client's receipt or lack of receipt of any E-mail Notice has no effect as to the transactions or information. Unencrypted e-mail is not secure. Client agrees not to rely on e-mail if Client needs to communicate with Bank immediately. Client should not use e-mail, or reply to any e-mail, to send Bank Client's confidential information. Bank will not take action based on Client's e-mail request until Bank actually receives Client's message and has a reasonable opportunity to act. Client agrees to continuously update its e-mail address on Bank's records and to maintain at all times a valid and active e-mail address at an Internet service provider.

**18. Term.** Either party may terminate this Agreement or any Service Schedule at any time for any reason or no reason upon written notice to the other party, provided, however, unless otherwise stated in the notice, such termination shall not be effective until thirty (30) days after receipt of such notice by the receiving party. Notwithstanding the foregoing, Bank may terminate this Agreement or any Service Schedule immediately

(i) if termination of this Agreement or any Service Schedule or closure of any of Client's accounts is required under any legal or regulatory process, legal notice, injunction or court order; (ii) in the event that the Bank reasonably believes that any fraudulent or illegal activity has occurred or is or may be occurring with regard to the Services, or (iii) for any failure on the part of Client, or inability of the Bank, to comply with all laws and regulations applicable to the Services, including without limitation the applicable terms of the federal and state Electronic Funds Transfer Acts, the Uniform Commercial Code Article 4A or the Rules of the National Automated Clearing House Association. In the event of any termination, all fees, expenses and other charges incurred or otherwise payable, and all other amounts payable under or in connection with this Agreement so terminated shall become immediately due and payable. All warranties of the Client made herein and obligations of Client that arose prior to termination shall survive the termination of this Agreement and the processing of any item, entry or payment order which may be applicable thereto, shall bind the successors and permitted assigns of the Client and shall inure to the benefit of Bank, its successors and assigns.

**19. Force Majeure.** The Bank shall bear no responsibility for non-performance of one or more Service(s) caused by an event beyond its reasonable control, such as: fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, lockout, strike, unavoidable accident, act of God, epidemic, pandemic or other public health emergency, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, , or any local or national disturbance, disaster or emergency that prevents the Bank from operating normally.

**20. Severability.** If any provision of this Master Agreement or any Service Schedule(s) shall be determined by a court of competent jurisdiction to be unenforceable, that provision shall be interpreted so as to achieve, as much as possible, the purposes intended by the original provision, and the remaining provisions of the Service Schedule(s) and this Master Agreement shall continue intact.

**21. Governing Law.** This Agreement and Service Schedule(s), and all deposit accounts ("Accounts") held at Bank shall be governed by the laws of the State of Ohio (without regard for conflict of law rules) and applicable federal law, but with respect to all fees and charges related to your Account(s) and the Services provided herein, federal law alone shall control.

**22. Other Agreements.** The parties agree that the Service Schedule(s), Deposit Account Agreement and this Master Agreement constitute the terms and conditions for the Service(s) and the matters covered hereunder. To the extent there is any conflict among this Agreement, the Service Schedules, or the Deposit Account Agreement, the terms of the Service Schedule shall control. Services are provided subject to other laws, regulations, and agreements which are incorporated into this Agreement by reference: service documentation such as set-up guides and user manuals as provided by Bank from time to time; the Uniform Commercial Code, as enacted in the State of Ohio; the most recent Deposit Account Agreement; applicable clearing house rules; and laws and regulations applicable to Bank or Client.

**23. Independent Contractor.** Client agrees that in performing the Service(s) hereunder, the Bank will be acting as an independent contractor and not as an employer, employee, partner, or agent of Client.

**24. Amendments.** The Bank may change, add or delete the terms of this Master Agreement and any Service Schedule(s) upon thirty (30) days prior notice to Client in writing or by

electronic means. Client's continued use of or failure to terminate any Service after the effective date of the change will evidence Client's agreement to the change.

**25. Assignment.** This Master Agreement and Service Schedule(s) shall not be assigned or otherwise transferred by the Client without the prior written consent of the Bank.

**26. Authorization.** (a) Client, and each of them if more than one, warrants and represents on the date hereof and on any date any Service is performed, that (i) Client is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; (ii) there are no provisions of any law, or any certificate of incorporation or by-laws, or any agreement of any kind, nature or description binding upon Client which prohibits Client from entering into or performing under this Master Agreement and Service Schedule(s); (iii) the execution and performance of this Master Agreement and Service Schedule(s) has been duly authorized; and (iv) this Master Agreement and Service Schedule(s) are binding obligations of Client.

(b) The undersigned warrants and represents as to Client, and each of them if more than one, that (i) the undersigned is an officer of Client duly authorized to act on behalf of Client ("**Authorized Officer**"); (ii) Client has taken all action required by its organizational documents to authorize the Authorized Officer to execute and deliver this Master Agreement and Service Schedules and to bind Client thereto; (iii) Authorized Officer is duly authorized to designate employees or agents of Client to act in the name of and on behalf of Client with regard to the Services; (iv) without limiting the generality of the foregoing, Authorized Officer is duly authorized to give Bank direction regarding the withdrawal, disbursement, or other transfer of funds by wire, computer, automated clearing house, or other electronic means and to delegate employees and agents of Client to give Bank direction regarding such transfers; and (v) Client has received a copy of the Master Agreement.

(c) Client, and each of them if more than one, covenants and agrees that Bank is relying on the authority of the Authorized Officer to act on behalf of Client, including any and all of the entities listed on Exhibit A, and waives any defense or other claim that the Authorized Officer was not authorized to act on behalf of any Client in regard to the Services.

**27. Compliance with Law.** Client shall comply with all valid laws and regulations now in effect or hereafter promulgated by any properly constituted governmental authority having jurisdiction over Client and Client's business.

**28. Waiver.** Failure of a party to insist upon strict adherence to any term of this Master Agreement on any occasion shall not deprive the forbearing party of the right thereafter to insist on strict adherence to that term or any other term in this Master Agreement. Any waiver of a breach shall not be construed as a waiver of any subsequent breach, whether or not similar.

**29. Communications.** Unless otherwise specified in a Service Schedule, all notices required to be given hereunder or under any Service Schedule(s) must be given in writing, addressed to the Bank or the Client at the address appearing on the first page of this Master Agreement or such other address as specified by either party in writing. Notices shall be effective upon receipt except as otherwise specified. Any notice which is required to be given to Client pursuant to this Master Agreement or any Service Schedule, shall be sufficient as to each and every Client if more than one, when provided to Client at the address listed on the first page of this Master Agreement. If Client chooses to use unencrypted electronic mail ("**e-mail**") or other insecure method to communicate with Bank, Client agrees to bear the risk that its e-mail may be corrupted, modified, or

hacked, or its confidentiality may be otherwise breached by a third party, and the risk that Bank may rely on the e-mail, which appears to be from Client, but is unauthorized, and such reliance results in a loss.

**30. Electronic Records Disclosure.** (a) Client agrees to receive electronic delivery of statements, images, records, agreements, disclosures, notices, and other information ("**Electronic Records**") for Client's accounts at Bank as designated by Client in writing to Bank from time to time ("**Designated Accounts**"). The Electronic Records will be available via access through a secure website such as KeyNavigator<sup>SM</sup> or Key Business Online or such other website as Bank establishes from time to time ("**Website**"). Client may elect to receive one or more Electronic Records for each Designated Account. Bank will notify Client from time to time regarding what records are available as Electronic Records.

(b) For records that Client has not selected to receive electronically through the Service, Bank will deliver such records in paper form and Bank's standard fee then in effect and charged for paper delivery of records will apply. For records that Client has selected to receive electronically through the Service, Client may request a paper copy of an Electronic Record previously delivered and Bank's standard fee then in effect and charged for paper delivery of records will apply. Even though Client has requested electronic delivery of selected Electronic Records through the Website, Bank may, at its discretion, deliver certain Electronic Records in paper form, however, in such case no fee will be charged. A paper copy of Electronic Records can be obtained until the copy is no longer required to be maintained as a record for the Designated Account under applicable law or regulation.

(c) Client will receive notice advising Client that Electronic Records of Statements and Wire Advices for Designated Accounts have been posted to the Website by e-mail ("Alert Notice") sent to the e-mail address selected and confirmed by Client ("**E-mail Address**"). Client may select and confirm one or more E-mail Addresses, however, Client agrees that an Alert Notice sent to any one of the E-mail Addresses shall constitute notice to Client. This Alert Notice will be the only notice Client will receive. As used herein, "Statement" means the account statement for an account and "Wire Advice" means a notice to Client of an incoming wire transfer to an account; both are "Electronic Records" hereunder. Client agrees that any and all Alert Notices sent by Bank to any of the E-mail Addresses will constitute sufficient and effective delivery and notice to Client of information contained in Client's Statements and Wire Advices whether or not Client accesses or reviews the Alert Notice, Website or specific Electronic Record, and shall be deemed to have been delivered to Client, whether actually received or not.

Client agrees to maintain computer capability and access to the Website in a manner that gives Client continuous ability to access, review, download and print Client's Electronic Records and to receive and access e-mail Alert Notices to Client at each of the E-mail Addresses. Client must immediately advise Bank of all changes or updates to any E-mail Address or if such E-mail Address becomes inoperative or inactive and to immediately identify another E-mail Address to be used for the Service. If Bank attempts to send an Alert Notice to any E-mail Address and receives two (2) consecutive reports from an e-mail service provider or other source that the e-mail is undeliverable, Bank may, at Bank's sole discretion, automatically unenroll Client and cancel the Service for all Designated Accounts and Client may begin receiving account records through the U.S. Mail subject to the terms hereof, including, without limitation, any applicable fees. It is Client's sole responsibility, whether the content of such Alert Notice is delivered by mail, electronic mail or other electronic means, to access and review promptly its

own Electronic Records for its Designated Account. The Electronic Records are delivered in a manner to allow Client immediate access to download and print the Electronic Records on its personal computer.

(d) Certain risks are associated with the transmission of confidential Electronic Records and Alert Notices through the internet including but not limited to unauthorized access, systems outages, delays, disruptions in telecommunications services and the Internet. E-mail is not private or secure. Alert Notices sent to Client by e-mail are unencrypted, automatic alerts. Client acknowledges that an Alert Notice could be seen or intercepted by others if delivered to Client's business address or other computers or electronic devices not exclusively under Client's control. This means that a person who is able to access Client's e-mail will be able to view information relating to Client's Designated Account contained in the Alert Notice. Client will not respond to the Alert Notice by return e-mail, or use it to request information, service, paper copies or other items or to revoke consent. Bank will not be responsible to act upon requests made in that manner.

**31. Jury Trial Waiver. BOTH THE CLIENT AND THE BANK HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER THE CLIENT OR BANK AGAINST THE OTHER.**

**32. Fraud.** This Agreement provides certain precautions Client can take to decrease the risk of fraud, which are in addition to other reasonable precautions Client can or should take to decrease the risk of fraud generally, and as relates to Client's particular circumstances. Bank will make available to Client certain products and services that will assist Client in decreasing the risk of fraud. Client agrees that if Client fails to implement any of these products or services and if Client otherwise fails to take such other precautions as may be established by Bank from time to time to decrease the risk of fraud, Client will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service or precaution was designed to detect or deter, and that Bank will not be required to pay such item, re- credit Client's account, or otherwise be liable for such item.

**33. Lockbox.** If Client utilizes Bank's lockbox services ("Lockbox Services"), Client agrees that the following terms and conditions shall apply: (a) Foreign items received through the Lockbox Services will be credited to Client's account at such time as Bank receives final payment for such items. The term "foreign item" is an item (check) not drawn on a U.S. bank, or is not payable in U.S. dollars; and (b) If in regard to the Lockbox Services Client requests, verbally or in writing, that Bank return checks bearing a restrictive endorsement or legend (e.g., "final payment", "paid in full" or words of similar meaning), Client agrees that Bank does not accept responsibility for Bank's

failure to discover and return such items.

**34. Credit Cards.** If Client utilizes Bank's Credit Card services ("Credit Card Services"), credit card processing is designated for the processing of credit or debit card payments and/or the handling of cardholder information in a Payment Card Industry (PCI) Data Security Standard (DSS) compliant manner. Client must ensure that Bank is aware of which forms, pages or fields within the documents to be received by Bank contain cardholder data (as that term is defined in the PCI DSS Glossary) and therefore must be protected according to PCI DSS

requirements. Bank will protect the security of cardholder data we receive from Client or otherwise store, process or transmit on behalf of Client, according to PCI DSS requirements.

security controls around our customers' correspondence. The correspondence service is not intended to be PCI DSS compliant.

**35. Client Affiliates.** Any Client Affiliate(s) shall, if they are identified on Exhibit A hereto, also be deemed to be parties to this Master Agreement and any Service Schedule(s) executed by Client. Client represents and warrants, on behalf of, and at the direction of, each Client Affiliate that the Authorized Officer appointed by Client (a) is hereby deemed to be an authorized representative of each Client Affiliate, and is duly authorized to act on behalf of each Client Affiliate, (b) each Client Affiliate has taken all action required by its organizational documents to authorize such Authorized Officer to execute and deliver this Master Agreement and any Service Schedule(s) and to bind each Client Affiliate thereto, and (c) unless otherwise designated in writing by both Client and any respective Client Affiliate, the Authorized Officer is authorized to act in the name of, and on behalf of, each Client Affiliate with regard to this Master Agreement and any Service Schedule(s). Client further represents and warrants that each Client Affiliate has received a copy of this Master Agreement and any Service Schedule(s). By executing this Master Agreement, Client, on behalf of itself, and any Client Affiliate, agrees that Client shall be liable for any obligations of Client or any Client Affiliate under this Master Agreement and/or any Service Schedule(s). Client, for itself, and on behalf of any Client Affiliate, further agrees to indemnify and hold Bank harmless for any claim, loss, cost, expense, or damages resulting from any action taken as a result of Bank's reliance on Client's signature on this Master Agreement, whether for itself or on behalf of any Client Affiliate. Any notice which Bank is required by this Master Agreement or any Service Schedule(s) to provide to Client or any Client Affiliate shall be provided only to Client. Each such notice shall be deemed to constitute notice to all parties to this Master Agreement and any Service Schedule(s) and shall satisfy the notice requirement set forth herein.

**By signing below, the undersigned Authorized Officer of Client understands and agrees that he/she is signing on behalf of the Client whose name appears immediately below and on behalf of each and every other Client and Client Affiliate listed on the "Client List," attached hereto as Exhibit A, and made a part hereof. Exhibit A may be amended from time to time by adding or removing a Client Affiliate from the Client List. Addition or removal of a Client Affiliate on Exhibit A shall be effective only upon receipt by Bank of a new Exhibit A in a form acceptable to Bank in its sole discretion.**

**Client:**

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**KEYBANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Correspondence is processed as received and is not handled as cardholder information. We will apply commercially reasonable

Printed Name

Title

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**ADDENDA AND SERVICE SCHEDULES  
ATTACHED**

- |  |   |
|--|---|
| <input type="checkbox"/> Guaranty Addendum to Master Agreement   | <input type="checkbox"/> International Draft – Payment Facility Service Schedule                  |
| <input type="checkbox"/> ACH Direct Service Schedule   | <input type="checkbox"/> Key2Benefits Service Schedule  |
| <input type="checkbox"/> Aptexx Referral Services Service Schedule   | <input type="checkbox"/> Key2Business Client Agreement  |
| <input type="checkbox"/> Automated Clearing House Debit Protection Service Schedule  | <input type="checkbox"/> Key2Payroll® Service Schedule  |
| <input type="checkbox"/> Automated Credit Sweep Service Schedule   | <input type="checkbox"/> Key2Prepaid Service Schedule   |
| <input type="checkbox"/> Automated Clearing House Electronic Data Interchange Service Schedule Exhibit A   | <input type="checkbox"/> Key2Purchase Client Agreement  |
| <input type="checkbox"/> Automated Clearing House Returned Check (RCK) Service Schedule  | <input type="checkbox"/> Key Accounts Manager Agreement   |
| <input type="checkbox"/> Automated Clearing House Accounts Receivable Conversion ( <b>ARC</b> ) Back Office Conversion ( <b>BOC</b> ) Service Schedule | <input type="checkbox"/> Key Capture® Service Schedule  |
| <input type="checkbox"/> Automated Investment Sweep Account Service Schedule   | <input type="checkbox"/> Key Capture® Service Schedule Third Party Provider/Related Entity        |
| <input type="checkbox"/> Bill Pay Consolidator Service Schedule  | <input type="checkbox"/> Key Capture® Plus Service Schedule                                       |
| <input type="checkbox"/> Centralized Returns Items   | <input type="checkbox"/> Key Capture® Plus Service Schedule Use of Third Party                    |
| <input type="checkbox"/> Consolidated Payables Service Schedule  | <input type="checkbox"/> Key Liquid Reserve Service Schedule                                      |
| <input type="checkbox"/> E-Bill & Collect Service Schedule   | <input type="checkbox"/> KeyPatient POS <sup>(SM)</sup> Service Schedule                          |
| <input type="checkbox"/> Electronic Record Delivery Service Schedule & Exhibit A   | <input type="checkbox"/> Payment Protection Service Schedule                                      |
| <input type="checkbox"/> Health Plan Solution Service Schedule   | <input type="checkbox"/> Payment Management Services Service Schedule                             |
| <input type="checkbox"/> Health Plan Solution Claims Settlement Services Addendum  | <input type="checkbox"/> Positive Pay Service Schedule  |
| <input type="checkbox"/> Health Plan Solution – Member Payments Services Addendum  | <input type="checkbox"/> Third Party Funds Transfer Addendum to Wire Transfer Service Schedule    |
| <input type="checkbox"/> International ACH Transactions Addendum to Automated Clearing House/Electronic Data Interchange Service Schedule              | <input type="checkbox"/> Third Party Service Provider Agreement                                   |
| <input type="checkbox"/> International Draft Payment Facility Addendum   | <input type="checkbox"/> Third Party Sender Agreement – ACH Services                              |
|  | <input type="checkbox"/> Wire Transfer Service Schedule   |
|  | <input type="checkbox"/> Wire Transfer Service Payment Authorization Form                         |
|  | <input type="checkbox"/> Universal Payment Code (UPIC) Addendum                                   |
|  | <input type="checkbox"/> Modification Addendum (to be used for revisions to any of the foregoing) |



# Deposit Account Agreement and Funds Availability Policy

Effective January 23, 2021

**KeyBank National Association**  
Member FDIC



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## PART I - DEPOSIT ACCOUNT AGREEMENT

This Agreement governs all Accounts you maintain with us. As used in this Agreement, "we," "us," "our," and similar terms mean KeyBank National Association, Cleveland, Ohio, its respective parents, wholly or majority owned subsidiaries, affiliates, predecessors, successors, assigns, employees, officers and directors. "You," "your," and similar terms mean each person listed on our records as the owner of the Account and any person you authorize to sign or act on your behalf.

**1. This Agreement.** This Agreement is the contract between you and us that governs all Personal and Business Accounts. You agree to its terms by opening an Account. You should read this Agreement carefully and keep a copy for your records. From time to time we may offer new types of Accounts and may cease offering some types of Accounts. This Agreement governs all of these new types of Accounts, and continues to govern any Accounts you may have that we no longer offer. As used in this Agreement:

- **Account** means all Checking, Savings and Time Deposit Accounts. "Personal Accounts" means Accounts we classify from time to time as personal and offer primarily to consumers for personal, family or household purposes. "Business Accounts" means all other Accounts and includes Accounts we offer from time to time primarily to businesses, organizations, public entities, commercial and non-profit enterprises, corporations, partnerships, limited liability companies, sole proprietors and associations.
- **Checking Accounts** means all Accounts we designate from time to time as Checking Accounts.
- **Savings Accounts** means all Accounts we designate from time to time as Savings Accounts.
- **Time Accounts** means all Accounts that you deposit with us for a specified period of time and we classify from time to time as time deposits.

Additional terms apply to Time Accounts, retirement Accounts and to some other types of Accounts. You receive a copy of these other terms when you open your Account, and you agree to comply with them. Some Accounts, such as retirement Accounts and uniform gifts or transfers to minors custodial Accounts, are also subject to the terms and conditions imposed by specific laws governing such types of Accounts.

Interest bearing Checking Accounts may be opened and maintained by any individual or business entity.

**2. Opening Your Account.** To open and maintain your Account you must complete the proper forms and provide us with any other documents, information or items that we may require to establish and maintain an Account with us. These requirements include acceptable forms of identification including but not limited to a thumbprint in certain states, any required minimum deposit, and your Taxpayer Identification Number. If these items are not provided within a reasonable period of time, we may close your Account as described in Section 16. If you open a non-personal Account with us, you must certify the adoption of resolutions acceptable to us that authorize us to transact business with your designated representative(s).

If you open a fiduciary Account, other documents required depend on the type of Account being opened. For example, if you open an estate Account you need certified court appointment papers naming you as executor or administrator of the estate. If you are a trustee under a written trust agreement, you must show us a copy of the trust agreement specifying the beneficiary, the trustee, the trust property, and verifying the trustee's authority to open the Account. Federal tax laws require us to obtain from each Account owner a certification of the owner's Taxpayer Identification Number and whether the owner is subject to backup withholding. You must notify us if your Taxpayer Identification Number is incorrect or if you become subject to backup withholding. We must withhold some of the interest payable on your Account if you fail to give us a correct Taxpayer Identification Number or otherwise become subject to backup withholding. It is our policy not to open an Account unless you certify your Taxpayer Identification Number or have applied for a Taxpayer Identification Number. If you fail to provide an appropriate Taxpayer Identification Number, we may close your Account.

**Standard Overdraft Services that may come with your Account.** You may make your selection as described below at the time you open your Account or any time thereafter.

### **THE FOLLOWING APPLIES TO CONSUMER ACCOUNTS ONLY**

In our discretion, we may decide to pay/process a check, recurring debit card transaction, preauthorized automatic debit, telephone-initiated transfer, electronic transfer or other item as a service to you even if the available balance in the Account on which it was drawn/debited is not sufficient to cover the transaction. When we do so the payment may create an "overdraft" in your Account. Overdrafts can also result from other

circumstances, such as when a check deposited by you is returned to us unpaid. *If you do not want us to pay/process any of these items as a service to you when the available balance in the Account on which it was drawn/debited is not sufficient to cover the transaction, please contact your KeyBank branch or your Financial Advisor.*

We do not authorize and pay an overdraft for Automated Teller Machine ("ATM") and everyday debit card transactions unless you ask us to. Please review the Overdraft Services Consent Form provided. *If you want us to authorize and pay overdrafts on ATM and everyday debit card transactions, at our discretion, you may call 1-888-725-7606, sign on to Online Banking and select the Overdraft Services Options link on the Self Service tab, visit any KeyBank branch or contact your Relationship Manager.* Normal overdraft fees will likely apply. If you do not contact us to make an overdraft services selection, we will consider this to mean you do not want us to authorize and pay overdrafts on ATM and everyday debit card transactions. On a joint Account, any account owner can make an overdraft services selection that will apply to these transactions.

You agree to pay us the full amount of any overdraft on your Account immediately upon demand, together with any additional fee we charge.

On joint Accounts, each of you is jointly and severally liable for overdrafts. This means we can collect the full amount of the overdraft, plus any fees, from either of you, even if you did not create the overdraft, or collect from all of you.

#### **THE FOLLOWING APPLIES TO BUSINESS ACCOUNTS ONLY**

In our discretion, we may decide to pay/process a check, ATM withdrawal, debit card transaction, preauthorized automatic debit, telephone-initiated transfer, electronic transfer or other item as a service to you even if the available balance in the Account on which it was drawn/debited is not sufficient to cover the transaction. When we do so the payment may create an "overdraft" in your Account. Overdrafts can also result from other circumstances, such as when a check deposited by you is returned to us unpaid. You agree to pay us the full amount of any overdraft on your Account immediately upon demand, together with any additional fee we may charge. *If you do not want us to pay/process any of these items as a service to you when the available balance in the Account on which it was drawn/debited is not sufficient to cover the transaction, please contact your KeyBank branch or your Financial Advisor.*

#### **Mobile Express Consent**

You expressly authorize KeyBank National Association and its service providers, affiliates, agents, successors, assigns, and third party debt collectors to contact you on any of your mobile phone numbers, whether you provide those numbers to KeyBank (now or in the future) or whether KeyBank identifies those mobile numbers via other sources including, but not limited to, those obtained via skip tracing or those provided by third parties. This consent applies to all calls including text messages or telephone calls made via or using an automatic telephone dialing system, autodialer, and/or an automated or prerecorded voice. This consent applies to any and all accounts including, but not limited to, depository accounts, loans, lines of credit, credit cards, or other relationships you have with KeyBank (including business accounts upon which you are identified as a point of contact or an authorized user), including those you already have or any that you may obtain in the future, and this consent permits calls regardless of their purpose. These calls and messages may incur access fees from your cellular provider.

**3. Deposits to Accounts.** All deposits you make are subject to "proof" by us. This means we reserve the right to review the cash, checks or other items deposited to confirm the amount of the deposit and that all checks and other items are properly payable. We can correct any errors we find. For example, if you made an error in adding up the amount of your deposit, we can correct your Account records to reflect the actual amount deposited. We can correct errors even if we gave you a receipt for the incorrect amount or already posted the incorrect amount to your Account. We can supply your endorsement if it is missing from any check or other item you deposit. If a check or other item was not properly payable, we can decline to credit your Account for the amount of the check or other item.

We reserve the right to refuse to accept any check or other item to be deposited. In particular, we will not accept deposits of any checks or other instruments that cannot be mechanically processed by our check/item processing hardware and software, or otherwise be processed and paid in accordance with our standard practices or with standard check/item collection practices of banks in general (e.g. checks in the amount of \$100 million or greater).

When we credit your Account for a check or other non-cash item you deposit, the credit is conditional. This means we can revoke the credit if the check or other item is dishonored or not paid for any reason, even if we are unable to return, or there is any delay in returning, the unpaid check or other item to you. We can also revoke a credit for any other reason if permitted under applicable law. You agree to waive the requirements of any law limiting the time within which we must revoke a credit or requiring us to notify you of nonpayment, dishonor or the revocation of a credit.

Some of our branches have established "cut-off" times (e.g. 2:00 p.m.). Deposits received, withdrawals made and other transactions occurring prior to the cut-off time each business day will be posted to Accounts as of that day. Deposits received, withdrawals made and other transactions occurring after the cut-off time will be posted to Accounts as of the next business day. Deposits received, withdrawals made and other transactions occurring on any non-business day will be posted as of the next business day.

Deposits containing 500 or more checks may be subject to a branch specific cut-off time. If a cut-off time applies it will be posted at the branch. Deposits of 500 or more checks made at a branch before the posted cut-off time will be considered received that business day. Deposits of 500 or more checks made at the branch after the posted cut-off time will be considered a next-business day deposit and processed accordingly. Cash is not subject to the cut-off time and will be verified and credited the same-day. The cut-off time may vary by location but will not be earlier than 2:00 p.m. local time.

Items sent to us in the mail for deposit are not considered to have been received by us until delivered to us by the U.S. Postal Service. Items placed in one of our night depository boxes or similar boxes at our facilities are not considered received until we remove them (which usually occurs by 9:00 a.m. on business days). Items delivered to us electronically are not considered to have been received by us until accepted by us. Until we receive them, you bear the risk that deposits will be lost, stolen or destroyed.

We make the funds you deposit available for withdrawal in accordance with our Funds Availability Policy, which accompanies this Agreement. Until the funds become available, you cannot withdraw them or write checks against them and we can refuse to permit withdrawals or pay checks if the funds to do so are not yet available.

You may not deposit remotely created checks (items not bearing the maker's signature, but purporting to be authorized by the maker) to an account with us without our prior, express written consent. This provision does not apply to checks created on your behalf by the paying bank. If you deposit remotely created checks with us, you agree that we may withhold a portion of the proceeds of such drafts or other funds in your Accounts in a reserve account, in an amount that we reasonably believe may be needed to cover future chargebacks, returned items, and/or claims that such drafts were unauthorized. You grant us a security interest in the reserve account. Unless we agree otherwise in writing with you, reserve funds shall not bear interest. Our rights to charge your Account for returned remotely created checks will not be limited by the balance or existence of any reserve. Our rights with respect to the reserve, as well as the security interest granted to us, shall survive the termination of this Agreement. We may discontinue accepting remotely created checks at any time without cause or prior notice.

**Restriction on Deposit of Substitute Checks.** You are prohibited from depositing or cashing any substitute check with us that was not previously created by a financial institution and then transferred to you, unless you have signed a separate service agreement with us that



governs this process. Please contact your Account Officer to discuss these services for business customers in greater detail. In the event you deposit a substitute check without our prior authorization and we subsequently process the substitute check, you assume all risk of losses, damages, liabilities and other obligations that may arise as a result of your action, and you agree to indemnify and save us harmless in the manner described in the section titled **Adverse Claims; Interpleader; Legal Process** from all losses, damages, liabilities, obligations, expenses and costs that we incur as a result of your action. Substitute checks created by us or another financial institution that are returned to a customer unpaid (i.e. a substitute check of a deposited item returned unpaid) may be redeposited in accordance with applicable rules, regulations and laws.

#### **IMPORTANT NOTICE TO BUSINESS CUSTOMERS REGARDING INTERNET GAMBLING.**

The Unlawful Internet Gambling Enforcement Act (UIGEA) prohibits any person or other entity from making or accepting a Restricted Transaction as defined in UIGEA and Regulation GG. All Restricted Transactions at KeyBank are prohibited. We have established certain policies and procedures designed to identify and block, or prevent payment of, any Restricted Transaction involving your Account(s) with us. Also we may at our sole discretion block or prevent payment of all Internet gambling transactions without notice to you. You hereby acknowledge and agree that we shall have no obligation or liability of any kind for blocking, or failing to block, any Restricted Transaction or other Internet gambling transaction.

**4. Collection of Items Deposited.** When you deposit or ask us to pay a check or other item that is not drawn on us, we act as your collecting agent to obtain payment for you. We may forward these items directly or indirectly to any other bank, including the bank on which the item is drawn. Items and their proceeds may be handled by any Federal Reserve Bank in accordance with applicable Federal Reserve rules, by clearinghouses in accordance with their rules, and by other banks in accordance with common bank practices. You agree that all rules, regulations and practices of Federal Reserve Banks and clearinghouses also apply to the payment and collection of the checks and items you give us. When we act as your collecting agent, we assume no duties or responsibilities (other than to use ordinary care), and we are not responsible for the actions of any Federal Reserve Bank or other bank or clearinghouse that handles the check or item during the collection process. You agree to reimburse us for any loss we may sustain (or damages we must pay another person for their loss) resulting from the condition of any check or item you deposit. This includes illegible and missing signatures, numbers or other information, instructions and disclaimers on the front or back of the check or item, and use of the space on the back of checks reserved for endorsement by banks that handle the check for collection.

**5. Withdrawals.** We impose special rules limiting withdrawals from some Accounts pursuant to Federal law. The rules differ depending on the type of Account.

- **Checking Accounts.** Checking Accounts consist of two subaccounts: a checking subaccount and a savings subaccount. All of the provisions of this Agreement and all of the terms and conditions governing your Checking Account apply to the Account as a whole without reference to the subaccounts, except as provided in this section. If your Checking Account earns interest, the interest rate will apply to both subaccounts. If your Checking Account does not earn interest, no interest will be paid on either subaccount.

We transfer funds in the checking subaccount to the savings subaccount when such funds are not needed to pay checks, debits, or other items drawn on your Checking Account. We may sweep the entire balance into the savings subaccount during the weekend when no items will post to your Checking Account. We may also establish a threshold balance in the checking subaccount and transfer any funds in excess of the threshold balance to the savings subaccount. All checks, debits and other items will be paid from balances credited to the checking subaccount. All deposits and credits will be credited to the checking subaccount. We periodically reallocate the balances between the subaccounts to make funds available in the checking subaccount to pay checks, debits and other items drawn on your Checking Account. These transfers will be the only transactions on the savings subaccount. We will not allow more than six transfers per monthly statement period from the savings subaccount and, if a sixth such transfer is made, all funds in the savings subaccount will be transferred to the checking subaccount for the remainder of the monthly statement period.

In accordance with federal law, we reserve the right to require seven days' prior notice of any transfer from a Money Market Checking Account (Negotiable Order of Withdrawal). Subject to these limitations, you can make an unlimited number of withdrawals in person or by check and arrange for preauthorized transfers and withdrawals, including telephone transfers.

- **Savings Accounts.** Savings Accounts have no check-writing privileges unless we specifically tell you that you may write checks on your Account. On Savings Accounts, you may withdraw money in person at our branches, arrange for preauthorized transfers and withdrawals and, if your Savings Account has check-writing privileges, write checks, subject to the following limitation: during any monthly statement period, you are permitted or authorized to make up to seven (7) transfers and withdrawals to another KeyBank account of yours (including a transaction account) or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, or by check, draft, debit card or similar order payable to third parties, including transfers to third parties made through an automated teller machine or telephone and point of sale transactions posted to your Account without incurring a fee. You can make an unlimited number of withdrawals in person at an ATM or at any of our branches. You can also make an unlimited number of transfers through an ATM from one Checking or Savings Account to another Checking or Savings Account. We reserve the right to require seven (7) days prior written notice of any intended withdrawal (whether made in person, by check, by telephone or by preauthorized transfer or withdrawal).
- **Time Accounts.** When you open a Time Account, you are agreeing to keep your funds on deposit with us in that Account until the maturity date. We are not required to allow you to withdraw any or all of the funds in the Account until the maturity date. If we do allow a withdrawal, we may require you to withdraw the full balance in the Account and pay an early withdrawal penalty. Unless the disclosures given when you open a Time Account provide otherwise, you cannot change the terms of this Account, make additional deposits or partial withdrawals either during the term or during any grace period after maturity.
- **Retirement Accounts.** Most of the restrictions on withdrawals described above will apply to Accounts that are retirement Accounts. Certain other restrictions will also apply. Refer to the documents governing your retirement Accounts for a complete description of these restrictions.

For Accounts on which we have reserved the right to require prior notice of withdrawal, if we exercise that right we can refuse to allow any withdrawal for which proper notice was not given. This means, for example, that we can refuse to pay checks written against the Account. If we take these actions, we are not liable to you for wrongful dishonor, for failure to release your funds or for any other reason.

For Savings Accounts, if you exceed any of the limits on transactions, withdrawals, or checks, we may close your Account or convert your Savings Account to a Checking Account. If we convert your Account, you agree to pay all fees we charge on Checking Accounts and comply with all other terms and restrictions applicable to Checking Accounts.

You authorize us to transfer money from one Checking Account or Savings Account to another Checking Account or Savings Account, or to a

third party, when we receive instructions to do so from you over the telephone. You agree that we may record any of your telephone calls to us when making a telephone transfer.

If we ask, you must provide us with identification or other documents or information acceptable to us in order to withdraw funds from your Account. If we ask, you also must sign a document acknowledging that you received the funds withdrawn.

You must use only the forms made available through us, or other forms approved by us, when making deposits to, withdrawals from, or writing checks on, your Account. All forms of checks must be standard size, bear your name and address, our name and address, and the appropriate routing/transit and Account numbers, and be capable of being processed by our MICR check/item processing hardware and software.

**6. Posting Order; Payment of Items; Overdrafts; Substitute Checks.** We may change the posting order at any time with notice to you. We establish different processing groups that are based on the date and/or time a transaction was initiated such as transactions made by you after normal business hours or items initiated by us. For example, consumer or small business account transactions that you make on a Saturday or Sunday are posted prior to a transaction you make during normal business hours on the next business day.

The processing groups established depend on your Account type. For all consumer (excluding Nursing Home Direct Deposit and Key Pre-Need Funeral Trust) and the following small business Account types, KeyBank Basic Business Checking, Key Business Gold Money Market Savings, Key IOLTA, Key Interest on RE Trust, Non-IOLTA Lawyer Trust Account, Key Business Saver, Key Business Reward Checking, KeyBank Business Interest Checking, Key Business Silver Money Market Savings, Key Business Basics Checking, Key Business MajorSaver Money Market Savings, Key Business Platinum Money Market Savings, and Key Business Money Market Savings, cutoff times were established to classify transactions as either prior day or current day. This results in two processing groups: (1) the *prior day* transactions processing group and (2) the *current day* transactions processing group. Transactions that are classified as prior day include but are not limited to the following:

- Transactions initiated by you in a branch after the branch's business day cutoff; including branch transactions conducted on Saturday.
- ATM, debit card PIN/POS, telephone, and online banking transactions conducted between 7:00 p.m. and midnight local time (local time is based on the state where you opened your Account) on the previous day; including transactions conducted between 7:00 p.m. Friday through midnight Sunday local time.
- Debit card signature transactions with an authorization date (when available, otherwise we will use the settlement date) that is prior to the current processing date are considered prior day transactions.
- Mobile Banking deposits made on a previous day to a consumer Account
  - between 7:00 pm. and midnight local time to a consumer Account opened in AK;
  - between 8:00 pm and midnight local time to a consumer Account opened in OR or WA;
  - between 9:00 pm and midnight local time to a consumer Account opened in CO, ID or UT
  - between 11:00 pm and midnight local time to a consumer Account opened in IN, KY, MI, OH, FL, NY, ME or VT
 including Mobile Banking deposits conducted between these time periods on Friday through midnight Sunday local time (local time is based on the state where you opened your Account).

All transactions not classified as prior day are considered current day transactions. Prior day transactions will post using the current business day's processing date.

The following chart reflects the current posting order for categories within the processing groups for all consumer (excluding Nursing Home Direct Deposit and Key Pre-Need Funeral Trust) and certain small business (refer to list above) Account transaction types. Certain limited exceptions may apply.

Processing Group	Primary Posting Categories	Examples of Transactions included in Posting Categories	Sort Order
Prior Day	Pending Credits	Reversed signed debit card purchase	Low to high dollar amount
	Credits	ATM deposit, branch deposit	Low to high dollar amount
	Overdraft Item and Return Item Charges	Charges from overdraft/return items occurrences from the previous day	Low to high dollar amount
	Branch Withdrawals		Low to high dollar amount
	ATM & Debit Card transactions (pending & settled)	ATM withdrawal, pending signed debit card purchase, posted signed debit card purchase	Authorization date/time; if no authorization date/time, then by settlement date/time; if no settlement date/time, then low to high dollar amount
	Checks		Check number; if no check number, then low to high dollar amount
	All Other Debits	ACH debit, E-Check, online banking bill pay	Low to high dollar amount
	Pending Credits	Reversed signed debit card purchase	Low to high dollar amount
	Credits	ATM deposit, branch deposit	Low to high dollar amount
	Wire Transfers		Low to high dollar amount
	Branch Withdrawals		Low to high dollar amount

<b>Current Day</b>	ATM & Debit Card transactions (pending & settled)	ATM withdrawal, pending signed debit card purchase, posted signed debit card purchase	Authorization date/time; if no authorization date/time, then by settlement date/time; if no settlement date/time, then low to high dollar amount
	Checks		Check number; if no check number, then low to high dollar amount
	All Other Debits	ACH debit, E-Check, online banking bill pay	Low to high dollar amount
	OD Protection Transfer	Automatic advance from Cash Reserve Credit (credit), Automatic Pymt. to Cash Reserve Credit (debit)	As applicable
	Service charges*	Overdraft Item Charge, Maintenance Service Charge	As applicable
*Does not include the Excessive Withdrawal Fee which will post with the associated withdrawal. Refer to the Deposit Account Fees and Disclosures for details.			

For all other business account type transactions we will post items from highest dollar amount to lowest dollar amount within certain categories. The following is the current posting order for all other business account type transactions. Certain limited exceptions may apply.

**We post all transactions as current day transactions in the following order:**

Pending Credits, Pending Debits, Credits, Wire Transfers, other types of transfers, Debits All Other

Withdrawals by check are permitted only on Checking Accounts and on Savings Accounts with check-writing privileges. You agree that, when a check or other item drawn on or payable from your Account is presented for payment, we can disregard any legends on the check (such as "void after 60 days", "paid in full" or "void over \$100"), any restrictive endorsements or other information, instructions and disclaimers that would limit or tend to limit the negotiability of the check or other item. In our discretion, we may process or decline to process any check more than six months old. We can also pay photocopies of checks accompanied by a representation that the original was lost or destroyed. You also agree that we can pay checks before the date set forth on the check (i.e. "post dated checks"). We have this right even if you give us notice that you wrote a post dated check. In order to prevent a post dated check from being paid, you must give us a valid stop payment order.

We may debit your Account on the day an item is presented by electronic or other means, or at an earlier time based on notification received by us that an item drawn on your Account has been deposited for collection in another financial institution. We pay checks or other items from the funds that we determine, in our discretion, are "available" for withdrawal from your Account. Some or all of the funds in your Account may not be "available" at the time a transaction posts. For example, for point-of-sale transactions the funds in your Account that are "available" may be reduced by the amount of any transaction for which the merchant/payee receives authorization from us, whether or not the transaction has been presented for payment. We may consider such pending transaction for the purpose of determining the amount of funds in your Account to be used to pay other items presented against your Account. If the available balance in your Account is not sufficient to cover other items presented against your Account, you may incur an Overdraft Item (OD) Charge or a Return Item Charge. Furthermore, if the authorized transaction posts to the Account when there are no longer sufficient available funds to cover it, you may incur an additional OD Charge.

In addition, funds you deposit may not be immediately available under our Funds Availability Policy. Likewise, we may have placed a "hold" on some or all of the funds in your Account because, for example, we reasonably believe a court order has restrained us from releasing funds to you. We will not be liable to you for damages, wrongful dishonor, or additional fees incurred if we dishonor or decline to pay a check or other item drawn on or payable from your Account if the Account has insufficient available funds to pay the check or other item. We do not have to check the balance in your Account more than once to determine if there are available funds. If an item is presented for payment against your Account and is returned for any reason more than twice, we reserve the right to cease any further negotiation of the item.

If you make a check or other item payable to the order of more than a single payee, and the check or item is presented to us for payment without the endorsement of one or more payees, you authorize us to pay the item and charge your Account. In such event, we will assist you, to the extent we deem practicable, in obtaining any such missing endorsement(s), or any reimbursement to which you may be entitled.

**What is a substitute check?**

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you, as a consumer, have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your Account. However, you have rights under other law with respect to those transactions.

**THE FOLLOWING APPLIES TO CONSUMER ACCOUNTS ONLY**

**What are your rights as a consumer regarding substitute checks?**

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your Account (for example, if you think that we withdrew the wrong amount from your Account or that we withdrew money from your Account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your Account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your Account is an interest-bearing Account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your Account earns interest) within 10 business days

after we received your claim and the remainder of your refund (plus interest if your Account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your Account.

#### **THE FOLLOWING APPLIES TO CONSUMER ACCOUNTS ONLY**

##### **How should you as a consumer make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your Account, please contact us by calling 1-800-KEY2YOU (1-800-539-2968) (TDD 1-800-762-4833), or write: KeyBank, Customer Disputes, 555 Patroon Creek Blvd., Albany, NY 12206. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the Account statement showing that the substitute check was posted to your Account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include-

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check and the following information to help us identify the substitute check: (identifying information, for example the check number, the Account number, your name, the name of the person to whom you wrote the check, the amount of the check and the posting date the check appears on your statement).

If you tell us orally, we may require that you send us your request for a refund in writing by the 10th business day after the banking day on which the bank received your oral notice. We will tell you the results of our investigation within 10 business days after we hear from you. If we need more time, however we may take up to 45 calendar days to investigate your claim. If we ask you to put your request for a refund in writing and we do not receive it within 10 business days, we may not credit your Account. We will tell you the results no later than the business day after the banking day we complete our investigation. If we decide your claim is not valid, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

**7. Stopping Payment.** You can ask us to stop payment on a check drawn on your Account. In order to place a stop payment request, you must inform us of the exact amount of the item, the number of the check, the date of the check, the Account number, and any other information we may request. A stop payment confirmation will be mailed to you. You must review the specific details on the confirmation for accuracy, and call us immediately if any of the information is not accurate. A stop payment request is effective for only six (6) months, unless you specifically request the stop payment be effective for 12 months. You may renew a stop payment prior to its expiration. Refer to the Deposit Account Fees and Disclosures for stop payment fee details. We are not liable for payment of a check or other item if a stop payment request has expired and not been renewed. In some states and under certain limited circumstances, you may stop payment on official checks and on certified checks.

We are not liable for failing to stop payment if you have not given us sufficient information or if your stop payment request comes too late for us to act on it. We are entitled to a reasonable period of time after we receive your stop payment request to notify our employees and take other action needed to stop payment. You agree that "reasonable time" depends on the circumstances but that we will have acted within a reasonable time if we make your stop payment request effective by the end of the next business day following the business day on which we receive your stop payment request. If we stop payment, you agree to defend and pay any claims raised against us as a result of our refusal to pay the check or other item on which you stopped payment.

If we recredit your Account after we have paid a check or other item over a valid and timely stop order, you agree to sign a statement describing the dispute you have with the person to whom the check or item was made payable. You also agree to transfer to us all of your rights against the payee and any other holder, endorser or prior transferee of the check or item and to cooperate with us in any legal action taken to collect against the other person(s).

If we are liable for inadvertently paying your check over a stop payment order, you must establish the amount of your loss caused by our payment of the check. We will pay you only the amount of the loss, up to the face amount of the check.

You may request us to stop payment of electronic funds transfers from your Account. You must refer to other agreements and disclosures for information regarding stopping payment on electronic funds transfers.

**8. Account Disclosure and Fees.** When you opened your Account, we gave you disclosures containing additional terms and conditions relating to your Account and listing fees that may be payable to us. You agree to comply with the terms and conditions disclosed and to pay us the fees and charges imposed by us on your Account. We can deduct any or all these fees and charges from your Account. We are not liable for dishonoring or declining to pay a check or other item drawn on or payable from your Account if your Account does not contain sufficient "available" funds as a result of our deducting fees and charges from your Account. We can change these fees at any time. We will give you prior notice of the change if we are required to do so under applicable law.

All fees are "deposit account service charges" under Title 12, Code of Federal Regulations, Section 7.4002 (12 C.F.R. section 7.4002). These fees are assessed for the inconvenience and additional administrative resources that we incur or require to provide the associated services. All fees charged in connection with an overdraft are designed to deter you from overdrawing your account and/or allowing such overdrafts to continue and thus to maintain the safety and soundness of our operations. No loan or extension of credit is or is intended to be established by our honoring of an overdraft. On certain Accounts, an overdraft line of credit is available. Please contact us for additional information if you are interested in an overdraft line of credit.

**9. Signature Cards and Resolutions; No Two Signer Accounts.** We are entitled to rely upon and treat as genuine the names, titles and signatures shown on any Account signature cards and Account Express Plan, or other written documentation acceptable to us, delivered by you or your officers, employees or agents on your behalf, unless you notify us otherwise in writing. If we require you to deliver certified copies of resolutions or sign our depository resolutions to open an Account, we are entitled to rely upon such resolutions and certifications, without investigation by us, unless you or your authorized representative notify us otherwise in writing.

You agree that we can pay checks drawn on your Account and made payable to any of your officers, partners, employees or agents and we may cash and pay such checks without inquiring about the authority of the payee or person who signed the check on your behalf. Subject to the statement review provisions contained in Section 10 below, if the signature cards or resolutions related to your Account are unavailable for any reason, you agree that we can rely upon the titling contained in your most recent Account Statement for purposes of determining the ownership of the Account.

We do not offer Accounts on which two signatures are required for a check or other withdrawal. Notwithstanding any provisions to the contrary on any signature card or other agreement you have with us, you agree that if any Account purports to require two or more signers on items

drawn on the Account, such provision is solely for your internal control purposes and is not binding on us. If more than one person is authorized to write checks or draw items on your Account, you agree that we can honor checks signed by any authorized signer, even if there are two or more lines on the items for your signature and two signatures are required.

**10. Account Statements; Limitation on Time to Report Unauthorized Transactions, Forgeries and Errors.** You should review and balance your Account statements promptly after you receive them or, if we are holding them for you, promptly after we make them available to you. If you don't receive an Account statement by the date when you usually receive it, call us at once. We will not mail a paper monthly statement if there is no activity on the account during that statement period. However, where required by law, you will receive a deposit account statement quarterly, even if there is no activity during that period. This is not applicable to you if you currently receive quarterly statements, a monthly paper combined statement or an online electronic monthly statement. You must review your statements to make sure that there are no errors in the Account information. You agree that if you give out your Account number to a third party, such act authorizes the recipient of the information to initiate debits to your Account, whether or not you have authorized the particular debit.

On Accounts with check-writing privileges, you must review your statement and any canceled checks we send you and report unauthorized transactions including forgeries, alterations, missing signatures, amounts differing from your records, or other information which might lead you to conclude that a transaction was not authorized or a check was forged or that, when we paid the check, the proper amount was not paid to the proper person. You have this duty even if we do not return checks to you or we return only an image of the check. You should notify us as soon as possible if you think there is a problem.

If we are holding your Account statements for you at your request, the statements become "available" on the day they are available for you to pick up. This means, for example, that the period in which you must report any problem with an Account begins on the day we make the statement available, even if you do not pick up the statement until later.

Because of the high volume of items we must process and the largely automated nature of such processing, you agree that we will not be considered to have failed to exercise ordinary care if we do not manually examine all items. All checks, withdrawal forms, and deposit slips must be on forms obtained through us or which we approve in advance. You are responsible for verifying the accuracy of all information on such forms. Our liability, if any, for any printing errors on forms obtained through us is limited to the cost of replacement of such forms. We are not responsible for errors or losses you may incur due to improper printing on forms not obtained through us or approved by us in advance.

If you choose to use a facsimile signature device, you agree that we are not liable for honoring checks bearing facsimile signatures or facsimile endorsements. You agree to indemnify us and hold us harmless from any claims related to the use of a facsimile signature device. This means we will not recredit your Account if your facsimile signature is forged or use of the facsimile device was unauthorized.

If you have made arrangements with us to review electronic information about checks presented for payment, we are not liable for any errors or problems with checks you authorize us to pay. You agree that we will not be considered negligent in paying checks presented to us electronically through normal banking channels prior to receiving the actual check or paying checks even if we do not check the signature on the checks we pay.

If you assert against us a claim that a transaction was not authorized or an item was not properly payable because, for example, the item was forged or an endorsement was forged, you must cooperate with us and assist us in seeking criminal and civil penalties against the person responsible. You must file reports and complaints with the appropriate law enforcement authorities and promptly provide us with copies of such reports and complaints. You must also give us a statement, under oath, about the facts and circumstances relating to your claim. If you fail or refuse to do these things, we will consider that you have ratified the defect in the item and agree that we can charge the full amount of the item to your Account.

**You must notify us as soon as possible after receiving your Account statement if you believe there is an error or irregularity of any kind, including any unauthorized transaction or signature, lack of signature or alteration. You agree that thirty (30) days after we mailed a statement (or otherwise made it available to you) is a reasonable amount of time for you to review your Account statement and report any errors or other irregularities. In addition, by law we may be relieved of any potential liability for multiple unauthorized signatures or alterations by the same wrongdoer if you do not notify us in writing within thirty (30) days after your statement containing the first such irregularity was mailed or otherwise made available to you. Similarly, by law we may be relieved of any potential liability for losses arising due to your negligence. You agree that failure to report any error or irregularity in writing within thirty (30) days after we mailed your statement (or otherwise made it available to you) shall preclude you from recovering any amounts from us. No legal proceeding or action shall be brought by you against us to recover any amount alleged to have been improperly paid out of the Account (as well as related losses) due to an unauthorized transaction or signature, alteration or other defect unless (1) you have given the written notice provided above, and (2) such action shall have been commenced within the time required by applicable law. Transactions involving electronic funds transfers may be governed by the Electronic Fund Transfer Act and may be subject to KeyBank's Terms and Conditions for Electronic Fund Transfer Transactions.**

You may not deposit remotely created checks (items not bearing the maker's signature, but purporting to be authorized by the maker) to an account with us without our prior, express written consent. This provision does not apply to checks created on your behalf by the paying bank. If you deposit remotely created checks with us, you agree that we may withhold a portion of the proceeds of such drafts or other funds in your Accounts in a reserve account, in an amount that we reasonably believe may be needed to cover future chargebacks, returned items, and/or claims that such drafts were unauthorized. You grant us a security interest in the reserve account. Unless we agree otherwise in writing with you, reserve funds shall not bear interest. Our rights to charge your Account for returned remotely created checks will not be limited by the balance or existence of any reserve. Our rights with respect to the reserve, as well as the security interest granted to us, shall survive the termination of this Agreement. We may discontinue accepting remotely created checks at any time without cause or prior notice.

Upon your authorization, or to the extent permitted by law, we may at our option send or otherwise make available your statements in an electronic medium, rather than mailing you a paper-based statement.

**11. Time Account Certificates.** All of the Time Accounts we currently offer are "book entry" Accounts, which means that the Time Account is owned by the person(s) shown on our records, and no certificate is issued by us on the Account. All Time Accounts are non-negotiable and non-transferable. We formerly issued certificates on some Time Accounts and, if we issued a certificate on your Time Account, you must present the certificate in order to make a withdrawal or close the Account. You should notify us at once if your certificate is lost or stolen. At our option, you must give us a bond from a surety company satisfactory to us in an amount not exceeding the balance in the Account, or other satisfactory indemnity, if you close a certificate Account without giving us the certificate.

**12. Joint Personal Accounts; Survivorship Accounts.** For Personal Accounts, if there are more than one of you, your Accounts are "joint Accounts." All deposits in joint Accounts are the property of each owner as joint tenants with rights of survivorship. While all owners are alive, we can honor checks or orders drawn by any owner, honor requests for withdrawals from any owner, release the entire amount on deposit in the joint Account to any owner, allow any owner to close the joint Account, and allow any owner to take all actions that a sole owner could take. Any owner can pledge the joint Account as security or grant a power of attorney to appoint an attorney-in-fact. However, we reserve the right to

require the consent and signatures of all joint Account owners to take these actions. Each of you appoints all of the other owners as your true and lawful agents and attorneys-in-fact to conduct any and all banking business relating to your joint Accounts. Each of you also agrees that any other joint owner may endorse your name on any check made payable to you for all purposes, including depositing the check in your joint Account.

You agree that we can follow the directions given, and take action requested by, any owner, even if the directions or actions to be taken are inconsistent with directions or instructions to act given by another owner. We are not liable for continuing to honor checks or other orders drawn on the joint Account by any owner or withdrawals made by any owner even after receiving notice from another owner not to do so. If we do receive notice, we may, but are not obligated to, refuse to honor any checks, orders or withdrawals from the joint Account unless all owners agree in writing. You agree that we can place a hold on funds in your joint Account or pay funds from your joint Account if we receive a garnishment, levy or other governmental order directed against any owner, even if the funds in the joint Account were not deposited by the owner against whom the order is directed.

For joint Accounts "with rights of survivorship" while all owners are living, each joint owner has the rights described above for joint Accounts. When any owner dies, the amounts on deposit in the joint Account pass to the surviving owners. The right of any survivor to obtain his or her share of the deceased owner's funds in a joint Account is subject to our right of set-off and the rights of any person (including us) that holds a security interest in or has any claim to funds in the joint Account.

On all joint Accounts, whether or not "with rights of survivorship," we may honor checks, orders, or requests for withdrawals from the surviving owners after the death of an owner. On joint Accounts without rights of survivorship, we may also honor checks, orders, or requests for withdrawals from the personal representative or legal successor of the deceased owner.

**13. Payable on Death Accounts.** In some states we offer Personal Accounts that are payable on death ("POD"). POD Accounts permit you to designate one or more beneficiaries to receive the funds on deposit in an Account after your death. Until your death, you are the owner of the Account and the beneficiary has no present, vested interest in the Account. You can change a beneficiary at any time. The beneficiary's right to receive the funds in the Account after your death is subject to our right of set-off and to the rights of any person (including us) that holds a security interest in or has any claim to the funds in your Account. On joint POD Accounts, the beneficiary's right to receive the deceased owner's share is subordinate to the surviving owners' rights and the beneficiary will not receive any funds unless all Account owners are deceased. In order to designate a beneficiary, a designation of beneficiary form must be completed and signed by you. If no beneficiary form is available, we will presume that no designation of POD exists.

**14. Fiduciary and Custody Accounts.** Trust Accounts and custody Accounts are fiduciary Accounts in which funds are held by a trustee or custodian for the benefit of another person. We offer a variety of these types of Accounts where permitted by applicable law.

An "in trust for" Account is an Account in which you name yourself as trustee in trust for one or more persons without otherwise establishing a written trust agreement. As with POD Accounts, you are the owner of the Account and the persons you name are considered beneficiaries and have no right to receive funds in the Account until all owners are deceased. The beneficiary's right to receive funds in the Account is subordinate to the rights of any other person (including us) that holds a security interest in or has a claim to the funds in the Account.

A Uniform Gift to Minors Act/Uniform Transfers to Minors Act ("UGMA/UTMA") Account is an Account established under a state law governing gifts or transfers to minors. In general, state law treats the minor as the owner of the Account and the custodian or trustee must hold funds in the Account solely for the benefit of the minor. State laws may restrict the trustee's or custodian's rights to use or withdraw the funds, regulate the appointment of a successor trustee/custodian and require the distribution of funds to the minor when the minor reaches a certain age. You must comply with all of these rules in order to maintain a UGMA/UTMA Account.

Some states have specific laws governing other specific types of fiduciary Accounts, such as Lawyer Trust Accounts. If you establish one of these types of Accounts you agree to comply with all of the laws applicable to such types of Accounts.

With all fiduciary and custody Accounts, the owners and beneficiaries of the Account agree that we will not be liable if the trustee or custodian commits a breach of trust or breach of fiduciary duty, or fails to comply with the terms of a written trust agreement or comply with applicable law. We are not responsible for enforcing the terms of any written trust agreement or applicable law against the trustee or custodian and can rely on the genuineness of any document delivered to us, and the truthfulness of any statement made to us, by a trustee or custodian.

**15. Powers of Attorney.** A power of attorney gives a person you designate as your "attorney-in-fact" the power to handle your affairs on your behalf while you are alive. For joint Accounts, we may require the consent and signatures of all Account owners in order to appoint an attorney-in-fact. All owners of the Account will be bound by any actions taken by the attorney-in-fact in connection with the Account. We do not honor powers of attorney on Business Accounts or Accounts owned by corporations, associations, partnerships, limited liability companies or on Accounts owned by fiduciaries. On other Accounts, we reserve the right not to honor powers of attorney. We will not honor a power of attorney unless it is in a form acceptable to us. We will not honor powers of attorney that do not survive your disability or declared incompetence, or that have limits on the time the power of attorney is in effect. We also will not honor any general power of attorney that does not specifically include detailed provisions granting the power to conduct all banking business on your behalf. If we decide to honor a power of attorney, we can later decide not to honor it any longer. Any attorney-in-fact appointed by you is subject to this Agreement.

**16. Closing Accounts.** We reserve the right to close any or all of your Accounts at any time for any reason whatsoever, including, but not limited to, because you have an excessive number or amount of overdrafts or your account is overdrawn for more than 10 days or if there is a zero balance and no activity for a period of thirty (30) days. If we do so, we will return the balance in the Account (less any amounts owed to us) to you by mailing a check to you at the address listed on our records. Subject to our right to require prior notice of withdrawal on some Accounts as described above, you may close any or all of your Checking Accounts or Savings Accounts at any time for any reason whatsoever.

If an Account is closed, you remain liable for all fees and charges incurred through the date the Account is closed. You also remain liable for all checks and electronic funds transfers drawn on the Account that have not been presented to us for payment and deducted from the Account prior to the time the Account is closed. We are not required to pay you interest that has accrued but not been credited to your Account prior to the date the Account is closed.

**17. Inactive Accounts/Unclaimed Funds.** We will consider a Checking Account inactive when there is no client-initiated activity within 3 consecutive months. Savings Accounts are considered inactive when there is no client-initiated activity within 12 consecutive months. If your Checking Account or Savings Account is inactive we may, in our discretion, decide not to pay checks or honor other requests for withdrawals on the Account until we receive proof that you have signed the checks or authorized the withdrawal. For Time Accounts that are auto-renewing, the applicable period according to state law for determining whether there has been activity commences at the expiration of its initial term. The start of a new term does not constitute activity in the absence of other activity.

State law requires us to transfer the balance in all Accounts to a state agency after a certain period of no withdrawals, deposits or other activity on the Account and no contact with the Account owner. Accounts will be escheated as unclaimed funds pursuant to applicable state law. If this happens to your Account, you must file a claim with the state agency to recover the funds. We are not liable for funds transferred to the state

agency.

**18. Death/Incompetence.** Your death, or a declaration that you are legally incompetent to handle your affairs, does not end our authority to pay checks signed by you, to accept deposits or to collect items deposited until we receive written notice of your death or declared incompetence. Even after we receive notice, we can pay checks drawn by you before your death or declared incompetence for up to ten (10) days or any longer period permitted under applicable law.

On joint Accounts, your death or declared incompetence does not affect the rights of any other owner of the Account to make deposits, make withdrawals or, if applicable, write checks. We may require the surviving owners and any POD beneficiary to provide reasonable proof of your death or incompetence and, in some states, provide any tax releases or other documents or consents needed from government authorities before we pay any checks drawn on your joint Account or allow the surviving owners or your beneficiary to withdraw any funds from the Account. Each of you is responsible for notifying us when any other joint owner of an Account dies.

Checks or other items made payable to a deceased joint Account holder (e.g. Social Security checks or electronic deposits) must be returned to the issuer and may not be used, cashed or disposed of in any other way by the surviving Account holders. If such items are used, cashed or disposed of by any one or all of the surviving Account holders each Account holder remains liable for the amount of the item and any charges incurred as a result of the improper use of the item. In our discretion, we can charge your Account for the amount of these items and remit payment to the issuer of the item.

**19. Our Right of Set-off.** We reserve the right to withdraw at any time some or all of the funds that may now or later be on deposit in any or all of your Accounts and apply them to the payment of any debts (other than amounts you may owe us on a personal credit card account with us) you may now or later owe us. We also have the right to set-off against any direct deposit from the federal government to which you are not entitled to. We have this right even if the Account(s) we withdraw money from is a joint Account and the debt we apply it to is owed by only one of you. Likewise, we could withdraw money from an Account owned by only one person and apply it to reduce the joint debt of that person and another person. Our rights under this section are in addition to any right of set-off we may have under applicable law. You agree that our right of set-off is not conditioned on, or limited by, the complete mutuality of the parties obligated on the debt and owners on your Account, the maturity of the debt, the giving of notice to you, or the availability of any collateral securing the debt.

We also have the right to place a hold on funds in your Accounts if we have a claim against you or pending exercise of our right of set-off. If we place a hold on your Account, you may not withdraw funds from the Account and we can refuse to pay checks drawn on the Account.

**20. Adverse Claims; Interpleader; Legal Process.** We need not honor any claim against or involving an Account unless we are required to do so by order of a court or governmental agency that has jurisdiction over us. This rule applies to any person asserting any rights or interest regarding an Account, including you and other persons who are authorized to make withdrawals or write checks or who present a power of attorney signed by you.

If we receive notice of any claim or dispute or of any legal proceeding we reasonably believe involves you or any of your Accounts, in our discretion we may suspend transactions on any Account which we believe to be affected until final determination of the claim or proceeding. We may place a hold on any funds in the Account and suspend transactions whether the affected Account is in your name alone or is a joint Account. Suspension of transactions may, in our discretion, involve placing a hold on any funds in the affected Account or transferring funds from the affected Account to a separate suspension account throughout the pendency of the claim, dispute, or legal proceeding. An Account may be suspended even though the suspension may have been due to inadvertence, error because of similarity of the names of depositors, or other mistake. We also may act upon any notice of garnishment, levy, restraining order, injunction, subpoena or other legal process we reasonably believe to be valid, without independent verification by us. You agree that we are not liable for any damages or losses (including claims based on the return or dishonor of checks) to you caused by the suspension of your Account or action taken in response to legal process, as long as we acted in good faith.

You agree to indemnify us against all losses, costs, attorneys' fees, and any other liabilities that we incur by reason of responding to or initiating any legal action, including any interpleader action we commence, involving you or your Account. As part of that indemnity, in the event we incur liability to a creditor of yours as a result of our response or failure to respond to a legal action, you agree to pay us on demand the amount of our liability to your creditor and to reimburse us for any expense, attorneys' fees, or other costs we may incur in collecting that amount from you.

We may, in our sole discretion and without any liability to you, initiate an action in interpleader to determine the rights of persons making adverse claims to your Account. We may exercise this right regardless of whether the persons making the adverse claims have complied with all statutory requirements pertaining to adverse claims, such as posting a bond or giving other surety. Upon initiation of an interpleader action, we will be relieved and discharged of all further duties and obligations. You agree that any costs associated with the action in interpleader will be charged against any Accounts you maintain with us.

**21. Assignment; Pledge.** You cannot assign or transfer your Account, or pledge your Account as collateral for a loan, without our written consent. We can withhold our consent for any reason. With our consent, any joint owner can pledge the entire Account as collateral for a loan. If we permit you or a joint owner to pledge your Account as collateral for a loan from us, you agree that if the person who pledged the Account dies we can apply the balance in the Account to pay off the loan. You agree that we have this right even if your Account is a joint Account with rights of survivorship or if you have a POD or an "in trust for" Account and have named a beneficiary or beneficiaries to receive your Account balance upon your death.

**22. Waiver of Notices.** We send periodic statements to you on most Checking Accounts and Savings Accounts to show activity on your Account, including any returned items or other credit and debit entries. You agree that these statements are sufficient notice to you and you waive any right to receive any other notice that may be required under clearinghouse rules, the Uniform Commercial Code or other state or federal laws (other than the federal Electronic Funds Transfer Act and the federal Truth in Savings Act).

**23. Check Cashing.** You may be required to provide positive identification when you present a check for payment. We may also limit the dollar amount of checks cashed. We provide check cashing privileges only to our customers. We reserve the right to charge a fee to a non-customer if we decide to cash a check for the non-customer, even if the check is drawn on us. You agree that the charging of such fee is not considered wrongful dishonor. Positive identification for a non-customer shall include the non-customer's thumbprint in most states.

**24. Addresses; Notices.** You agree that if we need to contact you or send you any written (paper-based) information (such as notices, Account statements, checks payable to you, or other communications), we can do so by mail addressed to any of you at the Postal Service address in our records or, at our option, by electronic communication(s) either authorized by you or permitted by law and transmitted by us to your e-mail address in our records. Unless the communication states another effective date, any paper-based communication we send you is effective when mailed to your Postal Service address by delivery to the mail service provider, and any electronic communication we send you is effective when transmitted by us to your e-mail service provider. You must notify us promptly in writing, or by e-mail with written confirmation mailed within five (5) days, if you change your Postal Service or e-mail address or if your e-mail service provider is no longer providing e-mail service for you. In no event shall we have any responsibility, and you hereby release us from all claims and liabilities, for any actions or omissions by

you or your e-mail service provider in handling e-mail to or from you, or for any failure in computer hardware, software, or communications lines not maintained by us or under our control.

**25. Arbitration Provision.** This Arbitration Provision sets forth the circumstances and procedures under which a Claim or Claims (as defined below) may be arbitrated instead of litigated in court. This Arbitration Provision supersedes and replaces any existing arbitration provision between you and us. **This Arbitration Provision will apply to your Account(s) unless you notify us in writing that you reject the Arbitration Provision within 60 days of opening your Account(s). Send your rejection notice to KeyBank National Association, P.O. Box 93752, Cleveland, Ohio 44101-5752. Your notice must include your name, the names of any joint account holders and your Account number(s) and must be signed by at least one of the joint account holders. Your rejection notice should not include any other correspondence. Calling us to reject the Arbitration Provision or providing notice by any other manner or format than as described above will not operate as a rejection of this Arbitration Provision and consequently this Arbitration Provision will become part of this Agreement. Rejection of this Arbitration Provision does not serve as rejection of any other term or condition of your Agreement with us governing your Account(s).**

As used in this Arbitration Provision, the word "Claim" or "Claims" means any claim, dispute, or controversy between you and us arising from or relating to this Agreement or your Account(s), including, without limitation, the validity, enforceability, or scope of this Arbitration Provision or this Deposit Account Agreement. "Claim" or "Claims" includes claims of every kind and nature, whether pre-existing, present, or future, including, without limitation, initial claims, counterclaims, cross-claims, and third-party claims, and claims based upon contract, tort, fraud and other intentional torts, constitutions, statute, regulation, common law, and equity (including, without limitation, any claim for injunctive or declaratory relief). The word "Claim" or "Claims" is to be given the broadest possible meaning and includes, by way of example and without limitation, any claim, dispute, or controversy that arises from or relates to (a) any Account subject to the terms of this Agreement (b) any electronic funds transfer from or to any account, (c) advertisements, promotions, or oral or written statements related to this Agreement or your Account, (d) your application for any Account, and (e) the collection of amounts owed by you to us. Notwithstanding this arbitration provision, if you have a Claim that is within the jurisdiction of the small claims court or your state's equivalent court, you may file your Claim there. If that Claim is transferred, removed or appealed to a different court, then we have the right to choose arbitration.

This Arbitration Provision will not apply to Claims previously asserted, or which are later asserted, in lawsuits filed before the effective date of this Arbitration Provision or any prior arbitration provision between you and us, whichever is earlier. However, this Arbitration Provision will apply to all other Claims, even if the facts and circumstances giving rise to the Claims existed before the effective date of this Arbitration Provision.

Any Claim shall be resolved, upon the election of you or us, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of either the American Arbitration Association or J.A.M.S/Endispute in effect at the time the Claim is filed (the "Arbitration Rules"). You may select one of these organizations to serve as the arbitration administrator if you initiate an arbitration against us or if either you or we compel arbitration of a Claim that the other party has brought in court. In addition, if we intend to initiate an arbitration against you, we will notify you in writing and give you twenty (20) days to select one of these organizations to serve as the arbitration administrator; if you fail to select an administrator within that twenty (20)-day period, we will select one. In all cases, the arbitrator(s) should be a lawyer with more than ten (10) years of experience or a retired judge. If for any reason the selected organization is unable or unwilling or ceases to serve as the arbitration administrator, you will have twenty (20) days to select a different administrator from the above list; if you fail to select a different administrator within the twenty (20)-day period, we will select one. In all cases, a party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in that lawsuit by any other party or parties.

**IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED FOR IN THE APPLICABLE ARBITRATION RULES. FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. YOU UNDERSTAND THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. THE FEES CHARGED BY THE ARBITRATION ADMINISTRATOR MAY BE GREATER THAN THE FEES CHARGED BY A COURT.**

There shall be no authority for any Claims to be arbitrated on a class action or private attorney general basis. Furthermore, arbitration can only decide your or our Claim(s) and may not consolidate or join the claims of other persons that may have similar claims. There shall be no pre-arbitration discovery except as provided for in the applicable Arbitration Rules. Any arbitration hearing that you attend shall take place in the federal judicial district of your residence. At your written request, we will pay all fees charged by the arbitration administrator for any Claim(s) asserted by you in the arbitration, after you have paid an amount equivalent to the fee, if any, for filing such Claim(s) in state or federal court (whichever is less) in the judicial district in which you reside. (If you have already paid a filing fee for asserting the Claim(s) in court, you will not be required to pay that amount again.) If the arbitrator issues an award in our favor, you will not be required to reimburse us for any of the fees we have previously paid to the administrator or for which we are responsible. Each party shall bear the expense of that party's attorneys', experts', and witness fees, regardless of which party prevails in the arbitration, unless applicable law and/or this Agreement gives you the right to recover any of those fees from Us. In the event you do not prevail in the arbitration, we will not seek to recover our attorneys', experts' or witness fees from you. This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. Sections 1 et seq. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of any party, shall provide a brief written explanation of the basis for the award. In conducting the arbitration proceeding, the arbitrator shall not apply the federal or any state rules of civil procedure or rules of evidence. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of appeal provided by the FAA and except that, if the amount in controversy exceeds \$10,000.00, any party can appeal the award to a three-arbitrator panel administered by the arbitration administrator which shall reconsider de novo (i.e., without regard to the original arbitrator's findings) any aspect of the initial award requested by the appealing party. The decision of the panel shall be by majority vote. The costs of such an appeal will be borne by the appealing party regardless of the outcome of the appeal.

This Arbitration Provision shall survive termination of all of your Accounts subject to this Agreement. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any law or statute consistent with the FAA, it shall not invalidate the remaining portions of this Arbitration Provision or the Agreement. In the event of a conflict or inconsistency between the applicable Arbitration Rules and this Arbitration Provision, this Arbitration Provision shall govern.

#### **Contacting Arbitration Administrators**

If you have a question about the arbitration administrators mentioned in this Arbitration Provision or would like to obtain a copy of their Arbitration Rules or fee schedules, you can contact them as follows: **American Arbitration Association**, 1633 Broadway, 10th Floor, New York, New York 10019, [www.adr.org](http://www.adr.org), (800) 778-7879, Commercial or Consumer Rules, **J.A.M.S/Endispute**, 222 South Riverside Plaza, Suite 1850, Chicago, IL 60606, [www.jams-endispute.com](http://www.jams-endispute.com), (800) 352-5267, Financial Services Arbitration Rules and Procedures.



**26. Applicable Law.** This Agreement and all Accounts shall be governed by the laws of the State of Ohio (without regard for conflict of law rules) and applicable federal law, but with respect to all fees and charges related to your Account, federal law alone shall control.

**27. Amendments; Non-Waiver; Severability.** We reserve the right to change or add to the terms and conditions of this Agreement or change the terms of your Account at any time. We will give you such notice of the change as we determine is appropriate, such as by statement message or enclosure, letter, or as posted in the branch, and as required under applicable law. Where applicable law permits, we can notify you of the changes by posting a new version of this Agreement, or a notice of change to Accounts, in our branches.

We may decide not to enforce this Agreement or delay enforcing it in some circumstances or at some times. If we do so, you agree that we can still enforce this Agreement in the same circumstances at another time, in other circumstances or at other times. If any provision of this Agreement is declared by a court to be invalid or unenforceable, the remaining provisions of this Agreement shall be enforced and construed as if the invalid provisions were not contained in this Agreement.

**28. Credit Reports.** You authorize us to obtain information about you, including a credit report, from third parties. If you ask, you will be told whether a credit report was requested and, if so, the name and address of the credit reporting agency that furnished the report. We may report information about your Account to a consumer reporting agency. Overdrafts on your Account, closure of your Account and other information related to your Account may be reported.

**29. Disclosure of Account Information.** We may share information within the KeyCorp family of companies as well as with unaffiliated third parties external to Key as described in our Privacy Policy. **You specifically consent to us sharing information within the KeyCorp family of companies and with external unaffiliated third parties.**

**Note:** You may elect to opt out of information sharing, or may be automatically opted-out under your state law, as described in our Privacy Policy. If you are opted out, that election will override this consent to share, except for those instances in which we are otherwise permitted to share by law without your consent.

**30. Electronic Authentication or Signature; Electronic Records.** At our option we may adopt or accept commercially reasonable authentication procedures and/or electronic signatures to: (a) verify the identity of a sender of Electronic Records, (b) determine the Electronic Record has not been altered during electronic transmission or storage, and (c) authenticate the sender's Electronic Signature and attribute the Electronic Record to such sender. Each party hereto may adopt as its signature an electronic identification consisting of symbol(s) or codes(s) ("**Electronic Signatures**"), which may be affixed to or contained in electronic agreements, records or data ("**Electronic Records**") transmitted by you or us to the other party. Such Electronic Signature so affixed to or contained in any Electronic Record shall be sufficient to verify the originating party and to evidence such party's acceptance of and agreement to be bound by the terms and conditions of such Electronic Record. Neither party shall disclose to any unauthorized person the confidential Electronic Signature of the other party.

**31. Enforceability of Electronic Records and Signed Documents.** The terms and conditions of any Electronic Record properly transmitted by you or us to the other party shall be considered in connection with any contemplated transaction to be a "writing" or "in writing" and shall be considered as authenticated by an Electronic Signature. Any Electronic Record containing an Electronic Signature ("**Signed Documents**") shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from Electronic Records established and maintained by us or our authorized agents in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, Electronic Records and Signed Documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or Electronic Records are to be in writing (documentary form) or signed by the party to be bound thereby. Electronic Records and Signed Documents, if introduced as evidence on paper in any judicial or other proceeding will be admissible to the same extent and under the same conditions as other documentary business records.

Upon our written request, you agree to manually sign or place your signature on any paper original of any Electronic Record or Signed Document we provide to you containing your purported Electronic Signature. You irrevocably authorize and appoint us as your lawful attorney-in-fact with full power and authority to sign, in your name and on your behalf, any such original of any Electronic Record or Signed Document, if you fail or are unable, for any reason, to sign such original no later than ten days after our request to you to do so.

## PART II - FUNDS AVAILABILITY POLICY

Our Funds Availability Policy for deposits to all Personal deposit account and specified Business deposit account types described in section 4. below is to make funds from your cash and all check deposits available to you on the first business day after the day we receive your deposit. Our Funds Availability Policy for deposits to all other Business deposit account types as stated in section 5. below is to make funds from your cash and most check deposits available to you on the first business day after the day we receive your deposit. Some check deposits will not be available until the second business day after the day we receive your deposit. This policy applies to all deposit channels.

The sum of cash, checks, and other items which have been on deposit long enough to be available for withdrawal under this section is called your Available Balance. We make funds from your deposits available to you as explained below. Until funds are available, you will not be able to use them for certain transactions. For example, you will not be able to withdraw the funds in cash, nor will you be able to have checks certified against them. For certain other uses, we may make funds available during this delay period; however we may charge you for this service. Refer to the Deposit Account Fees and Disclosures for details about any fees that may be assessed.

**1. Determining the Availability of a Deposit.** The length of the delay is counted in business days beginning with the business day following the day of your deposit. Every day is a business day except Saturdays, Sundays, and legal holidays. Our business day starts no later than 9:00 a.m. local time. Deposits made after 7:00 p.m. local time on any business day at an automated teller machine ("ATM") owned and operated by us will be considered received by us on the next business day. You can identify ATMs owned and operated by us by the initial screen message. Deposits made at an ATM not owned and operated by us will be available for withdrawal within five (5) business days. Deposits made using the Mobile Deposit service to an eligible Personal deposit account after 11:00 p.m. Eastern Time on any business day will be considered received by us on the next business day.

Some of our branches have "cutoff" times. If you make a deposit at one of these branches before the cutoff time on a business day we are open we will consider that day to be the day of your deposit. However, if you make a deposit after the cutoff time or on a day we are not open, we will consider that the deposit was made on the next business day we are open. The cutoff time may vary by location but will not be earlier than 2:00 p.m. If the cutoff time is earlier than the branch closing time, the cutoff time will be posted in the branch. The length of the delay varies depending on the type of deposit and is explained below.

Deposits containing 500 or more checks may be subject to a branch specific cut-off time. If a cut-off time applies it will be posted at the branch. Deposits of 500 or more checks made at a branch before the posted cut-off time will be considered received that business day. Deposits of 500 or more checks made at the branch after the posted cut-off time will be considered a next-business day deposit and processed accordingly. Cash is not subject to the cut-off time and will be verified and credited the same-day. The cut-off time may vary by location but will not be earlier than 2:00 p.m. local time.

**2. Same-Day Availability.** Direct deposits of electronic payments, such as Social Security benefits and payroll direct deposits are available on the business day that the funds are due to you. Wire transfers received by 6:00 p.m. Eastern Time, cash deposits made in a KeyBank branch and cash deposits made at a KeyBank image ATM are available on the business day of deposit.

**3. Next-Day Availability.** Funds from the following types of deposits and check deposits as described in section number 4. below are available on the first business day after the day of your deposit.

- U.S. Treasury checks that are payable to you.
- Wire transfers received after 6:00 p.m. Eastern Time on a business day will be considered received on the next business day and will not be available until that business day.
- Cash deposits made at a KeyBank envelope ATM.
- All checks drawn on KeyBank National Association. (In some instances funds may be available on the same business day of deposit.)
- If you make the deposit in person to one of our employees at one of our branches, funds from the following deposits are also available on the first business day after the day of your deposit:
  - State and local government checks deposited in that state into KeyBank accounts that are payable to you, if you use a special deposit slip which can be obtained at the teller window.
  - Cashier's, certified, and teller's checks that are payable to you, if you use a special deposit slip which can be obtained at the teller window.
  - Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees at one of our branches (for example, if you mail the deposit) funds from these deposits may not be available until the second business day after the day we receive your deposit.

**4. Other Check Deposits to any type of Personal deposit account including mobile deposits made to a Personal deposit account and the following types of Business deposit accounts: Key Business Reward Checking, Key Business Basics Checking, KeyBank Basic Business Checking, Key Business Checking, KeyBank Business Interest Checking, IOLTA/IOLA/IOTA/RAHF/IORTA, Key Business Saver, Key Business Silver Money Market Savings, Key Business Platinum Money Market Savings, Key Business Gold Money Market Savings.** The first \$100 of your total deposits, excluding mobile deposits made to a Personal deposit account, made on a business day will be available to you on that same business day. The remaining funds from deposits of checks will be available on the first business day after the day of your deposit. For a mobile deposit made to a Personal deposit account, all funds will be available on the first business day after the day of your deposit.

**5. Other Check Deposits to all other types of Business deposit accounts not listed above in section number 4.** The first \$225 of each deposit will be made available on the next business day after the day of deposit and the rest of the deposit will be available no later than the second business day after the day of deposit, with the following exception. Checks with the first four digits of the routing and transit numbers of 1214 or 3214 will be available no later than the third business day.

**6. Longer Delays May Apply.** In some cases, we will not make all of the funds that you deposit by check available at the times shown above.

**Case-by-Case Hold:** Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. However, the first \$225 of your total deposits made on a business day will be available to you on the next business day.

If we are not going to make all funds from your deposit available at the times shown above, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to a bank employee at a branch, or if we decide to take this action after you have left the premises, we will mail you the notice not later than the close of the business day following the banking day you made your deposit, or on the business day we learn of the reason requiring delay.

If you need the funds from a deposit right away, you should ask us when the funds will be available.

**Exception Holds:** In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,525 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment or other conditions beyond our control.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available for withdrawal no later than the fifth business day after the day of your deposit. In case of emergency conditions, a notification of any delay in your ability to withdraw funds will be provided within a reasonable time and in a reasonable manner given the emergency circumstances unless funds subject to this delay are made available before such notification must be provided.

**7. Special Rules for New Accounts.** If you are a new customer, the following special rules may apply, at our discretion, during the first 30 days your account is open instead of the rules described above.

Funds from electronic direct deposits to your account will be available on the business day that the funds are due to you. Funds from deposits of cash, wire transfers, and the first \$5,525 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,525 will be available no later than the fifth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,525 will not be available until the second business day after the day of your deposit.

Funds held from all other check deposits will be available on the fifth business day after the day of your deposit.

**8. Hold on Other Funds.** If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds in your account will be available 2 business days after the day the check is cashed.

### PART III - FDIC's CONTRACT PROVISIONS FOR ALL PASS-THROUGH DEPOSIT ACCOUNTS

KeyBank has determined that your Account may be held on behalf of one or more beneficial owner(s) (for example as an agent, nominee, guardian, executor, custodian or funds held in some other capacity for the benefit of others), and that those beneficial owners may be eligible for "pass-through" insurance from the FDIC. This means the account could qualify for more than the standard maximum deposit insurance amount (currently \$250,000 per depositor in the same ownership right and capacity). If your Account is held on behalf of one or more beneficial owner (s) and your Account has transactional features (such as accounts with check writing capability and/or the use of debit cards) as defined in § 370.2(j) of the FDIC's Rules and Regulations at [https://www.fdic.gov/regulations/laws/rules/2000-9200.html#dic2000part370\\_2](https://www.fdic.gov/regulations/laws/rules/2000-9200.html#dic2000part370_2), in order to comply with § 370.5(a), you as the account holder must be able to provide a record of the interests of the beneficial owner(s) in accordance with

the FDIC's requirements as specified below. Following these procedures may minimize the delay that these depositors may face when accessing their FDIC-insured funds.

The FDIC has published a guide that describes the process to follow and the information you may need to provide in the event of failure. In addition, the FDIC published an Addendum to the guide, section VIII, which is a good resource to understand the FDIC's alternative recordkeeping requirements for pass-through insurance. The Addendum sets forth the expectations of the FDIC to demonstrate eligibility for pass-through insurance coverage of any deposit accounts, including those with transactional features. The Addendum will provide information regarding the records you should keep on the beneficial owners of the funds, identifying information for those owners, and the format in which to provide the records to the FDIC upon a potential failure. That information can be accessed on the FDIC's website at <https://www.fdic.gov/regulations/laws/rules/2000-9200.html#fdic2000appendixbtopart370>.

You agree to cooperate fully with us and the FDIC in connection with determining the insured status of funds in such accounts at any time. In the event of failure, you agree to provide the FDIC with the information described above in the required format within 24 hours of KeyBank's failure for all pass-through accounts with transactional features and any other accounts to which you will need rapid access. As soon as the FDIC is appointed, a hold may be placed on your account so that the FDIC can conduct the deposit insurance determination; that hold will not be released until the FDIC obtains the necessary data to enable the FDIC to calculate the deposit insurance. You understand and agree that your failure to provide the necessary data to the FDIC may result in a delay in receipt of insured funds and legal claims against you from the beneficial owners of the funds in the account. If you do not provide the required data, your account may be held or frozen until the information is received, which could delay when the beneficial owners would receive funds. Notwithstanding other provisions in this Agreement, this section survives after the FDIC is appointed as our receiver, and the FDIC is considered a third-party beneficiary of this section.

(ID 1973-512)

**AUTOMATED CLEARING HOUSE DEBIT  
PROTECTION  
EPA Service Schedule**

<b>For Bank Use Only</b> TIN # (required) Account # (optional) Document Type: Treasury Services Agreement Aux Doc Type: ACH EPA Agreement Contact Name: Phone: Agreement Modified <input type="checkbox"/> Yes or <input type="checkbox"/> No
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**Client Name:** ("Client")

**THIS SCHEDULE.** Client has decided to use the Service described below and KeyBank National Association ("Bank") agrees to provide the Service as stated herein. Client and Bank agree that the Service shall be performed in accordance with this Schedule and Client's selections, designations, authorizations and/or other instructions, and subject to the Master Agreement between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Schedule is hereby made a part of the Master Agreement. All capitalized terms in this Schedule shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement.

**1. Services.** With respect to each Protected Account, Bank shall provide one of the following services ("Service(s)"), as selected by Client:

- A.** The rejection of all ACH debit entries, or
- B.** The rejection of all ACH debit entries except those that meet the criteria specified by Client. Client shall:

- (i).** Provide the information requested by Bank regarding the Service being selected for each Protected Account in such format as required by Bank from time to time ("Set-Up Instructions") and
- (ii).** Indicate the effective date or dates for the Service; provided, however, that Bank shall require a reasonable time period to implement the Services.

The ACH debit entries contemplated herein DO NOT include debit entries originated by Bank or any Bank Affiliate as creditor for payment of amounts owed under a credit facility.

**2. Protected Account.** Client shall designate one or more of its accounts at Bank with respect to which Bank shall provide the automated clearing house ("ACH") debit protection Services. Each such account shall hereinafter be referred to as a "Protected Account."

**3. Subsequent Instructions.** Following the initial delivery of Set-Up Instructions to Bank in accordance with Section 4, Client may deliver to Bank additional subsequent instructions ("Subsequent Instructions"):

- A.** In writing on a data sheet form provided by Bank, or
- B.** Electronically through a computer-to-computer transmission. Bank shall have a commercially reasonable time to implement any Subsequent Instructions received. Client shall designate in the Set-Up Instructions the method it intends to use to deliver Subsequent Instructions to Bank.

**4. Genuineness of Instructions.**

Notwithstanding any other provision herein, Client attests that it has in place sufficient internal safeguards to prevent fraudulent Set-Up Instructions and/or Subsequent Instructions (collectively, "Instructions") from being generated and agrees that Bank is under no obligation to verify the authenticity of any Instructions received by Bank in the normal course of dealing between the parties. Client further agrees that Bank shall not be liable for any losses resulting, directly or indirectly, from Bank following any Instructions.

**5. Return of ACH Debit Entries.** Bank shall use reasonable efforts to return to the originating financial institution ACH debit entries in accordance with the Instructions (using an ACH return code that indicates the entry is unauthorized) within the time period allowed by the applicable ACH Operating Rules, as in effect from time to time. Notwithstanding any provisions to the contrary in the Master Agreement, Bank shall not be liable for any costs or damages incurred by Client or any other person in connection with any ACH debit entry, which is returned by Bank in accordance with the Instructions.

**6. Client Information**

Client understands and acknowledges that, in order for Bank to perform the Services hereunder, Client must provide all information required by Bank, including without limitation, the Instructions, in a timely manner, and such information must be accurate and complete. In the event that any such information is not timely, accurate and/or complete, Bank may be unable to reject an entry in accordance with the Instructions, and, in this event and notwithstanding anything to the contrary in the Master Agreement, this Schedule, or any related documents, Bank shall not be liable for its failure to return such entry.

**7. Entries not Subject to Debit Protection Services.**

This Service Schedule in no way restricts Bank from charging the Protected Account for (i) the settlement activity related to the origination of ACH credit entries authorized by Client, or (ii) any fees or other amounts owed by Client to Bank or to a third party selected by Bank from time to time to provide specific services, including without limitation, the ordering of checks for the Protected Accounts.

**Client:**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**KEYBANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**AUTOMATED CLEARING HOUSE  
ELECTRONIC DATA INTERCHANGE  
Service Schedule**

**For Bank Use Only**

TIN # (required)  
Account # (optional)  
Document Type: Treasury Services Agreement  
Aux Doc Type: ACH EDI Agreement  
Contact Name:  
Phone:  
Agreement Modified  Yes or  No

**Client Name:** ("Client")

**THIS SCHEDULE.** Client has decided to use the Service described below and KeyBank National Association ("Bank") agrees to provide the Service as stated herein. Client and Bank agree that the Service shall be performed in accordance with this Schedule and Client's selections, designations, authorizations and/or other instructions, and subject to the Master Agreement between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Schedule is hereby made a part of the Master Agreement. Reference to the "Schedule" or "Service Schedule" herein shall include the Master Agreement. All capitalized terms in this Schedule shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement.

**1. Service.** The Automated Clearing House ("ACH") and Electronic Data Interchange ("EDI") service ("Service") provided hereunder by Bank enables Client to originate Debit Entries, Credit Entries or both Debit Entries and Credit Entries to the accounts of Receivers at Bank ("On-us Entries") or at Receiving Depository Financial Institution ("RDFI") pursuant to the terms of this Schedule and the Rules of the National Automated Clearing House Association ("NACHA") or other automated clearing house(s) as applicable. (Such rules shall hereinafter be referred collectively as the "Rules"). The Service also enables Client to originate addenda records and other Entry Data that further describe the payment Entries. Bank shall receive from Client, or Client's agent, Entries and Entry Data originated in compliance with the formatting, media, deadlines and other requirements provided to Client by Bank, to enable Bank to process and transmit Entries and Entry Data pursuant to the terms of this Schedule and the Rules. Undefined terms used in this Schedule which are defined in the Rules shall have the meanings ascribed thereto in the Rules.

**2. Procedures.** Bank shall provide Client with technical requirements, operational procedures, and security procedures regarding the Service(s) selected as applicable. Client shall follow the requirements and procedures, which Bank may revise from time to time.

**3. Third-Party Sender.** In the event Bank permits Client to perform the services of a "Third-Party Sender" for other

Originators as "Third-Party Sender" is defined in the NACHA Rules, Client must submit to Bank a completed Third-Party Sender Agreement in the form required by Bank. Client agrees that the terms of this Schedule shall apply to Client as Third-Party Sender, in addition to the terms of the Third-Party Sender Agreement.

**4. Risk Management; Credit Limits and Controls.** Notwithstanding anything set forth in this Schedule to the contrary, Client agrees that all ACH transactions that are handled by the Bank will be handled subject to the following:

A. Client shall promptly provide such information required by Bank and comply with procedures established by Bank from time to time for Bank to assess:

- (1) the nature of Client's ACH activity and the risks it presents,
- (2) Client's origination and return activity across multiple settlement dates, and
- (3) Client's creditworthiness.

B. Client will comply with the exposure limits established by Bank and will comply with restrictions established by Bank on the type or amount of ACH transactions that may be originated from time to time. Bank will monitor compliance with the exposure limits across all processing cycles for a given settlement date and across multiple settlement dates. If a file of payments exceeds the applicable file and/or exposure limit, processing will be suspended and authorized Bank personnel will make a determination on whether the file will be processed, deleted or otherwise returned to the Client. Bank will review the credit assessment periodically to ensure that recent economic conditions having a possible impact on Client's financial position are taken into consideration. Credit limits will be based on all credit relationships between Bank and Client.

C. If the Client's financial condition is deteriorating, Bank may require, and Client agrees, to pre-fund Client's account or take such other action as required by Bank, provided however, that Bank reserves its right to terminate the Services as provided herein.

D. From time to time, Bank may, in its discretion, require that Client irrevocably make available to Bank, in good and collected funds, the total amount of all Credit Entries prior to the time Bank processes the Entries ("Prefund"). If Client is required to Prefund, Client shall have sufficient funds in the Account (defined below) one to two (1-2) business days prior to the Settlement Date, and Client authorizes Bank to place a hold on the Account in the amount of Client's Credit Entries one to two (1-2) business days prior to the Settlement Date. If Client fails to Prefund the full amount of Credit Entries as required, Bank may, in its discretion, refuse to process such Credit Entries. If Client only partially Prefunds Credit Entries as required, Bank may, in its discretion, determine which Entries have been Prefunded or may refuse to process all Entries.

**5. Client Account.** Client shall maintain a designated account (the "Account") with Bank and hereby authorizes Bank to debit or credit such Account, as appropriate, in connection with Entries processed and transmitted by Bank in name of Client.

A. Credit Entries. Client shall maintain sufficient funds available for withdrawal in the Account on each Settlement Date to cover the aggregate amount of Credit Entries, processed and transmitted by Bank in the name of Client, to be settled that day. Bank shall debit the Account on each Settlement Date and may do so even though the debit may bring about or increase an overdraft. Any such overdraft shall be immediately due and payable by Client without notice or demand. If, in the reasonable opinion of Bank, Client's financial condition has become materially impaired, Bank may require Client to fund the Account in immediately available funds prior to the Settlement Date.

B. Debit Entries. Bank shall credit the Account on each Settlement Date in an amount equal to the aggregate amount of Debit Entries, processed and transmitted by Bank in the name of Client, to be settled that day. Bank need not make any deposit to the Account available for withdrawal until Bank has reason to know that the Debit Entries have been paid. In the event Bank fails to receive final settlement for a Debit Entry for whatever reason, Bank may charge back the amount thereof to the Account or claim a refund from Client.

**6. Same Day Origination.** Bank shall offer same day origination of Credit and Debit Entries ("Same Day Origination"). Eligible Entries may not exceed one hundred thousand dollars (\$100,000.00), and do not include International ACH Transaction Entries. Client may elect to opt-out of Same Day Origination by notifying Bank in writing. If Client does not otherwise notify Bank, Eligible Entries received by the cut-off time with an effective date of the same day will process as a Same Day Entry.

**7. Entries and Entry Data.** Client shall transmit Entries and Entry Data to Bank in the content and form, and within the time deadlines, as required by Bank and

indicated on Exhibit A to this Schedule. Bank may refuse or delay processing or transmittal of Entries, and Entry or Entry Data, including cancellations, reversals, error corrections or adjustments thereof, in the event Entries or Entry Data issued in the name of Client are not in accordance with mutually agreed security procedures, are unclear or incomplete or are not in compliance with Bank's requirements and procedures, or in the event of any other reasons satisfactory to Bank.

**8. Security Procedures.** Client and Bank shall comply with mutually agreed security procedures. All Entries and Entry Data issued in the name of Client are subject to verification by Bank pursuant to the security procedures. Bank may process and transmit Entries and Entry Data in the name of Client when verified by Bank pursuant to such procedures. Client acknowledges that the purpose of such security procedures is for verification of authenticity and not to detect an error in the transmission or content of an Entry. Client agrees that it will keep the security procedures strictly confidential and will take all steps to make sure neither Client nor any agent, employee, representative or any other affiliated party of Client reveals or provides access to any confidential information or security procedures to anyone other than Client's authorized users, and then only within Client's use of the Services for purposes of conducting transactions. Client shall be responsible for any unauthorized use or disclosure of all security procedure materials entrusted to it. Bank may deliver or disclose security procedure materials to any person designated by Client as an authorized representative on the appropriate authorization form. Client agrees to regularly read the security messages on the Bank's websites (including without limitation KeyNavigator<sup>SM</sup>) and to implement and maintain safe and secure computing practices. Bank shall not be liable for any loss, damage, or liability which may arise from the unauthorized use of the security procedure.

**9. Processing and Transmittal of Entries and Entry Data.** In processing and transmitting On-us Entries and Entry Data, Bank shall debit or credit, as applicable, the accounts of Receivers on its books. In processing and transmitting Entries and Entry Data intended for the accounts of Receivers at RDFIs, Bank shall process and transmit such Entries and Entry Data to the ACH Network for processing and ultimate transmittal to RDFIs which have agreed to receive such Entries. The relationship between Bank and Client with respect to Entries and Entry Data issued in the name of Client and transmitted by Bank to the ACH Network, except as otherwise provided in this Schedule, shall be governed by the terms of the applicable Rules.

**10. Inconsistency of Name and Account Number.** Client acknowledges and agrees that if an Entry or Entry Data describes the Receiver inconsistently by name and account number, Bank may rely upon the account number, even if it identifies a person different from the named Receiver, and that Client's obligation to pay the amount of the Entry is not excused in such circumstances.

**11. Warranties and Indemnity.** Client agrees to all warranties determined by the Rules. Without limiting the foregoing, Client warrants and agrees at the time of origination of each Entry that:

A. Each Entry is accurate, is timely, has been authorized by the party whose account will be credited or debited, and otherwise complies with the Rules;

B. Client has complied with all pre-notification requirements of the Rules;

C. Each Debit Entry is for a sum due and owing Client or is a correction of a previously transmitted erroneous credit entry;

D. Client has identified itself to the Bank as the originator by use of a commercially reasonable method;

E. Client uses commercially reasonable fraudulent transaction detection systems to 1) establish the identity of users who provide payment instructions in person, via the internet or by telephone and 2) verify the validity of routing-and-transit numbers contained within payment instructions. Additionally, Client warrants that it uses a secure Internet session and commercially reasonable security technology, which provides a level of security that, at a minimum, is equivalent to the applicable NACHA standard at the time this Schedule is signed;

F. Client has provided adequate financial information to allow the Bank to monitor the Client's creditworthiness on an ongoing basis;

G. Client has agreed to an exposure limit and agreed to procedures to review that exposure limit periodically;

H. Client has agreed to certain procedures to enable the Bank to monitor entries initiated by the Client relative to its exposure limit across multiple settlement dates;

I. Client has complied and will comply with all applicable laws and regulations, including without limitation the applicable terms of the federal and state Electronic Funds Transfer Acts, the Uniform Commercial Code Article 4A, and the NACHA Rules and shall perform its obligations under this Schedule and the Master Agreement in accordance therewith. Client has the capacity to perform its obligations in conformance with the NACHA Rules.

J. Client shall be bound by and comply with the

provisions of the NACHA Rules making payment of any Entry by an RDFI to a Receiver provisional

until receipt by RDFI of final settlement for such Entry. Client specifically acknowledges that it has received notice of the rule regarding provisional payment.

K. Client represents and warrants that Client has adopted, implemented and will maintain at all times commercially reasonable policies and procedures for the secure receipt, storage, transmission and destruction of personal information, including, without limitation, Data for ACH Entries, as required by applicable law, NACHA Rules and policies adopted by NACHA. Client will notify Bank immediately of any Breach. Client will cooperate fully with Bank in regard to any Breach, including, without limitation, providing any and all information requested by Bank in connection with such Breach.

L. In addition to, and not as a limitation on, Client's indemnification obligations under the Master Agreement, Client shall indemnify Bank and hold it harmless from and against any and all claims, demands, losses, liabilities or expenses (including attorney's fees and costs) resulting directly or indirectly from: (i) a breach of any Client warranty; (ii) the transmittal by Bank of Entries and Entry Data in accordance with Client instructions, including cancellations, reversals, error corrections or adjustments; or (iii) the delay or failure of an RDFI in debiting or crediting a Receiver's account.

**12. Entry Rejection by Bank.** In the event that Bank detects any errors in the Entries or Entry Data delivered by Client, Bank will give notice to Client by telephone or email no later than the time specified in Exhibit A attached hereto and made a part hereof, provided Entries and Entry Data are delivered to Bank no later than the time on the same day specified in Exhibit A. Client will thereafter furnish to Bank's computer operations center on the same day, a remake of the Entries and Entry Data no later than the time specified on Exhibit A.

**13. ACH Entry Rejection.** In the event that any ACH Entries or Entry Data are rejected by the ACH or any RDFI for any reason whatsoever, it shall be Client's responsibility to remake such ACH Entries or Entry Data; provided, however, that Bank shall remake such ACH Entries or Entry Data where such rejection was due to mishandling by Bank and correct data is available to Bank to permit it to remake such Entries or Entry Data. Client shall retain and provide Bank on request all information necessary to remake any File, Entries or Entry Data for three banking days after midnight of the Settlement Date.



**14. Cancellations or Amendments by Client.** Client shall have no right to cancel or amend any Entry after receipt of Entry by Bank. However, if a request by Client complies with the security procedures herein, the requirements specified in Exhibit A, and is in the format and media required by Bank, Bank shall use reasonable efforts to act on such request, but Bank shall have no liability if such cancellation or amendment is not effected. Client acknowledges that compliance with such a request is within the discretion of Bank and RDFI, and Client shall indemnify both Bank and RDFI from and against any and all claims, demands, losses, liabilities or expenses (including attorney's fees and costs) resulting directly or indirectly from compliance by Bank and the RDFI with such request.

**15. Record Retention.** Client agrees to keep all written authorizations required by the Rules on file for at least two years after such authorization has been terminated. Authorizations should be available upon request to Bank or RDFI.

**16. Compliance with Law.** Client agrees to comply with all applicable laws and regulations, including without limitation the applicable terms of the federal and state Electronic Funds Transfer Acts, the Uniform Commercial Code Article 4A, and the NACHA Rules. Client agrees that it will not initiate entries that violate the laws of the United States. Client shall perform its obligations under this Schedule and the Master Agreement in accordance with applicable law and the NACHA Rules. Client and Bank agree that each is bound by the NACHA Rules.

**17. OFAC.** Client agrees to comply with the sanctions enforced by the Office of Foreign Assets Control of the United States Treasury Department ("OFAC"). Client agrees, warrants and represents that it will not violate OFAC-enforced sanctions, and will not act on behalf of, or transmit funds to or from, any party subject to such sanctions.

**18. Audit.** Client agrees that Bank has the right to audit Client's ACH processes, controls and activities hereunder at the Bank's discretion.

**18. Third-Party Service Provider.** In the event Client uses a third-Party service provider ("TPSP") to submit Entries on behalf of Client to Bank as ODFI, Client agrees as follows:

(a) Client shall provide Bank with information in writing regarding each TPSP, the activities to be performed by TPSP on behalf of Client, and the conditions under which TPSP shall perform such activities, and shall provide written notice to Bank of any change in such activities, or if a relationship with a TPSP is terminated or initiated. Client will provide additional information regarding TPSP as requested by Bank from time to time;

(b) Client is responsible for the activities of the TPSP as if Client had performed such activities itself, and Client hereby waives any claim that Client is not responsible for TPSP's breach of this Agreement, any Applicable Law or the Rules, or any act or omission of a TPSP;

(c) Client will make each TPSP aware of the terms of this Schedule and the Master Agreement as amended from time to time and the requirements, compliance obligations and liabilities of TPSP hereunder and under the Rules and applicable law, including without limitation the terms of Exhibit A hereto, requirements regarding data quality, accuracy and security, and the performance of periodic audits including audits required by the NACHA Rules;

(d) All warranties made by Client under the Rules and this Schedule are made by Client on its own behalf and also on behalf of a TPSP for those activities performed by TPSP on Client's behalf;

(e) Client shall cause TPSP to execute and deliver to Bank the Third-Party Service Provider Agreement in the form required by Bank; and

(f) Client shall defend, indemnify and hold Bank harmless from any and all claims, actions, demands, losses, damages, liabilities, costs, expenses (including without limitation reasonable attorneys' fees' and court costs) and the costs of settlement of claims, relating to or arising out of, directly or indirectly, in whole or in part, Client's use of a TPSP, a TPSP's breach of any provision of this Agreement, or of Applicable Law or the Rules, or the acts or omissions of a TPSP; this indemnity shall survive termination of this Schedule. Client agrees that Client's failure to disclose to Bank Client's use of TPSP or update information regarding a TPSP shall have no effect on Client's liability and responsibilities under this section.

**19. Termination.** In addition to any termination rights in the Master Agreement, Bank may immediately terminate this Schedule and the Services at any time for any reason or no reason upon written notice to the other party. If the NACHA Rules or the Uniform Commercial Code requires, permits or otherwise provides for the return or chargeback of an item or transaction within a specified period of time, Client agrees to maintain sufficient funds in an account at Bank for such period of time after termination of the Services for settlement of such returns or chargebacks. Client agrees that Bank may place a hold on the Account during such period if Bank determines in its commercially reasonable judgment exercised in accordance with prudent banking practices that it is necessary to preserve funds in the Account for returns and chargebacks. In the event of any

termination, all fees incurred under this Agreement so terminated shall become immediately due and payable. All warranties of the Client made herein and obligations of Client that arose prior to termination shall survive the termination of this Agreement and the processing of any item, entry or payment order which may be applicable thereto, shall bind the successors and permitted assigns of the Client and shall inure to the benefit of Bank, its successors and assigns.

**20. Governing Law.** This Service Schedule shall be governed by the laws of the State of Ohio (without regard for conflict of law rules) and applicable federal law, but with respect to all fees and charges related to the Account and the Services provided herein, federal law alone shall control.

**21. Complete Agreement.** The parties agree that this Service Schedule and the Master Agreement constitute the complete and exclusive expression of the terms of this agreement between the parties regarding the Service and the matters covered hereunder. To the extent there is any conflict among this Agreement, the Service Schedules, or the Deposit Account Agreement, the terms of the Service Schedule shall control.

**22. Amendments.** The Bank may change, add or delete the terms of this Service Schedule upon thirty (30) days prior notice to Client in writing or by electronic means. Client's continued use of or failure to terminate any Service after the effective date of the change will evidence Client's agreement to the change.

**Client:**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**KEYBANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**EXHIBIT A**  
**Automated Clearing House Electronic Data Interchange Service Schedule**  
**SERVICE LEVELS FOR ELECTRONIC FUNDS TRANSFERS**

**I) Delivery of Input Data**

**ACH transactions initiated via Direct Transmission:**

Delivery of Input Data to be entered into the ACH is to be delivered not later than **9:00 p.m. EST** on the "banking day" scheduled for delivery.

For Same Day Origination of ACH Entries, delivery of Input Data to be entered into the ACH must be delivered to the Bank not later than **3:00 p.m. EST** on the "banking day" scheduled for delivery. Eligible Entries must have an effective date of (a) that day, or (b) the next processing date if submitted on a weekend or holiday, or (c) a date that has already passed in the "Effective Date" field as indicated in position 70-75 of the batch header (d) client has not opted out of Same Day. Any ineligible Entries will be processed as next day items without further notice by Bank.

**ACH transactions initiated via KeyNavigator<sup>SM</sup> :**

Delivery of Input Data to be entered into the ACH is to be delivered not later than **8:00 p.m. EST** on the "banking day" scheduled for delivery.

For Same Day Origination of ACH Entries, delivery of Input Data to be entered into the ACH must be delivered to the Bank not later than **3:00 p.m. EST** on the "banking day" scheduled for delivery. To be eligible for Same Day Origination, Client must manually change the "Payment Date" field to that day's date and not be opted out of Same Day ACH. Any ineligible Entries will be processed as next day items without further notice by Bank.

Data for Debit Entries is to be delivered no later than one banking day before the Settlement Date.

Data for Credit Entries is to be delivered no later than two banking days before the Settlement Date. If a Credit Entry file is delivered less than two (2) days before the Settlement Date, the Bank may, on its own initiative and without liability, endeavor to process the Credit Entry file. However, the entry may be subject to delayed posting at the RDFI if any processing delays occur at the ODFI, the ACH Operator, or the RDFI. The Client agrees and understands that in such an event the Bank shall have no liability to the Client for any posting delays.

A "banking day" shall mean any day on which the ACH and the main office of the Bank are both open for business, but shall not include any Saturday, Sunday, or holiday.

**II) File Deletions and Remake Capabilities**

Section I establishes delivery schedules and a cut-off time for processing but allows no provision for error correction or adjustment by the Client, provision for which is made herein.

**a. For files received for same day or next day settlement,** data must be delivered by the Client to BANK'S OPERATIONS CENTER in accordance with the terms of the Schedule under the following schedule in order to allow sufficient time for processing:

- Data to be delivered to Bank by 9:00 a.m. EST
- Error notification by Bank to Client by 10:30 a.m. EST
  
- Remade data file delivered to Bank by 11:00 a.m. EST
- **b. For files received prior to same day or next day settlement,** Client is able to remake file according to deadlines listed in Section I.

**III) Maintenance Requests**

As an alternative to the Remade Data File, the Bank will accept up to five (5) adjustment requests. These requests will be accepted via fax submitted in writing in a form provided by the Bank. A fee as stated in the fee schedule provided to Client by Bank will be charged for each adjustment processed. **Bank will process all adjustments submitted pursuant to the terms hereof but does not guarantee that adjustments will be completed.**

**a. Maintenance Requests (Deletes).** In order to delete a credit transaction, Bank must receive Client's adjustment

request by 3:00 p.m. EST, three (3) days prior to the transaction's effective date. In order to delete a debit transaction, Bank must receive Client's adjustment request by 3:00 p.m. EST, two (2) days prior to the transaction's effective date. If the request falls outside the abovementioned specifications, Bank will use reasonable efforts to delete the credit or debit transaction.

**b. Maintenance Requests (Reversals).** In the event Bank is unable to delete a transaction, Bank will initiate a reversal transaction up to five (5) banking days following the Settlement Date to comply with the "five day rule" in the NACHA Rules. Requests for reversals can be submitted to Bank's Operations Center prior to 3:00 p.m. EST of the fifth day. Bank's Operations Center" means the AUTOMATED CLEARINGHOUSE (ACH) OPERATIONS SECTION of Bank's Operations Center, located at 4910 Tiedeman Road, Cleveland, OH 44144.

**KEY CAPTURE<sup>®</sup>**  
**Service Schedule**

<b>For Bank Use Only</b> TIN # (required) Account # (optional) Document Type: Treasury Services Agreement Aux Doc Type: Key Capture Agreement Contact Name Phone: Agreement Modified <input type="checkbox"/> Yes or <input type="checkbox"/> No
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**Client Name:** ("Client")

**THIS SCHEDULE.** Client has decided to use the Service described below and KeyBank National Association ("Bank") agrees to provide the Service as stated herein. Client and Bank agree that the Service shall be performed in accordance with this Schedule and Client's selections, designations, authorizations and/or other instructions, and subject to the Master Agreement between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Schedule is hereby made a part of the Master Agreement. All capitalized terms in this Schedule shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement.

**1. Designated Accounts.** Client shall designate one or more deposit accounts at Bank (collectively, the "Account") with respect to which check truncation and Electronic Item presentment services described in Section 3 below (the "Services") shall apply, subject to the terms and conditions of this Schedule, the Master Agreement, and Bank's Deposit Account Agreement and Funds Availability Policy. The number and title of each Account and any special instructions are set forth in Set-Up Instructions completed between the parties. Each new account shall be designated in a new Set-up Instruction. In order for Bank to perform the Services hereunder, Client must provide all information required by Bank, and such information must be accurate and complete. In the event that any such information is not timely, accurate or complete, Bank may reject or be unable to process an Electronic Item and, in this event and notwithstanding anything to the contrary in the Master Agreement or Schedule(s), Bank shall not be liable for its failure to process such Electronic Item. Client may make deposits using the Services only to Accounts designated pursuant to this paragraph.

**2. Responsibilities of Client.**

A. Client shall truncate those one or more Original Checks that Client has received for payment or deposit and which Client has selected for truncation. Client shall create an electronic file ("Electronic File"), using the Application (as defined below), containing all such truncated Original Checks (collectively, called "Electronic Items") and shall transmit such Electronic File to Bank. The term "truncate" means to remove an Original Check from the forward

collection and payment process and send to a recipient, in lieu of such Original Check, electronic information relating to the Original Check (including data taken from the MICR line of the original check or an electronic image of the Original Check). The term "Original Check" means the first paper check issued with respect to a particular payment transaction.

B. Client represents, warrants and covenants that after truncation of an Original Check, Client or designated third party provider shall safeguard the Electronic Items and Original Checks (collectively "Items") identified in any Electronic File previously sent to Bank in order to assure that such Original Checks and Electronic Items (i) shall not be submitted for deposit with Bank or any other financial institution, except in accordance with the terms and conditions of this Schedule related to un-processable Electronic Items and (ii) shall not be transferred for value to any other person or other entity.

C. Upon receipt of any transmitted Electronic File, Bank shall be the lawful owner of such Electronic File and each Electronic Item with respect to Original Checks imaged in such Electronic File. Client shall retain and securely store all Original Checks truncated pursuant to this Schedule for a minimum period of time to be determined by Client in its own business judgment, after which time Client may destroy such Original Checks. Client agrees that such retention and destruction shall be carried out in a commercially reasonable manner. Client shall not maintain any copies of Electronic Files or Electronic Items. However, for accounting, auditing and other legal purposes, Client may keep electronic records regarding its receipt and deposit of such checks, provided such internal electronic records cannot be used to generate duplicate Electronic Files for purposes of depositing and presenting such checks for payment. Client agrees that it shall be liable for any damages, losses or other liability resulting from the retention and destruction of Original Checks, Electronic Files or Electronic Items.

D. Client shall not at any time truncate and shall not create an Electronic File under this Schedule for (i) any foreign checks, drafts or other items drawn on any financial institution that is not located in any State (as defined in Regulation CC) in the U.S.A. (including certain designated US Territories that are included as States), (ii) any Substitute Check created by Bank or any other person or other entity except as provided for

redeposit of a returned check or returned Electronic Item in Paragraph 4. A. below, (iii) U.S. savings bonds and (iv) other items that are not eligible for check image collection and presentment under applicable law.

E. Client agrees that for all purposes under this Agreement, the Documentation, any other agreements with Bank relating to the Account, and the application of applicable law to the Service, an Electronic Item shall be deemed to be a "check" and/or an "item" as such terms are used and defined in the Uniform Commercial Code, the Expedited Funds Availability Act, Regulation CC and Regulation J of the Federal Reserve Board and other applicable check law and rules to the same extent that the Original Check is a check and/or an item.

F. Client shall comply with such limits on Electronic Items or Electronic Files or other limitations on the Account(s) as are established by Bank from time to time, and shall establish procedures to assure compliance with such limits on an ongoing basis.

G. Client shall promptly provide to Bank such information as is reasonably requested by Bank relating to the Services including, without limitation, information regarding (1) the Account, (2) any Electronic Files or Items, (3) Client's physical location(s) and security, (4) check storage practices, (5) controls over use of the Services and related equipment, (6) transportation of data between Client sites or to third party sites and offsite storage utilized by Client at any time, (7) Client's procedures and policies for use of the Services by Client's employees, agents or third parties, including separation of duties, (8) Client's business continuity program, (9) Client's anti-money laundering program, (10) Client's data security program, and (11) any other information required by Bank to monitor Client's use of the Services.

H. Client shall have a plan for depositing its items at Bank in the event the Services are unavailable for any reason and shall provide Bank with a copy of such plan upon request.

I. Client will provide Bank with sixty (60) days prior written notice of a change in control of Client.

J. Client agrees that if Bank identifies an Electronic Item or Electronic File submitted by Client as an Electronic Item or Electronic File that has been previously transmitted to Bank ("duplicate presentment"), Bank will immediately charge the Electronic Item or Electronic File back to Client's Account or other account of Client, without accepting the Electronic Item or Electronic File for deposit. Client further agrees that if Bank accepts an Electronic Item or Electronic File for deposit and thereafter determines that the Electronic Item or Electronic File was a duplicate presentment, Bank may chargeback such Electronic Item or Electronic File at any time after acceptance. The provisions of this paragraph do not affect the warranty made by Client in paragraph 4. B. (ii) regarding duplicate presentment and Client's liability under

this Agreement for breach of such warranty.

### **3. Services; License; Responsibilities of Bank.**

A. Bank grants to Client a non-exclusive, non-transferable limited right and license in the Application and any related software for Client's internal business use in accordance with the Documentation. "Application" means the Key Capture product and related software for the creation and transmission of Electronic Files. "Documentation" means all materials, whether supplied in printed form or on magnetic tape or other media, that explain or facilitate the use of the Application and related software, without limitation, user manuals, standard operational manuals or instructions, training materials, flow charts, logic diagrams, systems manuals, programming manuals and modification manuals.

B. Bank shall accept for deposit at Bank's designated location all Electronic Files containing Electronic Items transmitted by Client using the Application, which are acceptable to Bank in its sole discretion or otherwise qualify based on criteria selected by Bank from time to time, subject to the terms of this Schedule and shall process such Electronic Items, either as electronic image exchange items or as Substitute Checks, for forward collection and presentment for payment by the paying bank, subject to applicable laws and regulations and clearinghouse rules. Client agrees that an Electronic File will not be deemed received by Bank until Client has received an electronic deposit receipt from Bank. Client agrees to print such receipt for its records.

C. Electronic Items accepted by Bank before Bank's cut-off time and availability schedule in effect for Electronic Items, as established or modified by Bank from time to time, shall be posted to Client's Account for settlement that banking day. Bank will make a deposit to the Account available for withdrawal in accordance with Bank's availability schedule. With respect to any return of an Electronic Item or warranty claim from another person relating to an Electronic Item, or if Bank fails to receive final settlement for an Electronic Item for whatever reason, Bank may charge back the amount of the returned Electronic Item or warranty claim to the Account.

D. Bank may in its sole discretion repair an Electronic Item, or the related MICR line information, prior to processing and collecting the Electronic Item. In the event that Bank detects an error in the Electronic Items or Electronic File delivered by Client and Bank determines not to process such Electronic Items or Electronic File, Bank will promptly notify Client. Client will thereafter transmit to Bank a corrected Electronic Item, or destroy the applicable Electronic Item and deposit the related Original Check for check processing to any account of Client. Client agrees that it is solely responsible for any loss in the event that an Electronic

Item or Electronic File cannot be processed for any reason and the Original Check is unavailable for collection.

**4. Client Warranties, Covenants.** Client makes the following representations, warranties and covenants as of the date of this Schedule and upon each delivery of an Electronic File to Bank:

A. Any Electronic File shall not include an electronic representation of a "substitute check" as defined in Part D of the FRB Regulation CC, except in connection with Client's redeposit of a returned check, or a returned Electronic Item. The term "Substitute Check" means: a paper reproduction of an Original Check that (1) contains an image of the front and back of the original check; (2) bears a MICR line containing all the information appearing on the MICR line of the Original Check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks; (3) conforms in paper stock, dimension, and otherwise with generally applicable industry standards for substitute checks; and (4) is suitable for automated processing in the same manner as the Original Check.

B. With respect to each Electronic Item in any Electronic File delivered to Bank:

(i) The Electronic Item accurately represents all of the information on the front and back of the Original Check as of the time that the Original Check was truncated, including without limitation the payment instructions of the drawer such as the amount of the check, the payee, and the drawer's signature, information identifying the drawer and the paying bank, and the MICR line of the Original Check, except for any changes required or permitted by Part 229, Subpart D of the FRB Regulation CC for Substitute Checks, and meets the technical requirements for sending Electronic Items to any Federal Reserve Bank ("FRB") or collecting bank as set forth in the applicable FRB operating circular or clearing house rule. The term "magnetic ink character recognition line" and "MICR line" mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of an Original Check in magnetic ink.

(ii) No party will receive a transfer, presentment, or return of, or otherwise be charged for, the Electronic Item, the Original Check, or a paper or electronic representation of the Electronic Item such that the party will be asked to make payment based on an Electronic Item, Original Check or Substitute Check it already has paid.

C. The Electronic Item bears all endorsements, if any, applied by previous parties that handled the check in any form (including the Original Check, a Substitute Check, or another paper or electronic representation of such Original Check or Substitute Check) for transfer, forward collection or return. Client shall indorse each Original Check prior to truncation in accordance with this Agreement and applicable law. Client shall be responsible to Bank for all losses that arise from the failure of Client to endorse an

Original Check or an Electronic Item. Client authorizes Bank as its agent and service provider to place the endorsement of Client on each Electronic Item or Original Item. Client acknowledges and agrees that Bank is acting as a collecting bank with respect to the Electronic Items or Original Checks that are delivered to it by Client.

D. Client is a person entitled to enforce the Original Check or is authorized to obtain payment of the Original Check on behalf of a person who is either entitled to enforce the Original Check or authorized to obtain payment on behalf of a person entitled to enforce the Original Check.

E. Bank will not sustain a loss due to Client's submission of Electronic Files.

F. All information provided by Client hereunder is accurate and true.

G. Client has complied with all applicable laws, regulations and rules in using the Service.

H. Electronic Files submitted do not contain viruses.

I. Client will use the Services, including, without limitation, the Application and related software, in accordance with the Documentation.

J. Client makes the same warranties and representations to Bank that Bank makes under applicable law to any bank or other person in connection with the collection or presentment by Bank of Electronic Items or Substitute Checks created from Electronic Items.

K. Client has the processes in place to comply with limits imposed by Bank on the Services, the terms of this Schedule and applicable law.

L. Client has processes in place to effectively back up Client information related to the Services, to test Client's processes, hardware and software used in conjunction with the Services, and to make deposits at Bank if the Services are unavailable.

M. Client is and will continue to be in compliance with the terms of any other agreement with Bank for services or credit facilities, and is not in default of any term or condition thereof.

**5. Indemnity; Liability.** Client shall indemnify Bank and hold it harmless from and against any and all claims, demands, losses, liabilities or expenses (including interest, costs, and reasonable attorney's fees and other expenses of representation) proximately caused by or arising from (i) a breach of any warranty or covenant by Client under this Schedule; (ii) the acceptance and/or presentment by Bank of Electronic

Items (or Substitute Checks created from Electronic Items) for forward collection and payment in accordance with any Electronic File, which Bank reasonably believes was sent by or on behalf of Client; (iii) any representation, warranty or indemnity made by Bank to another bank or person under applicable law in connection with the collection or presentment by Bank of Electronic Items or Substitute Checks created from Electronic Items; or (iv) the use of the Application by Client. Certain of the Services or functionality of the Services may be provided by Bank through the internet. Bank recommends that Client have appropriate security measures for internet use, including a proxy server and/or firewalls to control and protect internet access. In no event will Bank have any liability in connection with and shall not be responsible for (i) inability to connect to or use any Service via the internet or inability to communicate with Bank via the internet or any website resulting from a problem with an internet service provider or online service provider, failure of Client's systems or otherwise, (ii) unknown hazards of internet use, including, without limitation, interception of any information relating to Client or its transactions, or any application errors in or security breaches of any internet browser, or (iii) any data that is lost or destroyed in connection with the use of the internet.

#### **6. Security Procedures.**

A. When an Electronic File is transmitted to Bank, its authenticity will be confirmed by Client prior to transmission pursuant to the security procedure mutually agreed upon by Client and Bank. Client agrees that the security procedures selected are commercially reasonable for Client and waives any objection that they are not. Each Electronic file transmitted to and accepted by Bank shall be binding upon Client.

B. Client shall at all times maintain sufficient safeguards and security procedures to prevent unauthorized or fraudulent Set-Up Instructions and fraudulent or unauthorized Electronic Files or Electronic Items. Client shall establish procedures that ensure deposits are made only by those persons authorized to do so. Bank is under no obligation to verify the authenticity of any Set-Up Instruction, Electronic File or Electronic Items, received by Bank in the normal course and manner of dealing between the parties. Client shall also maintain adequate safeguards for use of and storage of the software and Application.

C. Security or operational procedures for the detection of Client errors in creating any Electronic Item or Electronic File are not provided by Bank and in no event shall Bank be liable for Client errors.

**7. Pricing.** For the Services, Client shall pay fees and charges mutually agreed upon by the parties hereto. Payment shall be processed by Bank as part of the period account analysis performed by Bank with respect to the Accounts. Such fees and charges may be increased by Bank upon notice to Client.

**8. Audit / Site Visit.** Client agrees that Bank shall have the right to audit Client's processes, controls and operations and also shall have the right to conduct site visits of Client's location at Bank's discretion upon prior notice of not less than forty-eight (48) hours. Client agrees that at the request of Bank, Client shall perform self-assessments in form and scope as required by Bank. Client acknowledges and agrees that Bank has the right to mandate internal controls relating to the Service and Client shall promptly implement such internal controls when mandated.

**9. Scanners.** Client may use one or more scanners compatible with Bank's systems as specified by Bank from time to time ("Scanners"). Scanners are not provided by Bank and shall be acquired by Client in connection with Services hereunder. Client is solely responsible for installing and connecting the Scanners in accordance with instructions provided by Bank, if any. Client shall use the Scanners only at Client's location. Client shall not move the Scanners location outside of the United States or Canada. Client acknowledges and agrees that any attempt to use the Services outside of the United State and Canada will be automatically declined. Bank is not responsible in any manner for repair or replacement of the Scanners or for any deficiency caused in whole or in part by inaccurate or deficient data, images, Scanners or other program or technology provided or created by any party other than Bank, including without limitation, any failure or consequence of a failure of the Scanners to function as purported by a vendor, or any loss, theft, damage, misuse or destructions of the Scanners. **BANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY SCANNER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.**

**10. Client's Internal Controls.** Client will (i) manage and administer the security of all use of the Service; (ii) designate employees of Client authorized to access and use the Scanners to prevent misuse of the Scanners or fraud; (iii) create user profiles, (iv) enable or disable user identification, (v) enable, disable, or distribute access mechanisms, and security procedures and (vi) complete, execute, and modify any forms or Service-related documentation deemed necessary by Bank. Bank may rely on all designations made by Client until such time as Bank receives notice that such designations have been changed. Client agrees to establish and maintain effective control procedures and policies for Client's use of the Service for the prevention of fraud, including, without limitation, fraud involving the theft and re-deposit or duplicate deposit of Items. Client shall notify Bank immediately of any misuse of the Service, breach of security procedures or fraud in use of the Service. Client shall integrate Client's use of the Service and the Scanners into Client's security program, including, without limitation, information security and



physical security programs, as well as Client's disaster recovery or business continuation procedures. Client acknowledges that in the event the Service is unavailable for any reason, Client may make deposits into its Account at a physical location of Bank.

**11. Termination.** This Schedule shall continue in effect until terminated by Client upon ten (10) days prior written notice; Bank may terminate this Schedule at any time. In the event of any termination, all fees incurred under this Schedule shall become immediately due and payable, and all Documentation and other materials related to the Application shall be returned to Bank by Client.

**12. Survival of Obligations.** Sections 2.B., 2.C., 2.E., 2.G., 2.J., 3.C., 4, 5, and 10 shall survive any expiration or earlier termination of this Schedule and, thereafter, remain in full force and effect.

**13. Multiple Signatures.** This Schedule may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together will constitute one and the same written agreement. This Schedule was signed in the United States.

**14. Use of Third Parties.** If Client enters into an agreement with a third party to act as an agent or broker on behalf of Client or otherwise to provide services to Client which services include the authorization by Client for the third party to use the Key Capture Services to truncate and electronically present items to Bank for deposit into Client's Account on behalf of Client or otherwise to be involved in the Services ("Third Party"), Client agrees to execute or cause to be executed such agreements or other documents relating to Client's use of the Third Party as are required by Bank from time to time.

**15. Execution.** Client and Bank acknowledge and agree that the execution of the Master Agreement and this Schedule was completed in the United States of America.

**Client:**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_  
**KEYBANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

## POSITIVE PAY Service Schedule

Client Name: ("Client")

### For Bank Use Only

TIN # (required)

Account # (optional)

Document Type: Treasury Services Agreement

Aux Doc Type: Positive Pay Agreement

Contact Name:

Phone:

Agreement Modified  Yes or  No

**THIS SCHEDULE.** Client has decided to use the Service described below and KeyBank National Association ("Bank") agrees to provide the Service as stated herein. Client and Bank agree that the Service shall be performed in accordance with this Schedule and Client's selections, designations, authorizations and/or other instructions, and subject to the Master Agreement between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Schedule is hereby made a part of the Master Agreement. All capitalized terms in this Schedule shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement.

### 1. Service.

Under the Positive Pay Service ("Service") provided hereunder by Bank, the Bank shall receive from Client, or Client's agent, certain information, including, but not limited to, the serial number, dollar amount, account number, and issue date of each item (the "Issuance File") in compliance with the formatting, media, deadlines and other requirements provided to Client by Bank. For the purposes hereof, "item" shall include, without limitation, checks, authorized drafts, and checks converted to ACH

entries, payable in US currency, that are presented for payment by electronic or other means. When the items are presented for payment, the Client authorizes the Bank to match the information against the Issuance File provided. Items that match are paid with no additional inspection. Items that do not match are reported to the Client in the Positive Pay Mismatch Report (the "Positive Pay Mismatch Report"), giving the Client an opportunity not to pay specified items. Bank shall provide to Client, guideline directions, documentation and other materials, as may be necessary, further describing appropriate and reasonable account procedures and Client agrees to be bound by the procedures contained therein, to the extent same are reasonable.

### 2. Procedures.

Client is authorizing the Bank to conduct a daily review of items being presented for payment against the Issuance File the Client has issued. This includes items presented at a branch office of Bank for encashment ("Teller Positive Pay"). The Bank will deliver (via KeyNavigator<sup>SM</sup>) a report to the Client of items that do not match issue file criteria as indicated in Exhibit A attached hereto and made a part hereof ("Exhibit A"). Bank, in addition to the Positive Pay Mismatch Report and additional account procedures, as described above, will provide the Client with technical

procedures regarding the Service selected as applicable. Client shall follow the requirements and procedures, which Bank may revise from time to time. Client agrees that by choosing this Service, Client expressly authorizes the Bank to rely solely upon the procedures set forth herein for payment, and that Bank will not be liable for any errors or problems with items the Client electronically authorizes the Bank to pay.

Client and Bank agree to be bound by Client's selection below directing Bank to either PAY ALL or RETURN ALL items on the Positive Pay Mismatch Report in the event Client takes no action on the Positive Pay Mismatch Report by the time limits set forth in Exhibit A and has not otherwise instructed Bank in writing.

### Client must initial one of the following options:

           **PAY ALL.** If Client takes no action on the Positive Pay Mismatch Report by the time limits set forth in Exhibit A, the items on the Positive Pay Mismatch Report will be considered properly payable and Client hereby authorizes payment of the items. If this option is selected, Client shall be referred to hereafter as a "PAY ALL Client."

           **RETURN ALL.** If Client takes no action on the requirements, operational procedures, and security

Positive Pay Mismatch Report by the time limits set forth in Exhibit A, Client hereby directs Bank to return all items on the Positive Pay Mismatch Report. If this option is selected, Client shall be referred to hereafter as a "RETURN ALL Client."

### **3. Teller Positive Pay.**

As part of the Positive Pay service, the Teller Positive Pay feature will be engaged. Therefore, items presented at teller lines of Bank branch offices will be reviewed against the Issuance File and paid or not paid, subject to the procedures provided in Section 1 herein.

If the Client decides to disengage Teller Positive Pay, the Client must notify the Bank in writing. In the event Client requests Teller Positive Pay to be disengaged, items will not be matched against the Client Issuance File at the teller line. Accordingly, any decision to either pay or not pay items, will not be governed by this Schedule.

### **4. Issuance File.**

Client shall transmit the Issuance File to Bank in the content and form, and within the time deadlines, as required by Bank as indicated on Exhibit A. Bank may refuse or delay processing or transmittal of the Issuance File, including cancellations, reversals, error corrections or adjustments thereof, in the event the Issuance File

issued in the name of Client is not in accordance with mutually agreed security procedures, is unclear or incomplete or is not in compliance with any reasonable account procedures prescribed by Bank, or in the event of any other reasons satisfactory to Bank.

**5. Security Procedures.**

Client and Bank shall comply with mutually agreed security procedures. All data issued in the name of Client is subject to verification by Bank pursuant to the security procedures. Bank may process and transmit Issuance File in the name of Client when verified by Bank pursuant to such procedures. Client shall be responsible for any unauthorized use or disclosure of all security procedure materials entrusted to it. Bank may deliver or disclose security procedure materials to any person designated by Client as an authorized representative.

**Client:**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**KEYBANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**EXHIBIT A**  
**Positive Pay Service Schedule**

**I. Issuance File Match Criteria**

The Bank will deliver a report to the Client of items that do not match the following issue file criteria:

- Items Not On Issue File
- Conflicting Dollar Amount
- Duplicate Presentment
- Void/Cancel On File

**Optional service upon Client Implementation Request:**

- Stale Dated Item
- Exceeds Dollar Limit
- Payee Name Conflict \*\*

**\*\* The Payee Name Conflict option allows the Client to match the payee name to the Issuance File. PLEASE NOTE, this option is only effective for Issuance File items issued AFTER the implementation date of this option. Accordingly, the Bank will not match Payee Names to Issuance File items received prior to the implementation date, unless the Client re-issues outstanding items with an updated Issuance date.**

**II. Issuance File Delivery Schedule** Client should submit its Issuance File of items as soon as possible after items are issued. For Positive Pay processing, the deadline for submission of item issuance information is 11:00 pm ET ("Eastern Time") on the day **prior** to the physical distribution of items (this includes manually issued items).

**III. Positive Pay Mismatch Report delivery schedule: Same Day Positive Pay: Controlled Disbursement Point: Report Available At:**

Albany, New York	12:00 pm Local Time ("LT")	Portland, Maine	12:00 pm LT
Vermillion, Ohio	12:00 pm LT	Price, Utah	12:00 pm LT
Anchorage, Alaska	12:00 pm LT		

"Local time" is defined as the time zone applicable to the geographical location of the assigned Bank account processing location

Same Day Positive Pay Clients will have until 6:00 pm ET to place a stop payment on any suspect item(s) that they do not want to post to their account.

If a PAY ALL Client takes no action on the Positive Pay Mismatch Report by the time limits set forth herein, the items on the Positive Pay Mismatch Report will be considered properly payable and Client hereby authorizes payment of the items.

If a RETURN ALL Client takes no action on the Positive Pay Mismatch Report by the time limits set forth herein, Client directs Bank to return all items on the Positive Pay Mismatch Report.

**Next Day Positive Pay: Report Available At:**

All Accounts 10:30 am LT

Next Day Positive Pay Clients will have until 2:00 pm LT to place a return on any suspect item(s) that they want returned from their account. Local Time is defined as the time zone of the account processing geographical location at the Bank.

If a PAY ALL Client takes no action on the Positive Pay Mismatch Report by the time limits set forth herein, the items on the Positive Pay Mismatch Report will be considered properly payable and Client hereby authorizes payment of the items.

If a RETURN ALL Client takes no action on the Positive Pay Mismatch Report by the time limits set forth herein, Client directs Bank to return all items on the Positive Pay Mismatch Report.

**It is the Client's responsibility to review their Positive Pay Mismatch Report each day. Failure to review the report will mean that all suspect items will be treated as PAY ALL or RETURN ALL as selected by Client on the first page of the Service Schedule.**

**IV. Error Notification by Bank and Error Correction by Client Bank Error:** In the event the delivery of the Same Day and/or Next Day Positive Pay Mismatch Report to Clients is either delayed or corrupt, Key Bank will notify the Client with an announcement message on KeyNavigator<sup>SM</sup>.

**Client Error:**

In the event of an error on an incoming Client Issuance File, the Bank may take action to contact the Client and request that the Client re-send the Issuance File with the correct information. The Bank will not be accountable for processing errors due to Client failure to meet the requirements of any reasonable account procedures prescribed by Bank.

**WIRE TRANSFER  
Service Schedule**

**For Bank Use Only**  
TIN # (required)  
Account # (optional)  
Document Type: Treasury Services Agreement  
Aux Doc Type: Wire Agreement  
Contact Name:  
Phone:  
Agreement Modified  Yes or  No

**CLIENT NAME:** ("Client")

**THIS SCHEDULE.** Client has decided to use the Service described below and KeyBank National Association ("Bank") agrees to provide the Service as stated herein. Client and Bank agree that the Service shall be performed in accordance with this Schedule and Client's selections, designations, authorizations and/or other instructions, and subject to the Master Agreement between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with this Schedule and all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Schedule is hereby made a part of the Master Agreement. All capitalized terms in this Schedule shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement.

**1. Service.** Bank provides Client with access to a Wire Transfer Service which enables Client to transfer available funds from its account at Bank as stated herein. Client agrees to be legally bound by the following terms and conditions each time that Client uses this Wire Transfer Service.

**2. Authorizations.**

(A) The authority of any agent of Client may be established under applicable principles of agency law or by resolution of the Client. Without limiting the generality of the foregoing, Client hereby authorizes each of the persons listed on the Payment Authorization Form (each herein called an "Authorized Representative"), and any person who may be added to the Payment Authorization Form by amendment thereof, to issue or authorize to be issued requests, instructions, and payment orders, including any cancellation or amendment thereof, in the name and on behalf of the Client, given by any means or modality, including without limitation by oral, written, terminal, personal computer, telephone, telegraph, telex, facsimile or electronic communication or signal, for or relating to any funds transfer from or into any account or accounts of the Client. Bank may rely on the authorization set forth in the prior sentence with respect to any Authorized Representative until the Wire Communications Department of Bank has received a proposed amended Payment Authorization Form deleting such person as an Authorized Representative, and Bank has had a reasonable opportunity to act upon any such amendment. Any amendment to the Payment Authorization Form may be signed by any other person whose authority to do so has been established to Bank's satisfaction.

(B) Client requests Bank to transfer funds from Client account(s) whether such accounts are at Bank or another financial institution, and to any account of a third party specified by Client, whether such third party account(s) is at Bank or another financial institution.

(C) Client requests Bank to effect funds transfers based upon pre-determined repetitive transfer instructions described in any Repetitive Transfer Schedule executed in the name of the Client currently on file with Bank ("Repetitive Transfers"). Such instructions cover pre-authorized transfers of a repetitive nature (those in which transfer debit and credit parties remain the same; date and dollar amount may be variable).

(D) The Client warrants and represents that Client's performance of this Schedule has been duly authorized and is a binding obligation of the Client.

**3. Security Procedures.**

(A) When a payment order issued in the name of a Client is transmitted directly to the Wire Communications Department of Bank, its authenticity will be verified pursuant to the security procedure chosen by the Client from among the alternative security procedures set forth in the Payment Authorization Form. Where Repetitive Transfers are requested, such initial request and any proposed modification to the Repetitive Transfer Schedule will be verified in accordance with the security procedure set forth in the Payment Authorization Form, but each successive transaction need not otherwise be independently verified.

(B) Client agrees that the security procedure chosen by Client as set forth in the Payment Authorization Form are commercially reasonable for the Client and waives any objection that they are not. The Client shall be bound by any payment order, whether or not authorized, issued in its name and accepted by Bank in compliance with such security procedures. To the extent that Client fails to follow these security procedures, Client shall be deemed to have refused such security procedures.

(C) Bank will assign a unique Personal Identification Number (PIN) for each of Client's Authorized Representatives as designated in the Payment Authorization Form. Client shall be responsible for transmitting the PIN to the appropriate Authorized Representative and for assuring that it is not made known to any person other than the Authorized Representative by whom it is intended to be used. Client shall maintain the

PINs in strictest confidence and take security measures sufficient to assure that they are not used to facilitate unauthorized transactions.

(D) If applicable, Bank will assign to each user an identification number ("User ID"), a temporary Password, and requires user to register a digital certificate which will enable Client to initiate payment orders by personal computer through the Internet. Client shall change the initial assigned Password immediately. Each user shall maintain his/her own unique User ID and Password. Client shall exercise reasonable care in determining when changes in the Password shall be made. If applicable, Client shall be responsible for terminating a user's access. Client has the option to require another authorized individual to approve or cancel a transfer request before it is released.

(E) Bank may require the use of a user authentication device for each of Client's Authorized Representatives as designated in the Payment Authorization Form. Client shall be responsible for transmitting the user authentication device to the appropriate Authorized Representative. Client shall maintain the user authentication device in strictest confidence and take security measures sufficient to assure that it is not used to facilitate unauthorized transactions.

(F) Client warrants that each transaction initiated or facilitated by the use of the User ID, Password, or any PIN is fully authorized by the Client and by any other party whose authorization is required. Bank shall not be liable for any loss, damage, or liability which may arise from the unauthorized use of the User ID, Password, or any PIN.

(G) The security procedures set forth in the Payment Authorization Form are available only if the Client's payment orders are transmitted directly to the Wire Communications Department of Bank. If the Client instead chooses to transmit such payment orders to a Bank representative outside the Wire Communications Department (such as a branch office employee or the Client's relationship manager or his or her assistant), the security procedures will be limited to possible voice recognition and the Client will be deemed to have refused the security procedures set forth in the Payment Authorization Form.

(H) Security procedures for the detection of Client errors are not provided by Bank and in no event shall Bank be liable for Client errors.

**4. Inconsistencies Between Names and Numbers.** If an identifying or bank account number provided in a payment order issued in the name of the Client identifies a person different from the beneficiary named in the payment order, or if the words and numbers set forth in a payment order are otherwise inconsistent, the Client understands that execution or payment of the payment order might be made by Bank, another beneficiary's bank,

or any other person on the basis of identifying number, bank account number, or other number rather than on the basis of the name or words. If a payment order identifies an intermediary bank or the beneficiary's bank both by name and an identifying number and the name and number identify different persons, the Client understands that Bank, another receiving bank, or any other person might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from Bank identified by name. Bank may, in its discretion and without liability, choose to rely either upon a name or other words, or upon an identifying, related, accompanying, or bank account number in a payment order. Bank shall not, for any purpose, be deemed to know that an account identifying or other number in a payment order does not identify or match the person or words intended to be identified or otherwise set forth therein unless the officer or employee of Bank who receives or accepts the payment order has actual knowledge and awareness of the contents of the payment order and the fact that a discrepancy exists.

**5. Execution, Rejection and Payment of Payment Orders.** Bank shall have the right to reject or impose conditions that must be satisfied before it will accept a payment order for any reason, including without limitation Client's violation of any term of this Schedule or the Master Agreement, Client's failure to maintain a sufficient withdrawable account balance, or the belief by Bank that the payment order may have not in fact been authorized. The payment order may also be rejected by an intermediary or beneficiary's bank other than Bank, or by operation of law. If a payment order is rejected, Bank shall endeavor to notify the Client by telephone, electronic transmission, in writing or by other means chosen by Bank. The notice shall be effective when given. Bank shall, however, have no liability to Client by reason of such rejection by another person in the funds transfer chain, or the fact that such notice was not given or was not given at an earlier time. Bank shall have no liability to Client for failing to notify Client within any specified period of time of receipt, acceptance, execution, or payment of any payment order.

**6. Execution Date.** The Client shall not issue a payment order instructing execution or payment on a banking day later than the day the order is received by Bank unless Bank agrees to accept such order.

**7. Cut-Off Hours.** Format requirements and cut-off hours may be established and changed by Bank from time to time. Payment orders received after such cut-off hours may be treated by Bank for all purposes as having been received on the following banking day.

**8. Provisionality of Credits.** While an account of the Client may be credited in the amount of an incoming payment order, such crediting shall be subject to receipt of final settlement by Bank and any cancellation effected or agreed to by Bank.

**9. Cancellation and Amendment.** Client shall have no right to amend or cancel any payment order. Bank may, however, on its own initiative and without obligation, act upon a request to amend or cancel, but shall have no liability if such cancellation or amendment is not effected. Any such request to cancel or amend must be received by the Wire Communications Department of Bank, on or before the banking day on which the payment order is to be executed. If Bank agrees to a request from the sender or originator to cancel a payment order which has been credited to a Client's account, Bank may deduct or set off the amount of the order from or against any Client account or otherwise obtain a refund from the Client.

**10. Overdrafts.** The Client does not have the right to incur an overdraft in any of its accounts as a result of a funds transfer. The Client shall have in its account, at the time a payment order is initiated, a balance of actually and finally collected funds sufficient to cover all of its obligations including the payment order. Bank may, however, in its discretion, execute the payment order even if such execution should result in the creation of an overdraft in a Client's account. The Client shall be liable to Bank for any such overdraft. If insufficient Client funds are available to cover a payment order, including charges, Bank may, in its discretion, send the amount of funds available or send the payment net of charges, or not execute the payment order.

**11. Report of Discrepancies in Payment Orders.** Within fourteen (14) days after the date the Client receives notification from Bank, whether by advice, confirmation, statement or otherwise, or Bank makes such notification available to the Client, whether by computer link or otherwise, that a payment order in the name of the Client was accepted by Bank or the Client's account was debited or credited with respect to a payment order, or within fourteen (14) days of any earlier date upon which the Client has notice from another source of execution, payment, non-execution, or non-payment by Bank or any other party of any payment order issued in the name of or paid to the account of the Client, the Client must notify the Wire Communications Department of Bank of the relevant facts regarding any unauthorized or erroneous payment order, any discrepancy reflected in such notification or notice, and any right of a refund. Failure of Client to so notify shall relieve Bank of any liability it would otherwise have in regard to such payment order. Bank shall have no obligation to notify the Client of the receipt, execution, or payment of any payment order within any specified period of time. If Client chooses not to receive advices, statements or other notifications of debits or credits to the Client's account, or instructs Bank to hold such notifications for Client, the fourteen-day period set forth herein shall be deemed to begin to run, respectively, on the date of the debit or credit or on the date the notification is prepared by Bank.

**12. Recording.** Bank may, but shall not be obligated to, tape or otherwise record telephone conversations between Bank and Client.

**13. Third Party Transfers.** Client covenants and agrees that Client may only use KeyNavigator<sup>SM</sup> to initiate funds transfers on its own behalf and in Client's own name. Client will not use KeyNavigator<sup>SM</sup> to initiate funds transfers on behalf of Client's customers or other third parties.

**14. Notices.** All notices or written communications of any type related to the Schedule or to the funds transfers hereunder shall be directed: (A) if sent by the Client, to the address for notices to Bank as set forth in the Payment Authorization Form, unless the Wire Communications Department of Bank, shall expressly specify a different address to the Client in writing; and (B) if sent by Bank, to the address of Client set forth in the Payment Authorization Form, as the same may be amended to reflect a different address.

**Client:**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**KEYBANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

**Attachments:**

Payment Authorization Form  
*NOTE:* This form *must* accompany all Wire Transfer Service agreements.  
Repetitive Transfer Schedule (optional)





## ERIE COUNTY WATER AUTHORITY

Balance Summary		Billing Information	
Average Ledger Balance	\$8,778,611.00	Settlement Cycle	Monthly
LESS: Average Float	\$563,968.00	Payment Method	Direct Debit
<b>Balances Available to Support Services</b>	<b>\$8,214,643.00</b>	Days in the Month	31

Service Charge Summary	
Service Charges Eligible for Earnings Credit	\$11,049.36
Earning Credit Rate	0.40 %
LESS: Earnings Credit Allowance	-\$2,710.83
Direct Service Charge	\$0.00
<b>Service Charges Due</b>	<b>\$8,338.53</b>

Service Account Summary		
Service Codes	Services	Total Service Charges
AFP00	BALANCE & COMPENSATION INFORMATION	\$0.00
AFP01	GENERAL ACCOUNT SERVICES	\$55.00
AFP05	LOCKBOX SERVICES	\$8,245.12
AFP10	DEPOSITORY SERVICES	\$307.64
AFP15	PAPER DISBURSEMENT SERVICES	\$51.15
AFP20	PAPER DISB. RECONCILIATION SERVICES	\$89.10
AFP25	GENERAL ACH SERVICES	\$1,940.32
AFP26	ACH CONCENTRATION SERVICES	\$0.00
AFP35	WIRE AND OTHER FUNDS XFER SERVICES	\$302.50
AFP40	INFORMATION SERVICES	\$58.53
AFP99	UNDEFINED SERVICES	\$0.00

Service Account Details					
Service Codes	Services	Quantity	Unit Price	Total Service Charges	Balance Needed To Support Services

AFP00 BALANCE & COMPENSATION INFORMATION					
000230	DEPOSIT ASSESSMENT	87,786	\$0.00000	\$0.00	\$0.00
009999	DEPOSIT COLLATERAL CHARGE	8,778,612	\$0.00000	\$0.00	\$0.00
009999	INTEREST ON CHECKING	66	\$0.00000	\$0.00	\$0.00
009999	MONTHLY COLLATERAL CHARGE	8,778,612	\$0.00000	\$0.00	\$0.00
<b>AFP00__Total</b>				<b>\$0.00</b>	<b>\$0.00</b>

AFP01 GENERAL ACCOUNT SERVICES					
010000	MAINTENANCE	5	\$11.00000	\$55.00	\$166,666.50
010300	DDA PAPER STATEMENT	5	\$0.00000	\$0.00	\$0.00
010307	KEYNAV CORP BANKING STATEMENT	4	\$0.00000	\$0.00	\$0.00
010407	KEYNAV ANALYSIS STATEMENT	1	\$0.00000	\$0.00	\$0.00
010499	ANALYSIS CHARGE- PAPER DETAIL	1	\$0.00000	\$0.00	\$0.00
<b>AFP01__Total</b>				<b>\$55.00</b>	<b>\$166,666.50</b>

AFP05 LOCKBOX SERVICES					
050000	LOCKBOX CASH RECEIVED	3	\$7.00000	\$21.00	\$63,636.30



## ERIE COUNTY WATER AUTHORITY

050101	LOCKBOX SCANNABLE ITEMS	20,715	\$0.10000	\$2,071.50	\$6,277,266.45
050113	LOCKBOX SORT	19,646	\$0.15000	\$2,946.90	\$8,929,991.07
05011L	INCOMING EXPRESS PACKAGE	3	\$11.2500	\$33.75	\$102,272.63
05011M	LOCKBOX UNPROCESSABLE ITEMS	433	\$0.15000	\$64.95	\$196,817.99
05011R	LBX IMAGE CHECK SCAN	19,646	\$0.05000	\$982.30	\$2,976,663.69
05011R	LBX IMAGE REMIT SCAN	20,747	\$0.04000	\$829.88	\$2,514,785.36
050220	LOCKBOX OCR BASE	1	\$100.000	\$100.00	\$303,030.00
050300	LBX DEPOSITED ITEM CLEARING	19,646	\$0.04000	\$785.84	\$2,381,330.95
050400	KEYNAV RECEIVABLES BASE FEE	1	\$0.00000	\$0.00	\$0.00
050401	LOCKBOX DATA TRANSMISSION	19	\$5.00000	\$95.00	\$287,878.50
050424	KEYNAV LBX IMAGE BASE FEE	1	\$50.0000	\$50.00	\$151,515.00
059999	LOCKBOX PRIORITY MAIL DELIVERY	264	\$1.00000	\$264.00	\$799,999.20
<b>AFP05 Total</b>				<b>\$8,245.12</b>	<b>\$24,985,187.14</b>

AFP10 DEPOSITORY SERVICES					
100200	DEPOSITS	96	\$0.00000	\$0.00	\$0.00
100200	DEPOSITS KEY CAPTURE TICKET	62	\$0.50000	\$31.00	\$93,939.30
100200	DEPOSITS LOCKBOX	36	\$0.50000	\$18.00	\$54,545.40
10021B	ELECTRONIC ITEM CLEARING FEE	1,044	\$0.00000	\$0.00	\$0.00
10021B	RDC SCANNED ITEM	1,044	\$0.06000	\$62.64	\$189,817.99
100400	CHECK CHARGE BACKS	9	\$8.00000	\$72.00	\$218,181.60
100416	KEYNAV RETURN ITEM REPORT	1	\$36.0000	\$36.00	\$109,090.80
100416	RETURN ITM ADVICE W/IMG E-MAIL	9	\$7.00000	\$63.00	\$190,908.90
109999	RDC MONTHLY FEE	1	\$25.0000	\$25.00	\$75,757.50
<b>AFP10 Total</b>				<b>\$307.64</b>	<b>\$932,241.49</b>

AFP15 PAPER DISBURSEMENT SERVICES					
150030	POSITIVE PAY MAINTENANCE	2	\$0.00000	\$0.00	\$0.00
150100	CHECKS/DEBITS PAID	482	\$0.07500	\$36.15	\$109,545.35
150120	POSITIVE PAY PER ITEM	482	\$0.00000	\$0.00	\$0.00
150122	PAYEE POSITIVE PAY PER ITEM	482	\$0.00000	\$0.00	\$0.00
150410	KEYNAV STOP PAYMENT ENTRY	1	\$15.0000	\$15.00	\$45,454.50
<b>AFP15 Total</b>				<b>\$51.15</b>	<b>\$154,999.85</b>

AFP20 PAPER DISB. RECONCILIATION SERVICES					
200010	RECONCILIATION MAINTENANCE	2	\$20.0000	\$40.00	\$121,212.00
200110	RECONCILIATION PER ITEM	482	\$0.05000	\$24.10	\$73,030.23
200201	ARP DAILY TRANSMISSION/MONTH	1	\$25.0000	\$25.00	\$75,757.50
20020B	KEYNAV ARP ADD/CANCEL ENTRY	6	\$0.00000	\$0.00	\$0.00
<b>AFP20 Total</b>				<b>\$89.10</b>	<b>\$269,999.73</b>

AFP25 GENERAL ACH SERVICES					
250000	ACH MONTHLY FEE	2	\$25.0000	\$50.00	\$151,515.00
250100	ORIG ACH DR VIA KEYNAV FT ( Tier 1 Vol : 1-10000 )	17,333	\$0.04000	\$693.32	\$2,100,967.60
250100	ORIG ACH DR VIA KEYNAV FT ( Tier 2 Vol : 10001-20000 )	0	\$0.04000	\$0.00	\$0.00
250100	ORIG ACH DR VIA KEYNAV FT ( Tier 3 Vol : 20001-35000 )	0	\$0.04000	\$0.00	\$0.00
250100	ORIG ACH DR VIA KEYNAV FT ( Tier 4 Vol : 35001-50000 )	0	\$0.04000	\$0.00	\$0.00
250100	ORIG ACH DR VIA KEYNAV FT ( Tier 5 Vol : >50000 )	0	\$0.04000	\$0.00	\$0.00
250101	ORIG ACH CR VIA KEYNAV FT ( Tier 1 Vol : 1-10000 )	980	\$0.04000	\$39.20	\$118,787.76
250101	ORIG ACH CR VIA KEYNAV FT ( Tier 2 Vol : 10001-20000 )	0	\$0.04000	\$0.00	\$0.00
250101	ORIG ACH CR VIA KEYNAV FT ( Tier 3 Vol : 20001-35000 )	0	\$0.04000	\$0.00	\$0.00
250101	ORIG ACH CR VIA KEYNAV FT ( Tier 4 Vol : 35001-50000 )	0	\$0.04000	\$0.00	\$0.00
250101	ORIG ACH CR VIA KEYNAV FT ( Tier 5 Vol : >50000 )	0	\$0.04000	\$0.00	\$0.00



## ERIE COUNTY WATER AUTHORITY

250200	INCOMING ACH DEBIT ITEM ( Tier 1 Vol : 1-1000 )	161	\$0.04000	\$6.44	\$19,515.13
250200	INCOMING ACH DEBIT ITEM ( Tier 2 Vol : 1001-5000 )	0	\$0.04000	\$0.00	\$0.00
250200	INCOMING ACH DEBIT ITEM ( Tier 3 Vol : >5000 )	0	\$0.04000	\$0.00	\$0.00
250201	INCOMING ACH CREDIT ITEM ( Tier 1 Vol : 1-1000 )	165	\$0.04000	\$6.60	\$19,999.98
250201	INCOMING ACH CREDIT ITEM ( Tier 2 Vol : 1001-5000 )	0	\$0.04000	\$0.00	\$0.00
250201	INCOMING ACH CREDIT ITEM ( Tier 3 Vol : >5000 )	0	\$0.04000	\$0.00	\$0.00
250220	ACH RECEIVED ADDENDA	92	\$0.03000	\$2.76	\$8,363.63
250302	ACH RETURN ITEMS	68	\$2.00000	\$136.00	\$412,120.80
250501	ACH DATA TRANSMISSION	42	\$5.00000	\$210.00	\$636,363.00
250701	CAR REPORT VIA KEYNAV IR	1	\$0.00000	\$0.00	\$0.00
251051	EPA AUTHORIZE FEE	3	\$0.00000	\$0.00	\$0.00
251052	EPA ADMIN FEE/MONTH	2	\$5.00000	\$10.00	\$30,303.00
251070	ACH NOC	393	\$2.00000	\$786.00	\$2,381,815.80
<b>AFP25__Total</b>				<b>\$1940.32</b>	<b>\$5,879,751.70</b>

<b>AFP26 ACH CONCENTRATION SERVICES</b>					
260400	ACH REPORTS	1	\$0.00000	\$0.00	\$0.00
<b>AFP26__Total</b>				<b>\$0.00</b>	<b>\$0.00</b>

<b>AFP35 WIRE AND OTHER FUNDS XFER SERVICES</b>					
350103	KEYNAV DOMESTIC	16	\$13.0000	\$208.00	\$630,302.40
350123	KEYNAV BOOK TRANSFER ENTRY	11	\$3.00000	\$33.00	\$99,999.90
350300	INCOMING DOMESTIC WIRE	1	\$11.5000	\$11.50	\$34,848.45
35040Z	KEYNAV IN/OUT WIRE RPT	1	\$0.00000	\$0.00	\$0.00
350600	KEYNAV WIRE MAINTENANCE	1	\$50.0000	\$50.00	\$151,515.00
<b>AFP35__Total</b>				<b>\$302.50</b>	<b>\$916,665.75</b>

<b>AFP40 INFORMATION SERVICES</b>					
40001Z	KEYNAV FILE TRANSFER BASE FEE	1	\$0.00000	\$0.00	\$0.00
400052	KEYNAV PREVIOUS DAY REPORT ( Tier 1 Vol : 1-5 )	5	\$0.00000	\$0.00	\$0.00
400052	KEYNAV PREVIOUS DAY REPORT ( Tier 2 Vol : 6-10 )	0	\$0.00000	\$0.00	\$0.00
400052	KEYNAV PREVIOUS DAY REPORT ( Tier 3 Vol : >10 )	0	\$0.00000	\$0.00	\$0.00
400210	KTT ACCOUNT MANAGEMENT ACCESS	1	\$0.00000	\$0.00	\$0.00
400271	KEYNAV PRE DAY DETAIL ITEMS	1,004	\$0.05000	\$50.20	\$152,121.06
400800	LONG-TERM IMAGE ACCESS ( Tier 1 Vol : 1-1 )	3	\$2.77778	\$8.33	\$25,252.52
400800	LONG-TERM IMAGE ACCESS ( Tier 2 Vol : 2-4 )	0	\$2.77778	\$0.00	\$0.00
400800	LONG-TERM IMAGE ACCESS ( Tier 3 Vol : 5-10 )	0	\$2.77778	\$0.00	\$0.00
400800	LONG-TERM IMAGE ACCESS ( Tier 4 Vol : 11-15 )	0	\$2.77778	\$0.00	\$0.00
400800	LONG-TERM IMAGE ACCESS ( Tier 5 Vol : 16-25 )	0	\$2.77778	\$0.00	\$0.00
400800	LONG-TERM IMAGE ACCESS ( Tier 6 Vol : 26-50 )	0	\$2.77778	\$0.00	\$0.00
400800	LONG-TERM IMAGE ACCESS ( Tier 7 Vol : 51-99 )	0	\$2.77778	\$0.00	\$0.00
400800	LONG-TERM IMAGE ACCESS ( Tier 8 Vol : >99 )	0	\$2.77778	\$0.00	\$0.00
<b>AFP40__Total</b>				<b>\$58.53</b>	<b>\$177,373.58</b>

<b>AFP99 UNDEFINED SERVICES</b>					
999999	ACCOUNT PREMIUM	5	\$0.00000	\$0.00	\$0.00
999999	CONTRACTUAL PRICED CLIENT PACKAGE	1	\$0.00000	\$0.00	\$0.00
999999	RELATIONSHIP PREMIUM	1	\$0.00000	\$0.00	\$0.00
<b>AFP99__Total</b>				<b>\$0.00</b>	<b>\$0.00</b>

<b>Grand Total</b>				<b>\$11,049.36</b>	<b>\$33,482,885.74</b>
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### **Assumptions & Clarifications**

1. Balances Needed to Support Services are calculated as follows:  $\text{Total Fees/Days in the Month ( 31 ) X Days in the Year ( 365 ) / Earnings Credit Rate}$
2. Earnings Credit Rate is based on several market indicators and is subject to change monthly. For purposes of this analysis, the rate is .4%.
3. All services and products not listed on this proforma will be billed in accordance with Key Bank's Schedule of Rates, Fees, and Charges for Non-Personal Accounts, as well as the Cash Management Schedule of fees.
4. All fees quoted within this proforma are valid for 30 days and subject to change after this period. Other fees such as one-time setup charges and software licenses may apply.
5. For purposes of this proforma, volumes and balances were based on a month containing 31 days.
6. The pricing quoted in this proposal is effective March 2022.