

Corporate Clients

Commerzbank AG, New York Branch

# General Business Conditions

## 2014

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## **PART I. GENERAL BUSINESS CONDITIONS APPLICABLE TO ALL ACCOUNTS AND SERVICES OF COMMERZBANK AG, NEW YORK BRANCH**

This account agreement (as it may be amended or otherwise modified, this "Agreement") contains the general business conditions for all of the accounts and services which you as a customer (the "Customer" or "you") may establish and select, followed by service-specific provisions, and constitutes a written contract between Commerzbank AG, New York Branch, (together with any of its bank affiliates and successors and assigns, the "Bank" or "we") and you, the Customer. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

**By signing an account application, signature card or similar document, by accepting a copy of this Agreement, or by using or continuing to use the Account (as defined in Section 1(A) below) and services provided by the Bank, the Customer consents to this Agreement.**

**Note: DEPOSITS WITH THE BANK ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC"). The Bank is NOT a member of the FDIC. Instead, as a German banking institution, the Bank is a member of the Deposit Protection Fund of the Federal Association of German Banks, which provides worldwide insurance for all depositors of Commerzbank Aktiengesellschaft, within the limits of such deposit protection program, as further described in Section 20 below.**

### **1. Establishment of Accounts**

(A) All accounts of whatever nature, present or future, established by the Customer with any U.S. office of the Bank (including any International Banking Facility) or with the Grand Cayman Branch of Commerzbank AG (which is administered by the Bank) (collectively, the "Account") are subject to this Agreement and any other relevant Account documentation. The Customer agrees to use the Account only for commercial purposes and the Account may not be used for personal or consumer purposes.

(B) The Customer shall not transfer any of its rights and obligations in any Account or with respect to any service provided by the Bank, or create any lien or security interest over such rights and obligations or in any Account, without the prior written consent of the Bank.

(C) The Customer agrees at its sole expense: (i) to advise each of its employees, officers, agents or other persons accessing any service provided by the Bank by or on behalf of the Customer of their obligations under this Agreement or under any other Account documentation; and (ii) to provide the Bank with all information required by Bank to establish an Account and provide services for the Customer.

(D) The Customer acknowledges that it has established and is employing know-your-customer policies, procedures and controls, to the extent applicable, for purposes of ensuring that it is, and its customers are, in compliance with applicable laws and regulations relating to anti-money laundering and the economic sanctions of the Office of Foreign Asset Controls of the U.S. Department of the Treasury ("OFAC"). Customer also represents and warrants to the Bank that it is in compliance with the requirements of the Foreign Corrupt Practices Act (the "FCPA").

(E) The Bank is required by law to implement procedures to verify the identity of any person seeking to establish an account with the Bank. The Customer acknowledges that the Bank's identity verification procedures require the Bank to request certain information from the Customer or third parties regarding the Customer and the Customer agrees to provide the Bank with and consents to the Bank obtaining from third parties any such information requested as a condition of establishing the Account with the Bank or using any service provided by the Bank. Any failure by the Customer to provide or to consent to the provision of any such information shall be grounds for the Bank to refuse to establish any account or provide any service hereunder and/or to close the Account or discontinue providing any service.

(F) **DISCLOSURE NOTICES** - (i) To assist the U.S. government in regard to terrorism and money laundering activities, the USA Patriot Act requires all banks to obtain, verify, and record information that identifies each person and each legal entity that establishes the Account, such as the Customer's name, mailing address (not P.O. Box) and U.S. taxpayer identification number (TIN) or other government-issued ID. Please contact the Bank if you have any questions regarding the Account opening procedures mandated by the USA Patriot Act or otherwise. (ii) The Unlawful Internet Gambling Enforcement Act of 2006 (the "Internet Gambling Act") prohibits the Bank from processing "restricted transactions" as defined under the Internet

Gambling Act. Restricted transactions are those in which a person accepts credit, funds, instruments or other proceeds from another person in connection with unlawful internet gambling.

The Internet Gambling Act prohibits any person engaged in the business of betting or wagering (as defined in the Internet Gambling Act) from knowingly accepting payments in connection with the participation of another person in unlawful internet gambling. The United States Department of the Treasury and the Federal Reserve Board have issued a joint rule, Regulation GG, to implement the Internet Gambling Act. As defined in Regulation GG, unlawful internet gambling means to “place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the internet when such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager was initiated, received or otherwise made. As a customer of the Bank, please be aware that such restricted transactions are prohibited. If you do engage in an internet gambling business and open a new account with us, we will ask that you provide us evidence of your legal authority to do so.

## **2. Representations and Warranties**

(A) Customer represents and warrants that (i) it is solvent and validly existing and in good standing in the jurisdiction of its organization, (ii) it has all requisite power and authority to enter into this Agreement, and (iii) any consent required by its own company, any governmental authority or third party to enter into, or perform under this Agreement has been obtained.

(B) In addition to the terms and conditions included in this Agreement, Customer represents and warrants to the Bank that Customer has received and read any service documentation for each service Customer selected in Part IV hereof and Customer agrees to be bound by all terms, conditions and procedures included in this Agreement and all applicable service documentation.

## **3. Authorized Account Persons**

(A) The Customer will provide to the Bank specimen signatures of each person it authorizes to act on its behalf with respect to the Account (each, an “Authorized Account Person”) in the manner requested by the Bank. The Bank is authorized to rely upon any document executed by a person who it reasonably believes is authorized to act on behalf of the Customer with respect to the Account and services provided by the Bank until the authority for such person is terminated by the Customer upon written notice to the Bank, and the Bank has been afforded a reasonable opportunity to act on the termination instruction.

(B) Each Authorized Account Person, subject to any written limitation agreed upon by the Bank, is authorized on behalf of the Customer to: open, manage and close the Account; execute or otherwise agree to any agreement relating to the Account or services provided by the Bank; execute guarantees, indemnities or other undertakings to the Bank in relation to guarantees, letters of credit or other financial transactions (including, without limitation, transfer orders); draw, accept or endorse checks, drafts, bills of exchange, notes and other financial instruments (collectively “Items”); receive information and/or documentation relating to security procedures relating to the Account; and give instructions regarding (i) the payment, transfer or withdrawal of funds by wire, computer or other electronic means; (ii) money, credits, Items or property at any time held by the Bank for the account of the Customer; or (iii) any other transaction of the Customer with the Bank.

## **4. Agents; Information**

(A) The Customer authorizes the Bank to retain an affiliated company and/or any other agents to perform data processing, collection and other services with respect to any Account which the Bank considers necessary or desirable for the Bank. The Bank reserves the right to modify or terminate the Bank’s arrangements with the Bank’s agents at any time.

(B) The Customer agrees that requests, instructions, and information with respect to the Account, the Customer itself, or transactions to be disclosed in accordance with this Agreement or any other Account documentation, may be transmitted across national boundaries and through networks, including networks owned and operated by third parties. The Customer authorizes the Bank to disclose information (including any confidential information as may be protected under U.S. Federal or State law, or any law of the Federal Republic of Germany, or as defined in the “Confidential Relationships (Preservation) Law” of the Cayman Islands) with respect to any Account, the Customer itself, or any transaction in which: (i) the disclosure, in

the Bank's opinion, is necessary or desirable for the purpose of allowing the Bank to perform its duties and to exercise its powers and rights here under or under any other Account documentation; (ii) the disclosure is to a proposed assignee of the rights of the Bank; (iii) the disclosure is to a branch, affiliate, subsidiary, employee or agent of the Bank or to its or their respective auditors, regulators or legal advisers;

(iv) the disclosure is to the auditors of the Customer; or (v) the disclosure is permitted or required by law or regulation (including any law of the Federal Republic of Germany), regardless of whether the disclosure is made in the country in which the Customer resides, in which the Account is maintained, or in which the transaction is conducted.

## 5. Deposits

(A) The Customer represents and warrants that it has good title to all Items presented to the Bank for deposit. All Items deposited are received for collection only, and subject to final payment. The Bank chooses the method of collecting items and may retain or engage another bank or savings institution, a Federal Reserve Bank, or any clearing house association in the process. The Bank will present Items in accordance with its usual and customary practices. The Bank is not responsible for actions taken by other banks, nor for the loss or destruction of any Item in transit or in the possession of other banks. The Bank may agree with other banks and clearing houses to vary procedures regarding the collection or return of Items, and deadlines to the extent permitted by applicable law or practice.

(B) The Customer agrees that the Bank has acted with due care in selecting any collecting agent that is: (i) another bank or savings institution, (ii) a Federal Reserve Bank, or (iii) any clearing house association.

(C) Funds deposited into an Account are subject to the Bank's funds availability policy, a copy of which is attached and a copy of which is posted in the reception area of the Bank.

(D) The Bank may return or refuse to accept all or any part of a deposit or credit to an Account at any time, and will not be liable to the Customer for doing so even if such action causes outstanding Items to be dishonored and returned, or payment orders to be rejected. Refused deposits will be returned to the Customer. In addition, any credit card deposit made by the Customer must be in line with the overall business of the Customer.

(E) If the Bank credits an Account (i) in contemplation of receiving funds for the Customer's credit and such funds are not received by the Bank, or (ii) in reliance on a transaction which is subsequently set aside or revoked, or if the Bank does not receive funds for the Customer's credit for value on the date advised by the Customer, then the Bank shall be entitled to debit any Account of the Customer with the amount previously credited and any other charges incurred.

(F) If the Customer sends an Item to the Bank, the Bank may defer credit or payment for a reasonable time, without dishonor, and the Bank shall not be obligated thereon until it has remitted final payment. For all Items, credit will be given only after the Bank ascertains that the Item will not be returned subsequently for lack of funds or genuineness of the drawer's signature.

(G) In the event the pay or bank, drawer or payee on any Item returns the Item to the Bank or makes a claim against the Bank for recovery of any part of any Item after final payment thereof, in each case, on the grounds that such Item was altered or bore a forged or unauthorized endorsement or was otherwise not properly payable, the Bank may accept that return or pay that claim and charge the Customer's Account for all or any part of the amount of the Item. If the Customer deposits an Item drawn on the Bank and the Item or any endorsement is asserted to be forged, unauthorized or altered, the Bank may charge back all or any part of the amount of the Item. The Bank reserves the right to refuse to accept any such Item for deposit or collection.

(H) If the Bank receives notice that an Item deposited in an Account or an Item directed to be returned to the Bank has not been paid, then the Bank may either immediately charge back any Account or place a hold on any Account and charge any Account for the Item when the Item is returned to the Bank. If a returned Item is one that the Bank agreed to process as a return, the Bank may charge back or hold funds in the Customer's Account.

## 6. Payment of Items

(A) The Bank is authorized to pay any Item drawn on an Account, in accordance with the Bank's procedures. The Bank is authorized to debit the Account on which the Item is drawn on the day the Item is presented, certified or accepted, or at such earlier time that the Bank receives notice by electronic or other means that an Item drawn on an Account has been deposited for collection at another depository institution. The Bank may determine Account balances in order to decide whether to dishonor an Item for insufficient funds at any time between receiving such presentment or notice and the time of the return of the Item.

(B) The Bank is authorized to pay all Items presented to it regardless of amount and without inquiry as to the circumstances of issue, negotiation or endorsement or as to the disposition of proceeds, even if drawn, endorsed or payable to cash, bearer or the order of the signer or any Authorized Account Person or to a lender in payment of that individual's obligations.

(C) The Customer is responsible for protecting blank check stock and other Items from theft or loss, and for issuing Items in a manner so as to prevent unauthorized completion, alteration or addition. The Customer shall not issue Items that are post-dated, and the Bank shall not be liable for any damages caused by early payment or certification of a post-dated Item.

(D) The Bank will not be required to pay any Item presented more than six (6) months after its date or that is a non-negotiable Item, but the Bank may pay such an Item and charge the Account on which the Item is drawn for the Item.

(E) The Bank may process any Item by electronic means. All Items the Customer draws against any Account must comply with any check specifications and image standards adopted by the Bank from time to time as well as industry standards. The Bank shall not be liable for damages or losses due to any delay or failure in procuring, collecting or paying Items not conforming to such specifications or standards, except to the extent such losses or damages are the result of the Bank's gross negligence or wilful misconduct.

(F) The Customer assumes all responsibility and liability for any claim or loss that the Customer or the Bank may suffer as a result of the Customer: (i) issuing a check in such a manner that information, marks or bands on the back of the check obscure endorsements, or (ii) placing an endorsement on the back of the check which obscures other endorsements, and which thereby causes a delay in the forward processing and/or return processing of the check. The Bank retains the right to refuse to accept a check for deposit when the back of the check is obscured.

(G) If the Customer establishes an Account which purports to require two or more signatures on any Item drawn on the Account, or limits the maximum amount for which any person can sign an Item, the Customer acknowledges and agrees that any such requirement is solely for the Customer's own internal control purposes. The Customer agrees that as long as the Bank follows Bank's procedures for processing and paying Items, the Bank will not be liable for paying any Item lacking Customer's required number of signatures, or in an amount exceeding the maximum limit assigned to the signer.

(H) If an Item issued by the Customer is transferred or negotiated outside of the United States and is subsequently sent to the Bank for deposit, collection or payment in the United States, the Customer shall be deemed to make to the Bank the transfer and presentment warranties under the Uniform Commercial Code as in effect from time to time in the State of New York, as if such Item were negotiated or otherwise transferred in the United States.

## 7. Customer Requests and Instructions

(A) The Customer may communicate its requests and instructions to the Bank in any form that is mutually acceptable to the Customer and the Bank. The Bank is authorized to act and rely on such requests and instructions that it believes to be genuine and is not obligated to confirm any such requests or instructions. Any confirmation of an instruction by the Customer must be clearly marked as such, and, if there is any discrepancy between an instruction and a confirmation, the terms of the instruction shall prevail. The Bank may, at its option, use any means to confirm or clarify any request or instruction, even if any agreed security procedure appears to have been followed. In the event that the Bank is not satisfied with any confirmation or clarification, it may decline to honor the request or instruction.

(B) If the Bank and the Customer agree on a security procedure to be used for any type of request or instruction, the Customer and the Bank shall safeguard any test keys, passwords, identification codes or other security or authentication procedures, and the Customer shall make them available only to Authorized Account Persons, and shall be responsible for any requests or instructions using such security procedures. It is understood that the security procedures used by the Bank and the Customer are designed to verify the authenticity of, and not to detect errors in, the requests or instructions of the Customer.

(C) Subject to Article 4A of the Uniform Commercial Code as in effect from time to time in the State of New York, (i) the Bank shall be under no obligation to act upon any request or instruction given to it over the telephone unless there is a specific written agreement to that effect with the Customer,

(ii) the Bank reserves the right to confirm prior to the execution thereof, any request or instruction received by telephone, at the Customer's expense, by either telephone or in writing, and (iii) any communication to the Bank over the telephone is understood to be subject to immediate confirmation by the Customer in writing, and if such written confirmation is not received within five (5) days of the date of the transaction, the transaction shall be deemed ratified by the Customer.

(D) All payment instructions, whether Items, payment orders or otherwise, are subject to applicable law and the rules of the payment system used.

(E) The Bank will not be obligated to execute payment orders or effect any other transaction hereunder where the beneficiary or other payee is a person or entity with whom the Bank is prohibited to do business by law or regulation or in any case where compliance would, in the Bank's judgment, conflict with applicable law or banking practice, or subject it to risk of loss.

(F) If the Bank determines that any request or instruction of the Customer if followed might expose it to any liability under law or regulation, or threat of legal or regulatory action, expense or loss, then the Bank may refuse to act on such request or instruction or require the Customer to provide a bond or to indemnify the Bank, in a manner satisfactory to it, against any such potential liability, expense or loss before proceeding to follow such request or instruction.

(G) In the event that any credit entry in favor of a Customer is made in consequence of a mistake or clerical error or for any other reason without corresponding requests or instructions having been given by the Customer, the Bank may reverse such credit entry by simple Account entry.

## **8. Funds Transfer Instructions**

(A) The Customer may issue funds transfer instructions, including amendments and cancellation requests, against the Account with the Bank, subject to the Bank's acceptance. Funds transfer instructions will be received, processed and transmitted only on the Bank's funds transfer business days, and within the Bank's established cut-off hours on such days. Cancellations of funds transfer instructions are subject to the consent of the beneficiary's bank. The Bank will debit the Account for the amount of each funds transfer instruction accepted by the Bank, and may debit the Account for all fees associated therewith.

(B) Notwithstanding any instructions by the Customer to the contrary, the Bank reserves the right to use any funds transfer system in the execution of any funds transfer instruction and may otherwise use any means of executing the funds transfer instruction which the Bank deems reasonable in the circumstances. The Bank is not responsible for any breakdowns or error occurring in such systems or methods.

(C) The Bank may refuse to allow a withdrawal or funds transfer regarding the Account for any reason, including, without limitation: (i) an order to withdraw or transfer funds prior to maturity or without giving sufficient notice, (ii) an order to withdraw or transfer funds not yet available, (iii) a legal garnishment or attachment is served, including, but not limited to, a levy, restraining notice or court order, (iv) if money is otherwise owed to the Bank by the Customer and not repaid on time, (v) Account documentation has not been presented, (vi) if the Account is pledged as collateral to secure a debt, and (vii) if the Bank suspects fraudulent or suspicious activity. The Bank shall notify the Customer of the reason for each such refusal. In addition, the Bank may refuse to pay out any money from an Account until any dispute over the deposits or funds (including, without limitation, any dispute over which persons are authorized to represent or act for the Customer) has been resolved by a court, or by agreement of the parties which is documented to the Bank's satisfaction. The Bank may file an action in interpleaded with respect to any money that the Bank has been

notified of disputed claims to that money. If any person asserts that a dispute exists, the Bank is not required to determine whether that dispute has merit in order to refuse to pay funds or interplead the funds. The Customer agrees to reimburse the Bank for any expenses, including attorneys' fees that the Bank incurs because of such dispute. The Bank has the right to pay any money from an Account that is required by law or regulation to be paid even if it results in an overdraft or reduces an Account to the point where the Bank returns one or more Items for insufficient funds.

**Note to Grand Cayman Branch Customers:** Under applicable law, demand for payment of deposits at Commerzbank Aktiengesellschaft, Grand Cayman Branch, may only be made at that location. The U.S. offices of Commerzbank Aktiengesellschaft will, however, be available to act as the Customer's collection agent for purposes of transferring these funds to the United States for withdrawal.

(D) In connection with any funds transfer, the Bank and other banks may rely upon the identifying number of the beneficiary, the beneficiary's bank or any intermediary bank included in the funds transfer. Also, the beneficiary's bank in the funds transfer instruction may make payment on the basis of the identifying number even though it identifies a person different from the named beneficiary. Accordingly, the Customer shall be responsible for the consequences of any inconsistency between the name and identifying number of any party in such a funds transfer instruction.

(E) The authenticity of oral or written funds transfer instructions (including writings transmitted by facsimile) and amendments and cancellations thereto may, at the Customer's written direction, be verified by telephone call-back, test key or password confirmation by an individual purporting to be an Authorized Account Person. If the Bank is not satisfied with any such confirmation, it may decline to honor any such funds transfer instruction or amendment or cancellation thereto. The Customer agrees that the security procedure it selects is commercially reasonable for those funds transfer instructions, amendments and cancellations, and further agrees to be bound by such funds transfer instructions, amendments and cancellations, whether or not authorized, issued in the name of the Customer using this security procedure.

(F) All Automated Clearing House ("ACH") entries received for an Account will be received by the Bank subject to the rules of the National Automated Clearing House Association (NACHA) and any other applicable ACH rules. The Customer agrees to be bound by such ACH rules. Any credit given by the Bank to the Customer for an ACH entry or any other situation in which the rules of any funds transfer system provide for provisional payments or for the multi lateral netting of accounts, all such payments made to or received by the Bank shall be provisional until the Bank receives final settlement. If the Bank does not receive final settlement, the Bank may revoke the provisional credit and charge back the amount to the Account or obtain a refund from the Customer, in which case the originator of the credit entry shall not be deemed to have paid the Customer the amount of such entry. The Bank shall not be obligated to notify the Customer of the receipt of a payment order or a credit entry for credit to an Account.

(G) To the extent permitted by Article 4A of the Uniform Commercial Code as in effect from time to time in the State of New York, for all payments executed through the employment of correspondent banks or agents (including other branches or subsidiaries of Commerzbank Aktiengesellschaft), their related charges, if any, will be deducted from the payment unless other arrangements have been made with the Customer.

(H) If the Bank accepts a funds transfer purported to be made on Customer's behalf requesting payment in a currency other than U.S. dollars, the Bank will endeavour in good faith and on a best efforts basis to make such payment within two (2) Business Days in accordance with such order, and Customer agrees to hold the Bank harmless from any liabilities, and for any losses, costs or expenses imposed on, or suffered by the Bank, arising from the currency transaction. If, for any reason, the funds transfer cannot be completed, the Bank's sole obligation will be to recredit Customer's Account with the funds returned to the Bank and any further obligation of the Bank shall be suspended pending such return. If Customer issues, and the Bank accepts, a funds transfer for payment in or outside the U.S. in a currency (the "Transfer Currency") other than the currency in which the account is denominated, the Bank will, prior to execution of payment, debit the relevant transaction for the equivalent of the amount of the Transfer Currency transferred, at the rate of exchange determined by the Bank. In any such case the funds transfer will not be accepted unless the Bank has been able to complete the conversion and to confirm the payment from the Customer. Customer agrees that if the beneficiary's bank is instructed to pay in a currency other than its local currency, payment may be made by the beneficiary's bank at its rate of exchange on the date of its payment. In connection with each



such funds transfer, Customer shall comply with all applicable local currency restrictions and any other local law governing the transaction.

(l) If for any reason it is not feasible for Bank to complete a funds transfer using the instructions given by the Customer, then the Bank shall have no obligation to execute the transfer and no liability for non-execution. If not given instructions, the Bank may elect to use any means of payment or communication deemed reasonable by it under the circumstances, and shall not be liable for acts or omissions of others arising there from, or may contact Customer for further instructions.

## 9. Overdrafts

(A) The Bank may debit the Account even though the debit may result in or increase an overdraft. Unless otherwise agreed, if any debit to the Account results in or increases an overdraft, such overdraft shall be immediately due and payable. If the Bank permits an overdraft, the Bank is authorized to charge interest on the amount of the overdraft as long as the overdraft is outstanding, at the rate determined by the Bank, up to the maximum rate permitted by law at the time of the overdraft or at the specific rate negotiated between the Customer and the Bank. Whether or not the Bank pays an overdraft Item, the Bank may deduct the applicable overdraft fees and expenses from the Account without notice. Unless agreed in writing, the Bank is under no obligation to permit any overdraft or to continue to permit overdrafts after having permitted an overdraft, notwithstanding any prior action or course of dealing.

(B) When Items drawn on the Account and other debits to the Account are presented to the Bank for payment on the same day and there are insufficient available funds in the Account to pay all of these transactions, the Bank may choose the order in which it pays transactions, including, without limitation, the largest transaction first or any other order determined by the Bank.

## 10. Stop Payments; Cancellations and Amendments; Reversals

(A) A stop payment instruction from the Customer will be effective on an Item if: (i) the Bank receives the stop payment instruction in time for the Bank to act on such instruction, which shall be at least one (1) full Business Day following the Business Day of the Bank's confirmed receipt of the instructions at the applicable Bank location; (ii) the instruction contains all information concerning the Item that the Bank requires, and is in the form required by the Bank; and (iii) the Item was not paid prior to the effective date. For purposes of this Agreement, "Business Day" means a day on which the Federal Reserve Bank of New York is open and a day on which the Bank is generally open for business in the jurisdiction where the Account is maintained. Stop payment instructions on Items, unless otherwise provided, will be valid for six (6) months and may be renewed in writing from time to time. The Bank is not obligated to notify the Customer when a stop payment instruction expires. The Bank shall not be liable for any Item properly paid (x) prior to the effective date of a stop payment instruction or (y) once the stop payment instruction has expired. Also, stop payment instructions may have no effect on the rights of a holder in due course with respect to an Item returned unpaid by the Bank to make a claim directly against the Customer. Any stop payment instruction or similar communication hereunder shall be subject to the Customer's continuing obligation to indemnify the Bank under the terms of Section 14 hereof for the Customer's use of the Account and the service hereunder.

(B) Communications requesting amendment or cancellation of payment orders must be received at a time and in a manner affording the Bank a reasonable opportunity to act prior to the Bank's execution of the payment order. The Bank has no obligation to adjust, reverse or stop payment, or the posting of a payment order or cancellation, except to the extent, if any, permitted by the applicable funds transfer system rules.

(C) Unless otherwise agreed by the Bank and the Customer, all requests and instructions including, without limitation, payment orders, shall continue in full force and effect until terminated. The Customer may reverse, amend, cancel or revoke any request or instruction only with the consent of the Bank, and the beneficiary's bank, as applicable, or in accordance with applicable law or regulation.

(D) An electronic foreign exchange payment order may be cancelled or closed-out, in whole or in part. In the event of such a cancellation or close-out, the Bank shall offset the amount of a foreign currency cancelled or closed-out by the Customer at the prevailing market rate, and the Customer will hold the Bank harmless from any loss suffered as a result of such offset necessitated by the Customer's cancellation or close-out, including any loss incurred by the Bank arising from any change in the value of the applicable

currency between the time the Bank purchases the applicable currency to cover the initial payment order and the time the Bank is able to convert such currency into a freely transferable currency of its choice.

#### **11. Set-Off**

(A) In addition to any common law right of set off in favor of the Bank, the balance of the Account, and every account at Commerzbank Aktiengesellschaft or any of its affiliates (the "Related Accounts") at any time or from time to time existing in favor of Customer is hereby pledged and made the subject of a general and continuing first priority security lien and right of set-off in favor of the Bank as security for the payment and performance of any obligation (whether matured or un matured) now or at any time hereafter owing by the Customer to the Bank or any of its affiliates.

(B) The Bank may at any time and without prejudice to any other rights which it may have, and without prior notice or demand for payment, combine, consolidate or merge all or any of the Accounts and/or the Related Accounts of the Customer or may retain, apply or set-off any money held in any Account and/or any Related Account in any currency towards payment of any amount owing by the Customer to the Bank or any of its affiliates. For the purposes of this Section, the Bank shall be entitled to accelerate the maturity of any time deposit or fixed term deposit. For the purposes of this Section, the Bank may effect currency conversions at such times or rates as it deems reasonable and may effect such transfers between any Account and/or any Related Account as it considers necessary.

#### **12. Fees and Service Charges; Security Deposit**

(A) Each Account shall be subject to such fees and service charges adopted by the Bank from time to time. A schedule showing such fees and service charges will be provided to the Customer upon request. The Bank is authorized to debit the Account for fees and service charges, whether or not such fees or service charges will result in an overdraft of the Account, or to bill the Customer separately. All payments to the Bank shall be in full, without set-off or counterclaim and free of any deduction or withholdings on account of any tax or otherwise.

(B) In addition to the fees and service charges referred to above, the Bank may request Customer to make a security deposit with the Bank in consideration for the Bank offering certain services to the Customer. The terms and conditions of the security deposit are to be mutually agreed between the Bank and the Customer.

#### **13. Taxes**

(A) The Customer agrees to pay or reimburse the Bank for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings (together with any related interest, penalties, fines, and expenses in connection with them) in connection with the Account or services offered by the Bank (including payments or receipts to the Account) except if and to the extent imposed on the overall net income of the Bank.

(B) The Customer will provide the Bank with such documentation, declarations, certifications and information as the Bank may require in connection with taxation, and warrants that such information is true and correct in every respect. The Customer undertakes to notify the Bank immediately if any information requires updating or correction. The Bank is authorized to charge an Account for any taxes or levies imposed by any revenue or governmental authority for whatever reason with respect to the Account.

#### **14. Indemnity; Limitation of Liability; Force Majeure**

(A) The Customer indemnifies and holds the Bank, its branches, affiliates and subsidiaries, and its and their employees, officers, directors, agents and service providers (hereinafter in this Section, the "Indemnified Persons"), harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses (including legal fees) resulting directly or indirectly from: (i) Customer's use of any service provided by the Bank, including, but not limited to, the Bank's acceptance or execution of any request or direction, including, without limitation, Items and instructions issued in the name of an Authorized Account Person; (ii) the Bank's acts or omissions pursuant to this Agreement except for the Bank's gross negligence or wilful misconduct; (iii) the Bank's payment of any taxes, interest or penalty otherwise due from the Customer paid on the Customer's behalf, or for which the Bank has no responsibility

under this Agreement; or (iv) the Customer's violation of law or regulation, or failure to observe any provision of this Agreement or any other Account documentation.

(B) The Bank and any other Indemnified Person shall have no liability for any damage, loss, expense or liability of any nature which the Customer may suffer or incur, except to the extent of direct losses or expenses attributable solely to the Bank's or such Indemnified Person's gross negligence or wilful misconduct. **Neither the Bank nor any other Indemnified Person shall, in any event, be liable for any indirect, special, consequential or punitive loss or damage of any kind (including, but not limited to lost profits), whether or not foreseeable, even if the Bank or such Indemnified Person has been advised of the likelihood of such loss or damage, and regardless of whether the claim for loss or damage is made in negligence, gross negligence, for breach of contract or otherwise; provided, however, that the foregoing shall not apply to the extent such loss or damage is caused by fraud on the part of the Bank or such Indemnified Person.**

(C) Neither the Bank nor any other Indemnified Person shall be liable for any loss or damage to the Customer caused by the Bank's or such Indemnified Person's failure to provide any service, or delay in providing such service, resulting from an act of God, act of governmental authority whether de jure or de facto, legal constraint, war, terrorism, civil unrest, fire, flood, storm, catastrophe, or electrical, computer, mechanical or telecommunications failure, or failure of any agent or correspondent, or unavailability of a payment system, or any cause beyond the Bank's reasonable control.

(D) Any claim which the Customer may assert against the Bank in connection with the Account, or in connection with any services offered by the Bank under this Agreement or any other account documentation, may only be brought as a breach of contract claim. The Customer waives all right in any action, proceeding or counterclaim, of whatever type or nature, to bring any claim against the Bank sounding in negligence or tort or based upon a statutory violation.

(E) BANK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY OF THE SERVICES FOR CUSTOMER, OR AS TO THE COMPATIBILITY OF BANK'S SOFTWARE, EQUIPMENT, OR COMMUNICATION INTERFACES WITH THOSE OF CUSTOMER.

## 15. Statements of Accounts

(A) Statements of accounts ("Statements of Accounts") are available at the Customer's option for mailing on a daily, weekly, monthly, quarterly, semi-annual or annual basis, as may be requested in writing by the Customer. Statements of Accounts will also be mailed, generally once a year, for reconciliation purposes. The Customer will exercise reasonable care and promptness in examining all Statements of Accounts and the Items, if any, accompanying them in order to discover any irregularities. The Bank shall not be responsible for the Customer's reliance on balance, transaction or related information which is subsequently updated or corrected or for the accuracy or timeliness of information supplied by any third party to the Bank.

(B) The Customer must notify the Bank in writing of any unauthorized, improper, or missing endorsements or of any other errors, discrepancies or irregularities in any Statement of Account, or of the non-receipt of an expected Statement of Account, within thirty (30) days after the Account Statement is mailed, transmitted or otherwise made available to the Customer. Any Customer who requests receipt of mailed Statements of Accounts on any basis less frequently than monthly shall be required to receive Statements of Accounts via an electronic transmission on a monthly or more frequent basis. Such Customer agrees that since its account information is also made available to it via an electronic transmission (including, without limitation, via the internet) on a monthly or more frequent basis, that it is deemed to have received its Statements of Accounts on such monthly or more frequent basis for purposes of this notice requirement. The Customer must provide the Bank with all information necessary for the Bank to investigate the alleged error, discrepancy or irregularity, including, without limitation, (i) the Customer's name and Account number, (ii) the dollar amount of the suspected error and the booking date of the transaction, and (iii) a description of the error and an explanation as to why an error is suspected, and must provide all supporting affidavits and testimony that the Bank requests. In the event that notice is not given within the specified time, particularly in the case of requests for back-valuing Items, claims for the loss of interest, damages, or charges or other expenses, no liability will be accepted by the Bank.

(C) The Customer shall not institute any legal proceeding or action against the Bank for any claim which it may have regarding any such error, discrepancy or irregularity unless: (i) the Customer has given the timely written notice and provided requested affidavits and testimony, as provided in clause (B) above, and (ii) such legal proceeding or action has been commenced within the following time periods after the date when such Statement of Account was mailed, transmitted or made available to the Customer: (a) within eighteen (18) months in the case of an unauthorized, improper, or missing endorsement; or (b) one (1) year for all other claims.

(D) If an Account has no activity other than charges assessed or interest credited by the Bank for a period of at least six (6) months, the Bank is not required to provide a Statement of Account until the Account has additional activity. If an Account has no activity other than charges assessed or interest credited by the Bank for a period of at least twelve (12) months, the Customer may be unable to access the Account until appropriate contact is made between the Customer and the Bank.

## 16. Recordings; Records

(A) The Bank hereby notifies the Customer, and the Customer hereby agrees that the Bank may record telephone conversations with the Customer by using electronic recording devices and Bank shall not be obligated to expressly inform the Customer when doing so.

(B) The Bank may retain copies of any documents or Items relating to the Account and services offered by the Bank in a form preserving an image of any such documents or Items or a regular business record and discard the original documents or Items. The Customer hereby waives any objection to the use of such records in lieu of their paper equivalents for any purpose and in any forum, venue or jurisdiction, including, without limitation, objections arising from the Bank's role or acquiescence in the destruction of the originals.

## 17. Notices

(A) All Statements of Accounts and notices may be sent to the Customer at the address of the Customer on the books and records of the Bank by ordinary mail, by courier, by facsimile transmission, by electronic transmission or by such other means as the Customer and the Bank agree upon. Unless otherwise arranged, all notices to the Bank must be sent to the Bank at 225 Liberty Street, New York, New York 10281-1050, and must be sent by ordinary mail, by courier, by facsimile transmission, by electronic transmission or by such other means as the Customer and the Bank agree upon from time to time. The Bank shall be afforded a reasonable time to act on any notices received.

(B) The Customer shall notify the Bank promptly, in writing, of any change in its address. Any Statement of Account or notice sent to the Customer's last address on the books and records of the Bank shall be deemed to have been properly sent.

## 18. Termination

(A) The Bank may close an Account or terminate a service offered by the Bank at any time.

(B) The Customer may close an Account or terminate a service offered by the Bank only on the last Business Day of each calendar month. Written notice of closure or termination must be given by Customer to the Bank no later than ten (10) Business Days prior to the last Business Day of the calendar month in which the Customer wishes to close the Account or terminate the service.

(C) If an Account is closed in accordance with clause (A) or (B) of this Section, the Bank will transfer any balance in such Account in accordance with the Customer's reasonable written instructions, subject to the following: (i) Bank will not transfer any Account balance if Bank determines there is a legal or regulatory reason that restricts it from doing so, (ii) Bank may deduct from the Account balance all amounts due to Bank under this Agreement unless Customer has satisfied the Bank's request, if any, for cash collateral to protect Bank against any liabilities or obligations under this Agreement, and (iii) Bank's obligations in respect of the Account immediately terminate upon the Bank's transfer of the balance of such Account.

(D) If a service is terminated in accordance with clause (A) or (B) of this Section, all amounts due to Bank with respect to such service are immediately due and payable. The Bank may deduct all amounts due to Bank with respect to such service from any Account.

(E) Please note that Customer may select from time to time services that contain more restrictive termination provisions than the foregoing.

## 19. Abandoned Property

New York State law requires the Bank to treat as abandoned all funds left on deposit in any Account for a period exceeding approximately five (5) years if no transactions regarding the Account have been initiated by, nor any communications received from, the Customer during such time (for time deposits, time starts to run at maturity of the deposit). Such abandoned property has to be turned over by the Bank to the State of New York in a complex and costly process and any claims of the Customer then run against the State of New York. The Bank therefore urges all Customers to communicate with it in writing at least every five (5) years to show that they are still aware of the existence of their Account(s). The Bank will also charge a fee on each Account or deposit representing abandoned property under New York law, which charge, as determined from time to time by the Bank, is hereby specifically agreed upon between the Customer and the Bank.

The Bank will make reasonable efforts to notify the Customer in writing before the deposit will escheat to the State of New York. The notice will provide the date the Account will escheat and the effects of the escheat, i.e. account closure and the necessity to file a claim with the State of New York for return of the property. Within the final notice, the Customer will be given the opportunity to reactivate the Account, provided that the Customer declares its intention in writing to maintain that Account on active status.

## 20. Deposit Protection Fund

(A) Scope of protection. The Bank is a member of the Deposit Protection Fund of the Association of German Banks (Einlagensicherungsfonds des Bundesverbandes deutscher Banken e.V.) (Here in after referred to as the "German Bank Association's Deposit Protection Fund"). The German Bank Association's Deposit Protection Fund protects all liabilities which are required to be shown in the balance sheet item "Liabilities to customers". Among these are demand, term and savings deposits, including registered savings certificates. The protection ceiling for each creditor is 30% of the liable capital of the Bank relevant for deposit protection. This protection ceiling shall be disclosed to the Customer by the Bank on request. It is also available on the Internet at [www.bankenverband.de](http://www.bankenverband.de).

(B) Exemptions from deposit protection. Not protected are claims in respect of which the Bank has issued bearer instruments, e.g. bearer bonds and bearer certificates of deposit, as well as liabilities to other banks.

(C) Additional validity of the By-laws of the Deposit Protection Fund. Further details of the scope of protection are contained in Section 6 of the By-laws of the German Bank Association's Deposit Protection Fund, which are available on request.

(D) Transfer of claims. To the extent that the German Bank Association's Deposit Protection Fund or its authorized representative makes payments to the Customer, the respective amount of the Customer's claim against the Bank together with all subsidiary rights shall be transferred simultaneously to the German Bank's Deposit Protection Fund.

(E) Disclosure of information. The Bank shall be entitled to disclose to the German Bank Association's Deposit Protection Fund or to its authorized representative all relevant information and to place necessary documents at their disposal.

## 21. Miscellaneous

(A) The Bank reserves the right to change the terms and conditions contained in this Agreement or any other Account documentation at any time (followed or preceded by notice thereof to the Customer). In addition, with respect to Account operations and processes, the Bank may change this Agreement or impose other restrictions on the Customer's Account or the services provided by the Bank as the Bank deems desirable or necessary in the course of its business at any time by sending notice thereof to the Customer. The Bank may waive any of the provisions hereof or of any other Account documentation, but such waiver shall apply only on that occasion. Such waiver shall not constitute a waiver of any other provision of this Agreement or any other Account documentation.

- (B) The terms of any supplement, amendment, modification, agreement or other Account documentation, or notice which is inconsistent with a provision of this Agreement shall supersede this Agreement's provision for purposes of the particular Account or service provided by the Bank which is the subject thereof. By signing an account application, signature card or similar document, by accepting a copy thereof, or by using or continuing to use the Account or services provided by the Bank, the Customer agrees to such supplements, amendments, modifications, agreements, terms and conditions or notices.
- (C) If any provision of this Agreement shall be held to be unlawful or unenforceable, the validity of the remaining portions of this Agreement shall not be affected.
- (D) This Agreement supersedes all previous written or oral agreements which may have been entered into between the Bank and the Customer with respect to the subject matter hereof.
- (E) This Agreement, the other Account documentation and the rights and obligations of the Customer and the Bank in respect of each Account and each service provided by the Bank shall be governed by and construed in accordance with the laws of the State of New York (without regard to its conflicts of law rules).
- (F) BOTH THE CUSTOMER AND THE BANK HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, OF WHATEVER TYPE OR NATURE, ARISING OUT OF THIS AGREEMENT, ANY OTHER ACCOUNT DOCUMENTATION OR THE RELATIONSHIP ESTABLISHED HEREBY OR THEREBY. Any claim in connection with the Account which is the subject of this Agreement, unless a shorter period of time is expressly provided, must be brought against the Bank within two (2) years of the occurrences of the cause of action.
- (G) In relation to each Account and any services provided by the Bank, the courts of the State of New York shall have exclusive jurisdiction to settle any disputes which arise out of or are connected with this Agreement, the relevant Account documentation and/or the relevant Account. This Section is for the benefit of the Bank only and does not prevent the Bank from taking proceedings in the courts of any other country or state with jurisdiction including, to the extent allowed by law, concurrently in any number of countries or states. The Customer irrevocably and unconditionally submits to the jurisdiction of any state or federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this Agreement, any other Account documentation and/or the Account.
- (H) To the extent that the Customer would have or would be able to claim sovereign immunity in any action, claim, suit or proceeding brought by the Bank, the Customer irrevocably waives such immunity and agrees not to claim such immunity and, further acknowledges that the contractual arrangements entered into with the Bank hereby are primarily commercial in nature.
- (I) Any information obtained by the Customer in connection with the Account or the services provided by the Bank which is designated by the Bank as confidential or is or should be known by the Customer to be confidential, including the intellectual property rights embodied therein, is the property of the Bank ("Confidential Information"). The Customer agrees to use any such Confidential Information in the manner prescribed by the Bank and agrees not to misappropriate the Confidential Information or disclose the Confidential Information to anyone other than a person authorized by the Bank, except to the extent required to do otherwise by law and except to the extent any such Confidential Information is or becomes part of the public domain through no fault or action of the Customer.
- (J) Section headings are for convenience only and shall not affect the meaning of this Agreement.
- (K) If this Agreement or any other Account documentation is translated into in a language other than English, the English language version shall control.
- (L) This Agreement may not be assigned by Customer without the prior written consent of the Bank. The Bank may assign this Agreement without Customer consent. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single contract.

## **PART II. FUNDS AVAILABILITY POLICY (REGULATION CC DISCLOSURE STATEMENT)**

### **A. General Policy**

The Bank's policy is to make funds from the Customer's deposits available to you on the first business day after the day we receive your deposit (this policy is called our "next-day policy"). At that time, you can withdraw the funds and we will use the funds to pay checks that you have written.

Our policy further provides that in the case of checks deposited on any one day in a total amount exceeding \$5,000, depending on the types of checks you deposit, we will make only the first \$5,000 available to you on the first business day after we receive your deposit.

#### A Note on Third-Party Checks

We wish to remind you that it is our general policy not to accept for deposit any "third-party checks", meaning checks originally payable to a party other than the depositor who wishes to deposit the check. The availability rules in this Disclosure Statement do not apply to such third-party checks.

### **B. Meaning of Certain Terms Used in This Disclosure Statement**

The following terms in this Disclosure Statement have the following special meanings:

#### Business day

For determining the availability of your deposits, every day is a business day except Saturdays, Sundays and Federal holidays. If you make a deposit (or if we receive your deposit by mail) before 3:00 P.M. on a business day on which we are open, we will consider that day to be the day on which you made (or we received) your deposit. However, if you make a deposit (or if we receive your deposit by mail) after 3:00 P.M. or on a day we are not open, we will consider that the deposit was made (or received) on the next business day we are open.

### **C. Availability of Wire Transfers**

Wire transfer deposits will be available at the latest on the business day after the day on which we receive the deposit.

### **D. Availability of Funds Deposited by Check: Next-Day Policy for Some, But Delays May Apply for Others**

#### **1. Next-Day Availability Irrespective of Amount**

Funds from the following checks ("next-day checks") will be available to you on the first business day after the day of your deposit, irrespective of the amount. Except as indicated, these checks will not be subject to delay for any of the reasons listed in Paragraph 2 or 3 below:

- "On-Us" Checks - all checks drawn on the New York Branch of Commerzbank,
- U.S. Treasury checks payable to you,
- U.S. Postal Service money orders payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after the day we receive your deposit),
- A Federal Reserve Bank or Federal Home Loan Bank check payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after we receive your deposit, or unless we have reasonable cause to believe that the check is uncollectible),
- A check issued by, or by a unit of general local government located in, New York State payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after we receive your deposit), and

- cashier's check, certified check or teller's check payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after we receive your deposit, or unless we have reasonable cause to believe that the check is uncollectible).

## 2. Our "Over \$5,000 Exception"

We have already described our general next-day policy. We have also explained that, if you deposit checks (other than next-day checks listed in Paragraph 1 above) totaling more than \$5,000 on any one day, then the first \$5,000 of the funds will generally be available on the following business day. The balance over \$5,000 will be available on the 5<sup>th</sup> business day after the day of your deposit. Please note that the hold may be placed only on the amount of the check(s) deposited in excess of \$5,000. However, when the deposit consists of multiple items, the Bank may select which items of the deposit to apply the hold to.

We will notify you if we delay your ability to withdraw funds for this reason, and we will tell you when the funds will be available. They will generally be available no later than the 9<sup>th</sup> business day after the day of your deposit.

## 3. Further Delays Are Possible

Finally, under the following circumstances, funds you deposit by check may be delayed for a period in addition to the delays provided herein:

- We believe a check you deposit will not be paid.
- 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 communications or computer equipment.

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 generally be available. They will generally be available no later than the ninth business day after the day of your deposit.

## 4. Please Ask Us

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



### PART III. SPECIFIC TERMS APPLICABLE TO CERTAIN ACCOUNTS AND SERVICES

This part of the Agreement contains the specific terms and conditions applicable to certain accounts and services which the Customer and Bank may establish or select from time to time. When in conflict with the General Business Conditions found in Part I of this Agreement, these specific terms and conditions shall apply.

#### 1. Commercial Balance Reporting

(A) The Commercial Balance Reporting service provides the Customer with account transaction and related information to help control and manage its Accounts. This may include information generated from other services used and delivered by, but not limited to, the following file types: Society for Worldwide Interbank Financial Telecommunications ("SWIFT") or telefax.

(B) Customer may elect to have its own accounts, or accounts of another company or organization, maintained at other banks reported through the Commercial Balance Reporting service. In doing so, the Customer agrees that it, and the other company or organization, will authorize the appropriate banks to make the reporting information available to the Bank and to take all other actions necessary for the Bank to provide the Commercial Balance Reporting service.

(C) Fees for this Commercial Balance Reporting service appear in a Schedule of Fees maintained by the Bank.

#### 2. Wholesale Lockbox

(A) The Wholesale Lockbox service provides faster collection of remittances and reduces float. The Customer will instruct its remitters to send remittances to a designated post office box (in each case, a "Lockbox"). The Bank takes or removes items in the Lockbox, processes them and deposits them directly to the Customer's Account designated by the Customer for such purpose, and returns the remittance items to the Customer.

(B) The Bank reserves the right to require that the Customer execute the necessary documents to open such a post office box in a manner acceptable to the Bank and to enable the Bank to have access to such designated post office box and the Customer authorizes the Bank (i) to open such post office box and remove its contents at agreed upon intervals each Business Day and (ii) to act on its behalf in connection with the rental of such post office box.

(C) The Customer authorizes the Bank to, and the Bank will, endorse each check or other remittance item removed from the Lockbox (collectively, and for purposes of this Section, called "Checks") and deposit all Checks in the Customer's Account (subject to the terms of our Funds Availability Policy in effect from time to time), except for the following Checks which will not be deposited, but will be returned to the Customer:

- Checks payable to any person other than the Customer or a payee named in a Letter of Indemnification Deposit of Items Not in Name of Account Holder;
- Checks not signed by the drawer;
- Checks postdated;
- Checks bearing the phrase "Paid in Full" or a similar legend, unless the Customer has instructed the Bank to deposit such Checks; and
- Checks the Bank determines do not otherwise meet the standards for deposit.

(D) Customer agrees that all Checks returned unpaid for non-sufficient funds ("NSF") will be sent for collection a second time. The Customer hereby waives notice of any returned Check that is sent for collection a second time. An NSF Check returned unpaid a second time will be charged back to the Customer's Account and the Check or substitute therefore, together with a debit advice, will be sent to the Customer.

(E) A summary of daily advices of credit, together with non-check material taken from the Lockbox, Checks not deposited and photocopies of deposited Checks, if requested, will be returned to the Customer

at the Customer's expense. Fees for this Wholesale Lockbox service appear in a Schedule of Fees maintained by the Bank.

### 3. Positive Pay

(A) "Positive Pay" is a fraud detection service that helps reduce losses due to check fraud. With Positive Pay, the Customer electronically transmits detailed information (check serial number and dollar amount) regarding the checks it has issued. Daily, the detailed issue information the Customer supplied is matched against the items being presented for payment. All items presented for payment with no issue information on the Customer's file or items with a discrepancy will be reported to the Customer. At this point, the Customer is given an opportunity to make a pay/no pay decision on the item(s) reported. The Bank is authorized by the Customer to process transactions in accordance with the information that the Bank receives in the Customer's file. The Customer shall be solely responsible for the information contained in the Customer's file, and the Bank shall have no responsibility for erroneous data provided by the Customer.

(B) Check issue information must be provided to the Bank by the Customer at least forty-eight (48) hours prior to the physical issuance of the check. If the Bank does not receive such information, the item will continue to be reported as a paid no issue item and the Customer will be charged accordingly. The Customer must provide voided check numbers to the Bank as checks are voided.

(C) The Bank will report to the Customer all checks presented for payment with no issue information or items that are found to have discrepancies. The Customer must notify the Bank via email, Internet or fax, by 2:00 p.m. (Eastern Time) on the next Business Day of any checks reported as paid no issue or reported as having discrepancies that should be paid. Unless payment has been authorized by the Customer, the Bank will return unpaid all checks presented for payment with no issue information or with discrepancies.

(D) The paid no issue information will be provided to the Customer via email, Internet or fax. Upon request, the Bank may notify the Customer via email that the Positive Pay report is ready for decisioning.

(E) Additional fees will apply for this Positive Pay service according to a Schedule of Fees maintained by the Bank and for failure to comply with the requirements of this service.

### 4. Remote Deposit Capture

(A) Definitions

For purposes of this Section 4, the following capitalized terms shall have the following meanings:

"Check" means a draft, payable on demand and drawn on or payable through or at an office of a bank located in the United States, whether or not negotiable, that is handled for forward collection, including a Substitute Check and a traveler's check; and does not include a non-cash item payable in a medium other than United States dollars.

"Debtor" means a debtor obligated on one or more Checks.

"Remote Deposit Service" means all information, Web-based services, technological infrastructure, and installed software on the Customer's computers, which allow the Customer to submit Checks for deposit through the Internet.

"Security Procedures" means the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, and other security devices, systems, and software used by the Customer to communicate through the Internet for the Remote Deposit Service.

"Services" means all duties to be performed by the Bank regarding the Remote Deposit Service.

“Substitute Check” means a paper reproduction of the original Check that:

- contains an image of the front and back of the original Check;
- bears a MICR line containing all the information on the MICR line of the original check, except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks;
- conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for Substitute Checks; and
- is suitable for automated processing in the same manner as the original Check.

(B) Duties and Responsibilities of the Bank

1. Use of Service

Under the terms and conditions of this Agreement, and any additional Schedules to this Agreement to be provided by the Bank, Bank hereby grants to Customer a non-exclusive access to utilize the Remote Deposit Service through the Internet or by creating information to deposit Checks through the software provided by the Bank, and to use the Bank’s proprietary documentation for the term of this Agreement.

2. Processing

Bank will process, encode, endorse, and deposit into the Account, any Checks submitted by Customer through the Remote Deposit Service in accordance with Bank’s internal procedures and all state and federal laws during any Business Day, subject to the agreed cut-off time. Bank will not examine Checks to verify any data or dates. Bank will process the Checks according to the amount entered by Customer, if applicable, or by the numeric amount shown. If the numeric amount is unclear, Bank may process the Checks according to the written amount, and Bank may correct the amount entered by the Customer. If any Check is determined by Bank to be ambiguous, Bank will return the Check as an exception. Checks made payable to the Customer or determined by Bank to be a reasonable derivation thereof are acceptable for deposit. If a Check is determined by Bank to lack the necessary information to be processed by the Bank, then the Bank will treat the Check as an exception. If a Check is treated as an exception, it will be forwarded by the Bank to the Customer, and not deposited or otherwise reflected in the Customer’s Account. Bank will disregard any notation on a Check, including, but not limited to, any notation containing “paid in full” or other restrictive notation, whether preprinted or handwritten, and treat any such Check as though such notation did not appear thereon.

3. Reporting

Bank will make reports regarding the Remote Deposit Service available through a Bank-designated Web page, which the Customer may access through the Internet. The Bank shall make available from time to time a report stating the total amount deposited to the Account, as well as a listing of individual items deposited, which the Customer may access through the Internet.

(C) Duties and Responsibilities of the Customer

1. Use of Remote Deposit

The Customer shall only submit valid Checks payable to Customer by using the Remote Deposit Service. In using the Remote Deposit Service, Customer shall create an image of the Check or Checks and the associated MICR data using approved hardware. If applicable, Customer agrees to enter in the amount of the Check using the written amount of the Check into the Remote Deposit Service in the data field provided.

2. Software, Internet, and Hardware

The Customer will comply with all software, Internet, and hardware requirements as they may be issued by the Bank from time to time and updated from time to time.

### 3. Fee for Services

Customer shall compensate Bank for the performance of the Service in accordance with the pricing established by Bank in its *Schedule of Fees*.

### (D) Representations, Warranties and Covenants

#### 1. Representations and Warranties

The Customer represents and warrants that: (a) any deposits made by Customer are currently and were at the time of their creation, bona fide and existing obligations of customers of the Customer, free and clear of all security interests, liens, and claims whatsoever of third parties and are not now nor have they ever been declared in default; (b) the documentation under which the Checks are payable authorizes the payee to charge and collect the monies owed; and (c) all Checks and all documents and practices related to them comply with all applicable federal and state laws and regulations.

#### 2. Covenants

The Customer covenants that: (a) it will allow the Bank to review and inspect during reasonable business hours, and the Customer will supply, all financial information, financial records, and documentation of the Customer regarding the Checks and such other documents that the Bank may request; (b) the Checks submitted by Customer are valid Checks, and the Customer will reimburse and indemnify the Bank for all loss, damage, and expenses, including reasonable attorneys' fees, incurred in defending such transactions as invalid or fraudulent Checks; (c) physical Checks will not be presented to any bank once these items are presented through the Remote Deposit Service; (d) physical Checks will be stored in a secured area and destroyed by shredding or incineration within fourteen (14) days of processing; (e) the Customer will notify the Bank if an acknowledgement sent by the Bank indicating receipt of remote deposit items is not received on the day of processing; and (f) in the event of the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Customer, the Customer will not oppose or object to any motion by the Bank seeking relief from the automatic stay provisions of such laws.

### (E) Security Procedures and Communications

Certain Security Procedures designed to verify the origination (but not errors in transmission or content) of instructions, orders, and other communications sent by Bank and Customer may be used in connection with the Service. Customer agrees that it has been encouraged by Bank to institute a robust Security Procedure to protect against errors and fraud. Customer agrees that any such Security Procedures that it elects to use for the Service shall be sufficiently deemed by it to be commercially reasonable for such purpose. Bank shall not be obligated to act on a communication not transmitted in accordance with the Security Procedures and may refuse to act on any communication where Bank doubts its authorization, contents, origination, or compliance with the Security Procedures. Bank shall have no duty to discover, and shall not be liable for, errors or omissions by Customer. If Bank complies with the Security Procedures in respect of a communication, Bank shall be entitled to act on that communication and shall not be obligated to verify the content of such communication, establish the identity of the person giving it, or await any confirmation thereof, and Bank shall not be liable for acting on, and Customer shall be bound by, any communication sent in the name of Customer, whether or not authorized. Bank reserves the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time. Whenever the Security Procedures include the assigning to Customer of any confidential password, logon identification, identification code, personal or location identification number, repetitive code, or similar security device, Customer shall not disclose such security device except to employees or agents authorized to act for Customer in connection with the Service. Customer shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify Bank if the confidentiality or integrity of any such security device is breached or threatened. Customer shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Customer's negligence or deliberate acts or otherwise. Bank shall not be liable for any loss or damage resulting from fraudulent, unauthorized, or otherwise improper use of any security devices.

(F) Confidentiality

All user guides, manuals, data, software, processes, and other information provided to Customer in connection with the Service and all fee and pricing information with respect to the Service ("Information") is the proprietary and confidential property of Bank and/or its relevant licensors or suppliers. Customer agrees to use the Information only in the manner specified by Bank and in the ordinary course of Customer's commerce, to return it to Bank upon termination of the relevant Service, and to keep the Information confidential and limit access thereto only to its agents and employees who require access in the normal course of their duties, except to the extent the Information is already in the public domain or Customer is required to disclose the Information by law.

(G) Intermediaries

Bank may act on any communication and provide the Service using any payment system or intermediary organization it selects. Bank's performance of the Service is subject to the rules and regulations of any such system or organization. Bank may engage third parties to provide the Service. Bank shall have no obligation to disclose arrangements with third parties to Customer or obtain Customer's consent thereto. Customer authorizes the transfer of information relating to Customer to agents of Bank or Customer for use in connection with the Service or as required by law.

(H) Discrepancies

Customer shall promptly notify Bank in writing of any error in connection with the Service and any discrepancies between any records maintained by Customer and any notice Customer receives from Bank with respect to the Service, and Customer shall provide Bank with any information it may reasonably request in connection therewith. Customer agrees that fourteen (14) days is a reasonable time for Customer to notify Bank of errors or discrepancies, unless any other agreements, laws, rules, or regulations provide for a shorter period. Bank shall have the right to correct the amount in the data field for any Check that has an incorrect amount to be consistent with the image of the Check. Notwithstanding the foregoing, if Bank at any time discovers that the legal amount of the Check is different than the amount that has been credited to Customer's Account, Bank will make the necessary adjustment to the Account to correct the discrepancy.

(I) Contingency

In the event the Remote Deposit Service is not available due to circumstances beyond the control of the Customer or the Bank, arrangements will be made to accept the presentment of physical check items by the Customer for processing by the Bank.

(J) Termination

The Bank may terminate the service at any time. The Customer may terminate the Remote Deposit Service by providing ninety-five (95) days' prior written notice to Bank, subject to the following: (i) the Customer shall cease using the Remote Deposit Service once such notice is given, and (ii) at the time of such notice, and at all times until the ninety-sixth (96th) day after such notice, Customer shall maintain its Account, and shall maintain in its Account, funds sufficient to satisfy all charge backs and amounts due to Bank with respect to the Remote Deposit Service, or such other amount as agreed to by the Bank. The Bank may deduct all amounts due to Bank with respect to the Remote Deposit Service from any Account.

## 5. Payment Order by Fax

(A) Instruction given by Customer to Bank

The Customer has provided Bank specimen signature sheets with specimen signatures of the authorized signatories affixed to them. The Customer hereby instructs Bank to execute the payment orders described below which are sent to Bank by fax on Customer's behalf and to carry out verification of the signatures exclusively by comparison of the signatures affixed to the fax received by it with the signatures affixed to the specimen signature sheet in its possession. Bank shall be authorized to execute payment orders to the debit of Customer's Account even if a payment order (in particular a signature affixed to it) is forged or falsified, unless gross forgery or falsification which is still plainly identifiable even after transmission is involved. When

fax transmission medium is used, the authenticity of payment orders can only be verified by the Bank on the basis of the fax copy received by it. The original document is not available for verification purposes.

The Bank is therefore usually unable to see from the fax whether any order has been forged - e.g. by attaching an authentic signature from a different document - or falsified - e.g. by changing the payee details - unless gross forgeries or falsifications, as described above, are involved.

(B) Authorized Account Persons

All persons who are named in writing to the Bank (the "Annex") as authorized signatories for this Payment Order by Fax service now and in the future shall be authorized to give payment orders by fax.

(C) Payment Orders

The present instructions shall apply to such of the following payment orders as set forth in the Annex if issued on Customer's behalf:

- Domestic and international payment orders
- Dispatch notes in the paperless data carrier exchange system (ACH) for remittances (including any recall of items)
- Dispatch notes in the paperless data carrier exchange system (ACH) for direct debit (including any recall of items)
- Dispatch notes in the paperless electronic data transmission system for remittance (including any recall of items)
- Dispatch notes in the paperless electronic data transmission system for direct debit (including any recall of items)

(D) Security Procedures

Customer shall exercise extreme care in maintaining its own security procedures. Customer agrees to adopt, and accepts responsibility for adopting, security measures that it deems are commercially reasonable regarding this Payment Order by FAX service. The Bank has recommended that the Customer adopt robust security procedures, and the Customer acknowledges that it has been so advised.

(E) Subsequent written bank confirmation

The Bank's responsibility to confirm execution of payment orders will be as set forth in the Annex.

Bank is allowed to execute the payment orders received by fax in line with instructions given in the Annex.

(F) Maximum amount per payment order

The instructions in the Annex shall set forth the maximum amounts the Bank will apply to order by fax.

(G) Account to be debited / credited

The instructions shall only apply to payment orders to the debit, or as the case may be the credit, of an Account as explained in the Annex and given to the Bank.

The instructions shall only apply to payment orders to the credit of Accounts as explained in the Annex and given to the Bank.

(H) Fees

Fees shall be paid in accordance with the *Schedule of Fees* maintained by the Bank, or as set forth in any Annex or Schedule to be provided by the Bank.

## 6. ACH Origination

The Customer has requested that the Bank permit it to initiate entries to Accounts maintained at the Bank and other banks by means of the Automated Clearing House (ACH) Network operated by the National Automated Clearing House Association (NACHA). The Bank has agreed to do so on the terms of this Agreement, and any additional *Schedule of Fees* maintained by the Bank or additional Schedules to this Agreement to be provided by the Bank.

### (A) Types of Entries

The Bank will transmit debit and/or credit entries initiated by the Customer to the ACH Network as provided in the NACHA Operating Rules (referred to as the "Rules"; capitalized terms used in this Section but not otherwise defined in this Section shall have the meanings set forth in the Rules) and this Agreement.

### (B) ACH Rules

The Customer acknowledges that it has obtained a copy of the Rules. The Customer agrees to comply with and be bound by the Rules in existence as of the date of this Agreement, and as amended from time to time. The duties of the Customer set forth in this Agreement in no way limit the requirements of complying with the Rules. Any fines or liabilities imposed against the Bank for a violation of the Rules caused by an action and/or inaction of the Customer will be assessed against the Customer.

### (C) United States Laws

The Customer acknowledges and agrees that it will not generate transactions that violate the laws or regulations of the United States. This includes, but is not limited to, sanction laws administered by the Office of Foreign Assets Control (OFAC). It shall be the responsibility of the Customer to obtain Information regarding such OFAC-enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's Web site at <http://www.ustreas.gov/ofac>.)

### (D) Authorizations and Agreements

#### (i) Consumer's Accounts

Before the Customer's initiation of the first debit or credit entry to a consumer's account, the Customer will obtain a proper authorization in accordance with the Rules and U.S. law or regulation. An authorization agreement must be readily identifiable as either an ACH credit or an ACH debit authorization and must clearly and conspicuously state the terms of the authorization in order that the consumer understands the authorization to which he or she is agreeing. Revocation language must be included on authorizations for recurring payments. All authorization agreements must contain language requiring consumers (a consumer is any customer of Customer who qualifies for such status under applicable law and does not include Customer) to acknowledge that ACH entries must comply with provisions of the laws of the United States. All debits to consumer accounts must be authorized by the consumer via a writing that is signed or similarly authenticated using a digital signature or other code, with the exception of certain truncation or conversion applications which require the Customer to provide the consumer with notification. For debit entries, the Customer must provide the consumer with a written copy of the authorization. The Customer, upon request, must present a copy of the consumer's authorization to the Bank. The Customer must retain the signed or authenticated authorization for a period of two years following the termination or revocation of the authorization. The Customer will initiate no entry after the termination or revocation of a consumer's authorization.

#### (ii) Other accounts

Before the Customer's initiation of the first debit or credit entry to a customer's account (other than a consumer's account referred to in the previous paragraph), the Customer will obtain a proper authorization in accordance with the Rules and U.S. law or regulation. An agreement must be readily identifiable as either an ACH credit or an ACH debit authorization. Revocation language must be included on authorizations for recurring payments. All debits to such customer accounts must be authorized by the account holder via a writing that is signed or similarly authenticated using a digital

signature or other code, with the exception of certain truncation or conversion applications which require the Customer to provide the account holder with notification.

The Customer, upon request, must present a copy of the authorization to the Bank. The Customer must retain the signed or authenticated authorization for a period of two years following the termination or revocation of the authorization. The Customer will initiate no entry after the termination or revocation of any such customer's authorization.

(E) Prenotifications

If the Customer chooses to originate non-dollar prenotification entries to verify the accuracy of routing and account numbers, it agrees not to initiate live-dollar entries until at least six (6) business days following the settlement date of the prenotification entry. Prenotifications will be provided to the Bank in the format provided in the Rules. If the Customer receives notice that a prenotification has been rejected or returned, the Customer will research the problem and make any necessary corrections before transmitting another entry.

(F) Notifications of Change

The Bank will notify the Customer of all Notification of Change (NOC) entries received no later than two (2) Business Days after the receipt of the entries. The Customer agrees to make the changes submitted within six Business Days of the settlement date of the original entry or before the next "live" entry, whichever is later. If the Notification of Change is incorrect, the Customer will generate a Refused Notification of Change and deliver it to the Bank.

(G) Transmission of Entries and Security Procedures

The Customer will transmit all debit and credit entries to the Bank at the location, on or before the cut-off time, described on Schedules to this Agreement. The Customer will provide all entries with the formatting, content, and specifications contained in the Rules, except as provided in Schedules hereto. The Bank has encouraged Customer to adopt robust security procedures to protect against fraud when utilizing this service. The Customer will comply with the security procedures which Customer adopts and agrees that these procedures are commercially reasonable. The Customer authorizes the Bank to transmit all entries received by the Bank from the Customer in accordance with the terms of this Agreement and to credit or debit such entries to the specified Accounts. The Customer will use appropriate encryption standards for ACH entries involving banking information that is transmitted or exchanged via an Unsecured Electronic Network.

(H) Bank Obligations

In a timely manner and in accordance with the Rules, the Bank will process, transmit, and settle for the entries received from the Customer which comply with the terms of this Agreement, including the security procedures. The Bank shall have no obligation to transmit entries if the Customer is in default of any of its obligations under this Agreement, including any obligation to pay the Bank.

(I) Representations and Warranties

The Customer certifies to the Bank all warranties the Bank is deemed by the Rules to make with respect to entries originated by the Customer. Without limiting the foregoing, the Customer represents, warrants and agrees 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) each debit entry is for the sum which, on the settlement date with respect to it, will be owed to the Customer from the party whose account will be debited, is specified by such party to be paid to the Customer, or is a correction of a previously transmitted erroneous credit entry; (c) the Customer has complied with all prenotification requirements of the Rules, and (d) the Customer will comply with the terms of the Electronic Funds Transfer Act, if applicable, or Uniform Commercial Code Article 4A, if applicable, and shall otherwise perform its obligations under this Agreement in accordance with all applicable laws and regulations. For any RCK (Re-presented Check) entries, ARC (Accounts Receivable) entries, POP (Point-of-Purchase) entries, WEB (Internet-Initiated) entries, TEL (Telephone-Initiated) entries, BOC (Back Office Conversion) entries, and IAT (International ACH Transaction) entries originated, the Customer certifies its compliance with all warranties made by the Bank pertaining to



such entries exchanged through the ACH Network. The Customer shall indemnify the Bank against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations, warranties or agreements.

(J) Provisional Credit

The Customer acknowledges that the Rules make provisional any credit given for an entry until the Bank crediting the account specified in the entry receives final settlement. If the Bank does not receive final settlement, it is entitled to a refund from the credited party, and the originator of the entry shall not be deemed to have paid the party.

(K) Settlement

The Customer will maintain an Account with the Bank at all times during the term of this Agreement. The Customer will maintain in the Account available funds, that, when combined with the then available undrawn balance of any credit lines with respect to such Account provided to Customer by Bank, are sufficient to cover all credit entries initiated by it. The Customer agrees to maintain a balance to cover returns and adjustments to prior funds credited. The Bank may debit any Account maintained by the Customer at the Bank or at any of its affiliates or secure necessary collateral to satisfy any amount owing to the Bank. The Customer agrees not to exceed the origination limits set by the Bank from time to time.

(L) Settlement Discrepancies

The periodic statement issued by the Bank for the Customer's Account will reflect entries credited and debited to the Customer's Account. The Customer agrees to notify the Bank within thirty (30) days after the Customer receives a periodic statement of any discrepancy between the Customer's records and the information in the periodic statement.

(M) Cancellation or Amendment of Entries

The Customer shall have no right to cancel or amend any entry/file after its receipt by the Bank. However, the Bank shall use reasonable efforts to act on a request by the Customer to cancel an entry/file before transmitting it to the ACH Network or processing it as an on-us entry. Any such request shall comply with the security procedures adopted by the parties. The Bank shall have no liability if it fails to effect the cancellation.

(N) Rejection of Entries

The Bank may reject any entry, including an on-us entry, which does not comply with the requirements of this Agreement and may reject any entry if the Customer is not otherwise in compliance with the terms of this Agreement. The Bank shall notify the Customer by telephone or other means selected by the Bank, of such rejection no later than the business day such entry would otherwise have been transmitted by the Bank to the ACH Network or, in the case of an on-us entry, its effective entry date. It shall be the responsibility of the Customer to remake any entries or files rejected by the Bank or the ACH Operator. The Bank shall have no liability to the Customer by reason of the rejection of any entry or the fact that such notice is not given at an earlier time than provided for herein. The Bank retains the right to reject any transaction for any reason, including, but not limited to, insufficient funds or revoked authorization.

(O) Returned Entries

The Bank shall notify the Customer by telephone or other means selected by the Bank, of the receipt of a returned entry from ACH no later than one business day after the business day of such receipt. The Bank shall have no obligation to re-transmit a returned entry if the Bank complied with the terms of this Agreement with respect to the original entry. The Customer authorizes the Bank to charge back any debit returns to the Customer's designated Account. The Customer will promptly provide immediately available funds to indemnify the Bank if any debit entry is returned after the Bank has permitted the Customer to withdraw funds in the amount thereof or if any adjustment memorandum that relates to such entry is received by the Bank.

(P) Reversals

The Customer may initiate a reversing entry or file of entries for erroneous or duplicate transactions, as permitted by the Rules. In doing so, the Customer warrants that it has initiated the entries or files within five (5) days of the original entry or entries and within 24 hours of discovery of the error. The Customer also warrants that the account holder of the reversing entry has been notified of the reversal and the reason for the reversal no later than the settlement day of the reversal. For both reversing entries and files, the Customer indemnifies all parties of the transaction(s) from and against any claim, demand, loss, liability, or expense.

(Q) Name and Account Number Inconsistency

The Customer acknowledges that, if an entry describes the receiver inconsistently by name and account number, payment of the entry may be made on the basis of the account number even if it identifies a person different from the named receiver.

(R) Fees

The Customer authorizes the Bank to debit its designated Account for services provided under the Agreement in accordance with the Schedule of fees in effect from time to time. The Bank may change its Fees from time to time.

(S) Exposure Limits

The Customer shall comply with the exposure limits established by the Bank.

(T) Contingency

In the event the Customer cannot create or transmit an ACH file due to hardware or communications outage, it is the responsibility of the Customer to have contingency procedures in place. In the event the Bank cannot process the file through normal channels, it may, at Bank's sole option, seek alternate means to process the file. The Bank will not be held liable for its failure to locate alternative means or for delayed files in any case.

(U) Termination of Agreement

The Bank may terminate the service at any time. The Customer may terminate the service by providing one hundred twenty (120) days' prior written notice to Bank, subject to the following:

- (i) The Customer shall cease using the service once such notice is given.
- (ii) At the time of such notice, and at all times until the one hundred twenty first (121st) day after such notice, Customer shall maintain its Account, and shall maintain in its Account, funds sufficient to satisfy all chargebacks and amounts due to Bank with respect to such service, or such other amount as agreed to by the Bank. The Bank may deduct all amounts due to Bank with respect to such service from any Account.

**Attached Schedules - ACH Origination****Schedule A - Delivery and Processing Specifications**Delivery Method

The Bank accepts files via the following methods:

Internet Transmission via Software/Client

Email Transmission

Delivery of data carrier

Effective Entry Date

The Effective Entry Date – contained in the Customer/Batch Header Record(s) of the ACH input file – is a date specified by the Customer on which it intends an entry to be posted and settled. The Effective Entry Date must be a future date and must not be a Saturday, Sunday, or holiday observed by the Federal Reserve Bank as listed in Schedule C.

You may submit debit transactions up to 1 day in advance of the Effective Entry Date.

You may submit credit transactions up to 2 days in advance of the Effective Entry Date.

Delivery Deadline

All ACH input files must be received by the Bank no later than the time of 3 pm Eastern time to be processed on that same day. Input files containing debit transactions must be transmitted or delivered to the Bank at least 1 business day(s) prior to the Effective Entry Date of the entries contained in the file. Input files containing credit transactions must be transmitted or delivered to the Bank at least 2 business day(s) prior to the Effective Entry Date of the entries contained within the file.

File Format

All ACH input files must be in the standard ACH format based on the NACHA Operating Rules.

File Name

The Customer must name any ACH input files in accordance with the following format:

Default Name Created by Software/Client

Other: \_\_\_\_\_

Settlement

As of 2 days prior to the effective date of credit transactions, the Customer will maintain in the Account immediately available funds sufficient to cover all credit entries initiated by it. The Customer authorizes the Bank to debit its Account, in the amount of each file, as of 2 days prior to the effective date of credit transactions. For debit files originated, an offsetting credit will be issued to the Customer's Account by the Bank on the effective date of debit transactions.

## **Schedule B - Security Procedures**

The Customer is responsible for the security of any software program it uses, including Software/Client supplied by the Bank for the creation and/or the transmission of ACH files to the Bank. Whether the software resides on the Customer's network/PC or on a remote server accessed through the Internet, the Customer is solely responsible for the assignment of individuals that can access the software.

### File Summary Report

For ACH input files in which the Customers provided an automated acknowledgment via Software/Client, it is the responsibility of the Customer to obtain and verify this acknowledgment after the file is accepted. In the event a file is rejected, it is the responsibility of the Customer to resubmit the file.

For ACH input files transmitted from the Customer to the Bank for processing by a method other than internet transmission via Software/Client, such files must be accompanied by a summary report containing the file name, total number of entries, dollar totals, Effective Entry Date, and signature of an authorized representative as listed in the ACH Access Form. For ACH input files delivered via electronic transmission (other than via Software/Client), the summary report should be faxed using the telephone number provided by the Bank. (In the event that the Customer is unable to fax the information, the Customer's authorized representative will telephone the Bank's ACH contact with the verification and subsequently mail the information as a backup on the same day.) The Bank will verify the information on the summary report to the actual ACH input file and, in the event of a discrepancy, will telephone the specified authorized representative of the Customer. Any such ACH input file will not be processed until an authorized representative is available for notification. The Bank shall be entitled to rely on summary reports believed by it in good faith to be genuine and to have been signed by the authorized representative. The Bank will rely on the ACH Access Form for a listing of authorized representatives and accepts no responsibility for files delivered by employees who have been subsequently terminated or by personnel whose authorization has been subsequently revoked by the Customer.

### Prearranged Schedule

The Bank will anticipate the receipt of an ACH file from the Customer on each scheduled processing date identified by the Customer in writing and agreed to by the Bank. The Customer's authorized representative will notify the Bank if a file will not be delivered on the prearranged scheduled processing date. The Customer is responsible for ensuring that the Bank receives the file in the ACH processing area on each processing date indicated in the processing schedule.

If ACH files are permitted to be delivered via data carrier, the Customer will present such disk to the Bank's office located at 225 Liberty Street, New York, New York 10281-1050 in an envelope clearly marked "ATTN: ACH PROCESSING." A duly signed dispatch note has to be attached.

## Schedule C - Holidays

### Holiday Calendar

The Bank will be closed on the following standard holidays observed by the Federal Reserve Bank. The Bank will not accept files for processing on the following days, as well as all Saturdays and Sundays. Likewise, entries should not be effective dated for these days.

- New Year's Day (January 1)
- Martin Luther King's Birthday (Third Monday in January)
- Presidents' Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25)

*Note: If January 1, July 4, November 11, or December 25 fall on a Sunday, the next following Monday is a standard Federal Reserve Bank holiday.*

## Schedule D - Authorized Representatives

Representatives of the Customer who are each authorized to transmit ACH input files to the Bank for processing shall be named in a separate access form (an "ACH Access Form"). The Bank shall be entitled to rely on any written notice or other written communication believed by it to be genuine and to have been signed by an authorized representative, and any such communication shall be deemed to have been signed by such person. The Customer may add, change user rights and limits or delete an authorized representative by written notice and by submitting an amended ACH Access Form to the Bank signed by at least two authorized representatives other than any representative being added or deleted. A requested change will become effective on the second Business Day following the day of the Bank's receipt of the written notification and revised ACH Access Form.

Annex to Fax agreement

**Authorized Account Persons**

The present instructions shall apply to the following authorized signatories:

Designation of persons

Last name, first name	State whether authorized to sign singly / jointly with serial number. (if several persons are designated, any two persons are authorized jointly)	Signature
1.		
2.		
3.		
4.		
5.		

or

**Designation by reference to specimen signature sheet**

All persons who are named to be authorized representatives in the specimen signature sheet agreed upon by us with Commerzbank now and in the future shall be authorized to give payment orders by fax. The type of signature authorization results from the specimen signature sheet.

**Security Procedures**

Customer agrees that any payment order given by fax copy contains a high risk. Especially, but not limited to, UCC 4a the customer wish to use the following marked security procedure

Return call

Before execution, payment orders will be confirmed by the following person(s):

Name	Telephone

Commerzbank shall not be obliged to execute payment orders until confirmation by phone has been obtained.

**Testkey agreement**

The customer joins in a separate agreed test key arrangement.

**Maximum amount per payment order**

The instructions shall only apply to orders by fax up to the maximum amount of USD / EUR \_\_\_\_\_

**Account to be debited / credited**

The instructions shall only apply to payment orders to the debit of account no. \_\_\_\_\_ with Commerzbank New York Branch

The instructions shall only apply to payment orders to the credit of the following accounts according to the enclosed separate list:

Payee:

Swift / Sort code:

Payee's account no:

With financial institution:

Payee

Swift / Sort code:

Payee's account no:

With financial institution:

## PART IV. TRANSMISSION OF MESSAGES BY E-MAIL

At the Customer's specific request, the Bank transmits messages in connection with banking operations also by e-mail; at the same time, the Customer wishes to send messages to the Bank by the same means.

### 1. Explanations on risks.

The Customer is aware of the fact that, in the use of this communication medium, abuse - especially by third parties - cannot be excluded as a rule, and may not be immediately recognizable. The Customer is further aware that this type of communication may involve restricted availability and other malfunctions, also in respect of the technology used by it and the services involved (e.g. telecommunication providers). Finally, the messages sent to the Bank and the Customer may possibly be read and even altered by third parties. This entails risks regarding confidentiality, integrity, banking secrecy and trade secrets.

The Customer has been informed that, for the transmission of the said messages by e-mail, no state-of-the-art security media are employed (in particular no encryption certificates); the Customer nevertheless wants to transmit and to receive the said messages by e-mail.

### 2. Legally binding messages not to be sent by e-mail.

Legally binding notices (especially declarations of intention such as securities/currency trading orders or payment orders) which need to be made in writing for reasons of evidence, shall not be communicated by e-mail between the Bank and the Customer in the absence of an express agreement. For this type of messages, the already known means of transmission such as business communication by post or via an Internet portal of the Bank shall be used.

The Bank will thus not process orders or instructions sent to it by e-mail, and its silence shall not signify acceptance of an application for the handling of banking transactions.

### 3. Responsibilities.

The Bank shall be liable for the authenticity, completeness and intactness of the notices which it sends by e-mail only to the extent that it is directly responsible for any damage incurred as a result.

The Customer is obliged to take the required organizational measures in order to check the authenticity and intactness of the notices sent to it by e-mail. The Customer shall also bear the risk of delays or any other malfunctions in the technical transmission, unless the Bank is responsible for the damage caused.

### 4. E-mail addresses to be used.

The e-mail addresses to be used for the transmission of e-mail information will be advised to the Bank individually. The sender's address of the Bank is: name.surname@commerzbank.com.

### 5. General.

The foregoing provisions shall remain valid until revoked in writing by the Customer or the Bank.



**PART V. SCHEDULE OF SERVICES**

Service Selections.

In this Schedule of Services Customer may select the services that the Bank will provide to the Customer. This Schedule of Services is not binding on the Bank with respect to a service Customer has selected until Customer has completed this Schedule of Services and the Bank has accepted it.

Changes to Existing Services or Additional Services.

If Customer wishes to (i) change any of the features or service options for a service already selected, including changing designated personnel for a particular service, or (ii) add a service, Customer may do so by having an Authorized Account Person complete and execute an addendum to this Schedule of Services in the form provided by the Bank, or some other form acceptable to the Bank. If Customer chooses to communicate such a change or addition of a new service to the Bank by any other means, the Bank is entitled (but not obligated) to rely on the information communicated to the Bank if it in good faith believes it was communicated to the Bank by someone authorized to do so on the Customer's behalf.

Please select the service(s) Customer would like to use:

- |  |  |
|--|--|
| <input type="checkbox"/> Commercial Balance Reporting* | <input type="checkbox"/> Wholesale Lockbox*      |
| <input type="checkbox"/> Positive Pay Service*         | <input type="checkbox"/> Remote Deposit Capture* |
| <input type="checkbox"/> ACH Origination Service*      | <input type="checkbox"/> Payment Orders By Fax * |

\* Denotes a service that requires the completion of setup instructions.

**General Business Conditions Signature Page**

IN WITNESS WHEREOF, the Customer has caused its duly authorized officer(s) to execute and deliver this Agreement as of the date written below.

Company: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_ \*

Name:

Title:

\*Use if 2nd signatory is required.