

## Michigan Commerce Bank Business Online Banking Services Agreement

This is the agreement for Michigan Commerce Bank Business Online Banking Services (the "Agreement") and it includes certain disclosures for electronic transfers and transactions. This Agreement, along with any Addendums attached hereto, is in addition to other agreements between Michigan Commerce Bank and you, including but not limited to, your checking, savings, and other deposit account agreements, your credit card agreements, your overdraft protection, loan and line of credit agreements as each may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and one contained in the other agreements between you and us, this Agreement will control.

### General Terms.

In this Agreement, the words "BANK", "we", "us" or "our" mean Michigan Commerce Bank as appropriate and their successors or assigns. When we use the words, "COMPANY", "you" or "your" we mean each person who has an interest in an account or other relationship, which is accessible through the Michigan Commerce Bank Business Online Banking System (the "System"), and any person authorized such access. Michigan Commerce Bank Business Online Banking Services (the "Services") means information, communication and transactions provided to you by us through any remote channel, including the Michigan Commerce Bank web site, within our area of service, including, but not limited to, the following: account information, scheduled recurring and automated (Sweeps) Book Transfers; Wire Transfers; ACH Batch Originations, ACH Federal Tax Payments (EFTPS) (collectively "ACH Transfers"); Check Images; online Stop Payment Requests; Bill Payment and Presentment; online Account Reconciliation; Positive Pay Service; Electronic Statement(s)/Notice(s) Delivery; and Mobile Banking for accounts established at Michigan Commerce Bank.

Each time you use our System or you permit any other person to use our System, you are agreeing to the terms and conditions that we have set out in this Agreement, as amended, and each amendment thereto from time to time by us. Each time you use our System or you permit any other person to use our System, you are agreeing to the terms and conditions of any instructional material, which we provide to you regarding the System. And, each time you use our System or you permit any other person to use our System, you are acknowledging receipt and understanding of this disclosure.

By signing this Agreement you acknowledge that neither you nor the BANK on your behalf may initiate any transactions that violate the laws of the United States.

You agree to receive account information by electronic transmission of a visual display of the text. You may request a paper copy of electronic notices required by federal regulations within 60 days of the availability of the electronic disclosure.

When any payment or other online service generates items to be charged to your account, you agree that we may debit your designated eligible account or the account on which the item is drawn without requiring your signature on the item and without prior notice to you.

Any transactions resulting from your instructions that we receive under your password shall be deemed to have been "a writing" and authenticated by you "in writing." All records maintained by us of transactions under your password shall be deemed to have been "signed" and to constitute an "original" when printed from records established and maintained by us or our authorized agent in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, the records and "signed" documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our written request, you agree to manually sign or place your signature on any paper original of any record or "signed" document which we provide to you containing your purported signature.

### Available Services.

You may be allowed access to the following Services by first entering your Company ID and Password and your Company Administrator ID and Password. Once validated on the System, there is no additional sign-on required to access specific Services, although additional approvals may be required to complete certain transactions.

**Business Online Banking Account Information.** You may obtain account balance(s) and debit and credit transaction information, including ATM and debit card transactions, and other certain information about your Eligible Account(s) on the System. The System will retain a minimum of six months of transaction history, including the transactions for the current statement cycle. Account balances reported on the System are live, real-time balances, excluding ATM/Debit card activity.

**Business Online Banking Book Transfers.** You may transfer funds to and from any of your Eligible Account(s) ("Book Transfer"). The cut off time in order to process a Book Transfer is 6:00 PM Eastern Time. Transfers made after such time will be processed on the next business day. Book Transfers that have been completed cannot be canceled. A reverse transaction must be processed.

**Business Online Banking Account Information Download.** You may use the System to export transaction information from your eligible accounts using one of the available file formats including: Quicken (QIF), WebConnect for Quicken (QFX), QuickBooks (IIF), WebConnect for QuickBooks (QBO), Microsoft Money (QIF), WebConnect for Microsoft Money (OFX), TXT (word processing) and CSV (comma-separated file) which can then be imported into your software applications which accept these file types. Data mapping may be required in order to accurately export and import some of these files.

#### **Secure Messaging**

You may use Secure Messaging provided on the System to contact us regarding your Eligible Accounts. Your regular Internet e-mail is not a secure method of communication over the Internet and we urge you not to send confidential information by regular Internet e-mail. You should never use regular Internet e-mail to initiate a transaction against your accounts. We will use reasonable efforts to respond to messages sent via Secure Messaging by the next Business Day. Responses sent to you via Secure Messaging will be considered received by you, regardless of whether or not you have logged on to the Business Online Banking system and read them.

#### **Additional Business Online Banking Services.**

- Multiple Business Access.** If checked, see **Addendum B.**
- Wire Transfer Service.** If checked, see **Addendum C.**
- ACH Batch Originations Service.** If checked, see **Addendum D.**
- ACH Electronic Federal Tax Payment Service.** If checked, see **Addendum D.**
- ACH Electronic State Tax Payment Service.** If checked, see **Addendum D.**
- Account Reconciliation and Positive Pay Service.** If checked, see **Addendum E.**

#### **Credit Verification**

Your use of the Services may be subject to credit approval. You hereby authorize us to check your credit, and verify or re-verify any information contained in this Agreement at any time, either directly or through a credit-reporting agency for each person who has a controlling ownership interest in your business. A controlling ownership interest shall mean the principal member, shareholder, business owner or other individual authorized to make significant business decisions regarding the direction and finances of your company.

#### **Equipment and Software.**

Certain computer equipment, peripherals and software are required to access the System including (i) a personal computer or equivalent device; (ii) a modem or equivalent means to connect to the Internet, and (iii) a commercially available Internet Browser with at least 128-bit encryption (hereinafter referred to as your "Equipment"). Your Equipment shall be acquired and maintained at your own expense. You hereby certify that you are an authorized user of the Internet Browser you select as well as any other software used to access or interface with the System and you agree to ensure that any future supported upgrades to your Internet Browser and other software will be loaded and operational on your personal computer.

#### **Security.**

Bank will verify that Company has authorized, canceled or amended an entry that constitutes a payment order solely by means of the security procedures inherent in the System. This security procedure uses 128-bit encryption and requires use of a Company ID, Company Password, User ID and User Password. In the event that COMPANY elects to use the Single Sign On feature, only a designated Single Sign On ID and Password will be required. Orders can only be transmitted to Bank through the System website, except as otherwise provided in this Agreement and its Addendums. .

You agree that the above-described security procedure is commercially reasonable and is the security procedure that best meets Company's wishes and its requirements given the size, type and frequency of the Company's use of the Services. Company further agrees to safeguard any number, code, passwords, test key, or other identifier assigned to it, from discovery by any unauthorized person. The security procedure is not designed to and will not detect errors and Company assumes all responsibility for errors that may be contained in its Orders to Bank.

Notwithstanding our efforts to insure that the System is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the System, or email transmitted to and from us, will not be monitored or read by others.

COMPANY acknowledges that it is solely responsible for the security of its own computer and access systems. COMPANY agrees that it will maintain adequate safeguards to protect its computer and access systems from viruses, spyware or any unauthorized intrusion that would threaten the System or COMPANY's accounts. COMPANY agrees that it will hold BANK harmless from any unauthorized transactions, loss or liability associated with any unauthorized intrusion into COMPANY's computer or access systems.

**Liability for Loss.**

**EXCEPT WHERE THE LAW REQUIRES A DIFFERENT STANDARD, YOU AGREE THAT NEITHER WE, OUR PARENTS, SUBSIDIARIES, AFFILIATES, OR THE SERVICE PROVIDERS SHALL BE RESPONSIBLE FOR DAMAGES, ERROR, LOSS, PROPERTY DAMAGE OR BODILY INJURY, WHETHER CAUSED BY THE EQUIPMENT, SOFTWARE, US, OR BY INTERNET BROWSER PROVIDERS SUCH AS NETSCAPE (NETSCAPE NAVIGATOR BROWSER) AND MICROSOFT (MICROSOFT EXPLORER BROWSER), OR BY INTERNET ACCESS PROVIDERS OR BY ONLINE SERVICE PROVIDERS OR BY AN AGENT OR SUBCONTRACTOR OF ANY OF THE FOREGOING, NOR SHALL WE OR THE SERVICE PROVIDERS BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, ECONOMIC OR OTHER DAMAGES ARISING IN ANY WAY OUT OF THE INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, THE BUSINESS ONLINE BANKING SERVICES, INTERNET BROWSER, ACCESS SOFTWARE, THIS AGREEMENT, THE UNAVAILABILITY OF BUSINESS ONLINE BANKING SERVICE OR ANY ERRORS IN INFORMATION PROVIDED THROUGH THIS SERVICE, EVEN IF WE OR A SERVICE PROVIDER HAVE BEEN ADVISED OF OR ARE OTHERWISE AWARE OF THE POSSIBILITY THEREOF, EXCEPT AS LIMITED BY APPLICABLE LAW. THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE THE LESSER OF THE AMOUNT YOU ORIGINALLY PAID FOR THE SERVICE, PRODUCTS OR MATERIALS OR ONE HUNDRED U.S. DOLLARS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE MAY NOT APPLY TO YOU.**

**Eligible Accounts.**

Eligible Accounts include the following business account types: Checking, Money Market, Savings and Time Deposits, Loans and Lines of Credit. Federal regulations restrict some types of transactions on Money Market and Savings accounts to six per month. These restricted transactions include checks, telephone transfers, online transfers, pre-authorized debits, and automated clearinghouse debits. Certificates of Deposit are time deposits whereby early withdrawals may result in the assessment of penalties. Therefore, only balance and interest information is available online for these types of accounts. An account that requires two or more signatures to make withdrawals, transfers or transactions may not be designated as an Eligible Account.

**Account Access.**

To have access to the System, you must have at least one Eligible Account with us. If you have multiple Eligible Accounts with us they will all be accessed on the System, unless otherwise indicated. A business account cannot be linked to a personal account with the exception of a sole proprietor relationship. Accounts that are linked must have one common owner and signer. Any signer, acting alone, must be authorized to access a linked account. Any non-linked account will not be accessible through the System unless you are the signer on the account, and you request that it be linked. Accessibility of Eligible Accounts may vary based on the Services you use.

**Authorized Contacts.**

The COMPANY shall designate a Company Administrator who shall be responsible for managing access to the System and serve as the primary contact for the COMPANY in matters pertaining to the System or Services. Additional representatives may be authorized by the COMPANY and granted the same administrative authorities (hereinafter referred to as "Administrative Users"), so long as these individuals are specifically identified in **Addendum A: Authorized Contacts**.

**System Access.**

Certain numbers, codes, marks, signs, public keys or other means of establishing your identity and acceptance of the electronic communications will be required in order for you to access the System (hereinafter referred to as the "Access Codes"). Use of Access Codes is the agreed upon security procedure to access the System via the Internet. Your Access Codes shall include a Company ID and Company Password and a Company Administrator ID and Company Administrator Password. You agree to keep these Access Codes confidential to prevent unauthorized use of the Services. It is recommended that you memorize your online Access Codes and do not write them down. You are responsible for keeping your Access Codes and account data confidential.

We reserve the right to block your access to the System to maintain or restore security to the BANK'S website and to the System, if we reasonably believe your Access Codes may have been obtained by unauthorized persons.

The Company Administrator may provide System access to additional users by i) establishing a unique User ID and User Password for each additional System user, including additional Administrative Users ii) to grant access to specific accounts, Services and System tools to each user, iii) and to designate transaction limits for each user within the COMPANY'S own limits.

The Company Administrator may change both the Company Password and their own User Password at any time via the System. The System allows the Company Administrator to create additional COMPANY User IDs and passwords which will allow those individuals to access accounts and create transactions within the limits established in the original Agreement between the COMPANY and the BANK. Your designated Company Administrator is responsible for creating and managing the User IDs issued to employees of your company. Other users authorized by the Company Administrator may change only their own passwords. If a user other than the Company Administrator gets locked out, the Company Administrator or an Administrative User designated by the Company Administrator can reset the user's password or unlock their access. The BANK can change or unlock the company password or the Company Administrator password. Therefore, we require that you provide us with a list of company contacts that are authorized to request password resets or other services on behalf of the COMPANY (see **Addendum A**). When creating new user profiles for the COMPANY, the Company Administrator may not exceed file limits imposed by the BANK for specific Services. Passwords will not expire.

The COMPANY agrees to implement internal security procedures to assure that only authorized employees have the ability to access the System and the Services. If the Company Administrator grants access to additional users, including administrative users, you thereby authorize us to complete requests and transactions initiated by those users.

The COMPANY controls and manages the COMPANY's and User's passwords and will be solely responsible for the use of the Services by anyone who utilizes correct COMPANY passwords. You will have the ability to set up additional users to access your accounts and will be responsible for assigning such users passwords and for maintaining the security surrounding your users, passwords and user transaction authority. BANK will act on instructions received under valid passwords, will have no duty to further verify the identity of any System user with valid passwords and shall not have any liability for transactions occurring on your account originated with valid passwords.

#### **Separation of Duties.**

The System provides you the ability to require that an approval of certain Services take place before they can be processed. In order to increase your internal security, we strongly suggest that the Company Administrator assign dual control to initiate transactions such as ACH Originations, Wire Transfers and ACH Federal Tax Payments whenever possible. Similarly, if the COMPANY has selected the Account Reconciliation or Positive Pay Service, we strongly recommend that whenever possible the user assigned access to these Services should not be the same individual that issues the COMPANY'S checks.

#### **Liability for Multiple Users of Your Account.**

**YOU HEREBY RELEASE US FROM ANY LIABILITY AND AGREE NOT TO MAKE ANY CLAIM OR BRING ANY ACTION AGAINST US FOR HONORING OR ALLOWING ANY ACTIONS OR TRANSACTIONS WHERE YOU HAVE AUTHORIZED THE PERSON PERFORMING THE ACTION OR TRANSACTION TO USE YOUR ACCOUNT(S) AND/OR YOU HAVE GIVEN YOUR ACCESS CODES TO SUCH PERSON, OR, IN THE CASE OF A JOINTLY HELD ACCOUNT SUCH PERSON IS ONE OF THE OWNERS OF THE ACCOUNT. YOU AGREE TO INDEMNIFY AND HOLD US HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) ARISING FROM ANY SUCH CLAIMS OR ACTIONS.**

#### **Errors and Unauthorized Transactions.**

The COMPANY shall report any errors, omissions or discrepancies between its records and information contained on the System to BANK immediately upon receipt or posting on System. If you believe your Access Codes have been lost or stolen or if you believe that an unauthorized transaction has been made or may be made from one of your BANK accounts you must contact the BANK immediately. COMPANY must review transactions daily to prevent loss associated with an unauthorized transfer. However, once the BANK has executed a payment order, it has no right to recall the entry. To report an error, omission, discrepancy or suspect transaction you must provide us with i) your COMPANY name, ii) affected account numbers, iii) description of the problem, iv) the dollar amount of the error, omission, discrepancy or suspect transaction, and v) a request for any information you need to aid in resolving the problem. You may contact the BANK by calling: **(517) 374-5333** COMPANY's failure to report unauthorized or erroneous transactions within 24 hours of their occurrence shall absolve BANK of liability for such unauthorized transfers.

#### **Hours of Operation.**

Except during any scheduled maintenance period or system outage, you may access the System 24 hours a day, 7 days per week, however, electronic communications and transactions executed on the System can be processed only on Business Days prior to the established cut off times. Our Business Days are Monday through Friday, except Federal bank holidays and state holidays that may be observed. The BANK reserves the right to change its cut off times without prior notice to COMPANY.

#### **Periodic Statements.**

You will receive periodic statements for your eligible BANK accounts with the regularity provided for in your depositor, credit card, overdraft protection and line of credit agreements. In addition to reflecting your other account activity, your statements will include any transactions you authorize using the Services.

#### **Business Online Banking Service Fees.**

You may be charged Monthly Fees and/or Usage Fees whether or not you use the Services. The Business Online Banking Fee Schedule is attached hereto as **Addendum F**. You hereby authorize us to automatically deduct all applicable charges and fees for the Services from your designated Eligible Account. You may also be charged additional fees that may be assessed by your Internet Service Provider and/or your telephone company in order to use the System.

To the extent permitted by law, you give us the right to set off any of your money or property which may be in our possession against any amount owed to us under this Agreement. This right of set off does not extend to any Keogh, IRA account, or similar tax-deferred deposit.

**Changes or Interruptions in Services.**

If you do not use the System for any 180-day period, we reserve the right to discontinue your Services without notice to you. We reserve the right to terminate or to discontinue support of any Equipment or related software without prior written notice. We may, on a regular basis, perform maintenance on the System or our equipment which may result in interruptions or errors in the Services. We also may need to change the scope of our Services from time to time. We will attempt to provide prior notice of such interruptions and changes, but cannot guarantee that such notice will be provided.

**Liability for Funds Transfers.**

We or a third-party acting as our agent, are responsible for completing Funds Transfers including, but not limited to Book Transfers, ACH Transfers, and Wire Transfers, to/from your account(s) on time and according to your properly entered and transmitted instructions submitted prior to the cut off time.

**HOWEVER, NEITHER WE NOR ANY SERVICE PROVIDER WILL BE LIABLE:**

- **IF YOU DO NOT HAVE ADEQUATE MONEY IN A DEPOSIT ACCOUNT TO COMPLETE A TRANSACTION FROM THE ACCOUNT, OR IF THAT ACCOUNT HAS BEEN CLOSED OR FROZEN;**
- **IF THE TRANSFER WOULD CAUSE YOUR BALANCE TO GO OVER THE CREDIT LIMIT FOR ANY CREDIT ARRANGEMENT SET UP TO COVER OVERDRAFTS;**
- **IF YOU HAVE NOT PROPERLY FOLLOWED SOFTWARE OR SERVICE INSTRUCTIONS ON HOW TO MAKE A TRANSFER;**
- **IF YOU ATTEMPT TO TRANSFER FUNDS BETWEEN ACCOUNTS FROM DIFFERENT BANKS USING THE BOOK TRANSFER OPTION;**
- **IF YOU, OR ANYONE YOU ALLOW, COMMITS ANY FRAUD OR VIOLATES ANY LAW OR REGULATION;**
- **IF YOUR EQUIPMENT AND/OR SOFTWARE, THE BANK'S EQUIPMENT AND/OR SOFTWARE, OR THE PHONE LINES WERE NOT WORKING PROPERLY;**
- **IF CIRCUMSTANCES BEYOND OUR OR OUR AGENT'S CONTROL PREVENT MAKING A TRANSFER OR PAYMENT, DESPITE REASONABLE PRECAUTIONS THAT WE HAVE TAKEN. SUCH CIRCUMSTANCES INCLUDE, BUT ARE NOT LIMITED TO, COMPUTER FAILURE, TELECOMMUNICATION OUTAGES, POSTAL STRIKES AND OTHER LABOR UNREST, DELAYS CAUSED BY PAYEES, FIRES, FLOODS, OTHER NATURAL DISASTERS; OR ANY ELECTRONIC TERMINAL, TELECOMMUNICATION DEVICE OR ANY PART OF THE ELECTRONIC BOOK TRANSFER SYSTEM IS NOT WORKING PROPERLY;**
- **YOU OR WE HAVE TERMINATED YOUR BUSINESS ONLINE BANKING SERVICE OR CLOSED THE ACCOUNT.**

**THIS LIST SHALL NOT BE CONSIDERED EXHAUSTIVE OF INSTANCES OF OUR LIMITED LIABILITY. THERE MAY BE OTHER EXCEPTIONS TO OUR LIABILITY AS STATED IN YOUR OTHER AGREEMENTS WITH US.**

The BANK shall have no liability for delays. In no event shall BANK be responsible for errors or delays caused by others through whom it transmits Funds Transfers pursuant to this Agreement.

**UNDER NO CIRCUMSTANCES SHALL BANK BE LIABLE TO COMPANY OR TO ANY THIRD PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, REGARDLESS OF THE FACT THAT BANK MAY HAVE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. FURTHER, IN NO EVENT SHALL BANK BE LIABLE TO COMPANY IN AN AMOUNT GREATER THAN THE DOLLAR AMOUNT OF THE FUNDS TRANSFER(S) WHICH IS/ARE THE SUBJECT OF COMPANY'S CLAIM, PLUS EXPENSES OF THE FUNDS TRANSFER(S) AND INTEREST AS ALLOWED BY LAW.**

**Harm to Computer Systems/Data.**

**YOU AGREE THAT OUR LIABILITY FOR VIRUSES, WORMS, TROJAN HORSES, OR OTHER SIMILAR HARMFUL COMPONENTS THAT MAY ENTER YOUR COMPUTER SYSTEM BY DOWNLOADING INFORMATION, SOFTWARE, OR OTHER MATERIALS FROM OUR SITE SHALL BE LIMITED TO REPLACING, OR THE REASONABLE COST OF REPLACING, THE LOST INFORMATION, SOFTWARE OR OTHER MATERIAL. WE WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM SUCH HARMFUL COMPONENTS.**

**Performance of Software and Electronic Service.**

**IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES ARISING OUT OF THE USE, MISUSE OR INABILITY TO USE THE ONLINE SERVICES, OR FOR ANY LOSS OF ANY DATA, EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. WE MAKE NO WARRANTY TO YOU REGARDING THE EQUIPMENT OR THE SOFTWARE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.**

**Security.**

In order to maintain secure communications and reduce fraud, you agree to protect the security of your numbers, codes, marks, signs, public keys or other means of identification. We reserve the right to block access to the Services to maintain or restore security to our Site and systems, if we reasonably believe your access codes have been or may be obtained or are being used or may be used by an unauthorized person(s).

**COMPANY Indemnity.**

The COMPANY shall indemnify the BANK and hold the BANK harmless from any cost, liability, or expense (including reasonable attorney's fees) arising out of any claim by a third party alleging that a COMPANY payment order contravenes or compromises the rights, title, or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order, or other mandate or prohibition with the force or effect of law, unless such claim arises out of the BANK's failure to exercise ordinary care, failure to act in good faith, or failure to act in accordance with the COMPANY's instructions given pursuant to this Agreement.

**Ownership of Materials.**

The reproduction or distribution of the content and information on our site is strictly prohibited. All magnetic tapes and related records used by us in rendering the Services hereunder shall be and remain our property. At your request upon termination of this Agreement, we, in our sole discretion, may make available information contained in such tapes or records then on hand. Any expenses incurred by us in doing so will be paid by you.

**Severability.**

Wherever possible, each provision of this Agreement shall be interpreted in a manner that makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

In the event performance of the Services provided in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation, or government policy to which the BANK is subject and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulations or policy, and the BANK shall incur no liability to the COMPANY as a result of such violation or amendment.

**Cumulative Remedies.**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, ordinance or otherwise.

**Delays/ Force Majeure.**

The obligations of the BANK shall be suspended to the extent and for so long as such obligations are hindered or prevented from being performed on account of labor disputes, war, riots, civil commotion, acts of God, fires, floods, failure of suppliers and/or subcontractors to perform, failure of power, restrictive governmental law and/or regulations, storms, accidents or any other cause which is reasonably beyond the control of the BANK.

**Merger Agreement.**

This Agreement, including the Addendums attached hereto, constitutes the entire agreement between the parties and supersedes all prior agreements, oral or written, and may be modified or amended only by instrument in writing signed by both parties. There are no statements, promises or inducements made by either party or an agent of either party that are not contained in this written Agreement or other documents referenced by this Agreement. This Agreement may not be enlarged, modified or altered except in writing in accordance with the above provisions. No course of dealing between the BANK and the COMPANY will constitute a modification of this Agreement or constitute an agreement between the BANK and the COMPANY regardless of whatever practices and procedures the BANK or the COMPANY may use.

**Choice of Law.**

This Agreement shall be governed by and interpreted under Michigan and Federal Law.

**Headings.**

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

**Amendment of this Agreement.**

We may amend this Agreement and any Addendums attached hereto (including changes to the Business Online Banking Fee Schedule: **Addendum F**) by giving notice to you at least thirty (30) days before the effective date of the amendment, unless such change or amendment is otherwise required by law or applicable regulation and unless prior notice is excused by law. Posting a revised Agreement containing the amendment(s) to the BANK'S website shall be considered adequate notice. Your continued use of the Services is your agreement to the amendment(s)

**Waiver.**

We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future.

**Assignment.**

We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party.

**Termination.**

Except as provided above, we may terminate this Agreement and any service provided hereunder at any time upon ten (10) Business Days prior written notice of termination to you. We reserve the right to terminate or to discontinue support of any software or Equipment without prior written notice.

**Waiver of Statutory and Other Legal Requirements.**

**YOU AGREE THAT ALL OF THE PROVISIONS OF THIS AGREEMENT ARE ENFORCEABLE AS YOU HAVE EQUAL BARGAINING POWER AND HAVE ENTERED INTO ALL PROVISIONS VOLUNTARILY AFTER A FULL REVIEW AND UNDERSTANDING OF THIS AGREEMENT WITH ANY DESIRED LEGAL, ACCOUNTING OR OTHER ADVISOR, AND YOU AGREE TO SPECIFICALLY WAIVE, IF LAWFUL, ANY STATUTORY PROVISION, CASE LAW OR OTHER LEGAL AUTHORITY WHICH IS IN ANY WAY CONTRARY TO AND/OR NULLIFIES/VOIDS ANY PROVISION OR PORTION OF A PROVISION OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY REQUIRED AGREEMENT FORMALITY.**

**Advice of Your Attorney.**

**YOU MAY WISH TO HAVE AN ATTORNEY REVIEW THIS AGREEMENT PRIOR TO AGREEING TO THE TERMS AND CONDITIONS CONTAINED HEREIN. YOU MAY PRINT A COPY OF THIS AGREEMENT PRIOR TO AGREEING TO THESE TERMS AND CONDITIONS.**

**Corporate Authority; Partnership Authority.**

If you are a corporation or LLC, the person signing this Agreement on behalf of the corporation or LLC represents and warrants that he or she has full authority to do so and that this Agreement binds the corporation or LLC. If you are a partnership, the person signing this Agreement for you represents and warrants that he or she is a general partner of the partnership, that he or she has full authority to sign for the partnership and that this Agreement binds the partnership and all general partners of the partnership. You shall give written notice to us of any general partner's withdrawal from the partnership.

By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in this Agreement.

**Michigan Commerce Bank**

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

## Addendum A

### Authorized Contacts

The individuals listed below are Authorized Contacts for the COMPANY and may contact the BANK to request some or all of the following on behalf of the COMPANY as indicated in the table below: reset or change Company Password, Company Administrator ID, and/or the Company Administrator Password; request a change in the Maximum Daily Exposure Limit for Wire Transfers and/or ACH Transfers; and enable or disable Services. The COMPANY will supply signatures of representatives authorized to act on behalf of COMPANY. The BANK shall be entitled to rely on any written notice or other written communication believed by it in good faith to have been signed by an Authorized Contact.

| Employee Name    | Admin-istrative User (Y/N) | SSN | Telephone Number | Items Authorized For |          |                |            |           |                   |                   |          |  |
|------------------|----------------------------|-----|------------------|----------------------|----------|----------------|------------|-----------|-------------------|-------------------|----------|--|
|                  |                            |     |                  | Company Password     | Admin ID | Admin Password | Wire Limit | ACH Limit | ACH Disk Delivery | Tax Payment Limit | Services |  |
|                  |                            |     |                  |                      |          |                |            |           |                   |                   |          |  |
| Signature: _____ |                            |     |                  | Date: _____          |          |                |            |           |                   |                   |          |  |
|                  |                            |     |                  |                      |          |                |            |           |                   |                   |          |  |
| Signature: _____ |                            |     |                  | Date: _____          |          |                |            |           |                   |                   |          |  |
|                  |                            |     |                  |                      |          |                |            |           |                   |                   |          |  |
| Signature: _____ |                            |     |                  | Date: _____          |          |                |            |           |                   |                   |          |  |
|                  |                            |     |                  |                      |          |                |            |           |                   |                   |          |  |
| Signature: _____ |                            |     |                  | Date: _____          |          |                |            |           |                   |                   |          |  |

By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in the Agreement and this Addendum.

\_\_\_\_\_ (COMPANY)

By: \_\_\_\_\_ (Authorized Signature)

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

\_\_\_\_\_ (Title)

Date: \_\_\_\_\_

**Addendum B**

**Multiple Business Access**

This Addendum sets forth additional terms and condition with respect to accessing multiple businesses via one Business Online Banking sign on. The definition, terms and conditions of the Business Online Banking Services Agreement are hereby incorporated in this Addendum by reference. The provisions of this Addendum are controlled by the rights, obligations and liabilities established in the Business Online Banking Services Agreement. The BANK is not liable for the actions any authorized contact for any business takes with respect to any other business included in Business Online Banking under this Addendum.

**Eligible Business Account for Linking**

Each Business executing this Addendum authorizes the authorized contacts for each other Business listed herein to act on it's behalf through the Business Online Banking and/or Online Banking systems. Each Business also acknowledges that it's bound by the rights, obligations, and liabilities of the COMPANY as defined, established, and obligated in the Business Online Banking Services Agreement and as "You" or "Your" as defined, established, and obligated in the Online Banking Services Agreement as if the executing Business executed those documents in their own name as the COMPANY. Businesses that COMPANY requests to be linked must have common ownership as established in each business's originating documentation. Businesses that COMPANY request to be linked must be listed below and must execute this Addendum.

| BUSINESS | EIN | ADDENDUMS AUTHORIZED FOR          |  |                                     |                            |  |   |
|----------|-----|-----------------------------------|--|-------------------------------------|----------------------------|--|---|
|          |     | ADDENDUM A<br>AUTHORIZED CONTACTS | ADDENDUM B<br>MULTIPLE BUSINESS ACCESS | ADDENDUM C<br>WIRE TRANSFER SERVICE | ADDENDUM D<br>ACH SERVICES | ADDENDUM E<br>ACCOUNT RECONCILIATION AND<br>POSITIVE PAY SERVICE | ADDENDUM F<br>BUSINESS ONLINE BANKING FEE<br>SCHEDULE |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |
|          |     |                                   |  |                                     |                            |  |   |

**Termination**

Either the BANK or any executing Business may terminate this Addendum at any time upon ten (10) Business Days prior written notice of termination. If a Business is terminating this Addendum, it must provide notice to Bank and each listed Business. If Bank terminates this Addendum, it must provide notice to each executing Business.

By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in the Agreement and this Addendum.

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date:

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date:

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date:

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date:

## Addendum C

### Wire Transfer Service

This Addendum sets forth additional terms and conditions with respect to requesting a Wire Transfer via the Business Online Banking System. The definitions, terms and conditions of the Business Online Banking Agreement are hereby incorporated in this Addendum by reference. The provisions of this Addendum are controlled by the rights, obligations and liabilities established by the Business Online Banking Agreement. To the extent that the terms of this addendum conflict with the Business Online Banking Agreement, this addendum shall control. This addendum shall be governed by Article 4A of the Uniform Commercial Code as adopted in <<insert state>> except as the article is amended herein.

Capitalized terms in this addendum refer to the defined term as found in UCC 4A, the Online Business Banking Agreement, or this addendum.

"Available Funds" means funds on deposit in an Eligible Account and available for withdrawal pursuant to the BANK's applicable funds availability schedule.

#### **Description of Wire Transfer Service.**

The Wire Transfer Service allows the COMPANY to use the System to request the transfer of funds from the COMPANY'S Eligible Account(s) by means of the Federal Reserve Communication System, or a similar network used for the transfer of funds between financial institutions or businesses ("Wire Transfers"). Wire Transfer requests communicated via the System will be reviewed and considered for processing if submitted before the posted cutoff time. Maximum per wire and daily limits on Wire Transfers are established at enrollment and may not be exceeded without prior written authorization from the BANK. Upon receipt of your Wire Transfer request, we may choose not to process the request if your account does not contain sufficient Available Funds to cover the transaction. The BANK may not process the request unless it is authorized by COMPANY or is verified by BANK in compliance with a Security Procedure for verifying the authenticity of funds transfers instructions. You may be notified via telephone, regular Internet e-mail or other means if a Wire Transfer request is denied. Wire Transfers input after the current day's posted cutoff time will remain on the System and will be processed on the following business day. Wire transfer requests must be dated for a Business Day. Wires Transfers cannot be dated for holidays, weekends or other non-processing days. An Authorized Contact identified in Addendum A of the Agreement may request changes in Wire Transfer limits, request the investigation of a Wire Transfer, request that we don't process a Wire Transfer, or request a reversal for a Wire Transfer request that has been submitted. Once Accepted by the Bank, a wire transfer cannot be reversed.

#### **Fedwire and Applicable Rules.**

Each payment order or cancellation thereof may be furthered by any bank by use of the funds transfer system of the Federal Reserve Banks ("Fedwire"). The rights and obligations of the BANK and COMPANY with respect to any payment order, any part of which is carried out through the use of Fedwire, will be governed by any applicable laws, the regulations of the Board of Governors of the Federal Reserve system, and the operating circulars of the Federal Reserve banks. Each payment order, or cancellation thereof, carried out through a funds transfer system will be governed by all applicable funds transfer system rules, whether or not the BANK is a member of the system. The COMPANY acknowledges that the BANK's right to reverse, adjust, stop payment, or delay posting of an Executed payment order is subject to the laws, regulations, circulars, and rules described in this paragraph.

#### **Maximum Limits on Wire Transfers.**

Maximum transfer limits help reduce the effect of fraud by limiting transfers, and therefore the limits should be selected to reflect COMPANY's actual anticipated need for Wire Transfers. Maximum per wire and daily limits on Wire Transfer requests shall be established as indicated below and may not be exceeded without prior written authorization from the BANK. Requests to change these limits must be submitted in writing and signed by an Authorized Contact with these privileges as identified in **Addendum A**. Other than in keeping with the established maximum per wire and daily limits, the BANK shall be entitled to execute Wire Transfers submitted via the System without regard to the amount(s) of the Wire Transfer(s), the recipient thereof, the account(s) to be credited or charged, or any other matter relating to the Wire Transfer, whether domestic or foreign. The BANK reserves the right to decrease your maximum per wire and/or daily limits at any time, for any reason without prior notice.

|                               |          |
|-------------------------------|----------|
| <b>Maximum Per Wire Limit</b> | \$ _____ |
| <b>Maximum Daily Limit</b>    | \$ _____ |

#### **Standing Authorization for Wire Transfer Requests.**

The COMPANY hereby requests that the BANK honor its requests to execute Wire Transfers communicated via the System.

The COMPANY understands that the BANK may elect not to act upon a Wire Transfer request for the COMPANY'S protection, if BANK is unable to obtain proper verification of the Wire Transfer request deemed satisfactory to the BANK or if there is any inconsistency between a Wire Transfer request and information previously supplied to BANK.

The COMPANY agrees that all Wire Transfer requests shall be subject to COMPANY having sufficient Available Funds in the account to be charged, as evidenced by the BANK'S records, which shall be conclusive. The BANK reserves the right to refuse to honor, and shall have no obligation to honor, any request for a Wire Transfer from any Eligible Account in which there is not sufficient immediately available funds to cover such Wire Transfer. However, in the event that the BANK does honor any request for a Wire Transfer that results in an overdraft of any COMPANY account, the COMPANY agrees that the amount of the overdraft shall be immediately due and payable to the BANK and that the BANK may offset the amount of the overdraft against the balance of any of the COMPANY'S accounts with the BANK, and may also exercise any rights that the BANK may have under any agreements granting the BANK security for the payment of liabilities or obligations of the COMPANY to the BANK.

The COMPANY hereby consents to the BANK'S recording of all Wire Transfer requests made electronically via the System or by telephone. However, BANK has no duty to record any instructions or Wire Transfer requests and the decision is totally within BANK'S discretion. The BANK may provide a wire transfer advice to the COMPANY within a reasonable time after the Wire Transfer has been executed. The COMPANY agrees that such advice shall constitute confirmation that a particular Wire Transfer has been executed by the BANK. Non-executed Wire Transfer requests will be reported to the COMPANY as soon as practicable. The COMPANY shall report any discrepancies between its records and the BANK'S statement or confirmation within a reasonable time, not to exceed thirty (30) days of such statement or confirmation, whichever the COMPANY received first.

**Identifying Number.**

COMPANY is notified that if the COMPANY's payment order in a funds transfer completed by Acceptance by the beneficiary's bank identifies the beneficiary by both a name and an identifying or bank account number and the name and number identify different persons, execution of the payment order, payment to the beneficiary, or cancellation of the payment order may be made solely on the basis of the number. If a payment order of the COMPANY identifies any bank by both a name and an identifying number and the number identifies a person different from the bank identified by name, any bank may rely solely on the identifying number.

**Limitation of Liability.**

Responsibility for the Detection of Errors. The BANK is not responsible for detecting any COMPANY error contained in any payment order sent by the COMPANY to BANK.

Compensable Damages. The BANK shall not be liable under any circumstance for consequential or special damages under this Addendum, whether or not such damages relate to the services covered by UCC 4A, even if the BANK has been advised of the possibility of such damages.

**Required Notice.**

The BANK will not be liable for any interest on the amount of a payment order that was not authorized or was erroneously executed unless the COMPANY notifies the BANK in writing that the payment order was not authorized or properly executed within 30 days following COMPANY's receipt of notification either of the acceptance of the payment order or of the debiting of the payment order to an Eligible Account.

**Consumer Transactions.**

COMPANY and BANK agree that if a payment order is a portion of a funds transfer in which other portions are subject to the Electronic Fund Transfer Act of 1987 (as in effect from time to time), all actions and disputes between the COMPANY and BANK concerning that payment order shall be determined pursuant to UCC 4A, as varied by this Addendum.

**No Extension of Credit.**

Nothing in this Addendum nor any course of dealing between the COMPANY and BANK constitutes a commitment or obligation of the BANK to lend money to COMPANY or obligates the BANK to extend any credit to COMPANY, or otherwise to advance funds to COMPANY to pay for any payment order contrary to BANK's published availability schedules.

**Termination.**

Either the BANK or COMPANY may terminate this Addendum at any time upon prior written notice to the other, but such termination shall not affect any Wire Transfers executed by the BANK prior to the effective termination date. Termination of this Addendum shall not constitute termination of the Agreement or any other Addendum.

By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in the Agreement and this Addendum.

**Michigan Commerce Bank**

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

## Addendum D

### ACH Services

This Addendum sets forth additional terms and conditions with respect to Business Online Banking Services associated with the Automated Clearing House (ACH) Network available via the Business Online Banking System. These Services include ACH Electronic Federal Tax Payments Service ("EFTPS Service"), State Tax Payment Service (available where permitted) and ACH Batch Originations Service (collectively the "ACH Services"). The definitions, terms and conditions of the Business Online Banking Agreement are hereby incorporated in this Addendum by reference. The provisions of this Addendum are controlled by the rights, obligations and liabilities established by the Business Online Banking Agreement. Unless otherwise defined in the Business Online Banking Agreement or herein, capitalized terms shall have the meanings set forth in the Operating Rules (the "Rules") of the National Automated Clearing House Association ("NACHA").

#### **Description of ACH Services.**

The EFTPS Service allows you to enter and submit all Federal tax payment types to the Department of the Treasury via the System. In order to qualify for the EFTPS Service, you must register with the Internal Revenue Service. In addition, state tax payments (available where permitted) can be paid to the appropriate taxing authority via the System. The ACH Batch Origination service allows you to create and/or send a NACHA formatted file in order to execute the transfer of funds to/from another financial institution to disburse/concentrate funds or to make payments/collect funds to/from another party via the System. All transactions executed through the ACH Services described above ("ACH Transfers") will be reviewed and considered for processing if submitted before the posted cut off time.

A Maximum Daily Limit for each of the ACH Services will be established herein and may not be exceeded without prior authorization from the BANK. Upon receipt of your ACH Transfer request, we may choose not to process the request if your account does not contain sufficient funds to cover the transaction. You may be notified via the System, regular Internet e-mail or other means if an ACH Transfer request is denied. You may enter future dated ACH Transfer requests up to thirty (30) days beyond the current date. Future dated ACH Transfer requests will remain on the System and will not be processed until the effective date of the ACH Transfer. It's recommended that ACH Transfer requests have an effective date **at least two (2) Business Days, but no less than one (1) Business Day** beyond the current Business Day in order to be processed. ACH Transfer requests with an effective date that falls on a holiday, weekend or other non-processing day will be processed on the following business day. An Authorized Contact identified in Addendum A of the Agreement may request changes in ACH Transfer limits, request the investigation of an ACH Transfer, request that we don't process an ACH Transfer, or request the reversal of an ACH Transfer request that has been submitted.

#### **Recitals.**

The BANK is a Participating Depository Financial Institution ("Participating Bank") of the Regional Payments Association for the State of Michigan. The COMPANY has requested that the BANK permit it to initiate electronic funds transfer entries ("Entry" or "Entries") through the BANK for the deposit ("Debit Entries") and/or payment ("Credit Entries") of money to/from the COMPANY'S Eligible Account(s) maintained at BANK and to/from accounts at other Participating Banks by means of the Automated Clearing House ("ACH") Network.

The COMPANY wishes to initiate Credit Entries by means of the ACH Network pursuant to the terms of the Agreement, this Addendum and the Rules of NACHA, and the BANK is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries.

#### **Operating Rules.**

The COMPANY agrees that it will comply with the Rules of NACHA, in existence as of the date of this Addendum and as amended from time to time. The duties of the COMPANY set forth in the following paragraphs of this Addendum in no way limit the requirement of complying with the Rules, and the COMPANY understands that it is bound by the requirements of the Rules first and foremost. Upon execution of this Addendum, the BANK will promptly deliver to the COMPANY a copy of the NACHA Rules and thereafter will promptly deliver revisions thereto as it receives them.

#### **Applicable Laws.**

The COMPANY hereby certifies it is aware that it is subject to all applicable state and federal laws when initiating ACH Transfers. This includes, but is not limited to the Office of Foreign Assets Control ("OFAC") enforced sanctions. Upon the submission of each ACH Transfer request, the COMPANY thereby certifies that it is not violating OFAC enforced sanctions, and is not acting on behalf of, or transmitting funds to/from any party subject to such sanctions. In some instances, provisions of the Agreement and this Addendum may be superseded by applicable federal or state law, including but not limited to, the Uniform Commercial Code Article 4A or the Electronic Fund Transfer Act.

**YOU SHOULD BE AWARE THAT YOU MAY NOT INITIATE ENTRIES THAT VIOLATE THE LAWS OF THE UNITED STATES AND YOU ARE HEREBY OBLIGATED TO ORIGINATE ONLY LAWFUL ENTRIES. WE MAY FROM TIME TO TIME NEED TO TEMPORARILY SUSPEND PROCESSING OF AN ACH TRANSFER FOR GREATER SCRUTINY THAT MIGHT RESULT IN DELAYED SETTLEMENT AND/OR AVAILABILITY OF FUNDS.**

**Security.**

The COMPANY is responsible to establish and maintain procedures to safeguard against unauthorized transmissions as provided in the Agreement. The COMPANY hereby further warrants that no individual will be allowed to initiate ACH Transfers in the absence of proper supervisions and safeguards. The BANK shall not be liable for any unauthorized transmissions, and assumes that all transmissions initiated from the COMPANY are duly authorized and properly permitted.

**Processing Transmittal and Settlement.**

Except as provided in **Section 9** of the Rules (**Rejection of Entries**), the BANK shall (i) process Entries received from the COMPANY to conform to the file specifications set forth in the Rules (ii) transmit such Entries as an Originating Depository Financial Institution to the ACH Operator, and (iii) settle such Entries as provided in the Rules.

The BANK shall transmit such Entries to the ACH Operator **two (2) Business Days prior to the Settlement Date** shown on such Entries provided (i) such Entries are received by BANK'S related cut off time on a Business Day, (ii) the Settlement Date is at least two (2) Business Days after such Business Day, and (iii) the ACH is open for business on such Business Day. If any of the requirements of clause (i), (ii) or (iii) of this paragraph are not met, the BANK shall use reasonable efforts to transmit such Entries to the ACH Operator by the next Business Day as defined in the Agreement.

**Prenotification and Rejection of Prenotification.**

The COMPANY may send a prenotification to the BANK that it intends to initiate an Entry/ Entries. Such prenotification shall be provided to the BANK in the format and on the medium prescribed by the Rules. If the COMPANY has received notice that such prenotification has been rejected within the prescribed period by a Receiving Depository Financial Institution as defined by the Rules ("Receiving Bank"), the COMPANY will not initiate any corresponding Entry until the cause for the rejection has been corrected and another prenotification has been submitted and accepted within the time limits prescribed by the Rules.

**Submission of Entry Information.**

The total dollar amount of an ACH Transfer request transmitted by COMPANY to the BANK on any one day shall not exceed the amount listed in the Exposure Limits table in this Addendum. The COMPANY will electronically submit the ACH Transfer request to the BANK via the System no later than the established cut off time of the first or second Business Day before the Settlement Date. If the System is unavailable, an individual identified as an Authorized Contact in Addendum A may deliver the data necessary for the ACH Transfer request on a CD directly to the BANK. Data submitted via CD must be provided in the NACHA file format and delivered prior to the established cut off time in order to be processed. Additionally, the COMPANY must provide an attached listing of the total dollar amount of the ACH Transfers contained within the CD and the effective posting date of each. Such CD shall be delivered by the Authorized Contact to the following address and representative for the BANK:

**Michigan Commerce Bank  
P.O. Box 13037  
Lansing, Michigan 48901  
Attn: Operations Manager**

**Indemnification.**

Unless the COMPANY is required to prefund its Eligible Account prior to executing an ACH Transfer, the COMPANY shall provide immediately available funds to cover any Credit Entry not later than the Settlement Date applicable thereto. The COMPANY will receive available funds for any electronic Debit Entry on the Settlement Date applicable thereto. If any Debit Entry is rejected by the Receiving Bank or if any adjustment memorandum that relates to any Entry is received by BANK after the BANK has permitted the COMPANY to withdraw funds in the amount thereof the COMPANY will promptly provide immediately available funds to indemnify the BANK. The COMPANY will indemnify BANK if the BANK incurs any loss or liability on account of a breach, with respect to any Entries initiated by COMPANY and of any of the warranties of an ODFI contained in the Rules, except due to the BANK'S own negligence.

In the event the COMPANY incurs any loss due to mishandling of a particular Entry/ Entries, the BANK'S liability to the COMPANY shall be limited to liability for its own willful misconduct and the amount recoverable by the BANK from the ACH, any indemnity agreement or any third party pursuant to the Rules.

The COMPANY shall assume full liability for any action made by any third party processor used by the COMPANY at its discretion to initiate Entries on its behalf.

**Submission and Processing of Entries.**

Entries will be made only to an Eligible Account(s) held at the BANK or accounts at other Participating Banks as defined by the Rules. All Entries shall be initiated by the COMPANY in accordance with this Agreement, this Addendum and in accordance with the Rules, including the section of the Rules entitled "Rights and Obligations of Companies." All Entries shall be received, processed and transmitted by the BANK pursuant to the Rules. The BANK'S obligation in connection with the making of Entries shall be those of an ODFI under the Rules, unless otherwise specifically provided herein.

**Rejection of Entries.**

The BANK may reject any Entry/Entries if the COMPANY does not have sufficient funds or if an Entry does not comply with OFAC requirements, any applicable state or federal laws, or any provision of the Agreement or this Addendum.

**Effective Entry Date.**

The Effective Entry Date with respect to an Entry shall mean the Business Day upon which the Entry is to be entered by the ACH operator.

**Settlement Date for Entries.**

The Settlement Date with respect to an Entry shall mean the Business Day upon which the Entry is to be debited or credited to the designated Eligible Account.

**Settlement by COMPANY for ACH Transfers.**

The COMPANY will maintain an Eligible Account, which shall be a Checking Account, at the BANK with balances sufficient to offset any Entries submitted and against which any rejected Entries may be credited or debited (the "Settlement Account"). The COMPANY hereby authorizes the BANK to offset against such Settlement Account for any rejected Entries. The BANK will either charge or credit the COMPANY'S Settlement Account for any Credit or Debit Entry initiated by the COMPANY on the Settlement Date. The COMPANY will reimburse the BANK with good and collected funds in the amount required if after settlement has been made by the BANK, any Debit Entry is rejected or if any adjustment memorandum that relates to any such Debit Entry is received by BANK. Such reimbursement will be made on the date such rejection or memorandum is received by the BANK. The BANK may require the COMPANY to prefund its Settlement Account for certain Entries. If prefunding is required, the COMPANY shall have sufficient funds in the Settlement Account on the ACH file origination date.

**Identifying Number.**

COMPANY is notified that if the COMPANY'S executed Credit Entry identifies the beneficiary by both a name and an identifying or bank account number and the name and number identify different persons, execution of the Entry, payment to the beneficiary, or cancellation of the Entry may be made solely on the basis of the number. If an Entry of the COMPANY identifies any bank by both a name and an identifying number and the number identifies a person different from the bank identified by name, any bank may rely solely on the identifying number.

**Limitation of Liability.**

**Responsibility for the Detection of Errors.** The BANK is not responsible for detecting any COMPANY error contained in any Entry sent by the COMPANY to BANK.

**Compensable Damages.** The BANK shall not be liable under any circumstance for consequential or special damages under this Addendum, whether or not such damages relate to the services covered by UCC 4A or other applicable rule or law, even if the BANK has been advised of the possibility of such damages.

**Required Notice.**

The BANK will not be liable for any interest on the amount of a an Credit Entry that was not authorized or was erroneously executed unless the COMPANY notifies the BANK in writing that the Credit Entry was not authorized or properly executed within 30 days following COMPANY'S receipt of notification either of the acceptance of the Credit Entry or of the debiting of the payment order to an Eligible Account.

**Consumer Transactions.**

COMPANY and BANK agree that if a payment order is a portion of a funds transfer in which other portions are subject to the Electronic Fund Transfer Act of 1987 (as in effect from time to time), all actions disputes between the COMPANY and BANK concerning that Entry shall be determined pursuant to NACHA Rules, as varied by this Addendum.

**No Extension of Credit.**

Nothing in this Addendum nor any course of dealing between the COMPANY and BANK constitutes a commitment or obligation of the BANK to lend money to COMPANY or obligates the BANK to extend any credit to COMPANY, or otherwise to advance funds to COMPANY to pay for any Entry contrary to BANK'S published availability schedules.

**Maximum Exposure Limits.**

The COMPANY may not exceed the Maximum Daily, Weekly, or Monthly Limits for Debit and Credit Entries on ACH Transfers executed under each of the ACH Services as indicated below without prior written authorization from the BANK. Maximum Exposure Limits help reduce the effect of fraud by limiting entries, and therefore the limits should be selected to reflect COMPANY'S actual anticipated need for Debit and Credit Entries. Any request to change the Maximum Exposure Limits on any ACH Service must be made by in writing by an Authorized Contact identified in Addendum A and may require credit approval. You may be required to set aside sufficient funds to cover any Credit Entry or Entries ("Prefunding"). If Prefunding is

required as indicated below, the BANK shall place a hold on the Settlement Account in the amount of your Credit Entries on the ACH file origination date. The BANK reserves the right to decrease your Maximum Exposure Limits at any time, for any reason without prior notice.

|   |                                     |    | Maximum Daily Exposure Limits |                |
|---|-------------------------------------|----|-------------------------------|----------------|
| ACH Service   | Prefunding Credit Entries Required? |    | Debit Entries                 | Credit Entries |
| ACH Batch Origination (Aggregate from ACH Company List) | YES                                 | NO | \$                            | \$             |
| <b>Total Debit Entries</b>                              |                                     |    | \$                            |                |
| ACH Electronic Federal Tax Payments                     | YES                                 | NO |                               | \$             |
| ACH Electronic State Tax Payments                       | YES                                 | NO |                               | \$             |
| <b>Total Credit Entries</b>                             |                                     |    | \$                            |                |

|   |                                     |    | Maximum Weekly Exposure Limits |                |
|---|-------------------------------------|----|--------------------------------|----------------|
| ACH Service   | Prefunding Credit Entries Required? |    | Debit Entries                  | Credit Entries |
| ACH Batch Origination (Aggregate from ACH Company List) | YES                                 | NO | \$                             | \$             |
| <b>Total Debit Entries</b>                              |                                     |    | \$                             |                |
| ACH Electronic Federal Tax Payments                     | YES                                 | NO |                                | \$             |
| ACH Electronic State Tax Payments                       | YES                                 | NO |                                | \$             |
| <b>Total Credit Entries</b>                             |                                     |    | \$                             |                |

|   |                                     |    | Maximum Monthly Exposure Limits |                |
|---|-------------------------------------|----|---------------------------------|----------------|
| ACH Service   | Prefunding Credit Entries Required? |    | Debit Entries                   | Credit Entries |
| ACH Batch Origination (Aggregate from ACH Company List) | YES                                 | NO | \$                              | \$             |
| <b>Total Debit Entries</b>                              |                                     |    | \$                              |                |
| ACH Electronic Federal Tax Payments                     | YES                                 | NO |                                 | \$             |
| ACH Electronic State Tax Payments                       | YES                                 | NO |                                 | \$             |
| <b>Total Credit Entries</b>                             |                                     |    | \$                              |                |

**ACH Company List.**

The COMPANY will provide a list of businesses they will originate ACH transactions on behalf of. Exposure limits must be provided for each business listed and the total for all businesses must not exceed the overall ACH Batch Origination limit for the COMPANY as shown above in the Maximum Exposure Limits. Any request to add additional businesses to the ACH Company List must be made in writing by an Authorized Contact identified in Addendum A and must be submitted to the BANK in writing fourteen (14) business days prior to the first scheduled ACH origination date. Additions to the ACH Company List may require additional credit approval.

|                                   |                                  |   |    | <u>Maximum Exposure Limits</u> |                      |                       |                      |                       |                      |                       |
|-----------------------------------|----------------------------------|---|----|--------------------------------|----------------------|-----------------------|----------------------|-----------------------|----------------------|-----------------------|
|                                   |                                  |   |    | <u>Daily</u>                   |                      | <u>Weekly</u>         |                      | <u>Monthly</u>        |                      |                       |
| <u>Business Name</u>              | <u>Tax Identification Number</u> | <u>Pre-funding Credit Entries Required?</u> |    | <u>Settlement Account #*</u>   | <u>Debit Entries</u> | <u>Credit Entries</u> | <u>Debit Entries</u> | <u>Credit Entries</u> | <u>Debit Entries</u> | <u>Credit Entries</u> |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
|                                   |                                  | Yes   | No |                                |                      |                       |                      |                       |                      |                       |
| <b>Total Debit/Credit Entries</b> |                                  |   |    |                                |                      |                       |                      |                       |                      |                       |

\*If pre-funding of credit entries required.

**Erroneous Entry.**

If the COMPANY discovers that any Entry it has initiated was in error, it may notify the BANK of such error and the BANK will utilize its best efforts on behalf of COMPANY, consistent with the Rules to correct the Entry. In all such cases, it shall be the responsibility of the COMPANY to notify the affected third party that an Entry has been made that is at variance with the third party's authorization or is otherwise erroneous.

**Rejected or Returned Entry.**

In the event any Entries are rejected or returned by the ACH Operator for any reason whatsoever, it shall be the responsibility of COMPANY to remake and resubmit such Entries or otherwise to resolve the rejection or return in accordance with the Rules, however the BANK shall remake such Entries in any case where rejection by the ACH was due to mishandling of such Entries by the BANK and sufficient data is available to the BANK to permit it to remake such Entries. The COMPANY shall retain and provide the BANK on request all information necessary to remake any files of Entries for three (3) Business Days after midnight of the day the Entries are sent to the ACH Operator. In all other instances, the BANK'S responsibility will be to receive rejected and returned Entries from the ACH Operator, perform necessary processing, control and settlement functions, and to forward such Entries to the COMPANY. The BANK shall notify the COMPANY of receipt of a returned Entry from the ACH Operator no later than three (3) Business Days after the Business Day of such receipt. The BANK shall have no obligation to retransmit a returned Entry to the ACH Operator if the BANK complied with the terms of the Agreement and this Addendum with respect to the original Entry.

**Cancellation or Amendment by COMPANY.**

The COMPANY shall have no right to cancel or amend any Entry after its receipt by BANK. However, the BANK shall use reasonable efforts to act on a request by the COMPANY for cancellation of an Entry prior to transmitting it to the ACH Operator and prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. The COMPANY shall reimburse the BANK for any expenses, losses or damages the BANK may incur in effecting or attempting to affect the COMPANY'S request for the reversal of an Entry.

**The Settlement Account.**

The COMPANY shall at all times maintain a balance of available funds in the Settlement Account sufficient to cover its payment obligations under this Addendum. In the event there are not sufficient available funds in the Settlement Account to cover COMPANY'S obligations under this Addendum, the BANK may without prior notice or demand, obtain payment of any amount due and payable to it under this Addendum by debiting an Eligible Account(s) of the COMPANY. The BANK shall credit the Settlement Account for any amount received by the BANK by reason of a return of a Credit Entry transmitted by BANK for which the BANK has previously received payment from the COMPANY. Such credit shall be made as of the day of such receipt by the BANK. The COMPANY agrees that the BANK may debit any account maintained by COMPANY with the BANK or any affiliate of the BANK or that BANK may set off against any amount it owes to COMPANY, in order to obtain payment of COMPANY'S obligation under this Addendum.

**COMPANY Representations and Agreements: Indemnity.**

With respect to each and every Entry initiated by the COMPANY, the COMPANY represents and warrants to the BANK and agrees that (a) each person shown as the Receiver on an Entry received by BANK from COMPANY has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting by the BANK as provided herein, (c) Entries transmitted to the BANK by the COMPANY are limited to those types of Credit Entries set forth in Section 6 Submission of Entry Information, (d) the COMPANY has complied with all of its obligations under the Agreement and this Addendum in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC and (e) the COMPANY has complied with the Rules in effect, including, without limitation, the provision making payment of an Entry by the Receiving Bank to the Receiver provisional until receipt by the Receiving Bank of final settlement for such Entry. The COMPANY specifically acknowledges that it has received notice of the Rule regarding provisional payment and of the fact that if such amount is credited, (a) the COMPANY shall not be deemed to have paid the Receiver the amount of the Entry (b) no warranties of an Originating Company and Originating Bank shall have been or shall later be breached, (c) each Entry shall in no way violate any federal, state or local statute or regulation pertaining to electronic fund transfers, including the Electronic Fund Transfer Act and Regulation E, and (d) if all such other settlement is not received, the Receiving Bank shall be entitled to a refund from the Receiver of the no warranties laws and regulations.

In the event of any breach of any of the warranties stated above or otherwise contained in this Addendum, the COMPANY will indemnify and defend BANK at the COMPANY'S cost and expense, and hold it harmless from and against any and all losses, claims, demands, damages, actions, including reasonable attorney's fees, expenses and costs, except for losses solely attributable to the BANK'S own willful misconduct.

**Liability; Limitations on Liability; Indemnity.**

The BANK shall be responsible only for performing the Services expressly provided for in the Agreement and this Addendum, and shall be liable only for its willful misconduct in performing those Services. The BANK shall not be responsible for the COMPANY'S acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any Entry received from COMPANY) or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, any Receiver or Receiving Bank (including without limitation the return of an Entry by such Receiver or Receiving Bank), and such person shall not be deemed the BANK'S agent. The

COMPANY agrees to indemnify the BANK for any and all liabilities whether claimed from a private person or entity, or any fine, penalty, or assessment imposed by the federal government, any state government, or political subdivision thereof (including attorney's fees and expenses). Such liabilities may include, but are not limited to, the amount of any fines assessed against the BANK for a Rules violation caused by the COMPANY.

In no event shall BANK be liable for any consequential, special, punitive or indirect loss or damage which the COMPANY may incur or suffer in connection with the Agreement or this Addendum, including without limitation loss or damage from subsequent wrongful dishonor resulting from BANK'S acts or omissions pursuant to the Agreement or this Addendum.

Without limiting the generality of the foregoing provisions, the BANK shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond the BANK'S control. In addition, the BANK shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in the BANK'S having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in the BANK'S otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

**Inconsistency of Name and Account Number.**

The COMPANY acknowledges and agrees that if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by BANK to the Receiving Bank may be made by the Receiving Bank (or by the BANK in a case of an On-Us Entry) on the basis of the account number supplied by the COMPANY even if it identifies a person different from the named Receiver, and that the COMPANY'S obligation to pay the amount of the Entry to the BANK is not excused in such circumstances.

**Notification of Change.**

The BANK shall notify the COMPANY of all notifications of change received by the BANK relating to Entries transmitted by the COMPANY no later than three (3) business days after receipt thereof.

**Payments for Services.**

The COMPANY shall pay the BANK the charges for the Services provided in connection with this Addendum as set forth in Addendum F of the Agreement (Business Online Banking Fee Schedule) and hereby authorizes the BANK to debit the COMPANY'S designated Eligible Account for such fees when due and payable. If the COMPANY does not pay the entire balance due for fees within thirty (30) days after transmittal by the BANK of the bill, the BANK may immediately terminate this Addendum without liability.

**BANK'S Responsibilities.**

In the performance of the Services required by this Addendum, the BANK shall be entitled to rely solely on the information, representations and warranties provided by the COMPANY pursuant to the Agreement and this Addendum, and the COMPANY shall be responsible for the accuracy or completeness thereof. The BANK shall be answerable for its willful misconduct, but the BANK shall not otherwise be responsible for any action taken, allowed or omitted by or under this Addendum or for anything arising there from, or for any liability, loss, claim or damage arising from an act of God, from delay occasioned in transit of data or processed work or from other cause or even beyond the control of BANK.

**The BANK does not make any representations or warranties with respect to the legal effect or sufficiency, under any Federal, State or local statute or regulation or other law, of any form, documents or other matters provided by BANK from time to time in connection with the Agreement, and disclaims any expressed or implied warranties in connection therewith, including any warranties or fitness for a particular purpose or use and any warranties or merchantability.**

**Evidence of Authorization.**

The COMPANY shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two (2) years after they expire.

**Cooperation in Loss Recovery Efforts.**

In the event of any damages for which the BANK or the COMPANY may be liable to each other or to a third party pursuant to the services provided under this Addendum, the COMPANY will undertake reasonable efforts to cooperate with the BANK, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the BANK may be obligated to defend or elects to pursue against a third party.

**Termination.**

Either the BANK or COMPANY may terminate this Addendum at any time upon prior written notice to the other, but such termination shall not affect any ACH Transfers executed by the BANK prior to the effective termination date. Termination of this Addendum shall not constitute termination of the Agreement or any other Addendum.

By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in the Agreement and this Addendum.

**Michigan Commerce Bank**

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

## Addendum E

### Account Reconciliation and Positive Pay Service

This Addendum sets forth additional terms and conditions with respect to the Account Reconciliation and Positive Pay Services via the Business Online Banking System (hereinafter referred to as the "ARP Services"). The definitions, terms and conditions of the Business Online Banking Agreement are hereby incorporated in this Addendum by reference. The provisions of this Addendum are controlled by the rights, obligations and liabilities established by the Business Online Banking Agreement.

The following accounts are specifically designated for the ARP Services.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Checks Covered by Service.

The ARP Services applies only to checks issued by the COMPANY from the Eligible Accounts specifically designated for the ARP Service and only to checks that are presented for payment to the BANK through the normal inter-bank clearings process. The COMPANY must provide and keep up to date a list of checks issued by the COMPANY on the System, including the check number, issue date and the exact amount (the "Issues File"). Checks not included on an Issues File on a timely basis or presented prior to being uploaded on the System will be treated as Exception Items if presented for payment before they are posted on the System.

#### Positive Pay Exception Items.

If the COMPANY elects to participate in the ARP Services, a daily report showing any "Exception Items" will be available to the COMPANY on the System. Items will be noted as an Exception Item if a check is paid and i) is not found in the Issues File, ii) is a duplicate of a previously paid item, iii) the issue date is older than the agreed upon stale date as defined in the System, iv) the check is listed in the Issues File with a Stop Payment status, v) the issue is listed with a Void status in the Issues File, or vi) has a different dollar amount than is shown in the Issues File, vii) does not have a serial number, viii) the account it's presented against is in a dormant status, ix) has a different payee than is shown in the Issues File, if such contains payee information. COMPANY may elect to disable the different payee function in the ARP Services. In such event the COMPANY understands and accepts the risk that checks with different payees will not be noted at Exception Items and will be paid by the BANK.

#### Payment of Checks.

The COMPANY agrees that the BANK may treat all issued checks as validly issued and properly payable, and that the BANK may process such items for payment regardless of your use of the ARP Services. If you have elected to use the ARP Services, the BANK must receive your "pay" or "return" decision via the System by the designated cutoff time otherwise the Exception Item shall be processed pursuant to the default decision indicated below.

**Default Decision for Exception Items:**      Pay \_\_\_\_\_      Return \_\_\_\_\_

#### Reliance on MICR Encoding.

The COMPANY understands and agrees that the BANK may compare the COMPANY'S Issues File with information that is encoded on the checks presented for payment. The COMPANY understands that the BANK will not physically examine checks to confirm that they are properly signed, completed and encoded. The COMPANY agrees that the BANK may rely on such a process and that the process will be deemed an acceptable standard of care for the ARP Services and the COMPANY'S accounts. The COMPANY understands that the ARP Services may not identify counterfeit or duplicate checks. As such, the COMPANY agrees to promptly review all statements, returned checks, reports and other check and transaction information made available to it by the BANK.

#### Liability.

To the extent applicable, the liability provisions of the Uniform Commercial Code as enacted in <<insert state>> shall govern this Agreement, except as provided below.

*Wrongful Honor.* It shall constitute wrongful honor by BANK if BANK pays an Exception Item listed in a timely Exception Item report unless: (a) COMPANY issued a "pay" decision, or (b) COMPANY selected the pay default option and did not issue a "return" decision. In the event that there is a wrongful honor: (1) BANK shall be liable to COMPANY for the lesser of the amount of the wrongfully paid Exception Item or the COMPANY'S actual damages resulting from the BANK'S payment of the Exception Item. (2) BANK expressly waives any right it may have to assert that the COMPANY is liable for the amount of the wrongfully honored Exception Item on the grounds that the Exception Item was property payable under UCC section 4-401. (3) BANK retains the right to assert the COMPANY'S failure to exercise reasonable care under UCC sections 3-406(b) and 4-

406(c). (4) BANK retains the right to assert the defense that COMPANY has sustained no actual damages because the BANK's honor of the Exception Item discharged for value an indebtedness of the COMPANY.

*Wrongful Dishonor.* Except as provided below, it shall constitute wrongful dishonor by the BANK if the BANK dishonors an Exception Item (a) that the BANK has been ordered to pay pursuant to a "pay" decision, or (b) for which the COMPANY has not issued a "return" decision under the pay default option. (1) Bank's liability for wrongful dishonor of an Exception Item under UCC articles 3 and 4. (2) Notwithstanding the preceding sentence, the BANK shall have no liability to the COMPANY for wrongful dishonor when the BANK, acting in good faith, returns an Exception Item: (a) that it reasonably believed was not properly payable; or (b) if there are insufficient available funds on deposit in the account; or (c) if required to do so by the service of legal process on the BANK or instructions of regulatory or government authorities or courts.

*Rightful Payment and Dishonor.* Except as provided in the "Faulty Information" provision of this agreement, (a) if BANK honors an Exception Item in accordance with the pay default option selected by the COMPANY or in accordance with a "pay" decision issued by the COMPANY, such honor shall be rightful, and the COMPANY waives any right it may have to assert that the Exception Item was not properly payable under UCC section 4-401. (b) If Bank dishonors an Exception Item in accordance with the return default option selected by COMPANY or in accordance with a "return" decision issued by the COMPANY, the dishonor shall be rightful, and the COMPANY waives any right it may have to assert that the dishonor was wrongful under UCC section 4-402. (c) COMPANY agrees that the BANK exercises ordinary care whenever it rightfully pays or returns an Exception Item consistent with the provisions of this agreement.

*Faulty Information.* Bank shall be liable for any losses, or other consequential damages, proximately caused by its honor of a check that was nor properly payable, or its dishonor of a check that was properly payable, if the honor or dishonor occurred b because BANK, in accordance with this Agreement: (a) should have shown the check as an Exception Item but failed to do so; or (b) showed the check as an Exception Item but referenced the wrong check number, unless BANK provided the COMPANY with timely information the disclosed the error.

**Termination.**

Either the BANK or the COMPANY may terminate this Addendum at any time upon prior written notice to the other. Upon termination, the BANK shall have no further obligation to perform ARP Services or to notify you of any Exception Items, including Exception Items pertaining to checks added to the Issues Register prior to the effective termination date. Termination of this Addendum shall not constitute termination of the Agreement or any other Addendum.

By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in the Agreement and this Addendum.

\_\_\_\_\_  
(COMPANY)

By: \_\_\_\_\_  
(Authorized Signature)

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

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

