

Customer Information

Customer Name _____
Address _____
City, State, Zip _____
Telephone _____ Facsimile _____, hereafter referred to as "Customer".

This Agreement is made on this _____ day of _____, 20____, by and between "Customer" and Lakeland Bank, having an address of 250 Oak Ridge Road, Oak Ridge, New Jersey 07438-8906 ("Financial Institution").

Recitals

- A. Financial Institution offers Remote Merchant Capture Electronic Check Processing Service ("Service") for the electronic clearing of checks, which enables Customer to convert checks to electronic items and to transmit those items electronically for deposit into Customer's Account at Financial Institution. Customer desires to use Service to electronically transmit and process checks for deposit and collection purposes.
- B. Unless otherwise defined herein, capitalized terms shall have the meanings indicated on Schedule A, including all Schedules attached hereto.

Now, therefore, for and in consideration of the mutual promises contained herein, the Customer and the Financial Institution agree as follows:

Agreement

1. **Services.** Financial Institution shall provide to Customer the Services described in this Agreement to enable Customer to use the Program to convert Checks to Electronic Items for the processing of such Checks electronically. Customer and Financial Institution shall comply with the terms and provisions of Schedule B with respect to performance of the Services.
2. **License.** Subject to the terms and conditions of this Agreement, Financial Institution hereby grants Customer a non-exclusive, nontransferable license to: (i) use the Software for those portions of the Service selected by Customer, solely for processing Checks in connection with Customer's own business operations, in accordance with the Documentation and solely on Authorized Equipment; (ii) copy and use the Documentation solely to support Customer's authorized use of the Software; and (iii) copy any Software actually delivered to Customer solely for archival or backup purposes. Customer agrees to abide by the provisions of Schedule C with respect to the Software and Documentation.
3. **Customer Obligations.** Customer represents and warrants that with respect to each Check processed by Customer hereunder and the corresponding Electronic Item: (i) the Electronic Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Customer converted the Check to an Electronic Item; (ii) the Electronic Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and (iii) all transfer and presentment warranties made under applicable law and the Account Agreement. If Customer captures a digital image of a previously truncated and reconverted Substitute Check for processing, Customer shall ensure that such Substitute Check meets the requirements for legal equivalency under Regulation CC and the identifications of previous truncating and reconvert bank(s) (as such terms are defined in Regulation CC) are preserved.
4. **Fees.** Customer will pay Financial Institution the license and service fees as set forth in Financial Institution's schedule of fees. Financial Institution reserves the right to change fees from time to time upon 30 days prior written notice. Customer shall be responsible for and pay all sales and other taxes applicable to this Agreement and imposed by any governmental authority, including without limitation any sales, use, and other taxes associated with the Program or Authorized Equipment, except income taxes of Financial Institution, including all applicable excise, property, value-added, sales or use, or similar taxes, any withholding taxes, national pension or other welfare taxes, customs, import, export, or other duties, levies, tariffs, taxes, or other similar charges. Financial Institution may charge to the Account all fees and taxes imposed on Financial Institution that are the responsibility of Customer.

5. **Access.** To use Service, Customer must be enrolled in Financial Institution's Business Online Banking system ("System") and have access to the Internet. Access to Service is permitted through and based on System's Access ID, password and Account rights.

6. **Term and Termination.**

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

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

(c) All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 3, 6, 7, 8, 9, 10, 12, 13, 15, 17 and 21, will survive any termination of this Agreement.

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

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

9. **Financial Institution's Liability.**

(a) Financial Institution will not be liable to Customer unless liability or loss is a result of (i) a material breach of this Agreement on behalf of Financial Institution, or (ii) gross negligence or willful misconduct by Financial Institution, its employees or agents. By way of example and not of limitation, Financial Institution has no liability arising from the following causes of action : (A) any damages, costs or other consequences caused by or related to Financial Institution's actions that are based on

information or instructions that Customer provides to Financial Institution; (B) any unauthorized actions initiated or caused by Customer or its employees or agents; (C) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Financial Institution has delegated the performance of specific obligations provided in this Agreement; (D) any refusal of a Payor Financial Institution to pay an Electronic Item or Substitute Check for any reason (other than the breach of contract, negligence or willful misconduct of Financial Institution), including without limitation that the Check, Electronic Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (E) any other party's lack of access to the Internet or inability to transmit or receive data; (F) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems, or (G) any of the matters described in Section 8 above.

(b) Financial Institution's liability for errors or omissions with respect to the data transmitted or printed by Financial Institution will be limited to correcting the errors or omissions. Correction will be limited to reprinting and/or representing Substitute Checks or Electronic Items to the Payor Financial Institution. Financial Institution is not liable for alterations made to the file after it is transmitted through the Service.

(c) Notwithstanding anything to the contrary in this Agreement, Financial Institution's aggregate liability to Customer for claims relating to this Agreement, whether for breach, negligence, infringement, in tort or otherwise, and arising during any twelve month period shall be limited to an amount equal to the total fees paid by Customer to Financial Institution for such twelve month period.

(d) In no event will either party be liable for any consequential, indirect, incidental, special or punitive damages, or any lost profits or loss of any opportunity or good will, even if such party has been advised of the possibility of such damages.

(e) Financial Institution and Customer acknowledge and agree that the limitations of liability in this section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party acknowledges and agrees that the other party would not enter into this Agreement without the limitations of liability set forth in this section.

10. **Disclaimer.** FINANCIAL INSTITUTION'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. THE SOFTWARE IS PROVIDED BY FINANCIAL INSTITUTION AND ITS LICENSORS "AS IS". CUSTOMER HEREBY WAIVES AND RELEASES FINANCIAL INSTITUTION AND ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS, AND EMPLOYEES FROM, ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS, AND LIABILITIES, WHETHER EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AUTHORIZED EQUIPMENT AND ANY AND ALL MATTERS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER FINANCIAL INSTITUTION NOR ITS LICENSORS WARRANT THAT OPERATION OF THE SOFTWARE OR THE AUTHORIZED EQUIPMENT WILL BE ERROR-FREE OR UNINTERRUPTED.

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

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

13. **Arbitration.** In the event of any dispute, claim, question, or disagreement arising from or relating to use of Service or the Terms and Conditions set forth in this Agreement, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

If the parties are not able to reach a solution within a period of 60 days, then upon notice by either party to the other, all

disputes, claims, questions, or disagreements shall be finally settled by binding arbitration under the Commercial Arbitration Rules administered by the American Arbitration Association, who can be reached via telephone at (800) 778-7879 or via the internet at www.adr.org. In the event that the American Arbitration Association is unable, unwilling or ceases to serve as arbitration administrator, Financial Institution will substitute an equivalent national arbitration organization.

Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This award shall be made within nine (9) months of the filing of the notice of intention to arbitrate, and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator(s) if necessary.

Any participatory arbitration hearing (other than telephone hearings) shall be held in New Jersey and at a location convenient to the Financial Institution for and in consideration of the availability of witnesses, local counsel, transportation, meeting facilities, etc., unless both parties agree otherwise.

The arbitrator(s) will have no authority to award punitive damages or arbitrate on a class action basis. The arbitrator(s) will determine who will be ultimately responsible for paying any fees in connection with the arbitration. Unless inconsistent with the applicable law, each party shall bear the expense of their respective attorneys', experts' and witness fees, regardless of which party prevails in the arbitration.

Both parties fully understand and agree that they will not have a right to litigate any claim in any court if either party chooses to have the claim resolved by binding arbitration. Further, in agreeing to arbitrate all claims, Customer waives the right to a jury trial. Except as may required by law, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

14. **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Financial Institution may assign this Agreement to an affiliate, subsidiary or its successors without Customer's prior consent, provided that Financial Institution remains primarily liable for the performance of its obligations under this Agreement. Any attempted assignment or delegation without the required consent will be void.
15. **Attorney's Fees.** If any action is brought by either party against the other regarding the subject matter of this Agreement, including any court action or arbitration proceeding, the prevailing party shall be entitled to recover, in addition to any relief granted, reasonable attorney's fees, costs of court, expert witness fees and other expenses of action.
16. **Compliance with Laws.** Each party will comply with all applicable federal, state and local laws and regulations with respect to this Agreement and such party's activities covered by or related to this Agreement.
17. **Construction and Interpretation.** Section headings used herein are for the convenience of reference only, and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be deemed to have been drafted by both parties, and in the event of dispute, no party shall be entitled to claim that any provision hereof should be construed against the other party by reason of the fact that it was drafted by any particular party. The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach shall not be considered a waiver of that right or breach unless the waiver has been reduced to writing and signed by the waiving party. If a party effectively waives a right or breach, that waiver will not constitute a waiver of any other right or breach or of a subsequent breach of the same obligation. If any provision of this Agreement is held invalid, illegal or unenforceable in any particular jurisdiction or circumstance, the remaining provisions of this Agreement shall remain valid and enforceable in such jurisdiction or circumstance, and such provision shall remain valid and enforceable in any other jurisdiction or circumstance.
18. **Entire Agreement.** This Agreement supplements the terms of the Account Agreement. This Agreement, the schedules to this Agreement (as may be amended from time to time), and the Account Agreement constitute the entire agreement between Customer and Financial Institution with respect to the subject matter hereof, supersede any prior agreements between Financial Institution and Customer with respect to the subject matter hereof, and shall be binding upon Financial Institution, Customer and their respective successors and permissible assigns. In the event of any inconsistency between this Agreement and the Documentation or any Account Agreement, this Agreement will govern.
19. **Force Majeure.** Except for the obligation to make payments, nonperformance by either party will be excused to the extent performance is prevented or delayed due to causes beyond such party's reasonable control and without its negligent or willful misconduct, including without limitation acts of God, natural disasters, terrorist acts, war or other hostilities, labor

disputes, civil disturbances, governmental acts, orders or regulations, third party nonperformance or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.

- 20. **Contingency Plan.** Customer agrees that in the event that Customer is not able to capture, balance, process, or otherwise transmit a File to Financial Institution through Service, including but not limited to communications, equipment or software outages, interruptions or failures, Customer will transport, or send via courier, the physical checks and deposits to the closest office of Financial Institution and deposit the original checks with Financial Institution until such time that the outage or other interruption can be identified and resolved. The deposit of original checks at an office of Financial Institution shall be governed by the terms and conditions contained in the Deposit Agreement and not by the terms of this Agreement.
- 21. **Injunctive Relief.** Notwithstanding Section 13 of this Agreement, each party acknowledges that its violation of Sections 2, 7 or 16 of this Agreement may cause irreparable injury to the other party, and agrees that the other party shall be entitled to seek temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation.
- 22. **Notices.** All notices permitted or required under this Agreement will be in writing and will be deemed given upon actual delivery. Any notice will be addressed to the parties as follows:

Lakeland Bank
eBanking Department
250 Oak Ridge Road
Oak Ridge, New Jersey 07438
Phone Number: 973-948-9520
Fax Number: 973-948-0163

If to Customer: The address or facsimile number set forth in the Customer Information section above.

- 23. **Periodic Statement.** Customer will not receive a separate Anytime Business Banking statement. Deposits made through Service will appear on the respective periodic paper or electronic Account statement.
- 24. **Relationship Between Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.
- 25. **Security Interest.** Customer grants Financial Institution a security interest in the Account, including any present and future principal and interest, as collateral security for the Performance of Customer hereunder.
- 26. **Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of Financial Institution and Customer and is not intended to benefit any third party, except Financial Institution's licensors. Customer and Financial Institution acknowledge and agree that any party that licenses the Software to Financial Institution, directly or indirectly through one or more sublicenses, is a third party beneficiary to this Agreement with respect to those provisions dealing with use and protection of intellectual property.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

CUSTOMER

Name: _____

Title: _____

Signature: _____

Date: _____

FINANCIAL INSTITUTION

Name: _____

Title: _____

Signature: _____

Date: _____

Schedule A – Definitions

The meanings of the defined terms set forth below are also applicable

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

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

Authorized Equipment means equipment that has been approved by Financial Institution for use with the Software, including the Scanner device.

Check means a draft that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks and Substitute Checks. Such term does not include Non-cash Items or items payable in a medium other than United States money.

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

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

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

Noncash Item means an item that would otherwise be a Check, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except a Check that qualifies for handling by automated check processing equipment; or (iv) it has not been pre-printed or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

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

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

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

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

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

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

Substitute Check means a paper reproduction of a Check that satisfies the requirements and definition of "substitute check" set forth in Regulation CC, including (a) it accurately represents all of the information on the front and back of the original check as of the time it was truncated (including payment, identification, and indorsement information); (2) it bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check;" and (3) a bank has made the Check 21 Act warranties with respect to the substitute check.

United States Financial Institution means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

Schedule B – Service Terms and Conditions**1. Financial Institution Responsibilities**

- (a) Financial Institution will deliver to Customer, or otherwise provide access to, the Software, as well as the Authorized Equipment required for Services.
- (b) Financial Institution will provide installation and training support as reasonably required for Customer's implementation of the Program. Any onsite installation or training support outside of Financial Institution's immediate market area shall be on such terms and conditions as the parties agree, including reimbursement for Financial Institution's reasonable travel costs.
- (c) Financial Institution will provide maintenance and support for the Software as reasonably necessary to permit Customer's processing of Checks through the Program. Such maintenance and support shall include (i) corrections, work arounds and bug fixes, (ii) such modifications, enhancements and updates as Financial Institution elects to make generally available to its customers without additional license fees, and (iii) telephone support to Customer during Financial Institution's regular business hours.
- (d) Financial Institution will accept for deposit to the designated Account digitized images of Checks that are transmitted to Financial Institution in compliance with this Agreement. Digitized images shall be deemed received upon successful receipt of the transmission of such images that are complete, usable, and adhere to the data specifications set forth in the documentation. If the digitized images are not complete, are not useable, or do not adhere to such data specifications, the images may not be processed by Financial Institution or its agents, in which event Customer's deposit will be adjusted and notification will be provided. Financial Institution is not responsible for images which it does not receive or for images that are dropped during transmission.
- (e) Customer's digitized images will be processed after Financial Institution has received Customer's transmission of the digitized images in accordance with the processing deadlines set forth in Schedule D. Financial Institution will use commercially reasonable efforts to present Image Exchange Items and Substitute Checks for collection. Unless Financial Institution notifies Customer otherwise, Financial Institution will provide provisional same day credit to the Account for all items transmitted by Customer and received by Financial Institution in accordance with the requirements of this Agreement and the Documentation, and within the timelines established by Financial Institution. Financial Institution reserves the right to reject the digitized images for any reason without liability to Customer.
- (f) If a Payor Financial Institution returns an item to Financial Institution, Financial Institution will charge the Account for such returned item, and may either (i) return the item to Customer, or (ii) re-present it to the Payor Financial Institution before returning it to Customer. Items may be returned as Image Exchange Items, rather than Substitute Checks, as agreed by the parties. If a Payor Financial Institution or other third party makes a claim against Financial Institution or seeks a recredit with respect to any Check processed hereunder, Financial Institution may provisionally freeze or hold aside a like amount in the Account pending investigation and resolution of the claim.
- (g) Financial Institution may suspend immediately the Services or the processing of any Check or corresponding Electronic Item if Financial Institution has reason to believe that there has been a breach in the security of the Program, fraud involving Customer's Account or such Check, or any uncertainty as to the authorization or accuracy of Electronic Items. Financial Institution reserves the right at any time to process Electronic Items on a collection basis.
- (h) Financial Institution's processing of items that do not meet the definition of Check as set forth in Schedule A shall not constitute a waiver by Financial Institution or obligate it to process nonconforming items in the future. Financial Institution may discontinue processing of nonconforming items at any time, without cause or prior notice.

Schedule B – Service Terms and Conditions (Continued)**2. Customer Responsibilities**

- (a) Customer will maintain an Account at Financial Institution for the receipt of deposits of digitized images of Checks, in accordance with applicable Account Agreement.
- (b) Customer will only deposit items permitted under this Agreement as set forth in Schedule D.
- (c) Customer will install the Software in accordance with the Documentation, and will install and implement any changes and upgrades to the Software as Financial Institution may require, within 30 days of receipt of such change or upgrade, or within such shorter time frame as Financial Institution may reasonably require in the event such change or upgrade is necessary to comply with statutory or regulatory changes or developments, or to protect the integrity and security of the Program.
- (d) Customer may use only Authorized Equipment in connection with the Software, and solely for Services on behalf of Customer. Upon termination of the Agreement by either party, Customer will promptly return all copies of the Software, documentation and Authorized Equipment to Financial Institution.
- (e) Customer will use the Authorized Equipment and the Software, including the entering, processing and transmittal of items, in accordance with the Documentation. Without limiting the foregoing, Customer will comply with all security procedures described in the Documentation, and will not bypass, override or disable any security mechanisms in the Authorized Equipment or Software.
- (f) Customer will ensure the Authorized Equipment is clean and operating properly. The quality of digitized images must be such that is an accurate representation of the Original Check and is legible for all posting and clearing purposes. It must meet standards for image quality established by ANSI, the Federal Reserve or any other regulatory agency.
- (g) Customer will be responsible for training its employees in the use of the Program, and for supervising and auditing their use of the Program.
- (h) Customer will ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser with respect to a Check processed by Customer will receive presentment or return of, or otherwise be charged for, the Check (including the Original Check or Substitute Check), corresponding Electronic Item, and/or other paper or electronic representation of the Check such that such person will be asked to make payment based on an item that it already has paid.
- (i) Customer will retain each Check for 45 days after such Check has been digitized and processed. Customer will promptly provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to Financial Institution as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check. Customer will use a commercially reasonable method approved by Financial Institution to destroy Checks after the retention period has expired.
- (j) Customer will retain all information about its digitizing of Checks as created by the Software for no less than 7 days. Original Checks must be stored in a secure location, and Customer must establish and put into practice security procedures to limit access to the Original Checks. In the event of lost, mistaken, incomplete or unusable Electronic Items, or in the event of claims of fraud, alteration, counterfeit or otherwise, Customer shall cooperate fully with Financial Institution in providing information, including access to such records, as requested by Financial Institution for verification, audit or other purposes.
- (k) Customer understands and agrees that if the image of a previously deposited Original Check is dishonored and returned unpaid by the drawee financial institution, the Original Check will not be returned and Financial Institution may charge back an electronic or paper reproduction of the Original Check or a Substitute Check to Customer's Account.
- (l) Customer agrees to permit Financial Institution, at its sole discretion and at any time, to conduct an on-site inspection of the Customer's place of business to ensure compliance with the provisions of this Agreement.

Schedule C – Intellectual Property Provisions**1. Protection and Security of Software and Documentation**

- (a) Customer will establish reasonable precautions and use commercially reasonable efforts, no less rigorous than those Customer uses to protect its own confidential information to protect and maintain the confidentiality and security of the Software and the Documentation. Without limiting the generality of the foregoing, Customer will use reasonable measures to protect the Software and Documentation from unauthorized copying, dissemination, disclosure or other unauthorized use.
- (b) Customer will not, and will not permit any third party to, (i) copy or use the Software or Documentation except as expressly authorized by this Agreement (including this Schedule); (ii) sublicense, rent, distribute, transfer, publish, disclose, display or otherwise make available the Software to others; (iii) use the Software or Documentation for third-party training, commercial time-sharing or service bureau use; or (iv) alter, change, modify or otherwise create derivative works of the Software or Documentation.
- (c) Customer will not, and will not permit any third party to, reverse engineer, disassemble or decompile any Software, except to the extent expressly permitted by applicable law. If Customer intends or begins to take any such action based on any applicable law, Customer shall notify Financial Institution and Financial Institution shall have the right to immediately terminate this Agreement and/or the license to the Software upon notice to Customer.
- (d) Customer will maintain a complete and accurate list of all locations where Customer has loaded and maintains the Software, and make such list available to Financial Institution upon Financial Institution's request.

2. Ownership of Intellectual Property.

- (a) Customer acknowledges and agrees that all right, title and interest in and to the Software and the Documentation, together with modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents, and trade secrets, pertaining to the Software and the Documentation, (i) are and shall remain owned exclusively throughout the universe by Financial Institution and its licensors, (ii) represent or contain valuable rights of Financial Institution and its licensors, and (iii) are protected under United States patent, copyright, trademark and trade secret laws of general applicability. This Agreement does not create in Customer any rights to, and does not constitute an assignment of any rights of Financial Institution or its licensors in and to, any copyrights, trade secrets, patents, or other intellectual property rights of Financial Institution or such licensors. Other than the license set forth above in this Schedule, no other license or interest in the Software or Documentation, either expressed or implied, is granted under this Agreement.
- (b) Customer will not at any time, either directly or indirectly, (i) put to issue the scope, validity or ownership of Financial Institution's or its licensor's intellectual property rights in the Software and Documentation; (ii) do any act which could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights, or (iii) assert any ownership rights to the Software or Documentation. Customer acknowledges and agrees that this Agreement does not grant or convey to Customer (i) an interest in or to the Software or Documentation, but only a limited right of use, revocable in accordance with the terms hereof; or (ii) any right, title, interest or license in or to any trademark of Financial Institution or its licensors.
- (c) Customer hereby assigns to Financial Institution and/or its licensors, as directed by Financial Institution, any rights, including any patent, copyright, mask work rights, trademarks, and trade secrets, which Customer may now have or which it may acquire at any time in the future to the Software or the intellectual property rights to the Software, and any other computer code using any of the software.
- (d) Customer shall not remove or alter any copyright, trademark, or other intellectual property or proprietary right notices, legends, symbols or labels appearing on or in the Software, Documentation or any packaging, and shall include on any copy of the Software or Documentation any copyright, trademark, or other intellectual property or proprietary right notices contained on the original.

Schedule C – Intellectual Property Provisions (Continued)**2. Ownership of Intellectual Property (Continued)**

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

3. Termination.

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

4. Limitation on Liability.

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

5. Compliance with Law.

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

6. Assignment.

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

7. Further Assurances.

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

8. Injunctive Relief.

Customer acknowledges that violation of its commitments regarding the Software, as outlined in Sections 2(d), 2(e) and 6 of this Schedule, may cause irreparable injury to Financial Institution and/or its licensors, and agrees that Financial Institution shall be entitled to seek and obtain temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation.

9. Survival.

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

Schedule D – Deposit Restrictions, Limits and Processing Deadlines**1. Types of Deposit Items (Checks) Prohibited.**

- a. Items (checks) not drawn on financial institutions within the United States
- b. Items (checks) not payable in U.S. dollars (\$).
- c. Items (checks) not authorized under the Account Agreement.
- d. Non-local Items (checks) issued by and/or drawn on Customer or affiliates of the Customer.
- e. Items (checks) that have been altered, forged or otherwise modified.
- f. Items (checks) that have already been negotiated/deposited and have not been returned by the payor financial institution ("Duplicate" items).

2. Deposit Limits.

The total daily amount of items (checks) deposits through Service may not exceed the maximum limit established at the time of approval.

3. Processing Deadlines.

The deadline ("Cut-Off Time") for processing remote deposits is 5:00 p.m. Eastern Time on each business day (Monday through Friday, excluding bank holidays). Deposits received by Financial Institution after the "Cut-Off Time" on any business day, or on non-business days (Saturdays, Sundays and bank holidays) will be considered to have been received on the following business day.