AuburnBank REMOTE DEPOSIT CAPTURE SERVICE AGREEMENT

This Remote Deposit Capture Service Agreement ("Agreement") is between __________________. ("Company") and AuburnBank ("Financial Institution").

RECITALS

A. Financial Institution offers ***AuburnBank Remote Deposit***, a remote deposit capture service (the "Service"), designed to allow customers to make electronic deposits of Electronic Items (as defined below) captured from checks into accounts designated by customers.

B. Company wishes to utilize the Service pursuant to the terms of this Agreement and other applicable rules, laws and regulations.

THEREFORE, the parties hereto, in consideration of the mutual covenants set forth herein, agree as follows:

1. **Applicable Agreements.** This Agreement governs Company's use of the Service, along with the Remote Access Services described in Schedule A. Financial Institution offers the Service under this Agreement only in association with one or more Designated Account(s) (as defined below) maintained by Company at Financial Institution. The terms and conditions of the deposit account agreement(s), as amended from time to time, governing the Designated Account(s) between Financial Institution and Company (the "Deposit Agreement") shall apply to the use of the Designated Account(s), except as provided herein. Company's access to and use of Financial Institution's On-Line (as defined below) services shall be governed by the applicable electronic access agreement(s), as amended from time to time, between Company and Financial Institution. The terms and conditions of this Agreement do not replace, but supplement, any and all other agreements that govern any account maintained by Company at Financial Institution (whether now or in the future) or any other Financial Institution services utilized by Company (whether now or in the future). In the event of conflict between this Agreement and any other agreement with Financial Institution, this Agreement shall prevail, unless otherwise provided herein.

2. **Definitions.** The following words or terms shall each have the meanings as provided below. Additional defined terms shall be provided throughout the Agreement. Unless otherwise defined therein, capitalized terms in the attached Schedules shall have the same meanings as such capitalized terms have in this Agreement.

a. "Additional Equipment" shall have the meaning set forth in Section 4

b. "Agreement" means this Agreement, as it may be amended from time to time, and all Schedules, as they may be amended from time to time, attached hereto and incorporated herein by reference.

c. "ANS X9" means the standards and specifications for paper-based and imaged-based payments established by the American National Standards Institute ("ANSI") from time to time.

d. "Authorized Representative" means a person authorized to act for or on behalf of Company as designated in Schedule C.

e. "Banking Day" means one of Financial Institution's banking days as defined in Regulation CC (as defined below).

f. "Business Day" means a business day as defined in Regulation CC.

g. As used in this Agreement, the term "check" shall have the meaning defined in Regulation CC of the Board of Governors of the Federal Reserve System ("Regulation CC").

h. "Designated Account(s)" means those deposit accounts of Company maintained at Financial Institution and listed in Schedule B into which Electronic Items may be deposited.

i. “Electronic Item” means an image of the front and back of an original check, all of the information from the Magnetic Ink Character Recognition (“MICR”) line on the original check, the amount as entered by Company for MICR encoding purposes, and additional information about the original check, including any associated electronic records derived from the original check and any other information specified by Financial Institution, in the format specified by Financial Institution.

j. “Files” shall have the meaning set forth in Section 3(c).

k. “Information and Systems” shall have the meaning set forth in Section 6(a).

l. “On-Line” refers to use of the Internet website designated by Financial Institution used to transmit or receive electronic deposits, instructions, notices or other communications but does not include transmissions by the AuburnBank on-line system used to view balances, transfer funds, send ACH, or wires and governed by the AuburnBank Cash Management Service Agreement, telephone, fax, in person, regular mail, express mail or e-mail.

m. “Remote Access Services” means those remote access services described in Schedule A.

n. “Rules Governing Transactions.” The Financial Institution and Company will transmit and process the electronic entries initiated by Company in accordance with Regulation CC, ANS X9 specification, UCC Article 3 and 4 and any network association agreements as are currently in effect and as amended from time to time (“Rules”). Company agrees to be bound by and held subject to the Rules as well as provisions contained in this Agreement.

o. “Security Procedures” means the procedures set forth in Schedule D, as such procedures may be amended from time to time by Financial Institution in its sole discretion.

p. “Service Provider” shall have the meaning set forth in Section 15.

q. “State” means any one of the fifty states of the United States of America.

r. “UCC” means the Uniform Commercial Code in effect in a State.

3. **The Service.**

a. The Service is designed to allow Company to deposit checks into Company’s Designated Account(s) from locations owned or operated by Company or its agent by scanning checks on a desktop scanner and delivering the images and information required hereby to Financial Institution or Financial Institution’s designees. Company, using hardware and software meeting the specifications and requirements provided by Financial Institution, shall capture the Electronic Items from each original check to be deposited.

b. Company shall ensure that each original check is endorsed prior to imaging it for deposit without any restrictions or conditions, in accordance with any applicable procedures of Financial Institution. Company shall identify Financial Institution as the Bank of First Deposit by placing the Financial Institution’s Routing Transit Number in the proper field, according to the current image exchange standards, of each Electronic Item. The Company shall not identify any other financial institution, other than Financial Institution, as the Bank of First Deposit with respect to any Electronic Item.

c. Electronic Items must be transmitted in electronic files that conform to such specifications as Financial Institution requires, as modified from time to time by Financial Institution in its sole discretion (the “File(s)”).

d. Company warrants to Financial Institution that the legal amount of the original check is correctly encoded for each Electronic Item.

e. Company shall transmit the Files to Financial Institution in accordance with Financial Institution's On-Line access procedures and any other applicable procedures, including Security Procedures, as made available by Financial Institution. Electronic Items, Files, notices, messages, acknowledgements and information shall be deemed delivered by Company and received by Financial Institution when Company has satisfactorily completed the applicable Security Procedures and the Electronic Items, Files, notices, messages, acknowledgements and information have been placed on a Financial Institution storage device that makes the Electronic Items, Files, notices, messages, acknowledgements and information available for the Financial Institution to retrieve or review. For purposes of determining when Electronic Items, Files, notices, messages, acknowledgements and information have been delivered by Company and received by Financial Institution, Financial Institution's records shall be determinative.

f. Files received by Financial Institution prior to the applicable time designated by Financial Institution in Schedule B (the "Cutoff Time") on a Banking Day shall be deemed received and eligible for processing on that Banking Day. Files received by Financial Institution after the Cutoff Time on a Banking Day or on a day that is not a Banking Day shall be deemed received and eligible for processing on the next Banking Day. To meet the Cutoff Time, the entire File must be received by Financial Institution prior to the Cutoff Time, and the File must successfully pass the edits for conformity with the technical requirements.

g. Company agrees that (i) the dollar value of any Electronic Item received by Financial Institution shall not exceed the dollar amount specified in Schedule B (the "Item Limit), (ii) the total number of Electronic Items per day received by Financial Institution shall not exceed the total specified in Schedule B (the "Number of Items Per Day"), (iii) the total dollar value of all Files received on any one (1) Banking Day shall not exceed the amount specified in Schedule B (the "File Limit Per Day"), and (iv) the dollar value of all Files received during any given month shall not exceed the monthly dollar amount specified in Schedule B ("the File Limit Per Month"), which may be modified by Financial Institution, from time to time, in its sole discretion. If any Item Limit, Number of Items Per Day, File Limit Per Day or File Limit Per Month is exceeded, Financial Institution may, at its option, refuse to accept for processing any Electronic Item, File and/or deposit that exceeds such limits. Financial Institution reserves the right to change the Item Limit, Number of Items Per Day, File Limit Per Day, File Limit Per Month or the Cutoff Time. All such changes shall be effective immediately and may be implemented prior to Company's receipt of notice thereof. Company may contact Financial Institution at any time to verify the Item Limit, Number of Items Per Day, File Limit Per Day, File Limit Per Month and the Cutoff Time.

h. Once Financial Institution receives Electronic Items, it may review them to determine whether they will be accepted for processing or be rejected. Financial Institution shall provide notice to Company regarding whether Electronic Items are accepted for processing or rejected, as determined by Financial Institution in its sole discretion. It shall be Company's responsibility to routinely review the relevant On-Line systems for notices from Financial Institution regarding whether Electronic Items have been accepted for processing or rejected. If Company believes that Electronic Items have been sent to Financial Institution but Company has not received a notice that the Electronic Items have been accepted for processing or rejected, it is Company's responsibility to contact Financial Institution to inquire about the status of the Electronic Items in question.

i. Financial Institution will provisionally credit the Designated Account(s) for the amount of the deposit(s) to which the Electronic Items pertain and that Financial Institution has accepted for processing on the Banking Day of receipt of Electronic Items, subject to the conditions set forth in this Agreement, and will handle the deposited items as check deposits in accordance with the applicable Deposit Agreement(s).

j. Company shall securely store and maintain, in accordance with the specifications of Section 6, all original checks for a period of **75** days (or longer if requested by Financial Institution) after Company has received notice from Financial Institution that the Electronic Items that reflect the original of the checks have been accepted for processing or rejected (the "Retention Period"), after which time, Company shall destroy the original checks using a method of destruction that provides commercially reasonable assurance that any sensitive information contained in the checks is protected from unauthorized disclosure. Company will use commercially reasonable methods of destruction approved by Financial Institution to destroy original checks after expiration of the Retention Period. During the Retention Period, Company shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to original checks, (b) the information contained on such checks shall not be disclosed, (c) such checks will not be duplicated or scanned more than one time and (d) such checks will not be deposited or negotiated in any form. Company shall also implement proper security procedures and internal controls to ensure the confidentiality of any information that is considered to be confidential personal information that is retained by Company.

k. When transmitting Electronic Items to Financial Institution and receiving Electronic Items from Financial Institution, Company shall comply with the Security Procedures as set forth in Schedule D. Company acknowledges that the purpose of the Security Procedures is for verification of authenticity and not to detect an error in the transmission or content of Electronic Items, Files or information transmitted to or received from Financial Institution. In addition, Company shall comply with any rules, requirements or procedures prescribed by Financial Institution from time to time governing submission of Electronic Items and any applicable clearinghouse rules or requirements and provisions of agreements entered into by Financial Institution with third parties related to the Service. Company will promptly (but in all events within five (5) business days) 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.

4. **Hardware and Software Requirements.**

a. Company must obtain computer hardware, including scanner hardware (the “Purchased Equipment”) that complies with Financial Institution’s specifications for the proper delivery of the Service and that fulfills Company’s obligation to obtain and maintain secure access to the Internet. In connection with the use of the Service, Company shall only use Purchased Equipment as is approved in advance by Financial Institution and shall only use such software as is approved in advance by Financial Institution.

b. The Company’s computer (“PC”), Internet Connection, and related equipment and services must meet the current technical requirements of the Financial Institution, as the same may be amended or supplemented.

c. Company shall be solely responsible for, at its own expense, properly obtaining, installing, managing, operating, maintaining and using any Purchased Equipment and any hardware pursuant to this Section 4 and any Software (as defined below), including any Software provided by Financial Institution, and licenses to use such Software that is required in connection with the Service (“Additional Equipment”) that complies with the specifications and requirements of Financial Institution. Only Purchased Equipment and Additional Equipment that complies with Financial Institution’s specifications and requirements may be used in connection with the Service. Company shall be solely responsible for, at its own expense, properly obtaining, installing, managing, operating, maintaining and using an Internet communication connection used to transmit the File(s) and other information to Financial Institution and to receive information from Financial Institution. Company understands and agrees that it is solely responsible for the operation, maintenance and updating of all equipment, software and services used in connection with the Service and the cost thereof, and Company hereby agrees that it shall perform, or cause to be performed, all vendor-recommended maintenance, repairs, upgrades and replacements to the Purchased Equipment, Additional Equipment and Internet communication connection, and such performance shall be rendered by properly trained personnel, whether employees of Company or of a third-party. In addition to installing antivirus software, Company hereby agrees to scan its computer hardware and software on a regular basis (not less than once per month) using a reliable computer virus detection product to detect and remove computer viruses.

d. Company must perform a test of its Purchased Equipment and Additional Equipment to ensure that the Purchased Equipment and Additional Equipment satisfy the specifications and requirements of the Financial Institution for use of the Service (the “System Test”). To perform the System Test, Company must install a software program provided by Financial Institution (the “Test Program”).

e. All right, title and interest in and to (a) any and all computer programs, including but not limited to the object and source codes therefore, and any and all updates, upgrades, fixes and enhancements thereto, together with any and all documentation, user guides and instructions pertaining thereto (collectively, “Software”) and (b) any and all users guides, instructions and other documentation provided to, or used by, Company in connection with the Service (collectively, the “Documentation”) shall be, and remain, the property of Financial Institution or any third party Software provider, as applicable. Unless otherwise expressly authorized, Company may not (a) copy, reproduce, transmit, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign, commercially exploit, reverse engineer, reverse compile or create derivative works of the Software in any form or (b) copy, reproduce, transmit, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign or commercially exploit the Documentation.

f. FINANCIAL INSTITUTION IS NOT RESPONSIBLE FOR, AND COMPANY HEREBY RELEASES FINANCIAL INSTITUTION FROM ANY AND ALL CLAIMS OR DAMAGES RESULTING FROM, OR RELATED TO, ANY COMPUTER VIRUS OR RELATED PROBLEMS THAT MAY BE ASSOCIATED WITH USING ELECTRONIC MAIL OR THE INTERNET TO DELIVER SERVICES. FINANCIAL INSTITUTION HEREBY DISCLAIMS ANY AND ALL LIABILITY ASSOCIATED WITH ANY PURCHASED EQUIPMENT OR ADDITIONAL EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY OF FINANCIAL INSTITUTION'S REQUIREMENTS RELATED TO SUCH PURCHASED EQUIPMENT OR ADDITIONAL EQUIPMENT, INCLUDING BUT NOT LIMITED TO THE TEST PROGRAM OR SYSTEM TEST, AND MAKES NO WARRANTIES WHATSOEVER REGARDING THE FOREGOING INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY THAT THE TEST PROGRAM WILL BE UNINTERRUPTED OR ERROR FREE. FINANCIAL INSTITUTION MAKES NO WARRANTIES REGARDING THE EFFECT THAT THE PURCHASED EQUIPMENT, ADDITIONAL EQUIPMENT, TEST PROGRAM OR SYSTEM TEST MAY HAVE ON COMPANY'S OTHER SYSTEMS AND COMPANY HEREBY RELEASES AND HOLDS FINANCIAL INSTITUTION HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, LOSSES, DEMANDS, OBLIGATIONS, COSTS, EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COURT COSTS), AND/OR DAMAGES THAT THE PURCHASED EQUIPMENT, ADDITIONAL EQUIPMENT, TEST PROGRAM OR SYSTEM TEST MAY CAUSE (INCLUDING BUT NOT LIMITED TO DAMAGE TO COMPANY'S OTHER SYSTEMS OR PROPERTY) REGARDLESS OF WHETHER SUCH DAMAGE WAS DUE TO FINANCIAL INSTITUTION'S SPECIFICATIONS OR REQUIREMENTS. COMPANY AGREES THAT, REGARDLESS OF CAUSE, FINANCIAL INSTITUTION IS NOT RESPONSIBLE FOR AND COMPANY SHALL NOT MAKE ANY CLAIM AGAINST FINANCIAL INSTITUTION FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, PUNITIVE OR INDIRECT, FOR ANY LOSSES IN ANY WAY CONNECTED WITH THE PURCHASED EQUIPMENT, ADDITIONAL EQUIPMENT, TEST PROGRAM OR SYSTEM TEST. UNLESS OTHERWISE REQUIRED BY LAW, FINANCIAL INSTITUTION'S TOTAL LIABILITY TO COMPANY FOR ANY DAMAGE, LOSS OR LIABILITY IN CONNECTION WITH THE PURCHASED EQUIPMENT, ADDITIONAL EQUIPMENT, TEST PROGRAM OR SYSTEM TEST SHALL NOT EXCEED THE LESSER OF (I) COMPANY'S ACTUAL DAMAGES OR (II) THE FEES CHARGED TO COMPANY FOR THE SERVICES FOR THE SIX-MONTH PERIOD PRIOR TO THE TIME THE DAMAGES ARE SUFFERED.

5. **Electronic Items That May Be Deposited.**

a. Company hereby warrants that every Electronic Item shall have been captured by Company from an original check. Company agrees that the image of the check that is transmitted to Financial Institution shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code. If Company sends an Electronic Item for deposit that was not captured from an original check, Company agrees to indemnify, defend and hold harmless Financial Institution against any financial loss, costs (including but not limited to attorneys' fees, costs of litigation and consequential losses, if any), claim, harm or damage that Financial Institution suffers as a result. In its discretion, Financial Institution may terminate the Service immediately if Company sends an Electronic Item that was not captured from an original check.

b. Company hereby further warrants that it will send an Electronic Item for deposit only if the original check is:

(i) payable to Company and not to a third party; and

(ii) drawn on an account owned, controlled or accessible by a person or entity other than Company or any affiliate of Company.

c. Company agrees and warrants that Company will ***not*** use the Service to transmit to Financial Institution for deposit any Electronic Item reflecting:

(i) any original check, the deposit of which is prohibited by Financial Institution's then-current procedures pertaining to the Service or is in violation of any applicable law, regulation or rule;

(ii) any original check that Company knows or suspects or should suspect is fraudulent or otherwise not authorized by the owner of the account on which the original check is drawn;

(iii) any original check that Company knows or suspects or should suspect is drawn on an account owned by a "Specially Designated National" as defined from time to time in regulations issued by the Office of Foreign Asset Control of the United States Department of the Treasury;

(iv) substitute checks or image replacement documents that purport to be substitute checks, without Financial Institution's prior written consent;

(v) any check that is drawn on or is payable by or at a financial institution that is located in a foreign country;

(vi) any check that is not permitted for deposit into a Designated Account, as provided in the applicable Deposit Agreement between Company and Financial Institution;

(vii) any "remotely created check," as that term is defined in Federal Reserve's Regulation CC, that is, any check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn; or

(viii) any Money Order or Traveler Check.

d. **With respect to each Electronic Item that Company sends to Financial Institution for deposit, Company agrees to indemnify and reimburse Financial Institution for and hold Financial Institution harmless from and against any and all losses, costs and expenses (including attorney fees) that Financial Institution incurs with respect to any warranty or indemnity Financial Institution makes to another party, whether by operation of law or by agreement, with respect to the check, any electronic representation of the check, the Electronic Item, any substitute check based on the original check or any paper or electronic representation of a substitute check derived from the original check.**

6. **Security Requirements.**

a. Company shall be solely responsible for preventing and safeguarding against unauthorized transmissions and unauthorized access to the following, all of which is referred to collectively as "Information and Systems": (i) original checks; (ii) Electronic Items; and (3) Company information, systems, connections and equipment that interface with, connect to or allow access to Financial Institution, its information, systems and equipment, including but not limited to instructions, codes, passwords, procedures, including security-related procedures or any passwords, codes or PINs ("Personal Identification Numbers") used in transmitting the Electronic Items or related information. Company shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to the Information and Systems. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in any applicable laws, regulations, regulatory guidelines and rules.

b. Company shall disclose security-related information and information concerning Financial Institution and the Information and Systems only to persons to whom disclosure is necessary for the conduct of Company's business affairs and Company agrees to take commercially reasonable steps to maintain the confidentiality of all such security-related information and information concerning Financial Institution and the Information and Systems.

c. Company warrants that no individual will be allowed to create Electronic Items and/or transmit them to Financial Institution in the absence of proper supervision and safeguards and that only Authorized

Representatives shall authorize transactions pursuant to this Agreement and transmit the Electronic Items and instructions related thereto to Financial Institution. Financial Institution is entitled to rely on all instructions and information received from someone who is an Authorized Representative of Company or someone whom Financial Institution believes in good faith to be an Authorized Representative of Company.

d. Company shall notify Financial Institution immediately, followed by written confirmation, if Company has reason to believe or suspects there has been any unauthorized access to the Information and Systems or unauthorized transmissions.

7. **Image and MICR Quality**.

a. Company understands and agrees that Financial Institution, any subsequent collecting bank, the paying bank and the drawer with respect to each Electronic Item transmitted by Company to Financial Institution may employ automated processes or sight review assessing the legibility, usability or technical acceptability of the electronic image and the data that make up the Electronic Item, and that the Financial Institution, any subsequent collecting bank, the paying bank or the drawer may reject or return an Electronic Item (or a substitute check or other item derived from an Electronic Item) if such person or entity determines that the image or the data are unacceptable. If an Electronic Item is rejected or returned, Company agrees to follow such re-clearing procedures as the Financial Institution may establish with respect to rejected or returned Electronic Items.

(i) Company shall therefore ensure that the image of the original check in an Electronic Item shall be of such quality that the following information can be clearly read and understood by sight review of such image:

(1) Amount of the original check as written or printed in words and numbers by the drawer;

(2) Payee of the original check as written or printed by the drawer;

(3) Signature of the drawer of the original check;

(4) Date of the original check as written or printed by the drawer;

(5) Check number of the original check as written or printed on the original check;

(6) Any information identifying the drawer and the paying bank that is preprinted on the original check;

(7) MICR line of the original check; and

(8) All other information placed on the original check prior to the time an image of the original check is captured, including but not limited to any required identification written on the front of the original check and any endorsements applied to the back of the original check.

(ii) Company shall ensure that each Electronic Item shall meet all standards for image quality established by the ANSI, Board of Governors of the Federal Reserve System or any other applicable regulatory agency, the Federal Reserve Banks and any clearinghouse or association.

b. Company shall ensure that each Electronic Item transmitted by Company to Financial Institution shall contain in the appropriate field in the Electronic Item the following information pertaining to the MICR line of the original check:

(i) The American Bankers Association Routing Transit Number;

(ii) Account number on which the original check was drawn;

(iii) The amount of the original check inserted by the Company as required by Section 3(a); and

(iv) If present on the original check, the serial number and the process control field of the original check.

8. **Provisional Credit and Availability of Funds.**

a. Upon acceptance of Electronic Items for processing, Financial Institution shall provisionally credit Company's Designated Account. Such provisional credit shall be subject to final payment of the Electronic Items by the paying bank and the terms of any applicable Deposit Agreement covering the Designated Account(s).

b. Company agrees that Electronic Items transmitted using the Service are not subject to the funds availability requirements of Regulation CC. For purposes of determining the availability of funds, the terms of the Deposit Agreement applicable to the Designated Account(s) shall apply.

9. **Returned Checks.**

a. If Electronic Items that are deposited into Company's Designated Account(s) pursuant to this Agreement are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are rejected or returned by a clearing agent or collecting bank for any reason, including, but not limited to, issues relating to the quality of the image, Company understands and agrees that, since Company either maintains the original check or has destroyed the original check in accordance with Section 3(j) of this Agreement, an original check will not be returned to Company but that Financial Institution may charge back the amount of the original check to Company's Designated Account and provide Company with an image of the original check, a paper reproduction of the original check or a substitute check. **Unless otherwise instructed by Financial Institution, Company shall not attempt to deposit or otherwise negotiate an original check that has been imaged if it has been charged back to Company.**

b. Company agrees that Financial Institution may debit any of its accounts maintained with Financial Institution to obtain payment for any Electronic Item that has been rejected or returned, for any adjustment related to such Electronic Item or for any warranty claim related to such Electronic Item, whether or not the rejection, return, adjustment or warranty claim was made timely. Financial Institution has no duty to Company or to any other person to decline or dispute any such rejected or returned item, or to dispute or defend against such adjustment or warranty claim.

c. If the Company's use of the Service causes the risk identification triggers or other benchmarks (related to, for example return rates, rejection rates and dollar and item count volumes), which are set by Financial Institution in its sole discretion, to be met or exceeded, as applicable, Financial Institution may, in its sole discretion, immediately terminate the Service or impose such limitations and restrictions on the Service as Financial Institution deems appropriate.

10. **Collection of Checks.**

a. Financial Institution, in its sole discretion, shall determine the manner in which Electronic Items shall be presented for payment to the drawee bank.

b. Financial Institution, in its sole discretion, shall select the clearing agents used to collect and present the Electronic Items, and Financial Institution's selection of such clearing agents shall be considered to have been approved by Company. Financial Institution shall not be liable for the negligence of any clearing agent.

c. Financial Institution will collect Electronic Items through the check collection process pursuant to UCC Articles 3 and 4, Regulation CC, applicable clearinghouse rules and any applicable agreements

Financial Institution may enter into from time to time, including any Deposit Agreement covering the Designated Account(s).

11. **<u>Contingency Plan</u>.** Company agrees that, in the event Company is not able to comply with the terms of this Agreement or to transmit Electronic Items for any reason, including but not limited to any communications, software or equipment failures, interruptions or outages, Company shall transport to Financial Institution any original checks to the closest office of Financial Institution that the Company wishes to deposit and shall deposit such original checks with Financial Institution until the problem is resolved. Company hereby acknowledges and agrees that Financial Institution shall not be liable to Company for any loss or damage of any nature sustained by Company as a result of the inability of Company to use the Service. The deposit of original checks at an office of the Financial Institution shall be governed by the terms and conditions of the Deposit Agreement applicable to the Designated Account in which the original checks are deposited and not the terms of this Agreement. Notwithstanding the foregoing, and to the extent applicable, Section 13 of this Agreement dealing with warranties shall apply to the deposit of original checks.

12. **<u>Designated Account(s)</u>.**

a. Company shall maintain with Financial Institution one or more Designated Account(s) to which deposits may be made pursuant to this Agreement.

b. **Company agrees that, to the extent the provisions in this Section 12(b) are inconsistent with provisions in an agreement governing Company's Designated Account(s), the provisions in this Section 12(b) shall prevail. Company agrees that, pursuant to this Agreement, certain persons, who might or might not otherwise be authorized under the account agreement applicable to a Designated Account(s), may be authorized by this Agreement to perform certain transactions or provide and receive certain related information or provide related instructions pursuant to this Agreement. Company agrees that any provisions contained in account agreements applicable to Designated Account(s) concerning (i) the number of signatures that are required to authorize or perform certain transactions or provide information or instructions to Financial Institution or (ii) the specific persons who are identified as authorized to authorize or perform certain transactions or provide and receive information or provide instructions to Financial Institution shall not apply to transactions performed pursuant to this Agreement.**

c. Company agrees that Financial Institution may debit any account (either now or in the future existing) maintained by Company with Financial Institution in order to obtain payment of Company's obligations under this Agreement, if necessary. Company agrees that Company's obligations under this Agreement, including, without limitation, any indebtedness or liability arising as a result of the provisions of this Agreement, will be secured by any collateral now or in the future held by Financial Institution or on which Financial Institution now or in the future has a lien or security interest for any other indebtedness Company owes to Financial Institution, whether such other indebtedness has already been incurred or will be incurred in the future, and the instruments and agreements under which such collateral is provided are hereby amended to secure Company's obligations under this Agreement. Company hereby assigns all of its deposit accounts with Financial Institution and any affiliate of Financial Institution to Financial Institution to secure its obligations to Financial Institution under this Agreement. Company expressly authorizes Financial Institution to debit any account maintained by Company with Financial Institution or any affiliate of Financial Institution and/or set off any of Company's obligations to Financial Institution under this Agreement against any amount it owes to Company, in order to obtain payment of Company's obligations under this Agreement.

d. Company may be required to maintain a reserve ("Settlement Reserve") of an amount to be determined solely by the Financial Institution. Company acknowledges and agrees that any Settlement Reserve will be deposited in a Financial Institution account for exclusive use by the Financial Institution for purposes of offsetting any of Company's obligations under this Agreement. Company grants Financial Institution a security interest in any Settlement Reserve to enable Financial Institution to enforce any obligation owed by Company under this Agreement without notice or demand to Company. Company's obligation to maintain a Settlement Reserve shall survive the termination of this Agreement, with such obligation lasting until all of Company's obligations under this Agreement have been fully offset.

e. Financial Institution may, at its discretion, require Company to provide quarterly financial reports and other reasonable information to establish the creditworthiness of Company. Where Financial Institution reasonably believes that Company's financial condition is impaired or deteriorating, Financial Institution may refuse to process any Electronic Items.

f. Company agrees to submit to reasonable background checks and provide any other information to Financial Institution that is necessary for Financial Institution to comply with applicable laws and regulations and Financial Institution's internal policies and procedures. In accordance with Section 22 of this Agreement, Financial Institution may, in its reasonable discretion, upon providing reasonable advance notice to Company, conduct an off-site or on-site review of Company's operations to ensure compliance with the provisions of this Agreement. Such review may include but is not limited to a review of the physical area in which Company creates Electronic Items, Company's security procedures, Company's storage and destruction of original checks and Company's business activities. Without limiting the foregoing, Company agrees to provide Financial Institution with all information that the Bank Secrecy Act and any other applicable law or regulation that Financial Institution, in its sole discretion, believes it should obtain. If Company fails to provide Financial Institution with all the information required by law and the provisions of this paragraph, Company agrees that Financial Institution is not obligated to provide the Service and shall not incur any liability for such action or omission. Company shall cooperate fully in providing any information or fulfilling any requests of Financial Institution pursuant to this Agreement.

13. **Company Representations and Warranties and Indemnity.**

a. Company represents and warrants to Financial Institution and agrees that:

(i) Company shall transmit only Electronic Items to Financial Institution for deposit that comply with the provisions of this Agreement and the Deposit Agreement applicable to the Designated Account(s);

(ii) Each Electronic Item transmitted by Company to Financial Institution contains an accurate representation of the front and back of the original check and complies with requirements of this Agreement;

(iii) All information submitted by Company to Financial Information, including but not limited to data contained in the MICR line of each original check, is complete and accurate and complies with the provisions of this Agreement;

(iv) Company is not a consumer, each Designated Account is used for business purposes and is not a consumer account, and the Service shall be used only for business purposes;

(v) All signatures on the original check from which an Electronic Item is derived are authentic and authorized;

(vi) Each check from which an Electronic Item is derived is authentic and has not been altered;

(vii) Each Electronic Item transmitted to Financial Institution is an accurate, authentic replica of an original check, and the Electronic Item has not been altered;

(viii) Company is entitled to enforce each check from which an Electronic Item is derived;

(ix) No check from which an Electronic Item is derived is subject to a defense or claim in recoupment of any party that can be asserted against Company;

(x) Company has no knowledge of any insolvency proceedings commenced with respect to the maker or acceptor or, in the case of an unaccepted check, the drawer of any checks from which an Electronic Item is derived;

(xi) Company shall not, whether knowingly or unknowingly, transmit or cause to be transmitted to Financial Institution any computer virus or any malicious code and shall take commercially reasonable steps to prevent such transmissions from occurring;

(xii) Company will not: (1) create a duplicate Electronic Item of an original check; (2) transmit a duplicate Electronic Item to Financial Institution or to any other person for collection or presentment; or (3) deposit or otherwise negotiate the original of any check from which an Electronic Item has been created;

(xiii) No subsequent transferee of an Electronic Item, including but not limited to Financial Institution, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay an original check from which an Electronic Item was created or to pay a duplicate of an Electronic Item;

(xiv) All information provided by Company to Financial Institution is true, complete and accurate and properly reflects the business, financial condition and principal partners, owners or officers, of Company. Company is not engaged in, or affiliated with, any businesses, products or methods of selling other than those disclosed by Company to Financial Institution;

(xv) No subsequent transferee of an Electronic Item, including but not limited to Financial Institution, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as a result of an Electronic Item (or any item or returned check derived from the Electronic Item) being presented for payment or returned, instead of the original check;

(xvi) Company is authorized to enter into and perform its obligations under this Agreement; the person signing this Agreement on behalf of Company is duly authorized to execute this Agreement; this Agreement is valid and enforceable against Company; and entering into, and performing under, this Agreement shall not violate any law, regulation or rule, or conflict with any other agreement to which Company is subject;

(xvii) Individuals listed in Schedule C have been duly authorized to act in the capacity provided in Schedule C and this Agreement by the Company;

(xviii) There is no action, suit or proceeding pending or, to Company's knowledge, threatened which, if decided adversely, would impair Company's ability to carry on its business substantially as now conducted or which would adversely affect Company's financial condition or operations; and

(xix) Company shall perform its obligations under this Agreement in accordance with, and shall not perform any acts or omissions that would cause Financial Institution to violate, any applicable rules (including but not limited to applicable rules of trade associations, clearinghouses and payment processors), requirements, laws, regulations, sanctions, executive orders and regulatory guidelines including, but not limited to, the following: U.S. federal or state laws and regulations; foreign laws, regulations and/or directives; the sanctions laws, regulations and executive orders administered by the Office of Foreign Assets Control ("OFAC"); laws, regulations and orders administered by FinCEN; any applicable Rules; Federal Reserve Operating Circulars; and any applicable state laws, regulations, orders or regulatory guidelines.

b. Company shall indemnify and hold Financial Institution and its parent, subsidiaries and affiliates and their respective officers, directors, employees and agents (each an "Indemnified Party" and, collectively, the "Indemnified Parties") harmless from and against any and all actions, causes of action, claims, damages, losses, demands, liabilities and expenses (including reasonable attorneys' fees and litigation expenses) of any nature or kind (including those by third parties) arising directly or indirectly from or relating in any manner to: (a) Company's (i) failure to satisfy its obligations under this Agreement, including a failure to report required changes, (ii) failure to exercise ordinary care in connection with its duties under this Agreement, (iii) breach of any warranties and representations in this Agreement and/or any provision in this Agreement, (iv) transmission of incorrect data to Financial Institution, (v) failure to maintain compliance with the Rules, (v) destruction of original checks, (vi) deposit of an electronic representation of a substitute check into a Designated Account instead of an original check, (vii) deposit of a prohibited check, and (viii) use of the Service; (b) Financial Institution's (i) provision of the Service and (ii) action or inaction in accordance with, or in reliance upon, any instructions or information received from any person reasonably believed by Financial Institution to be an Authorized Representative of Company; (c) the dishonor or otherwise return unpaid by the drawer bank, or return by a clearing agent, for any reason, of any check and/or Electronic Item presented to Financial Institution by Company; (d) any actions by any agent employed by Company that result in a breach of this Agreement by Company; (e) to the extent that it involves Financial Institution, any litigation asserting noncompliance on Company's part with applicable rules, laws, regulations or other requirements; and (f) from any claim of any person that Financial Institution is responsible for any act or omission of Company or any other person acting on behalf of Company.

c. Company shall be responsible for and shall indemnify the Indemnified Parties against any acts and omissions of Company's agents, service providers, affiliates, officers, employees and any other person or party Financial Institution believes in good faith to be acting on behalf of Company to the same extent that it is responsible for and must indemnify against its own acts and omissions pursuant to this Agreement.

14. **Financial Institution Responsibilities, Liability; Limitations on Liability; Indemnity.**

a. In the performance of the services required by this Agreement, Financial Institution shall be entitled to rely solely on the information, representations and warranties provided by Company pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Financial Institution shall not be responsible for or liable for detecting any error of Company contained in any Electronic Item transmitted by Company. Notwithstanding the fact that Financial Institution may have received and accepted for processing an Electronic Item and provisionally credited a Designated Account(s), Company shall remain liable to Financial Institution for any errors, inaccuracies, breach of warranties and any other loss sustained by or claim made against Financial Institution.

b. Financial Institution shall be responsible for performing only the services expressly provided for in this Agreement, the Deposit Agreement applicable to the Designated Accounts and any other agreements governing the Designated Accounts, and shall be liable only for damages solely and proximately caused by its gross negligence or willful misconduct in performing those services, and Financial Institution's liability shall in no event exceed the lesser of (i) Company's actual damages or (ii) the total fees paid by Company to Financial Institution for the Service for the period of six (6) months immediately preceding the date of the alleged gross negligence or willful misconduct.

c. Financial Institution shall not be liable for claims, expenses, losses or damages resulting from Company's acts or omissions or alleged acts or omissions or those of any other person, including, without limitation, with respect to any check, the drawer, the payee, any indorser and/or any collecting or returning bank, Federal Reserve Bank, financial institution, clearinghouse or payment processor.

d. In no event shall Financial Institution be liable for any consequential, special, incidental, punitive or indirect loss or damage (including, without limit, lost profits, loss of use or loss of data) which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by Financial Institution or even if the Financial Institution was specifically advised of the possibility of such losses or damages, and regardless of the legal or equitable theory of liability which Company may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Financial Institution's acts or omissions pursuant to this Agreement.

e. Company acknowledges and agrees that Company's use of the Service shall be at Company's sole risk, and that the Service is provided by Financial Institution on an "AS IS" basis. Company further agrees and acknowledges that Financial Institution may from time to time temporarily suspend or interrupt the operation of the Service, including the Remote Access Services, without notice or liability to Company, for maintenance or for any other operational or business needs as determined by Financial Institution.

f. Except as expressly set forth in this Agreement, Financial Institution makes absolutely no representations or warranties whatsoever, express or implied, in law or in fact, to Company or to any other person, as to the Service or any aspect thereof, including (without limitation) any warranty of merchantability, fitness for a particular purpose, quality, accuracy, or suitability, and Financial Institution hereby disclaims any and all of the same. Company agrees that no oral or written advice or representation obtained from any Financial Institution employee or representative shall create a warranty or representation for purposes of this Agreement or the Service to be performed pursuant hereto.

g. To the fullest extent allowed by law, and subject to the foregoing provisions of this section dealing with Financial Institution's liability for damages solely and proximately caused by its gross negligence or willful misconduct, in all instances, Financial Institution's liability to Company under this Agreement shall be limited to correcting errors resulting from Financial Institution's failure to exercise ordinary care. If Financial Institution substantially complies with the terms, conditions and provisions set forth in this Agreement and in the applicable Schedules, Financial Institution shall be deemed to have exercised ordinary care. Company agrees that clerical errors and mistakes do not constitute a failure to exercise ordinary care.

h. Financial Institution shall not be responsible or liable for any errors or failures resulting from defects in, or malfunctions of, Company's computer hardware or software or Financial Institution's software, for the quality of performance or lack of performance of any computer software or hardware or Internet delivered services supplied by Financial Institution to Company in connection with this Agreement, or for the transmission or failure of transmission of any information from Company to Financial Institution, from Financial Institution to Company, from Company to any processor, from any processor to Financial Institution, or otherwise. Financial Institution shall not be responsible for notifying Company of any upgrades or enhancements to any of Company's computer hardware or software.

i. Company agrees to monitor its account balances and charges, to promptly notify Financial Institution if any report conflicts with Company's records, and to refrain from acting on information it has reason to believe is erroneous. Without limiting the generality of the foregoing provisions, Financial Institution shall not be liable and 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, error in or inoperability of communication equipment or lines, omissions or errors of any carrier and/or agent operating between Company and Financial Institution or Financial Institution and any Federal Reserve Bank or other agency utilized to exercise transfers or any recipients of transferred funds, any incorrect, unauthorized or fraudulent use or other fraud by any person other than Financial Institution's employees; natural disaster, fire, equipment failure, war, emergency conditions or other circumstances beyond Financial Institution's control. In addition, Financial Institution shall not be liable for and shall be excused from failing to provide the Service if such action or omission would result, in Financial Institution's reasonable judgment, in a violation of any rule, law, regulation, executive order or any requirements of any governmental authority, or cause Financial Institution to engage in an unsafe and unsound practice.

15. **Third-Party Service Provider.** Electronic Items and other related information may be processed on behalf of Financial Institution through any agent or third-party service provider ("Service Provider") of Financial Institution. Performance of services through a Service Provider does not affect any obligation or performance thereof which Company has under this Agreement.

16. **Fees, Compensation & Costs.**

a. **Fees**. Company shall pay Financial Institution the charges for the Service at the rates specified in the applicable fee schedule, as such rates may be modified by Financial Institution from time to time. Such charges do not include, and Company shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to the Service, this Agreement or the software or equipment made available to Company, and any fees or charges provided for in the Deposit Agreement between Financial Institution and Company with respect to the Designated Account(s). Company is also responsible for the costs of any communication lines and any data processing charges payable to third parties. Company authorizes Financial Institution to deduct any charges for the Service from any account Company has at Financial Institution, even if such deductions cause an overdraft in the account. Should Company fail or refuse to pay any charges under this Agreement, Company agrees to pay all collection costs (including reasonable attorney's fees) which Financial Institution may incur. Financial Institution shall have the right to add, remove, increase, decrease or otherwise revise any charges imposed for the Service at any time, as provided in Section 23(a) of this Agreement.

b. **Account Reconciliation**. Financial Institution will provide notice of receipt of deposits to Company's Designated Account with Financial Institution on Company's periodic report or statement. Company shall promptly examine each periodic report detailing transactions, including Electronic Items and checks processed by Financial Institution and the credit given for such Electronic Items and checks, made pursuant to this Agreement and notify Financial Institution in writing of any problem, error or discrepancy between Company's records and the information shown on any periodic report within ten (10) days of delivery of the report to Company. If Company fails to provide written notice to Financial Institution within such ten-day period, Company shall be deemed to irrevocably agree with the information as provided in such periodic report and shall be precluded from being able to assert a claim based on such problem, error or discrepancy. This Section 16(b) shall also preclude Company from being able to assert a claim based on any problem, error or discrepancy that appears in an account statement pertaining to a Designated Account that also appeared in a periodic report and in which Company failed to comply with this Section 16(b) to report the problem, error or discrepancy within ten (10) days of delivery of the report to Company. To the extent the provisions of this Section 16(b) are inconsistent with any provisions governing Company's Deposit Agreements with Financial Institution or any other agreement with Financial Institution, this provision shall prevail.

17. **Notices, Instructions, Etc.**

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

b. Company acknowledges that any e-mail systems Company uses to submit information to Financial Institution or that Financial Institution may use to receive e-mails from Company may not be secure. As such, Company agrees that, to the extent it submits any information to Financial Institution in e-mail communications, such e-mail communications shall not contain any confidential or sensitive information.

c. Financial Institution shall be entitled to rely on any written notice or other communication believed by it in good faith to be genuine and to have been submitted by or signed by an Authorized Representative, and any such communication shall be deemed to have been given by Company.

d. Company certifies that the individuals listed in Schedule C are Authorized Representatives for purposes of this Agreement. These Authorized Representatives are authorized to act on behalf of Company in order to perform or authorize transactions related to the Service, transmit checks and/or Electronic Items and provide and receive related information and provide related instructions to Financial Institution. Until Financial Institution receives a written notice from Company that revokes the authorization granted to any of the individuals listed in Schedule C, and has a reasonable opportunity to act on such notice of revocation, Financial Institution shall be permitted to continue to rely upon the authority granted to such Authorized Representatives.

e. Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered or sent by (i) United States registered or certified mail, postage prepaid, (ii) express carrier with proof of receipt, or (iii) hand delivery to the street address listed in Schedule B. Notices may also be delivered from Financial Institution to Company electronically by facsimile or to the e-mail address on file for Company. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

18. **Recording and Use of Communications.** Company and Financial Institution agree that all telephone conversations and/or data transmissions, including but not limited to, any and all On-Line transmissions made between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means.

19. **Information and Records.** All data storage media, security procedures, data, information and related records used by Financial Institution for transactions contemplated by this Agreement shall be and remain

Financial Institution's property. Except to the extent that Financial Institution is required by law to make information available to Company, Financial Institution may, in its sole discretion, determine whether to make available such information upon Company's request. Any expenses incurred by Financial Institution in making such information available to Company shall be paid by Company.

20. **Internet Disclaimer.** Financial Institution does not, and cannot, control the flow of any documents, files, data or other information via the Internet, whether to or from Financial Institution's network, other portions of the Internet or otherwise. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt Company's connections to the Internet (or portions thereof). Financial Institution cannot guarantee that such events will not occur. Accordingly, Financial Institution disclaims any and all liability arising out of, resulting from or related to, such events, and in no event shall Financial Institution be liable for any damages of any kind (whether in contract, in tort or otherwise) that are attributable or in any way related to the Internet infrastructure or Company's or Financial Institution's ability or inability to connect to the Internet.

21. **Use of Trademarks.** Company not use Financial Institution's name or trademarks without the express written consent of Financial Institution. If Company is permitted to use any of Financial Institution's name, trademarks or promotional materials, Company will not indicated, directly or indirectly, that Financial Institution endorses, or is connected in any way with, any of Company's goods or services.

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

23. **General Terms.**

a. **Amendments**. From time to time, Financial Institution may amend any of the terms and conditions contained in this Agreement, including, without limitation, any Cutoff Time, any security requirements, and any part of any of the Schedules attached hereto, including the fees charged for the Service. Such amendments shall become effective upon five (5) days' prior written notice to Company or such earlier or later date as may be stated herein or in Financial Institution's notice to Company. Notice may be given as provided in Section 17 above. Company's continued use of the Service following the effective date of an amendment shall constitute Company's agreement to such amendments. No amendments requested by Company shall be effective unless received and agreed to in writing by Financial Institution. Any practices or course of dealings between Company and Financial Institution, or any procedures of operational alterations used by Financial Institution, shall not constitute a modification of this Agreement, nor shall they be construed as an amendment to this Agreement.

b. **Termination**. This Agreement shall remain in full force and effect from the date hereof until such time as this Agreement is terminated by either party as hereinafter provided. Company may terminate this

Agreement at any time for any reason in its sole discretion. Such termination shall be effective on the second Banking Day following the day of Financial Institution’s receipt of written notice of such termination or such later date as is specified in that notice. Financial Institution reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Financial Institution’s rights and Company’s obligations with respect to any transactions already in process prior to such termination, or the payment obligations of Company with respect to services performed by Financial Institution prior to termination. Financial Institution’s election to terminate this Agreement is in addition to any and all other remedies that may be available to Financial Institution. Any reinstatement of the Service under this Agreement will be at Financial Institution’s sole discretion and must be agreed upon in writing by an authorized representative of Financial Institution. Upon termination of this Agreement, any property or rights of a party in the possession of the other party, tangible or intangible, shall be returned to the owner thereof within thirty (30) days after the later to occur of (i) termination of the Agreement or (ii) the last date that such party receives any such property or rights. Upon termination of this Agreement, (i) Company will promptly pay to Financial Institution all sums due or to become due under this Agreement and (ii) Company shall have no further right to make use of the Service or any Purchased Equipment or Additional Equipment which may have been provided in connection with any Service.

c. **Survival.** Any provision of this Agreement that by its very nature or context is intended to survive any termination, cancellation or expiration thereof, shall so survive termination of this Agreement.

d. **Entire Agreement**. This Agreement (including the Schedules attached hereto) is the complete and exclusive statement of the agreement between Financial Institution and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between Financial Institution and Company with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement, agreements pertaining to Designated Account(s), or the Schedules, the terms of this Agreement shall govern. In the event performance of the Services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Financial Institution is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Financial Institution shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Financial Institution and Company will constitute a modification of this Agreement, the Rules or the Security Procedures or constitute an agreement between Financial Institution and Company regardless of whatever practices and procedures Financial Institution and Company may use.

e. **Non-assignment**. Company may not assign this Agreement or any of the rights or duties hereunder to any person without Financial Institution’s prior written consent, and any assignment made without such consent shall be null and void. Financial Institution may assign this Agreement upon written notice to Company.

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

g. **Miscellaneous**. Headings are used for reference purposes only and shall not be used to limit the applicability or meaning of any provisions of this Agreement. Financial Institution may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Financial Institution’s rights with respect to any other transaction or otherwise modify the terms of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

h. **Governing Law and Choice of Forum**. The terms of this Agreement, including all services provided by or relating to the services provided hereunder by Financial Institution, and all rights and obligations of the parties, shall be governed and construed in all respects in accordance with the laws and regulations of the State of ***Alabama***, without reference to choice of law principles, whether the scanner(s) are located within or outside of the State of Alabama. Company agrees that any dispute arising out of this Agreement must be instituted in any state or federal court in Lee County in the State of Alabama, and Company waives any objection which it may have with respect to jurisdiction, venue or forum.

i. **ARBITRATION.** ANY CONTROVERSY, CLAIM, DISPUTE OR ISSUE RELATED TO OR ARISING FROM (1) THE INTERPRETATION, NEGOTIATION, EXECUTION, ASSIGNMENT, ADMINISTRATION, REPAYMENT, MODIFICATION, OR EXTENSION OF THIS AGREEMENT; (2) ANY CHARGE OR COST INCURRED UNDER THIS AGREEMENT; (3) THE COLLECTION OF ANY AMOUNTS DUE UNDER THIS AGREEMENT; (4) ANY ALLEGED TORT RELATED TO OR ARISING OUT OF THIS AGREEMENT; OR (5) ANY BREACH OF ANY PROVISION OF THIS AGREEMENT, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA RULES"). ANY DISAGREEMENT AS TO WHETHER A PARTICULAR DISPUTE OR CLAIM IS SUBJECT TO ARBITRATION UNDER THIS PARAGRAPH SHALL BE DECIDED BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH. COMMENCEMENT OF LITIGATION BY ANY PERSON ENTITLED TO DEMAND ARBITRATION UNDER THIS PARAGRAPH SHALL NOT WAIVE ANY RIGHT THAT PERSON HAS TO DEMAND ARBITRATION WITH RESPECT TO ANY COUNTERCLAIM OR OTHER CLAIM THAT MAY BE MADE AGAINST THAT PERSON, WHETHER IN, RELATING TO, OR ARISING OUT OF SUCH LITIGATION, OR OTHERWISE. THE EXPEDITED PROCEDURES OF THE AAA RULES SHALL APPLY IN ANY DISPUTE WHERE THE AGGREGATE OF ALL CLAIMS AND THE AGGREGATE OF ALL COUNTERCLAIMS EACH IS IN AN AMOUNT LESS THAN $500,000. THE ARBITRATOR(S) MAY AWARD ALL REMEDIES THAT A COURT COULD AWARD. JUDGMENT UPON ANY AWARD RENDERED BY THE ARBITRATOR(S) IN ANY SUCH ARBITRATION MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ANY DEMAND FOR ARBITRATION UNDER THIS AGREEMENT SHALL BE MADE NO LATER THAN THE DATE WHEN ANY JUDICIAL ACTION UPON THE SAME MATTER WOULD BE BARRED UNDER ANY APPLICABLE STATUTE OF LIMITATIONS. ANY DISPUTE AS TO WHETHER THE STATUTE OF LIMITATIONS BARS THE ARBITRATION OF SUCH MATTERS SHALL BE DECIDED BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH. ANY ARBITRATION PROCEEDINGS UNDER THIS AGREEMENT SHALL BE HELD IN THE STATE OF ALABAMA. ANY ARBITRATION UNDER THIS PARAGRAPH SHALL BE ON AN INDIVIDUAL BASIS BETWEEN THE PARTIES TO THIS AGREEMENT ONLY AND SHALL NOT BE COMMENCED, AS A MEMBER OR REPRESENTATIVE OF OR ON BEHALF OF A CLASS OF PERSONS, IT BEING THE INTENTION OF THE PARTIES THAT THERE SHALL BE NO CLASS ACTION ARBITRATION UNDER THIS AGREEMENT. EACH PARTY SHALL SHARE EQUALLY IN THE COST OF ARBITRATION AND SHALL BEAR ITS OWN EXPENSES, INCLUDING PROFESSIONAL FEES. COMPANY AND FINANCIAL INSTITUTION SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT EVIDENCES A "TRANSACTION INVOLVING COMMERCE" UNDER THE FEDERAL ARBITRATION ACT, AND COMPANY AND FINANCIAL INSTITUTION EACH HEREBY WAIVE AND RELINQUISH ANY RIGHT TO CLAIM OTHERWISE.

NOTWITHSTANDING THE PRECEDING PARAGRAPH OR THE EXERCISE OF ARBITRATION RIGHTS UNDER THIS AGREEMENT, EACH PARTY MAY (1) FORECLOSE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL BY THE EXERCISE OF THE POWER OF SALE UNDER ANY MORTGAGE, DEED OF TRUST, DEED TO SECURE DEBT, SECURITY AGREEMENT, PLEDGE AGREEMENT OR ANY OTHER DOCUMENT OR INSTRUMENT CREATING A SECURITY INTEREST IN SUCH PROPERTY OR UNDER APPLICABLE LAW; (2) EXERCISE ANY SELF HELP REMEDIES SUCH AS SET OFF OR REPOSSESSION; OR (3) OBTAIN PROVISIONAL OR ANCILLARY REMEDIES SUCH AS REPLEVIN, PRELIMINARY INJUNCTIVE RELIEF, ATTACHMENT, SEQUESTRATION, OR APPOINTMENT OF A RECEIVER FROM A COURT HAVING JURISDICTION, BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDINGS. THIS ARBITRATION PROVISION SHALL NOT BE INTERPRETED TO REQUIRE THAT ANY SUCH REMEDIES BE STAYED, ABATED OR OTHERWISE SUSPENDED PENDING ANY ARBITRATION OR REQUEST FOR ARBITRATION. THE EXERCISE OF A REMEDY SHALL NOT WAIVE THE RIGHT OF EITHER PARTY TO RESORT TO ARBITRATION.

j. **WAIVER OF RIGHT TO TRIAL BY JURY. THIS PROVISION LIMITS COMPANY'S RIGHTS TO A JURY TRIAL**. COMPANY SHOULD REVIEW THIS SECTION CAREFULLY. IF NEITHER COMPANY NOR FINANCIAL INSTITUTION SEEKS TO COMPEL ARBITRATION OF ANY DISPUTE FINANCIAL INSTITUTION HAS RELATED TO THIS AGREEMENT, COMPANY'S ACCOUNT, OR

ANY TRANSACTIONS INVOLVING COMPANY'S ACCOUNT, THEN EACH OF US AGREES TO WAIVE ANY RIGHT WE MAY HAVE TO A JURY TRIAL TO THE EXTENT ALLOWABLE UNDER THE LAWS OF THE STATE THAT GOVERN THIS AGREEMENT.

k. **Attorneys' Fees**. In the event of any adversarial proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recovery its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

l. **Confidentiality**. Company acknowledges and agrees that confidential data relating to the Service, marketing, strategies, business operations and business systems (collectively, "Confidential Information") may come into Company's possession in connection with this Agreement. Company understands and agrees that Company is prohibited from disclosing and agrees to maintain the confidentiality of Financial Institution's Confidential Information. Without limiting other confidentiality and nondisclosure provisions in this Agreement or any other agreements between the parties, Company shall hold all Confidential Information obtained pursuant to this Agreement in accordance with its customary and commercially reasonable procedures for handling highly confidential information and in accordance with any applicable laws, regulations and regulatory guidelines and will only use such information in connection with the Services provided pursuant to this Agreement, and in any event may only make disclosure of any such information to the extent required by law (including statute, rule, regulation or judicial process), unless Company obtains Financial Institution's prior written consent. This clause shall survive the termination of the Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and agree to all of this Agreement's terms, including but not limited to the arbitration clause.

AuburnBank	________________________________
Financial Institution	Company
Name: ________________________	Name: ________________________
Title: ________________________	Title: ________________________
Signature: ____________________	Signature: ____________________
	Phone: ________________________
	Fax: ________________________
	Email: ________________________

Agreed by the parties on this ______ day of ________________, 20____.

SCHEDULE A

TO THE *AUBURNBANK* REMOTE DEPOSIT CAPTURE SERVICE AGREEMENT

AuburnBank Remote Access Services

IMPORTANT - READ CAREFULLY: COMPANY'S USE OF THE AUBURNBANK REMOTE ACCESS SERVICES ("REMOTE ACCESS SERVICES") IS CONDITIONED UPON COMPANY'S COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS OF USE.

TERMS OF USE: BY EXECUTING THE AGREEMENT OR BY USING THE REMOTE ACCESS SERVICES, COMPANY AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS, INCLUDING THE DISCLAIMER OF WARRANTIES AND RELEASE OF LIABILITY SET FORTH BELOW. COMPANY MAY NOT ACCESS THE REMOTE ACCESS SERVICES UNTIL COMPANY HAS READ AND ACCEPTED THE TERMS OF THIS SCHEDULE.

THIS SCHEDULE SETS FORTH ADDITIONAL TERMS AND CONDITIONS WITH RESPECT TO REMOTE ACCESS SERVICES ASSOCIATED WITH THE SERVICES UNDER THE AGREEMENT. THE DEFINITIONS, TERMS AND CONDITIONS OF THE AGREEMENT ARE HEREBY INCORPORATED IN THIS SCHEDULE BY REFERENCE. THE PROVISIONS OF THIS SCHEDULE ARE CONTROLLED BY THE RIGHTS, OBLIGATIONS AND LIABILITIES ESTABLISHED BY THE AGREEMENT.

By executing the Agreement or by using the Remote Access Services, Company acknowledges that it has read the terms and conditions below and agrees to be bound by terms thereby; including, but not limited to, the disclaimer of warranties. If this PC belongs to a business or another person, that business (or individual) as well as the signor of the Agreement warrants that the signor has the authority to accept the terms and conditions of this Schedule.

1. REMOTE ACCESS SERVICES. Financial Institution and/or its Affiliates (defined below) will provide the Remote Access Services in accordance with the terms of this Schedule to assist Company in the servicing of the Service. The Remote Access Services may be accessed either by clicking a link that Financial Institution provides, where Company will be sent to a website hosted by one of Financial Institution's suppliers ("Suppliers"), which will allow Financial Institution remote access to Company's PC; or by typing in the address of a specific Supplier URL that Financial Institution provides, along with a unique PIN. Notwithstanding the foregoing, Financial Institution may, at its sole discretion, modify the features of the Remote Access Services from time to time without prior notice. Company understands and agrees that prior to permitting Financial Institution to access Company's computer, it is Company's responsibility to back up the data, software, information or other files stored on Company's computer disk and or drives to prevent loss or corruption of information or data.

As part of the registration process allowing Company access to the Remote Access Services, Company may be required to use Company's email address or other personally identifiable information as Company's user name (collectively, "Password Information"). Company agrees to carefully safeguard all of Company's Password Information, and Company is responsible for any and all activity that occurs under Company's registration. Company agrees to immediately notify Financial Institution of any unauthorized use of Company's Password Information or any other breach of security known to Company, including if Company believes that its Password Information has been stolen or otherwise compromised.

2. Company acknowledges that some parts of the Remote Access Services are being provided through Internet access. Financial Institution implements and maintains reasonable technical safeguards to protect the security of Company's data in connection with the Remote Access Services being provided, but it does not warrant that such Remote Access Services are provided risk-free. Financial Institution does not warrant the security of Company's data against unlawful interception or access and will not be responsible for any theft, illegal activity or other unauthorized

acts resulting in damage to Company and Company's computer, data or other property as a result of Company's use of the Remote Access Services.

3. DISCLAIMER OF WARRANTIES; RELEASE OF LIABILITY. Company acknowledges that Financial Institution's ability to access Company's PC remotely is made possible via the Internet and through the use of a Supplier. COMPANY EXPRESSLY AGREES AND UNDERSTANDS THAT THE REMOTE ACCESS SERVICE IS PROVIDED ON AN "AS IS" BASIS AND THAT USE OF THE REMOTE ACCESS SERVICE IS AT COMPANY'S SOLE RISK. NEITHER FINANCIAL INSTITUTION, NOR, TO THE EXTENT APPLICABLE, FINANCIAL INSTITUTION'S PARENT, SUBSIDIARIES OR AFFILIATES (COLLECTIVELY, "AFFILIATES"), NOR THEIR RESPECTIVE SUPPLIERS PROVIDING REMOTE ACCESS SERVICES OR RELATED TECHNOLOGY HEREUNDER MAKE ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR INFRINGEMENT RELATING TO THE USE OR PERFORMANCE OF THE REMOTE ACCESS SERVICES OR RELATED TECHNOLOGY. NEITHER FINANCIAL INSTITUTION, ITS AFFILIATES NOR THEIR RESPECTIVE SUPPLIERS SHALL BE LIABLE FOR ANY INJURY OR DAMAGE TO COMPANY OR ANY PERSONS USING THE REMOTE ACCESS SERVICES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE, LOSS OF PROFIT, LOSS OF DATA OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR PERFORMANCE OF THE REMOTE ACCESS SERVICES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COMPANY HEREBY RELEASES FINANCIAL INSTITUTION, ITS AFFILIATES AND THEIR RESPECTIVE SUPPLIERS FROM ANY AND ALL LIABILITY ARISING FROM OR RELATED TO ALL CLAIMS CONCERNING THE USE OF THE REMOTE ACCESS SERVICES AND RELATED TECHNOLOGY.

4. PRIVACY. In connection with Company's use of the Remote Access Services, Company may disclose certain personally identifiable information to Financial Institution or its Affiliates, such as Company's Password Information. Financial Institution may send personally identifiable information about Company to third parties when Financial Institution: (a) has Company's consent to share such information; (b) determines that Company's actions violate this Agreement; or (c) responds to subpoenas, court order or legal processes which require Financial Institution to disclose registration data or any information about Company to law enforcement or other government officials as Financial Institution, in its sole discretion, believes necessary or appropriate. In addition, Financial Institution may share personally identifiable information about Company to third parties to the extent necessary to provide Remote Access Services hereunder.

5. INDEMNIFICATION. Company is responsible for all activities occurring in connection with Company's use of the Remote Access Services. Company hereby agrees to defend, indemnify and hold the Indemnified Parties and Suppliers harmless from and against any and all liabilities, claims and costs (including attorney's fees) incurred by the Indemnified Parties and Suppliers occurring in connection with any demand, claims, action, suit or loss arising as a result of any breach by Company of these terms of use or claims arising from Company's use of the Remote Access Services.

6. PROPRIETARY RIGHTS. Financial Institution and/or its Suppliers, as applicable, retain ownership of, and/or license, all proprietary rights in the Remote Access Services and in all trade names, trademarks, logos and service marks associated or displayed with the Remote Access Services. Company will not remove, deface or obscure any of Financial Institution's or its Suppliers' copyright or trademark notices and/or legends or other proprietary notices associated or displayed with the Remote Access Services. Company may not reverse engineer, reverse compile or otherwise reduce to human readable form any software associated with the Remote Access Services. Except as expressly provided herein, no license or right, express or implied, is hereby conveyed or granted to Company by Financial Institution or its Suppliers with respect to any intellectual property right of Financial Institution, its Affiliates or Suppliers.

7. CUSTOMER RESPONSIBILITY. During each Remote Access Services session, Financial Institution requires that Company remain at Company's PC at all times while Financial Institution is accessing Company's PC. If Company leaves its PC at any time during the Remote Access Services session, Company must notify Financial Institution and terminate the session. In addition, Company understands that by requesting Remote Access Services, Company (i) will be providing Financial Institution with access to and control of Company's PC and (ii) may be providing Financial Institution with access to files that reside on Company's PC. As a result, prior to commencing any Remote Access Services session, Company agrees to close any unnecessary windows to avoid the disclosure of any personally identifiable information or other confidential or personal files. As a condition of entering into this Agreement, Company acknowledges that Company has installed all necessary virus protection software on Company's PC to avoid any loss/corruption of data, computer files and hard drives as a result of spyware or any computer viruses that may result in the deletion/corruption of data. Company's use of any software or program provided by a Supplier in connection with the Remote Access Services may be subject to additional terms and conditions, including an end user license agreement, the terms of which will be set forth on such Supplier's website. As a condition of using the Remote Access Services, Company agrees to comply in all respects with such terms and conditions, including the end user license agreement, as well as any and all laws, rules and regulations applicable thereto.

SCHEDULE B

TO THE *AUBURNBANK* REMOTE DEPOSIT CAPTURE SERVICE AGREEMENT

Designated Accounts

Company Name:

Company designates the following as accounts to which deposits of Electronic Items may be made pursuant to this Agreement and agrees that such deposits shall not exceed the limits set forth below.

	Account Number	**Item Limit**	**Number of Items Per Day**	**File Limit Per Day**	**File Limit Per Month**
1		$		$	$
2		$		$	$
3		$		$	$
4		$		$	$
5		$		$	$
6		$		$	$

Cutoff Time **6:00 PM CST** on a business day Financial Institution is open.
All notices provided pursuant to Section 17 of the Agreement shall be provided to the following addresses for each party:

If to Financial Institution:	If to Company:
AuburnBank ***100 N. Gay St*** ***P.O. Box 3110*** ***Auburn, AL*** ***Attn: CTO*** ***Fax: 334-887-4650***	______________________________ ______________________________ ______________________________ Attn:_________________________ FAX:__________________________

Signor must be an authorized signatory of Company.

Company: ______________________________

Name: ______________________________

Title: ______________________________

Signature: ______________________________

Date: ______________________________

SCHEDULE C

TO THE *AUBURNBANK* REMOTE DEPOSIT CAPTURE SERVICE AGREEMENT

Authorized Representatives

Company Name:

The undersigned certifies that the individuals listed below are Authorized Representatives of Company for purposes of this Agreement. These Authorized Representatives are authorized to act on behalf of Company in order to perform or authorize transactions related to the Service, transmit checks and/or Electronic Items and provide information and instructions to Financial Institution. Until Financial Institution receives written notice from Company that revokes the authorization granted to any of the individuals listed below, and has a reasonable opportunity to act on it, Financial Institution shall continue to rely upon the authority granted hereunder to such Authorized Representatives and rely on all information provided by such Authorized Representatives.

Name	Signature	Phone Number/Fax/Email

Signor must be an authorized signatory of Company.

Company: ___________________________________

Name: _____________________________________

Title: ______________________________________

Signature: ____

Date: _____________________________________

SCHEDULE C.1

TO THE *AUBURNBANK* REMOTE DEPOSIT CAPTURE SERVICE AGREEMENT

Non-Signer Administrators

Company Name:

Below please list those non-signers who you wish to have Administrative privileges for Remote Deposit Capture:

Name	Signature	Phone Number/Fax/Email

Signor must be an authorized signatory of Company.

Company: ___________________________________

Name: ___________________________________

Title: ___________________________________

Signature: ____

Date: _____________________________________

SCHEDULE D

TO THE *AUBURNBANK* REMOTE DEPOSIT CAPTURE SERVICE AGREEMENT

Security Procedures Agreement

Company Name:

1. The following sets forth the Security Procedure with which the Company agrees to comply when using the Service:

a. Files containing Electronic Items transmitted by Company to the Financial Institution shall be encrypted by at least ***128 bit RC4 encryption*** or its equivalent;

b. Company shall utilize a multi-factor authentication method as prescribed by Financial Institution;

2. The Security Procedure is used for the purpose of verifying the identity of the immediate source from which the Financial Institution receives Electronic Items and Files and communications and instructions related thereto. The Security Procedure is not used to validate or verify the authenticity of the content of an Electronic Item or File or any data related to an Electronic Item or File, or of an original check underlying an Electronic Item.

3. The Company agrees that the Security Procedure is commercially reasonable.

4. The Company agrees to be bound by any Electronic Items and Files and any communications and instructions related thereto in which this Security Procedure is used.

5. The check scanners used with this service are located at:

a. ____

b. ____

And will not be relocated without prior notice to the Financial Institution.

Signor must be an authorized signatory of Company.

Company: ____________________________________

Name: ______________________________________

Title: ____

Signature: ____

Date: _____________________________________