



# Treasury Management Services Terms and Conditions

## I. INTRODUCTION

This Treasury Management Services Terms and Conditions ("Terms and Conditions") governs the use of all treasury management services ("Services" or as to a single treasury management service, "Service") offered by Bremer Bank, National Association ("Bremer") to its customers (together, "Customers" and individually "Customer").

### A. Other Agreements, Laws and Regulations

In addition to this Terms and Conditions, the Services are provided to Customer subject to the following other agreements, laws and regulations, which are hereby incorporated into and made a part of this Terms and Conditions:

1. The Bremer Business Account Agreement and Personal Account Agreement (referred to herein as "Account Agreement" and amended from time to time) and accompanying disclosures and fee schedules, which govern standard deposit accounts and other depository services.
2. The provisions of the Uniform Commercial Code, as enacted in the state governing Customer's accounts.
3. All applicable automated clearing house operating rules, including without limitation the National Automated Clearing House Association Operating Rules and Guidelines (NACHA Rules), and the rules promulgated by the Electronic Check Clearing House Organization (ECCHO Rules).
4. Federal, State and local laws and regulations applicable to Bremer or Customer, including, without limitation, Regulation CC promulgated by the Board of Governors of the Federal Reserve System, 12 CFR Section 229.1, et seq. ("Regulation CC"), all Operating Circulars promulgated by the Board of Governors of the Federal Reserve System, and the regulations promulgated by the Office of Foreign Assets Control ("OFAC"), Regulations D, E, J, DD, and GG.
5. The set-up materials, user guides, and any applicable supplemental agreement required by Bremer to implement a specific Service.

### B. Definitions

Terms shall have the meanings provided below.

- "Account(s)" means any checking, interest checking, savings, money market savings certificate of deposit or loan account Customer has opened with Bremer or about which Customer has inquired.
- "ACH Operator" means Federal Reserve Bank.
- "ACH Transaction" means an electronic transaction presented through an ACH Operator that has been properly authorized by the receiver of the transaction.
- "Act of Insolvency" means, (i) the commencement of bankruptcy, insolvency, reorganization, liquidation, dissolution or similar proceedings or seeking the appointment of a receiver, trustee, custodian or similar official for themselves or any substantial part of their property, or (ii) the commencement of these types of proceedings against either party, or the filing against either part of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (1) is consented to or not timely contested by them, (2) results in the entry of an order or relief, such as an appointment, the issue of a protective decree or the entry of an order having the same effect, or (3) is not dismissed within fifteen (15) days, (iii) the making by either party of a general assignment for the benefit of creditors, or (iv) the admission in writing by either party of their inability to pay their debts as they come due.
- "Additional Purchased Securities" means securities provided by Bremer if Customer requests.

- “Agent” means a commercial bank named on the Confirmation as the custodian of the Purchased Securities during the term of the Repurchase Agreement.
- "Agreement" means this Treasury Management Services Terms and & Conditions.
- “Authorization” means a written agreement with the originating Customer signed or similarly authenticated by an employee or client to allow payments processed through the ACH Network to be deposited in or withdrawn from their account at a financial institution.
- “Authorized Representative(s)” refers to a person whom Customer authorizes to view or transact business on Customer’s Account(s) using any of the Services. Bremer may continue to recognize the authority of an Authorized Representative until Bremer has received and had a reasonable time to act upon written notice from Customer that a person previously designated by Customer as an Authorized Representative is no longer authorized to view or transact business on Customer’s behalf.
- “Business Account Agreement” contains the rules that apply to business deposit accounts, pursuant to which Customer agreed to be bound upon signing a signature card and corporate resolution and by opening and continuing to hold an account with Bremer.
- “Business Day” means Monday through Friday, excluding Saturday, Sunday and federal banking holidays for bank accounts and products and U.S. stock exchange holidays for brokerage accounts.
- “Check” means a draft, payable on demand to Customer and drawn on or payable through or at an office of a United States bank, whether or not negotiable, that is handled for forward collection, including a Substitute Check and a traveler’s check; and does not include a non-cash item payable in a medium other than United States dollars.
- “Collected Balance(s)” mean the sum of all finally collected funds on deposit with Bremer in the Main Operating Account that are not subject to dishonor, charge back, reversal, stop payment direction, offset, suspension or the like.
- “Confirmation” is a Bank acknowledgment of a transaction, agreement or process.
- “Customer’s Margin” means an amount obtained by applying a percentage (agreed to by Customer and Bremer prior to entering into a Repurchase Agreement) to the Purchase Price.
- “ECCHO Rules” means the rules promulgated by the Electronic Check Clearing House Organization.
- “Effective Entry Date” means the date included in any Entry as the date upon or after which such Entry is to be effective.
- “Entry” means an electronic item or any On-Us item as defined in the NACHA Rules.
- “Exception Item” means check(s) presented for payment that do not match the issued file (amount and check serial number) that has been submitted by Customer into the Positive Pay System. In the event that Customer does not submit an issued file, all items will default to Return All within the system.
- "Funding Account" shall mean the checking or similar account for which Customer is an authorized signer, and from which Bank may debit or otherwise collect the funds necessary to remit the Scheduled Payment to the corresponding Payee, per Customer’s instructions.
- “Funding Amount” means on any date, the Collected Balance in the Funding Account.
- “Income” shall include any principal payable and all interest due on Purchased Securities.
- “Investment Account” means the separate account maintained by Customer with Bremer to track the transactions made pursuant to this Agreement.
- “Loan” shall mean the credit facility identified by Customer as subject to a Service.
- “Loan Document(s)” shall mean the documents and instruments evidencing and securing a loan as the same may be amended, renewed, extended or replaced from time to time.

- “Main Operating Account” means Customer’s deposit account with Bremer designated by Customer as its main checking account.
- “Market Value” means the price of any security on the Purchase Date (as listed on the Repurchase Agreement Confirmation), plus accrued income, as determined from Bremer’s bond accounting system.
- “NACHA” means the National Automated Clearing House Association.
- “NACHA Rules” shall mean any transaction governed by the Operating Guidelines of the National Automated Clearing House Association ("NACHA") as amended from time to time.
- “Notification of Change (NOC)” means information sent by the RDFI to notify the ODFI that previously valid information for a receiver has become outdated or that information contained in a pre-notification is erroneous.
- “ODFI” (Originating Depository Financial Institution) means a participating financial institution that initiates ACH entries at the request of and by agreement with its Customers.
- “Online” refers to use of the Internet website designated by Bremer used to transmit or receive electronic transactions, instructions, notices or other communication but does not include transmissions by telephone, fax, in person, regular mail, express mail or e-mail.
- “Online Banking Agreement” refers to an electronic service that permits Bremer Customers to access financial services through the use of the Internet.
- “On-Us Entry” means a debit or credit Entry to an account maintained at Bremer.
- “Originator” means any individual, corporation or other entity that initiates entries into the Automated Clearing House Network.
- “Prime Rate” means the prime rate of U.S. commercial banks as published in The Wall Street Journal. If this index becomes unavailable during the term, Bremer may designate a substitute index after notifying Customer.
- “Purchase Date” means the date Purchased Securities are transferred from Bremer to Customer.
- “Purchase Price” means on the Purchase Date, the funds to be transferred from Customer to Bremer. After the Purchase Date, it is that original Purchase Price adjusted for (i) any funds added to or subtracted from the Repurchase Agreement, (ii) Bremer transfers of funds to Customer (iii) Bremer transfers of funds to Customer to reduce Bremer’s obligation.
- “Purchased Securities” means the government or agency securities that are obligations of, or that are fully guaranteed as to principal and interest by the United States or any agency of the United States that are transferred by Bremer to Customer in a Repurchase Agreement, and any securities substituted. Purchased Securities will also include Additional Purchased Securities delivered.
- “RDFI” (Receiving Depository Financial Institution) means any financial institution qualified to receive ACH entries that agrees to abide by the NACHA operating rules.
- “Repurchase Agreement Interest” means the sum obtained by applying the Repurchase Agreement Interest Rate for the Repurchase Agreement to the Purchase Price on a 365 day per year basis for the actual number of days during the period, beginning on and including the Purchase Date and ending on but excluding the date of calculation. This amount will be reduced by any Repurchase Agreement Interest that may be paid by Bremer to Customer for that Repurchase Agreement prior to termination of the Repurchase Agreement.
- “Repurchase Agreement Interest Rate” means the per annum percentage rate for determining the Repurchase Agreement Interest.
- “Repurchase Date” means the date Bremer is to repurchase the Purchased Securities from Customer, including any date determined.

- “Repurchase Price” means the price paid by Bremer when Customer returns Purchased Securities to Bremer at the termination of the Repurchase Agreement, which is the sum of the Purchase Price and the Repurchase Agreement Interest.
- “Repurchase Transactions” means transactions pursuant to this Service and similar agreements with other Customers of Bremer.
- “Return” means any ACH entry that has been returned to the ODFI by the RDFI or the ACH Operator because it cannot be processed.
- “Return All” means all items presented on a specific business day that appear as “Exceptions” in the Positive Pay System which will be automatically returned to the payee’s presenting financial institution as “Refer to Maker” unless Customer makes a change on each item designated as an “Exception” to pay against the account balance.
- “Schedule” is the time according to which business day- pay or no-pay decisions must be communicated to Bremer.
- “Securities provided by Seller to Buyer” If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a Customer acts as Buyer is less than the aggregate Buyer’s Margin Amount for all such Transactions (a “Margin Deficit”), then Buyer may, by notice to Seller, require Seller in such Transactions, at Seller’s option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer (“Additional Purchased Securities”), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer’s Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).
- “Security Procedures” means the use of identification codes, encryption, passwords, log in identifications, personal or location identification numbers, repetitive codes, and other security devices, systems and software used by Customer to communicate for Services. (Services could include services beyond origination, and or be provided to a receiver).
- “Settlement Date” means the date on which an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank(s).
- “Set-up Form” means the form(s) a completed with Customer provided information to designate specific accounts, balances, callback parties, authorized signers, and authorized representatives as required by any Service Customer elects.
- “Specified Balance” means a designated specific Collected Balance in a Deposit Account.
- “Substitute Check” meets the legal requirements of the “Check Clearing for the 21st Century Act” (Check 21 Act) and Check 21 regulations.
- “Supplemental Agreement” means each Supplemental Agreement for a specific Service requested by Customer.
- “Third Party Service Provider” is authorized by agreement to originate ACH entries on behalf of other companies.
- “User Documentation” means any written information Bremer provides to Customer, including information to electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service, as provided by a particular banking center or office. User documentation may vary from one jurisdiction to another. Current User Documentation is available upon Customer’s request.

### C. Amendments

From time to time Bremer may amend any provision contained in this Agreement. Each such amendment shall become effective upon notice to Customer or such later date as may be stated in Bremer’s notice to Customer. Bremer reserves the right to notify Customer of changes electronically, by internet posting, mailing or other means

permitted by law. Using any Service following the effective date of the amendment shall be deemed evidence of Customer's acceptance of and agreement to the amendment. If Customer does not agree to the changes as set forth in the amendment, Customer may choose to terminate the Service prior to the effective date of the amendment by discontinuing further use of the Service and following the procedures set forth in Section II.W. Termination. This Agreement may not be amended or modified by Customer unless agreed to in writing by Bremer.

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, law or government policy to which Bremer 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, law or policy, and Bremer shall incur no liability to Customer as a result of such amendment.

#### **D. Third Party Beneficiaries/Third Party Claims**

Services provided by Bremer under this Agreement are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement. Customer agrees to indemnify, defend and hold Bremer harmless from and against any and all claims, demands, expenses, losses, liabilities and damages of third parties of any nature whatsoever, including, without limitation, reasonable attorney fees and court costs at trial or appeal arising directly or indirectly from any Service delivered to Customer pursuant to this Agreement.

## **II. TERMS APPLICABLE TO ALL SERVICES**

### **A. Services**

Bremer offers all Services that are listed in Section III and may offer additional services not specifically included in Section III. By accepting and using any Service, Customer agrees that the Service will be governed by this Agreement, together with any other agreement that governs each individual Service utilized by Customer. Customer agrees to execute and deliver all Set-up Form(s) that may be required by the use of any Service.

### **B. Proprietary Information**

Customer acknowledges that this Agreement, all related documents, systems used in providing Services, and all information related thereto constitute proprietary property of Bremer that is of great commercial value. Customer agrees that it shall not acquire any proprietary interest or rights therein as a result of its use of the Services and shall keep all such proprietary information strictly confidential.

### **C. Representations and Warranties**

Bremer warrants to Customer, as of the date on which this Agreement is entered into, and at the time the Services are used or performed, that: (a) Bremer is a validly existing national banking association and in good standing under the laws of its organization; (b) Bremer has all requisite power and authority to execute and deliver, and to perform its obligations under this Agreement, and (c) this Agreement has been duly authorized and executed by Bremer and constitutes Bremer's legal, valid and binding obligation.

Customer warrants to Bremer as of the date on which this Agreement is entered into, and at the time the Services are used or performed, that: (a) Customer is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) Customer is solvent and it is not the present intent of Customer to seek protection under any bankruptcy laws; (c) Customer has all requisite power and authority to execute and deliver, and to perform its obligations under this Agreement; (d) this Agreement has been duly authorized and executed by Customer and constitutes Customer's legal, valid and binding obligation.

### **D. Financial Review**

Bremer's willingness to provide Services to Customer is based on Customer's financial condition. Customer's financial condition is subject to review by Bremer from time to time, and such reviews must be satisfactory to Bremer in its sole discretion and opinion. Customer shall, upon request, provide to Bremer any information Bremer may require to perform any such review. Customer's failure to meet commercially reasonable standards or provide information or assistance when requested shall constitute a breach of this Agreement and shall trigger Bremer's right to cease providing Services upon written notice to Customer.

#### **E. Fees for the Services**

Customer shall compensate Bremer for the performance of the Treasury Management Services in accordance with the agreed upon pricing. Amounts payable by Customer to Bremer shall be either billed or deducted from a designated Account on a monthly basis by Bremer. Bremer may change pricing from time to time. If Customer does not accept the pricing change, then Customer must notify Bremer within thirty (30) calendar days from the receipt of the account analysis statement.

#### **F. Deposit Accounts**

Most Treasury Management Services require that Customer maintain one or more deposit accounts with Bremer. All checks, wire transfers, ACH payments and other items deposited into such accounts are provisionally credited and taken subject to later verification by Bremer and Bremer's receipt of final settlement. Deposited items that are deposited and later returned unpaid will be charged against the account without prior notice. Customer agrees to pay Bremer for any overdraft or overpayment in any of Customer's accounts. Bremer will first attempt to recover such amounts from the account associated with the debt. If the available balance of such account is insufficient to compensate Bremer, Customer authorizes Bremer to charge any account Customer maintains with Bremer for any amount remaining due under this section.

#### **G. Security Interest**

Customer grants Bremer a consensual possessory security interest in Customer's deposit accounts maintained with Bremer and the funds held therein to secure payment of all Customer's obligations under this Agreement. Nothing contained in this agreement shall be construed or interpreted to limit, restrict or impair Bremer's ability to exercise its offset rights against funds in the Deposit Account following a default by Customer under the Loan Documents.

#### **H. Disclosure of Information**

The circumstances under which Bremer will disclose information about Customers or Customers' Accounts has been separately disclosed to Customer in our Privacy Policy and in other disclosures that have been provided directly to Customer. Bremer's Privacy Policy may change from time to time and is always available online and at Bremer Bank locations.

#### **I. Authorized Representatives**

Customer agrees to designate Authorized Representatives to act on Customer's behalf, who shall have the authority to authorize all actions necessary in the use of any Service hereunder. Customer agrees that Bremer shall not be under a duty to inquire as to the authority or propriety of any transaction made by Customer's Authorized Representative. Bremer shall be entitled to act upon the instructions of any person whom Bremer reasonably believes to be Customer's Authorized Representative, whether or not Customer has authorized such instructions. Bremer shall not be liable for any loss, cost, expense or other liability arising out of any such instructions.

#### **J. Prohibited Transactions.**

Customer agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Customer is bound, (c) to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, or (d) to engage in any transaction or activity that is not specifically authorized and

permitted by this Agreement. Customer acknowledges and agrees that Bremer has no obligation to monitor Customer's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that Bremer reserves the right to decline to execute any transaction or activity that Bremer believes violates the terms of this Agreement.

#### **K. Security**

All Services utilize a comprehensive security strategy to protect Customer's accounts and any transactions conducted over the Internet. Customer and each Customer Authorized Representative will be given an Access I.D. and Password together with instructions for establishing an extra layer of security called Multifactor Authentication to access Services. Online passwords for Bremer Services can be changed at any time. Passwords must meet the criteria presented on the screen at the time of creation, generally involving a minimum number of characters, a combination of letters and characters, and other parameters.

Bremer recommends that online passwords be changed regularly. All online Passwords are prompted to be changed every 90 days.

Customer agrees that Bremer may send notices and other communications, including Access I.D. (s) and Password(s) to the current address shown in Bremer's records, whether or not that address includes a designation for delivery to the attention of any particular individual. Customer agrees to implement and comply with Bremer's Password and Multifactor Authentication requirements. Customer further agrees that Bremer will not be responsible or liable to Customer in any way if information is intercepted by an unauthorized person, either in transit or at Customer's place of business. Customer agrees to: (1) keep Password(s) secure and strictly confidential, providing Password(s) only to Authorized Representatives on Customer's account(s); (2) instruct each person having access to Password(s) that he or she is not to disclose such Passwords to any unauthorized person; and (3) immediately notify Bremer and select a new Password if Customer believes a Password may have become known to an unauthorized person.

Customer agrees to run antivirus software before transmitting data to or through any website. Customer may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis and in no event less often than once every month.

#### **L. Recording and Use of Communications.**

Customer and Bremer agree that all telephone conversations or data transmissions 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. Bremer shall not be obligated to make such recordings.

#### **M. Account Statements and Account Communications**

All of Customer's daily transactions, payments, and funds transfers will appear on Customer's Account statement(s). Reports may be delivered in written form, fax, or electronically through designated modules of Online Banking assigned to Customer. Customer agrees to regularly and promptly review and verify all statements, reports, check payment records, wire transfer instructions, confirmations, adjustments, charges, and other transactions ("Account Communications"). Unless a different review period is specified elsewhere in this Agreement, Customer shall, within a reasonable time, which in no event shall be greater than thirty (30) calendar days following the day Bremer mails, electronically transmits or otherwise makes data available to Customer ("Review Period"), notify Bremer of any error or discrepancy between Customer's records and any Bremer notice or statement, or any transaction or transfer Customer believes was not authorized. If Customer fails to notify Bremer of such unauthorized transaction within the Review Period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bremer of any liability for the unreported erroneous or unauthorized transaction. In accordance with NACHA Rules, Customer must report an unauthorized ACH debit entry to Customer's account by the established deadline on the business day following the settlement date of the unauthorized entry. Otherwise, Customer's sole recourse is to the originator of the transaction.

Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be personally delivered, or sent by United States mail, postage paid, by express carrier, or email to the parties at the address set forth below. Unless otherwise provided in this Agreement, notice is effective when personally delivered, deposited in the U.S. mail or delivered by an express carrier except that notice to Bremer is effective when received by Bremer's treasury management product manager or banker. Any written notice or other written communication should be personally delivered to the addresses below.

Treasury Management Product Manager

Bremer Financial Services, Inc.

Mail Stop: MN-001-77FO

8555 Eagle Point Blvd

Lake Elmo, MN 55042

#### **N. Liability**

Bremer's liability to Customer is limited to the extent stated in any other Account and/or loan agreements, notices, and disclosures that are separately provided to Customer from time to time regarding Customer's Accounts and/or this Agreement. This section explains the complete extent of Bremer's liability to Customer only to the extent that it has not been separately disclosed to Customer by any of other agreements, notices, or disclosures.

If Bremer fails or delays in making payment or transfer pursuant to Customer's instructions, or if Bremer makes a payment or transfer in an erroneous amount that is less than the amount per Customer's instructions, unless otherwise required by law, Bremer's liability shall be limited to interest that may have accrued (as defined below) on the amount that Bremer failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or Customer canceled the instructions. Bremer may pay such interest either to Customer or the intended recipient of the payment or transfer, but in no event shall Bremer be liable to both parties, and Bremer's payment to either party will fully discharge any obligation to the other. If Bremer makes a payment or transfer in an erroneous amount that exceeds the amount per Customer's instructions, or if Bremer permits an unauthorized payment or transfer after Bremer has had a reasonable time to act on a notice from Customer of possible unauthorized use as described above, unless otherwise required by law, Bremer's liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed 60 days' interest. If Bremer becomes liable to Customer for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district where Bremer is headquartered for each day interest is due, computed on the basis of a 360-day year.

NEITHER BREMER NOR ANY OF ITS DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PERFORMANCE OR QUALITY OF BREMER SERVICES OR THE RESULTS THAT MAY BE OBTAINED FROM USING BREMER SERVICES. BREMER SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF MERCHANTABILITY OR WARRANTIES AGAINST INFRINGEMENT. NEITHER BREMER NOR ANY OF ITS DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, RESULTING FROM OR CAUSED BY THE USE, OR ATTEMPTED USE, OF BREMER SERVICE, OR ITS CONTENT, INCLUDING, WITHOUT LIMITATION, LOSSES RELATED TO CUSTOMER'S USE, OR INABILITY TO USE, BREMER SERVICE; ANY ERRORS, OMISSIONS OR DEFECTS IN ANY CONTENT; ANY INTERRUPTIONS OR DELAYS IN TRANSMISSION TO A BREMER SERVICE; OR COMPUTER VIRUSES RECEIVED BY CUSTOMER AS A RESULT OF CUSTOMER'S USE OF BREMER



SERVICES. IN ANY EVENT, ANY LIABILITY OF BREMER, ITS EMPLOYEES, AFFILIATES, AGENTS, CONTENT PROVIDERS AND LICENSORS SHALL NOT EXCEED THOSE AMOUNTS SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT.

Further, Bremer will not be obligated to honor, in whole or in part, any transaction or instruction that:

1. Is not in accordance with any term or condition applicable to the relevant Service in this Agreement or Customer's Account Agreement
2. Bremer has reason to believe may not have been authorized by Customer or any third person whose authorization Bremer believes is necessary, or that involves funds subject to a hold, dispute, restriction or legal process Bremer believes prevents their withdrawal
3. Would violate any applicable provision of any risk control program of the Federal Reserve or any applicable rule or regulation of any other federal or state regulatory authority
4. Is not in accordance with any other requirement of Bremer's applicable policies, procedures or practices
5. Bremer has reasonable cause not to honor for Customer's protection, or the protection of Bremer

#### **O. Indemnification**

Except to the extent of Bremer's liability pursuant to the terms of this Agreement or any other agreement or notice that otherwise governs Customer's Account, Customer agrees to indemnify and hold Bremer, its directors, officers, employees, affiliates and agents harmless from any and all loss, liability, claims, demands, judgments and expenses (including attorney's fees) arising out of, or in any way connected with, Customer's use or misuse of Bremer Services. This indemnification is provided by Customer without regard to whether Bremer's claim for indemnification is due to the use of Bremer Services by Customer or Customer's Authorized Representative.

#### **P. Acknowledgement of Commercially Reasonable Security Procedure**

By using Bremer Services, Customer acknowledges and agrees that this Agreement sets forth security procedures for electronic banking transactions that are commercially reasonable. Customer agrees to be bound by instructions that Bremer implements in compliance with these procedures, unless Customer has given Bremer prior notice of possible unauthorized use as described above (and Bremer has had a reasonable opportunity to act on such notice).

#### **Q. Legal Process**

If Bremer is served with any notice of lien, attachment, levy, garnishment or other legal process relating to Customer or Customer's Account, Bremer is authorized without notice to Customer except where required by law, to withhold the withdrawal or payment of so much of the funds in Customer's Account that may be the subject of such notice or legal process. Bremer may disburse such amount out of Customer's Account to a court or to such persons as applicable state or federal law either requires or permits because of such powers. Bremer shall have no liability to Customer for such withholding or disbursements or for refusal by Bremer to permit withdrawals or payment against Customer's Account because of a court order or other legal process including the return by Bremer of items presented against Customer's Account as unpaid that otherwise would be paid. Any lien, attachment, levy, or garnishment against Customer's Account is subject to Bremer's right of set-off as provided in the Account Agreement unless prohibited by law. Customer agrees to pay Bremer's costs and expenses for complying with such legal process, including legal costs and attorneys' fees, costs of research, and copying and administrative fees.

#### **R. Non-Assignment**

Customer may not assign this Agreement or any of the rights or duties hereunder to any person without Bremer's prior written consent.

#### **S. Governing Law; Jurisdiction**

This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota. Customer consents to the jurisdiction of the courts of the State of Minnesota, waives any argument that such a venue is inconvenient, and agrees to bring any litigation commenced by it in connection with this Agreement in the District Court of Ramsey County or the Federal District Court, District of Minnesota, Fourth Division.

#### **T. Construction**

Wherever possible, each provision of this Agreement and each related document shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such related documents.

#### **U. Use of Third Parties**

Some Services are provided by Bremer through access to a third party network. Customer agrees that Bremer may disclose to any third party such information regarding Customer as is necessary to provide the Service and related support to Customer. Third party network Services are dependent upon the availability of the third party network on conditions acceptable to Bremer. Bremer reserves the right to discontinue the Service or provide the Service through an alternative third party network and shall have no liability should such network become unavailable. Bremer shall be entitled to perform its obligations under this Agreement through subcontractors and agents (each, a "Vendor") without the assignment or delegation of its rights and obligations hereunder. All expenses associated with Bremer's hiring of a Vendor shall be the responsibility of Bremer. The performance of Services through a Vendor shall not relieve Bremer of its obligations to perform fully under this Agreement.

Customer agrees that it shall not allow any third party to use a Service under Customer's Agreement or to process such third party transaction through Customer or its Account without Bremer's prior written consent.

#### **V. Cooperation in Loss Recovery Efforts**

In the event of any damages for which Bremer or Customer may be liable to each other or to a third party pursuant to the services provided under this Agreement, Bremer and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party. In the event of a breach of a Security Procedure, Customer agrees to assist Bremer in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing Bremer or Bremer's agent access to Customer's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Customer further agrees to provide to Bremer any analysis of such equipment, device, or software or any report of such analysis performed by Customer, Customer's agents, law enforcement agencies, or any other third party. Failure of Customer to assist Bremer shall be an admission by Customer that the breach of the Security Procedure was caused by a person who obtained information facilitating the breach of the Security Procedure from Customer and not from a source controlled by Bremer.

#### **W. Termination**

Unless otherwise stated herein either party may terminate this Agreement upon at least ten (10) business day's written notice to the other. Bremer may terminate this Agreement immediately and without prior notice if Customer files or has filed against it a petition in bankruptcy or if Customer breaches any terms of this Agreement. Any termination of this Agreement shall not alter the obligations of either party arising prior to such termination.

#### **X. Entire Agreement**

This Agreement (including the Exhibits attached hereto), together with any agreements regarding the Account, is the complete and exclusive statement of the agreement between Bremer and Customer with respect to the subject matter hereof and supersedes any prior agreement(s) between Bremer and Customer with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and any other

agreements regarding the Account, the terms of the Deposit Account 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 Bremer 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 Bremer shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between Bremer and Customer will constitute a modification of this Agreement, the NACHA Rules, or the security procedures or constitute an agreement between Bremer and Customer regardless of whatever practices and procedures Bremer and Customer may use. Bremer reserves the right to amend this Agreement at any time. The most current version of this Agreement can be found on [www.bremer.com](http://www.bremer.com).

#### **Y. Waiver**

Bremer may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Bremer's rights with respect to any other transaction or modify the terms of this Agreement.

#### **Z. 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 Bremer or Customer hereunder.

### **III. TREASURY MANAGEMENT SERVICES TERMS & CONDITIONS BY SERVICE**

#### **A. ACH Service**

This ACH Service permits Customer to initiate debit and credit entries to accounts maintained at Bremer and other Banks by means of the Automated Clearing House (the "ACH") Network.

1. **Applicable Agreements.** This Agreement governs Customer's use of ACH Origination. Customer's access to and use of Bremer's Online services shall be governed by the applicable electronic access agreement(s), as amended from time to time, between Customer and Bremer. In the event of conflict between this Agreement and any other Agreement with Bremer, this Agreement shall prevail, unless otherwise provided herein.
2. **Compliance with the NACHA Rules and Applicable Law.** Customer's rights and obligations with respect to any Entry are governed by the NACHA Rules, this Agreement and applicable law. Customer acknowledges receipt of a copy of, or availability of, the NACHA Rules. The NACHA Rules may also be purchased by contacting your Regional Payments Association (RPA). Customer agrees to be bound by the NACHA Rules. Customer represents and warrants that it will comply with the NACHA Rules, United States laws, and other applicable laws, regulations and regulatory requirements and that it will not transmit any Entry or engage in any act or omission that violates or causes Bremer to violate the NACHA Rules, applicable laws, regulations or regulatory requirements, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC), sanctions or executive orders. Bremer may terminate or suspend this Agreement upon written notice and identification of a material breach by Customer of the NACHA Rules. Furthermore, Bremer shall have the right to initiate an audit of Customer procedures for compliance with this Agreement and the NACHA Rules, upon written notification to Customer.
3. **Third Party Service Providers.** Customer may be using special equipment, services or software provided by a third party to assist it in processing Files hereunder ("Service Provider"). If Customer uses Service Provider to transmit Files to Bremer and Customer and Service Provider have not entered into a Third Party Service Provider Agreement, Customer (a) agrees that Service Provider is acting as Customer's agent in the delivery of Files to Bremer, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with the laws of the United States, the NACHA Rules and this

Agreement. Bremer will not be liable for any losses or additional costs incurred by Customer as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Customer is solely responsible for maintaining compliance with the requirements of Service Provider, including obtaining any software updates.

Bremer's sole responsibility shall be to transmit Bremer approved transactions to the ACH Operator and Bremer shall not have any responsibility for any File handled by Service Provider until that point in time when Bremer accepts and approves a File from such Service Provider for processing. If Bremer authorizes Customer to use a Service Provider, the terms and conditions governing the relationship between Customer and Service Provider shall be governed by a separate agreement between Customer and Service Provider ("Service Provider Agreement"). All of Customer's obligations and responsibilities under this Agreement will apply to Service Provider and Customer's separate agreement with Service Provider must so provide. At Bremer's request, Customer will provide to Bremer a true and exact copy of such agreement. Customer shall designate Service Provider as a User and Service Provider must also enter into a Service Provider Agreement before Service Provider sends Files to Bremer. Notwithstanding the foregoing, Customer hereby authorizes Bremer to accept any File submitted by Service Provider even if Service Provider has not been designated as a User or if the Third Party Service Provider has not executed Service Provider agreement. Customer hereby indemnifies and holds Bremer harmless for any losses, damages, fines, assessments, costs and expenses incurred or suffered by Bremer or any other person as a result of or arising from Customer's use of Service Provider, including fines or assessments incurred under or pursuant to the NACHA Rules and attorneys' fees

4. Customer's Representations, Warranties and Agreements. Customer represents and warrants that each Entry provided to Bremer complies in all respects with the NACHA Rules and this Agreement. Customer acknowledges and agrees that, pursuant to the NACHA Rules, Bremer makes certain warranties to the ACH Operator and other financial institutions and that such warranties are made in reliance on: (i) the representations and warranties of Customer, including but not limited to those contained in this section of this Agreement and (ii) Customer's agreement to be bound by the NACHA Rules and applicable law. Customer shall indemnify Bremer against any claims, alleged claims, loss, liability or expense (including attorneys' fees and expenses) resulting directly or indirectly from, related to or arising out of: (i) any breach of Customer's warranties or this Agreement; (ii) Customer's failure to exercise ordinary care in connection with its duties hereunder; (iii) any action by the Receiving Depository Financial Institution ("RDFI") upon an unauthorized or erroneous Entry initiated by Customer; (iv) any actions by a Service Provider or agent of Customer that results in a breach of this Agreement by Customer; (v) to the extent that it involves Bremer, any litigation by an ACH Operator, an RDFI or any Customer Receivers asserting noncompliance on Customer's part with the NACHA Rules, laws, regulations or regulatory requirements. Without limiting the foregoing, Customer warrants:
  - a. Each Entry is authorized pursuant to the NACHA Rules and the authorization has not been revoked;
  - b. Each authorization is clear and readily understandable by the receiver;
  - c. Copies of authorizations will be made available when requested by Bremer;
  - d. Each credit Entry is timely and accurate;
  - e. Each debit Entry is for a sum which, on the Settlement Date will be due and owing to Customer from the party whose account will be debited, is for a sum specified by such party or is to correct a previously transmitted erroneous credit Entry;
  - f. No Entry has been reinitiated in violation of the NACHA Rules;
  - g. If Customer generates RCK, POP, BOC, ARC, WEB, TEL or IAT entries, all the special warrantees from NACHA Rules have been complied with;
  - h. Customer has used commercially reasonable procedures to verify that all information contained in an Entry, including but not limited to routing numbers, is accurate and valid; and,

- i. This Agreement has been duly and properly authorized by Customer, the party executing this Agreement is properly authorized on behalf of Customer to execute this Agreement on its behalf, and this Agreement is enforceable by Bremer in accordance with its terms.
5. Bremer Obligations. Subject to Section 10 under Section III.A of this Agreement, Bremer shall, in accordance with the NACHA Rules, process, transmit and settle for any Entry. Bremer shall have no obligation to transmit an Entry if Customer fails to comply with the NACHA Rules or any terms of this Agreement. Bremer shall rely on any and all information it receives from an Authorized Representative of Customer, and any person Bremer, in good faith, reasonably believes to be acting on behalf of Customer, whether or not such person was authorized by Customer.
6. Payment for Credit Entries and Returned Debit Entries; Customer's Account. Customer agrees to pay for all credit Entries issued by Customer, User(s), or credit Entries otherwise made effective against Customer. Customer shall make payment to Bremer on the date as determined by Bremer in its sole discretion ("Payment Date"). Customer shall pay Bremer for the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") or debit Entry dishonored by Bremer. Customer will maintain a deposit account (the "Account") with Bremer at all times during the term of this Agreement. Customer shall at all times maintain a balance of available funds in the Account sufficient to cover Customer's obligations under this Agreement. If collected balances in the Account are insufficient to cover the aggregate amount of Entries, Bremer shall have no obligation to transmit such Entries. Customer authorizes Bremer to debit its Account or any other account maintained at Bremer for any amount it owes Bremer as a result of this Agreement.
7. Prefunding. Bremer reserves the right to require Customer to pre-fund an account maintained at Bremer prior to the Settlement Date of the ACH file. Bremer shall determine whether pre-funding is required based on criteria established from time to time by Bremer. Bremer will communicate directly to Customer if pre-funding is required and, if requested by Customer, will provide Customer with an explanation of its pre-funding criteria.
8. Exposure Limits. Bremer will assign Customer a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Customer each day ("Exposure Limit"). Customer understands that requests for Entries exceeding this amount are honored solely at the discretion of Bremer. Requests not honored would be communicated to Customer or Customer's designated representative. Customer shall comply with the Exposure Limits as determined by Bremer. Such limits may be modified from time to time by Bremer at its sole discretion with notice to Customer. Failure of Customer to meet such standards or to provide such information or receive a satisfactory review shall constitute a breach of this Agreement and shall cause Bremer to immediately terminate Customer's participation in the ACH service.
9. Cancellation or Amendment of an Entry. Customer shall have no right to cancel or amend any Entry after its receipt by Bremer. However, Bremer shall use reasonable efforts to act on a request by Customer to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with this Agreement. File cancellation can be completed for two reasons: (1) Errors in a file; or (2) Duplicate file was sent. Bremer does not cancel individual items; only files. Bremer shall have no liability if it fails to effect the cancellation. Customer shall reimburse, indemnify and hold harmless Bremer for any expenses (including attorneys' fees), losses or damages Bremer incurs in effecting or attempting to affect Customer's request for the cancellation of an Entry.
10. Rejection of Entries. Bremer may reject any Entry, including an On-Us Entry, that does not comply with the requirements of the NACHA Rules or this Agreement, and may reject any Entry if Customer is not otherwise in compliance with the terms of this Agreement or the NACHA Rules. Bremer shall notify Customer of such rejection no later than the business day such Entry would otherwise have been transmitted by Bremer to the ACH Operator or, in the case of an On-Us Entry, the day before its Effective Entry Date. Notices of rejection shall be effective when given. Bremer shall have no liability to Customer

by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

11. **Provisional Credit Notice.** In the case of a credit Entry, credit given by the RDFI for the Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or has otherwise received payment. If the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and Customer will not be considered to have paid the amount of the credit Entry to the Receiver.
12. **Reversals.** Customer may reverse a File or Entry pursuant to the NACHA Rules. If Customer reverses an Entry or File, Customer shall indemnify Bremer against any claim, alleged claim, demand, loss, liability or expense (including attorney's fees) resulting directly or indirectly from such reversal.
13. **Error Detection.** Bremer has no obligation to discover and shall not be liable to Customer for errors made by Customer, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Bremer shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Customer. Notwithstanding the foregoing, if Customer discovers that any Entry it has initiated was in error, it shall notify Bremer of such error. In the event that Customer makes an error or issues a duplicate Entry, Customer shall indemnify, defend all claims, and hold Bremer harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Bremer as result of the error or issuance of duplicate Entries.
14. **Notice of Returned Entries and Notifications of Change.** Bremer shall notify Customer of the receipt of a returned Entry or Notification of Change (NOC) from the ACH Operator no later than one business day after the business day of such receipt. Bremer shall have no obligation to retransmit a returned Entry if Bremer complied with the terms of this Agreement with respect to the Entry.
15. **Entries Returned as Unauthorized.** In the event that an Entry is returned as unauthorized or authorization revoked, Customer will contact the necessary parties and resolve any dispute. During this process Customer may ask Bremer to request from the RDFI a copy of the "Written Statement of Unauthorized Debit." Bremer will make its best effort to obtain the form and will deliver it to Customer when received. Customer agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer reauthorized the Entry or Entry stream.

In accordance with NACHA Rules, Customer must report an unauthorized ACH debit entry to Customer's account by the established deadline on the business day following the settlement date of the unauthorized entry. Otherwise, Customer's sole recourse is to the Originator of the transaction.

16. **Unauthorized Rate in Excess of .5%.** In the event the rate of unauthorized transactions exceeds .5% based on the calculations noted in the NACHA Rules, Customer will share the data requested by Bremer based on the NACHA Rules and will immediately begin the process of bringing the rate below .5%.
17. **Administrative Returns.** In the event the rate of administrative returns exceeds 3% for any two calendar months or 60 day period, Customer will share any data requested by Bremer based on the NACHA Rules. If it is determined that remediation is necessary Customer will develop a plan to reduce that figure to under 3%.
18. **Overall Return Rate.** In the event that the overall rate of returns is greater than 15% for any two calendar months or 60 day period, Customer will share any data requested by Bremer based on the NACHA Rules. If it is determined that remediation is necessary Customer will develop a plan to reduce that figure to under 15%.
19. **Periodic Statement.** The periodic statement issued by Bremer for Customer's Account will reflect Entries credited and debited to Customer's Account. Customer agrees to notify Bremer within a reasonable time

not to exceed sixty (60) days after Customer receives a periodic statement of any discrepancy between Customer's records and the information in the periodic statement. If Customer fails to notify Bremer of any such discrepancy within sixty (60) days after receipt of such periodic statement, Customer shall be precluded from asserting any claim against Bremer arising from such discrepancy.

20. **Financial Information and Audit.** Bremer may from time to time request information from Customer in order to evaluate a continuation of the service to be provided by Bremer hereunder and/or adjustment of any limits set by this agreement. Customer agrees to provide the requested financial information immediately upon request by Bremer, in the form required by Bremer. Customer authorizes Bremer to investigate or reinvestigate at any time any information provided by Customer in connection with this agreement or the service. Upon request by Bremer, Customer hereby authorizes Bremer to enter Customer's business premises for the purpose of ensuring that Customer is in compliance with this Agreement and Customer specifically authorizes Bremer to perform an audit of Customer's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Customer hereby acknowledges and agrees that Bremer shall have the right to mandate specific internal controls at Customer's location(s) and Customer shall comply with any such mandate. In addition, Customer hereby agrees to allow Bremer to review available reports of independent audits performed at Customer location related to information technology, the service and any associated operational processes. Customer agrees that if requested by Bremer, Customer will complete a self-assessment of Customer's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by Bremer in an audit of Customer. If Customer refuses to provide the requested financial information, or if Bremer concludes, in its sole discretion, that the risk of Customer is unacceptable, if Customer violates this agreement or the NACHA Rules, or if Customer refuses to give Bremer access to Customer's premises, Bremer may terminate the service and this Agreement according to the provisions hereof.
21. **Liability.** In the performance of the services required by this Agreement, Bremer shall be entitled to rely solely on the information; representations and warranties provided by Customer pursuant to this Agreement and shall not be responsible for the accuracy or completeness of such information. Except as otherwise specifically provided by law, Bremer shall be responsible only for performing the services expressly provided for in this Agreement and shall be liable only in the event of loss due to its gross negligence or willful misconduct in performing those services. In no event shall Bremer have any liability for any consequential, special, incidental, punitive or indirect damages Customer may incur or suffer in connection with this Agreement whether or not the likelihood of such damages was known or contemplated by Bremer and regardless of the legal or equitable theory of liability Customer may assert. Without limiting the foregoing, Bremer shall not be liable for 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 communications facilities, equipment failure, war, acts of terror, emergency conditions or other conditions beyond Bremer's control. To the extent allowed by law, Bremer shall not be liable for and shall be excused from failing to transmit or any delay in transmitting an Entry (i) if such transmittal would result in Bremer's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines; (ii) if, for any reason, the ACH Operator fails or declines to process an Entry; (iii) if, in Bremer's sole discretion, processing an Entry would violate or contribute to the violation of any present or future risk control program of the Federal Reserve or any Rule, law, regulation or regulatory requirement; or (iv) if processing an Entry, in Bremer's sole discretion, would cause it to engage in an unsafe and unsound practice.
22. **Credit and Debit Entries; Record Retention.** Customer shall obtain an authorization ("Authorization Agreement") as required by the NACHA Rules from the person or entity whose account will be debited or credited as the result of a debit or credit Entry initiated by Customer and Customer shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the NACHA Rules. Upon request, Customer shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the NACHA Rules.

23. NACHA Rules Enforcement. In the event that a Report of Possible NACHA Rules Violation is filed on Customer, Customer will take appropriate steps to correct the problem within the time frames suggested by Bremer. In the event that a fine is levied against Bremer for a violation of the NACHA Rules, Customer agrees to make Bremer whole for the value of the fine.
24. Inconsistency of Name and Account Number. Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person different from the named Receiver, and Customer's obligation to pay the amount of the Entry to Bremer is not excused in such circumstances.
25. Miscellaneous. Bremer may amend the terms of this Agreement from time to time upon thirty (30) days' written notice to Customer. Bremer may terminate this Agreement at any time for any reason, in its sole discretion, without liability. Customer may terminate this Agreement upon ten (10) days' written notice to Bremer except that Customer may terminate the Agreement immediately if the terms of the Agreement are materially breached by Bremer. Any termination of this Agreement shall not affect any of Bremer's rights and Customer's obligations with respect to Entries initiated by Customer prior to the effective time of such termination, or the payment of obligations of Customer with respect to services performed by Bremer prior to the effective time of such termination, or any other obligations that shall survive termination. The provisions of this Agreement that are necessary to give effect to the purposes of this Agreement shall survive its termination. Bremer may assign this Agreement or any of its rights and duties hereunder without prior notice to or consent by Customer, but Customer may not assign this Agreement or any of the rights or duties hereunder to any person without Bremer's prior written consent. This Agreement shall be governed by and construed in accordance with the law of the state of Minnesota. Customer consents to the jurisdiction of the courts of the State of Minnesota, waives any argument that such a venue is inconvenient, and agrees to bring any litigation commenced by it in connection with this Agreement in the District Court of Ramsey County or the Federal District Court, District of Minnesota, Fourth Division. 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. This Agreement may be executed by a party by electronic or facsimile transmission of the party's signature, and said electronic or facsimile copy shall have the same force and effect as any originally-signed document delivered in person. 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.
- (a) Except as otherwise expressly provided herein, Bremer shall not be required to act upon any notice or instruction received from Customer or any other person, or to provide any notice or advice to Customer or any other person with respect to any matter.
- (b) Customer authorizes and directs Bremer to act on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an authorized representative of Customer, and any such communication shall be deemed to have been signed by such person. Any authorized representative may request in writing changes pertaining to this Agreement, including changes to services, passwords, security codes and other security procedures. Customer shall authorize designated representatives in the Online Banking system to initiate ACH transmissions.
- (c) Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be personally delivered, or sent by United States mail, postage prepaid, or by express carrier, to the parties at the addresses set forth below. Unless otherwise provided in this Agreement, notice is effective when personally delivered, deposited in the U.S. mail or delivered to an express carrier except that notice to Bremer is effective when received by Bremer's ACH Services Department.
26. Data Retention. Customer shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by Bremer as provided herein, and shall provide such Data to Bremer upon its request.



## B. Funds (Wire) Transfer Service

Customer agrees to abide by all the terms and conditions in this Funds Transfer Agreement ("Agreement") and the Business Account Agreement. In addition, if Customer is a user of Bremer's Business Online Banking, Customer shall abide by all the terms and conditions in the Business Online Banking Terms and Conditions and with the Treasury Management Services Terms and Conditions

1. **Communication of Payment Orders.** Customer may instruct Bremer to process funds transfer requests ("Payment Orders") verbally. Customer has executed Attachment A. Customer agrees to be bound by all terms of Attachment A (the "Attachment"), which is part of this Agreement.

Customer may initiate funds transfer requests ("Payment Orders") electronically through Business Online Banking. Customer has executed Attachment B. Customer agrees to be bound by all terms of Attachment B (the "Attachment"), which is part of this Agreement.

2. **Content of Payment Orders.** Customer may initiate either of two types of Payment Orders. Repetitive Payment Orders are those for which Customer preprograms the destination, credit and debit information that remain constant for subsequent Payment Orders designated by a repeat code assigned by Bremer. One-time Payment Orders are those for which Customer supplies the destination, credit and debit information for each Payment Order. Each Payment Order shall include the amount, the account to be debited, the beneficiary's name, account number, and physical address, the name and routing and transit number of the beneficiary's bank, and such other information as Bremer may reasonably request.
3. **Security Procedures.**

- a. **Verbal Funds Transfers only**

Customer authorizes Bremer to execute Payment Orders from any Authorized User listed on attachment A of the Funds Transfer Agreement. Authorized Users must provide Customer's account number together with their individual Bremer assigned security code.

- b. **Call Backs**

Bremer will contact a callback party designated by Customer in attachment A and B of the Funds Transfer Agreement to verify Payment Orders. Customer authorizes Bremer to execute a Payment Order upon verification by the callback party.

Bremer, at its sole discretion, retains the right to call back verification regarding the authenticity or accuracy of any Payment Order.

Bremer shall not be liable for any loss, including but not limited to lost interest that results from cancellation of a Customer transaction for which Customer fails to provide secondary authorization designated in attachment A and B of the Funds Transfer Agreement prior to the established Bremer deadlines.

- c. **Security Codes**

All security codes for the purposes of verbal Payment Orders and callbacks shall be compatible with and adaptable to Bremer systems for processing payment orders, as the security codes and security methods may change from time to time. Bremer will maintain a list of the security code(s) assigned to Customer. Customer has sole responsibility for distribution and use of the security code(s). The security code(s) shall be changed upon five business days' advance written notice from either party and, in the case of notice from Customer to Bremer, upon Bremer's acknowledgement of receipt of such notice.

Customer designates the individuals named in attachment A and B of the Funds Transfer Agreement as "callback" parties (minimum of two (2) required).

4. Execution of Payment Orders. Customer authorizes Bremer to (a) execute and charge Customer's account at Bremer for all Payment Orders delivered to Bremer in compliance with the security procedures established in Section 3 in this agreement and all other terms of this Agreement; (b) Bremer will record and/or document all verbal instructions and retain the recordings or such documentation for such period of time as Bremer deems necessary; (c) use whatever means Bremer, in good faith deems acceptable under the circumstances to execute each Payment Order, including selection of funds transfer system, routing, and means of transmission.

Customer acknowledges that in order for Bremer to execute a Payment Order on any business day, Bremer must receive the Payment Order before the applicable deadline established from time to time by Bremer. Bremer shall have no obligation to execute a Payment Order if Customer's account to be charged contains insufficient collected funds to cover such Payment Order.

5. Liability.

Bremer's liability to Customer is limited to the extent stated in any other account and/or loan agreements, notices, and disclosures that are separately provided to Customer from time to time regarding Customer's accounts and/or this Agreement. This section explains the complete extent of Bremer's liability to Customer only to the extent that it has not been separately disclosed to Customer by any of other agreements, notices or disclosures.

If Bremer fails or delays in making payment or transfer pursuant to Customer's instructions, or if Bremer makes a payment or transfer in an erroneous amount that is less than the amount per Customer's instructions, unless otherwise required by law, Bremer's liability shall be limited to interest that may have accrued (as defined below) on the amount that Bremer failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or Customer canceled the instructions. Bremer may pay such interest either to Customer or the intended recipient of the payment or transfer, but in no event shall Bremer be liable to both parties, and Bremer's payment to either party will fully discharge any obligation to the other. If Bremer makes a payment or transfer in an erroneous amount that exceeds the amount per Customer's instructions, or if Bremer permits an unauthorized payment or transfer after Bremer has had a reasonable time to act on a notice from Customer of possible unauthorized use as described above, unless otherwise required by law, Bremer's liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed sixty (60) days' interest. If Bremer becomes liable to Customer for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district where Bremer is headquartered for each day interest is due, computed on the basis of a 360-day year.

NEITHER BREMER NOR ANY OF ITS DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PERFORMANCE OR QUALITY OF BREMER SERVICES OR THE RESULTS THAT MAY BE OBTAINED FROM USING BREMER SERVICES. BREMER SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF MERCHANTABILITY OR WARRANTIES AGAINST INFRINGEMENT. NEITHER BREMER NOR ANY OF ITS DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, RESULTING FROM OR CAUSED BY THE USE, OR ATTEMPTED USE, OF BREMER SERVICE, OR ITS CONTENT, INCLUDING, WITHOUT LIMITATION, LOSSES RELATED TO CUSTOMER'S USE, OR INABILITY TO USE, BREMER SERVICE; ANY ERRORS, OMISSIONS OR DEFECTS IN ANY CONTENT; ANY INTERRUPTIONS OR DELAYS IN TRANSMISSION TO A BREMER SERVICE; OR

COMPUTER VIRUSES RECEIVED BY CUSTOMER AS A RESULT OF CUSTOMER'S USE OF BREMER SERVICES. IN ANY EVENT, ANY LIABILITY OF BREMER, ITS EMPLOYEES, AGENTS, AFFILIATES, CONTENT PROVIDERS AND LICENSORS SHALL NOT EXCEED THOSE AMOUNTS SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT.

Further, Bremer will not be obligated to honor, in whole or in part, any transaction or instruction that:

- a. Is not in accordance with any term or condition applicable to the relevant Service in this Agreement or Customer's Account Agreement;
- b. Bremer has reason to believe may not have been authorized by Customer or any third person whose authorization Bremer believes is necessary, or that involves funds subject to a hold, dispute, restriction or legal process Bremer believes prevents their withdrawal;
- c. Would violate any applicable provision of any risk control program of the Federal Reserve or any applicable rule or regulation of any other federal or state regulatory authority including the US Patriot Act and Office of Foreign Assets Control;
- d. Is not in accordance with any other requirement of Bremer's applicable policies, procedures or practices; or
- e. Bremer has reasonable cause not to honor for Customer's protection, or the protection of Bremer.

### **C. Target Balance Account Service**

This Target Balance Account Service permits Bremer to automatically transfer funds between Customer's Parent Account and Target Balance Account(s) with Bremer in the manner described as follows.

1. **Parent Account.** Subject to this Agreement, Bremer will transfer funds in to or out of the Target Balance Account to maintain the designated balance in the account at the close of each business day. Each Target Balance Account will be linked to one Account (hereinafter referred to as the "Parent Account") from which available funds will be transferred to the Target Balance Account to pay checks, transfers and other debits (collectively "Debits"). The Parent Account may be linked to multiple Target Balance Accounts.
2. **Debits from Target Balance Accounts.** When a Target Balance Account does not have sufficient available funds to pay all Debits, Bremer will automatically transfer to the Target Balance Account available funds from the Parent Account. In the event there are insufficient available funds in a Parent Account, Bremer reserves the right, in its sole discretion, to pay or return Debits. If Bremer pays any Debit that overdraws a Target Balance Account (due to insufficient available funds in the linked Parent Account), the payment of a Debit will result in a negative balance in the linked Parent Account.
3. **Funds in Excess of Target Balance.** At the close of each business day, Bremer will automatically transfer to the Parent Account any excess available funds in a Target Balance Account.
4. **Multiple Target Balance Accounts.** If more than one Target Balance Account is linked to a Parent Account, Bremer will transfer available funds from the Parent Account to cover Debits from all linked Target Balance Accounts prior to making transfers from the Parent Account to restore the Target Balance in the Accounts. If there are insufficient available funds in the Parent Account to cover all Debits from all linked Target Balance Accounts, Bremer reserves the right, in its sole discretion, to (a) pay or return any Debits, and (b) advance funds to restore the Target Balance of any one or more of the Target Balance Accounts.

### **D. Master Repurchase Agreement**

This Master Repurchase Service covers repurchase transactions wherein Bremer agrees to transfer specific securities to Customer in exchange for specified funds. Customer simultaneously agrees to resell the Purchased Securities to Bremer, at a specified Repurchase Date, in exchange for specified funds. Each Repurchase

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Agreement is governed by this Agreement and by terms contained on the written confirmation provided for each Repurchase Agreement.

6. Investment Sweep; Initiation; Confirmation; Termination

- a. (1) For Sweep Transactions: On each Business Day Bremer will compute the Investment Sweep Amount in the Main Operating Account. If the Investment Sweep Amount is greater than zero, Bremer will debit the Main Operating Account and credit such amount to the Investment Account.

Bremer shall invest the resulting Investment Sweep Amount in a Repurchase Agreement until the following Business Day.

(2) Repurchase Agreement Public Funds: Bremer shall pledge Purchased Securities at 110% of the resulting Investment Sweep Amount or Funding Amount in a Repurchase Agreement until the following Business Day

(3) Applies to all Repurchase Agreement Accounts: Customer's ownership in the purchased securities of the Repurchase Agreement will be in effect until the end of the next Business Day. In the event that there is insufficient collateral to cover all Customer Repurchase Transactions, Bremer will compensate Customer by issuing a credit (for the amount of any missed earnings) to the Main Operating Account, as if the Repurchase Agreement had occurred. Amounts in the Investment Account will be allocated to a Repurchase Agreement each Business Day.

Repurchase Agreements under this subsection will earn interest on a daily basis. The interest rate is established by Bremer and may be changed weekly/monthly without prior notice to Customer. Customer may obtain information on the current interest rate by contacting Bremer.

Bremer will provide daily confirmations to Customer of Repurchase Agreement transactions under this subsection. Reports may be delivered in electronic format.

Customer must review the confirmations and statements and notify Bremer of any errors, overcharges, improper investments or other problems with the services provided by Bremer under this Agreement (collectively, the "error(s)") within ten (10) Business Days of Bremer's mailing of the first confirmation or statement on which any such error(s) appear. If Customer fails to notify Bremer of such error(s) within the time period set forth above, the confirmations and statements will be deemed to be correct and conclusive.

The automatic sweep provisions of this subsection may be terminated by Bremer or Customer upon delivery or written notice to the other party.

- b. On the Purchase Date of the Repurchase Agreement, the Purchased securities will be transferred by Bremer to Customer or its Agent for the transfer from Customer to Bremer.

Bremer will promptly deliver electronic Confirmation of each Repurchase Agreement to Customer. The confirmation will describe the Purchased Securities (including CUSIP or Pool Numbers, if any), identify both Customer and Bremer, and detail the Purchase Date, Purchase Price, Repurchase Date, the Repurchase Agreement Interest Rate, and any other terms and conditions of the Repurchase Agreement as long as they are consistent with Section III.D. of this Agreement.

The Confirmation, along with this Agreement, will constitute conclusive evidence of the Repurchase Agreement between Customer and Bremer, unless Customer promptly objects to the terms detailed on the Confirmation. In the event the terms of the Confirmation conflict with the Agreement, this Agreement will prevail.

For Repurchase Agreements terminated by Demand, the Demand can be made by either Customer or Bremer. The demand will be made on or prior to the date the termination is to take effect. If a Customer Demand is to be effective on the date the Demand is made, the Demand must be made early enough in the day to permit Bremer to process the transaction on that business day. The Repurchase Agreement will be terminated when the Purchased Securities (and any income not previously transferred to Bremer, according to Section III.D of this Agreement) are transferred from Customer or its Agent to Bremer, and Bremer has transferred the Repurchase Price to Customer.

7. Margin Maintenance
  - a. If at any time during the term of a Repurchase Agreement the Market Value of all Purchased Securities for a Repurchase Agreement is less than Customer's Margin, Customer may require Bremer to (at Bremer's option) either transfer cash or additional securities ("Additional Securities") to Customer so that the market Value of the securities, including any Additional Purchased Securities, equals or exceeds the percentage of the Purchase Price as defined in this Agreement.
  - b. Customer and Bank may agree that the duty to correct a deficient Customer's margin is independent of any other Repurchase Agreement that might be outstanding between Bremer and Customer at that time.
8. Interest Payments. If a Repurchase Agreement's term extends over an interest payment date on any security purchased in a Repurchase Agreement, Customer or its Agent will, on the date that the interest is payable, transfer to or credit to Bremer's account an amount equal to the interest due.
9. Security Interest. Bremer Bank acts as Agent and serves as Custodian for the securities in this Agreement for and on behalf of the above-named Customer. Although both Bremer and Customer intend that all Repurchase Agreements executed under this Agreement are purchases and sales of securities and not loans, in the event the Repurchase Agreements are deemed to be loans, Bremer will grant a security interest to Customer for each Purchased Security named in the Repurchase Agreement Confirmation.
10. Payment and Transfer. Transfers of securities will comply with the provisions of the Government Securities Act of 1986. Unless otherwise agreed to:
  - a. All securities transferred by one party to the other will be in suitable form for transfer.
  - b. All transfers of funds will be in immediately available funds.
  - c. All transfers of funds by Bremer to Customer will be to a new Repurchase Agreement or to Customer's Investment Account or Main Operating Account.
11. Segregation of Purchased Securities. Consistent with the Government Securities Act of 1986, all Purchased Securities kept in Bremer's possession will be segregated from other securities in its possession and will be identified as subject to this Agreement. Segregation will include an appropriate identification on the books and records of Bremer.
12. Title to all Purchased Securities passes to Customer. Unless otherwise agreed by Customer and Bremer, Customer may engage in repurchase transactions with the Purchased Securities or otherwise pledge or hypothecate (use as security for a loan) the Purchased Securities. No such use of the Purchased Securities, however, relieves Customer of its obligation to transfer Purchased Securities to Bremer in accordance with the terms of Section III.D. of this Agreement or of Customer's obligation to credit or pay income to Bremer in accordance with the terms of Section III.D. of this Agreement.

**REQUIRED DISCLOSURE FOR TRANSACTIONS IN WHICH THE SELLER RETAINS CUSTODY OF THE PURCHASED SECURITIES**

Bremer is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Customer's securities segregated at all times.

13. No Right of Substitution. Bremer may not substitute securities for any securities named in the Repurchase Agreement.
14. Representations. Customer acknowledges that (a) it is acting as principal unless it is disclosed that it is acting as agent, (b) it has obtained all authorizations of any governmental body required in connection with this Agreement and such authorizations are currently in effect, and (c) no law, ordinance, charter by law, or rule is violated by the execution, delivery or performance of this Agreement.
15. Rights in the Event of Default.
  - a. If Bremer fails to repurchase securities from Customer on the day following an Act of Insolvency for Bremer, the Repurchase Agreement terminates immediately. Customer is entitled to receive interest on the outstanding Purchase Price each day Bremer is in default at either the Repurchase Agreement Interest Rate or the Prime Rate, whichever is higher on each day. Interest payable due to default will be calculated on a 365 day basis. Customer is entitled to have Bremer immediately transfer the Purchased Securities to its possession. Customer has the right to direct Bremer to sell the Purchased Securities as Agent for Customer. Customer is also entitled to sell and receive any proceeds from the sale of Purchased Securities as long as the proceeds do not exceed the Repurchase Price, plus any additional interest due after the termination of the Repurchase Agreement.
  - b. If Customer defaults due to an Act of Insolvency, after one day Bremer can terminate the Repurchase Agreement by Demand and repurchase securities it has sold for the Repurchase Price.
  - c. In addition to rights spelled out in this Agreement, the party which does not default retains any other rights available under applicable law.
  - d. Customer and Bremer agree that each Repurchase Agreement executed will be governed by this Agreement. If more than one Repurchase Agreement is outstanding and either Bremer or Customer defaults on just one Repurchase Agreement, all Repurchase Agreements outstanding at that time will be considered to be in default. The non-defaulting party will be entitled to set off claims and apply property held by them against any of the defaulting party's obligation owed to them.
16. Non-assignability; Termination. The rights and obligations of Customer and Bremer under this Agreement and for individual Repurchase Agreements shall not be assigned by either party without prior written consent of the other party. This Agreement may be canceled by Customer or Bremer by giving 30 days written notice to the other party. Any Repurchase Agreements outstanding upon cancellation of this Agreement will continue to be governed by this Agreement until termination of the Repurchase Agreement.
17. Intent. Customer and Bremer recognize that each Repurchase Agreement is a "repurchase agreement" as that term is defined in Section 101 of the United States Code unless the security pledged or term of the repurchase agreement would not be covered by that definition. The right to liquidate securities in the event of default is a contractual right pursuant to Paragraph (10d) as described in Sections 555 and 559 of Title II of the United States Code, as amended.
18. Disclosure Relating to FDIC Coverage. FUNDS HELD BY BREMER PURSUANT TO A REPURCHASE AGREEMENT COVERED BY THIS AGREEMENT ARE NOT DEPOSITS AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC).

## E. Loan Sweep Service

This Loan Sweep Service creates an automated sweep arrangement between a deposit account and a line of credit for purposes of initiating principal advances or repayments against a line of credit.

1. **Deposit Accounts.** Customer has designated a specific Collected Balance in the Deposit Account ("Specified Balance").
2. **Loan Sweep.** At the end of each Business Day, Bremer will determine Collected funds in the Deposit Account. If the Collected Balance in the Account exceeds the Specified Balance, the excess funds will be applied as a principal payment to the Loan. If the Collected Balance of the Deposit Account is less than the Specified Balance, a principal advance against the Loan will be applied to the Deposit Account. Bremer will make advances in accordance with the terms and conditions of the Loan Documents, including but not limited to restrictions on the amount available for advances. Further, unless in conjunction with the exercise by Bremer of its offset rights following a default under the Loan Documents Collected Balances in excess of the Specified Balance shall not be used to pay interest on the Loan.

In the event Bremer determines that an error has occurred resulting in an incorrect advance or paydown, Bremer will adjust the Deposit Account by applying a credit or debit.

The automatic advance and repayment feature is requested by and for the benefit of Customer. Customer represents and warrants that Bremer is carrying out Customer's request set forth in this Agreement is not exercising any control over Customer's business or making any management decisions by providing Customer with the Service.

3. **Termination.** Notwithstanding Section II.S. unless contrary to the terms of the Loan Documents, Customer may terminate this service at any time by giving Bremer written notice of such termination at least ten (10) Business Days prior to the effective date of termination. Bremer may terminate Customer's use of the Loan Sweep at any time, with or without cause. The Loan Sweep will also automatically terminate at the maturity of the Loan.
4. **Offset.** Nothing contained in this agreement shall be construed or interpreted to limit, restrict or impair Bremer's ability to exercise its offset rights against funds in the Deposit Account following a default by Customer under the Loan Documents.

## F. Positive Pay Service

This Positive Pay Service provides a payment application service designed to assist with managing the risk of unauthorized check transactions presented to Customers designated deposit account(s) maintained with Bremer.

1. **Duties and Responsibilities of Bremer**
  - a. **Review.** Bremer will conduct an automated review of the checks presented for payment against the outstanding issued item list for the relevant Account. Bremer will pay all such checks that match (i) the serial number and (ii) dollar amount in the outstanding issued item list for that account. If a check is rejected, Bremer may, at its discretion, attempt to review the check manually and repair any damage to the MICR line. Checks that do not match and are not reviewed will be sent to the Customer to decision.

- b. Processing. Bremer will process requests for pay, return decisions submitted by Customer through the Services in accordance with Bremer's Business Account Agreement and all state and federal laws on any Business Day, subject to the agreed upon Cutoff Time.
- c. Notification. Bremer will attempt to send notifications to authorized representatives when checks present that do not match any issued items and need a pay or return decision made.

## 2. Duties and Responsibilities of Customer

- a. Use of the Service. Customer should log in to Online Banking regularly (and, in any event, daily) to obtain accurate information regarding its Account. Customer shall authorize designated representatives in the Online Banking system to make pay, return decisions. Customer shall submit issued files or items in the approved format using the Service subject to the agreed upon Cutoff Time. Customer shall submit pay, return decisions based on the information provided by the Service. In the event that Customer does not provide pay, return decisions within the agreed upon Cutoff Time, the Service will default to return all items unless otherwise agreed upon. In using the Service, Customer agrees to abide by all terms of use and procedures for using the Service.
- b. Inability to Access due to Bremer system outage. If on any Business Day, Customer cannot access the Service, Customer shall promptly contact Bremer to facilitate alternative processing as soon as practicable, prior to agreed upon Cutoff Time.
- c. Returned Items. When a return decision on a check occurs, the check will be returned to the bank of first deposit. Customer understands and agrees that Bremer cannot return checks that have been cashed over-the-counter or otherwise paid prior to a pay or return decision.
- d. Customer Liability. Customer will exercise ordinary care in utilization of the Service and will be responsible for any loss sustained by Bremer only to the extent such liability, loss or damage is caused by its failure to submit issued files or items. Customer will incur all liability for any loss if it fails to make a pay or return decision on any of Customer's accounts utilized in connection with the Service in accordance with the terms and conditions of this Agreement.
- e. Wrongful Dishonor. If Customer fails to comply with the delivery or input of issued file or items, submits or inputs items that contain errors, or does not review daily Exception Items making pay and return decisions, and items default to return, Bremer will not be liable for wrongful dishonor claims made by the payee or payee's presenting financial institution.
- f. Indemnification. Customer a) agrees to indemnify and hold Bremer harmless from any losses or liabilities it may suffer or incur as a result of its payment of a Matching Check or other check at Customer's instruction; and b) releases and forever discharges Bremer, and its , successors, officers, directors, employees and agents, from any and all manner of action or actions, suits, claims, damages, judgments, levies, executions, expenses, costs, interest, attorneys' fees and legal expenses, whether known or unknown, liquidated or not liquidated, fixed, contingent, direct or indirect, which Customer has, or ever can, may or shall have or claim to have against Bremer regarding or relating to the return or payment of any check pursuant to provisions of this Agreement.

## G. Payee Verification

Payee Verification is an add-on feature to Positive Pay Service. Payee Verification requires Customer to include the Payee name (or names if there is more than one payee) in addition to the check serial number, date and dollar amount as part of the outstanding issued item list for verification. Customer assumes full responsibility for



the timely and accurate submission of the issued items list for the Account. Checks presented to Bremer that are drawn on the Account that do not match will be sent to the Customer to decision.

In reliance on the payee information provided by Customer, each Business Day, Bremer shall make reasonable efforts to report to Customer any payee names that do not match the issued item list for that day's presentment. Customer acknowledges that Bremer is unable to validate payee information for electronically converted items presented to Bremer for payment.

## H. ACH Positive Pay Service

This ACH Positive Pay Service allows Customer to authorize Automated Clearing House ("ACH") transactions to Customer's deposit account(s) maintained with Bremer.

### 1. Duties and Responsibilities of Bremer

- a. **Review.** Bremer will conduct an automated review of the ACH debits presented for payment against the authorized ACH Company ID's entered by Customer for the relevant Account. Bremer will pay all such ACH debits that match (i) the ACH Company ID and (ii) allowed dollar amount authorized for that account. ACH debits that do not match will be sent to the Customer to decision.
- b. **Processing.** Bremer will process requests for pay, return decisions submitted by Customer through the Service in accordance with Bremer's Business Account Agreement and all state and federal laws on any Business Day, subject to the agreed upon Cutoff Time(s).
- c. **Notification.** Bremer will attempt to send notification to authorized representatives when ACH debits present that do not match established authorized ACH Company ID's and need a pay or return decision made.

### 2. Duties and Responsibilities of Customer

- a. **Use of the Service.** Customer should log in to Online Banking regularly (and, in any event, daily) to obtain accurate information regarding its Account. Customer shall authorize designated representatives in the Online Banking system to make pay, return decisions. Customer shall establish authorized ACH Company ID's using the Service. Customer shall submit pay, return decisions based on the authorizations established by Customer. In the event that Customer does not provide pay, return decisions within the agreed upon Cutoff Time(s), the Service will default to return all items, unless otherwise agreed upon. Customer accepts full responsibility for maintaining and updating the authorized information as it deems appropriate and is solely responsible for ensuring that all information it includes is accurate, appropriate and timely updated to meet Customer's needs. If Customer does not input any information for authorized ACH Company ID's, all ACH debits received will need a pay or return decision made. In using the Service, Customer agrees to abide by all terms of use and procedures for using the Service.
- b. **Inability to Access due to Bremer system outage.** If on any Business Day, Customer cannot access the Services, Customer shall promptly contact Bremer to facilitate alternative processing as soon as practicable, prior to agreed upon Cutoff Time(s).
- c. **Returned Items.** When a return decision on an ACH debit occurs, the entry will be returned to the bank of first deposit.

- d. **Customer Liability.** Customer will exercise ordinary care in utilization of the Service and will be responsible for any loss sustained by Bremer only to the extent such liability, loss or damage is caused by its failure to enter authorized information. Customer will incur all liability for any loss if it fails to make a pay or return decision on any of Customer's accounts utilized in connection with the Service in accordance with the terms and conditions of this Agreement.
- e. **Wrongful Dishonor.** If Customer does not review daily Exception Items making pay and return decisions, and items default to return, Bremer will not be liable for wrongful dishonor claims made by the payee or payee's presenting financial institution.

### **I. Controlled Disbursement Service**

This Controlled Disbursement Service permits Bremer to transfer specified funds from the Funding Account maintained at Bremer on a daily basis to the Controlled Disbursement Account.

1. **Controlled Disbursement Account.** Customer shall open and maintain one or more demand deposit accounts which shall serve as Customer's Controlled Disbursement Account(s) (each a "CDA"). Customer will withdraw funds from each CDA only by check. Customer may not debit a CDA by wire or any other type of transfer. Deposits to each CDA are limited to transfers made by Bremer in accordance with the terms of this Agreement. Except as otherwise provided in this Agreement, the establishment and maintenance of each CDA shall be subject to the terms and conditions of Bremer's Business Account Agreement.
2. **Funding Account.** Customer has opened and shall maintain at Bremer the demand deposit account ("Funding Account") to fund each CDA. Customer will maintain sufficient collected and available funds in the Funding Account every "Business Day" (as defined below), to cover the Funding Totals and any Funding Total Adjustments (each defined below) for each CDA. As long as Customer is in compliance with its obligations under this section, every "Business Day" Bremer will debit the Funding Account in the amount of the Funding Totals and Funding Total Adjustments for that day and transfer that amount to the CDA(s). For purposes of this section, Business Day means any day on which the Federal Reserve Bank is open for carrying on substantially all of its functions.
3. **Notice of Funding Totals.**
  - a. **Funding Totals -** Bremer will notify Customer each "Business Day of the Funding Totals for each CDA by memo posting the CDA account with a preliminary Funding Total. The "Funding Total" reported to Customer will be the total dollar amount required to pay checks that are drawn on the CDA, (i).
  - b. **Funding Total Adjustment -** If any Funding Total proves incorrect due to incorrect information supplied by the Federal Reserve Bank, Bremer's error, service of legal process on a CDA, or any other reason, Bremer may notify Customer of any additional sums (a "Funding Total Adjustment") needed to cover checks that will be presented for payment that "Business Day" and Customer will on that day deposit sufficient collected funds to the Funding Account to cover the Funding Total Adjustment.
4. **Failure to Fund.** If Customer fails to maintain sufficient collected funds in the Funding Account in accordance with this Agreement, Bremer may take either of the following actions:
  - a. **Return Items -** Bremer may refuse to make, or to the extent made, may reverse, the transfer of funds from the Funding Account to each CDA and return unpaid all checks drawn on each CDA, whether or not there are sufficient collected funds to pay some of the checks drawn on each CDA. Customer agrees that all checks returned pursuant to this section are not properly payable from the CDA.

- b. Overdrafts - Bremer may cause some or all of the items drawn on each CDA to be paid and the amount by which the items paid exceed the funds available in each CDA and the Funding Account ("Overdrawn Amount") shall become immediately due and payable and subject to applicable overdraft and interest charges. If Customer fails to immediately fund the overdrawn account, the Account shall be subject to the terms and conditions of Bremer's Business Account Agreement, insufficient available funds section.
5. Limitations on Liability. Bremer shall not be liable, and Customer assumes full responsibility, for any loss or damage suffered by Customer or any third party under this Agreement or otherwise, except to the extent caused by the gross negligence or willful misconduct of Bremer. In no event shall Bremer be liable for any indirect or consequential damage, or loss of profit, notwithstanding notice to Bremer of the possibility of such damage or loss. Without limiting the generality of the foregoing provisions, Bremer shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bremer's reasonable control.

#### **J. Remote Deposit Service**

This Remote Deposit Service provides a payment application to convert Customer's eligible paper check transactions into either check images under the Check Clearing for the 21st Century Act ("Check 21") by Customer scanning paper checks or ACH debits under the National Automated Clearing House ("NACHA") ARC and BOC rules and entering information into Bremer Remote Deposit Internet web site.

1. Automated Clearing House ("ACH"). Customer acknowledges, agrees and confirms that it has executed this Agreement and is in effect as of the date hereof for check conversion applications including ARC, BOC, POP, and RCK entries. Customer is also required to provide Bremer with updated financial information and other information that may be required from time to time.
2. Duties and Responsibilities of Bremer
  - a. Use of Service. Bremer hereby grants to Customer a non-exclusive ability to utilize Bremer Remote Deposit Service through the Internet or by creating information to deposit checks through the software provided by Bremer, and to use Bremer's proprietary documentation.
  - b. Processing. Bremer will process, encode, endorse and deposit into the Account, Checks submitted by Customer through Bremer Remote Deposit Service in accordance with Bremer's internal procedures and all state and federal laws, subject to the agreed upon time by which a transaction must occur on a Business Day to be given effect on that Business Day ("Cutoff Time"). Bremer will not examine Checks to verify any data or dates. Bremer will process the Check according to the amount entered by Customer, if applicable, or by the numeric amount shown. If the numeric amount is unclear, Bremer may process the Check according to the written amount, and Bremer may correct the amount entered by Customer. If the Check is ambiguous, Bremer may return the check as an exception. Customer agrees to be liable to Bremer for any loss suffered by Bremer as a result of a discrepancy between the words and numbers on a Check. Checks made payable to Customer or any reasonable derivation thereof are acceptable for deposit. Customer may not deposit third-party checks through Bremer Remote Deposit Service. If a Check does not have the necessary information to be processed by Bank, then Bremer will treat the Check as an exception. If a Check is treated as an exception, it will be forwarded by Bremer to Customer, and not deposited or otherwise reflected in the account of Customer. Bremer will disregard any notation on a Check containing "paid in full" or other restrictive notation, whether preprinted or handwritten, or any attempt to post date the Check and will treat any such Check as though such notation did not appear thereon.

- c. Reporting. Reports regarding Bremer Remote Deposit Service and deposit details are available through the Internet daily.

### 3. Duties and Responsibilities of Customer

- a. Use of Bremer Remote Deposit Service. Customer shall submit valid Checks payable to Customer by using Bremer Remote Deposit Service. In using Bremer Remote Deposit Service, Customer shall scan an image of the Check or Checks and the associated MICR data using approved scanner, browser and operating system. Customer agrees to enter in the amount of the Check using the numeric amount of the Check into Bremer Remote Deposit Service in the data field provided. Customer agrees to securely store the scanned Checks for fourteen (14) calendar days, after which time Customer agrees to securely destroy the physical checks by means of secure shredding or other industry accepted secure destruction methods. Customer agrees to abide by all terms of use and procedures for using Bremer Remote Deposit Service.
- b. Operating Procedures. If on any Business Day Customer cannot access Bremer Remote Deposit Service, Customer shall notify Bremer as soon as practicable. Customer shall then make its deposit physically at a Bremer location. Customer accepts and acknowledges that its inability to access Bremer Remote Deposit Service may result in the untimely deposit of Checks to the financial detriment of Customer.
- c. Customer's responsibilities to retain all items, source documents, and records of authorization in accordance with the FFIEC Guidance. Further, Customer consents to Bremer's right to audit its procedures and data upon reasonable request.

### K. Lockbox Service

This Lockbox Service permits Customer's clients to mail payments to Customer at a post office box address and for such payments to be processed on its behalf, including imaging of such payments for electronic review by Customer.

1. Lockbox Provider. Bremer has entered into an agreement with third party processors to conduct on Bremer's behalf certain portions of the Service. In this section, Bremer and third party processors are defined as "Lockbox Provider".
2. Authorization to Establish Post Office Box. Customer hereby authorizes Lockbox Provider to establish a Post Office Box and have exclusive access to the Post Office Box. Customer shall execute any and all forms required by the Postmaster to establish the Post Office Box and to grant Lockbox Provider exclusive access thereto. Customer shall not have access to the Post Office Box and shall not authorize any other person or entity to have access to or remove the contents of the Post Office Box.
3. Description of Lockbox Service. The Service will allow Customer to enter a website hosted by Lockbox Provider (the "Website") for the purposes of accessing archival images of lockbox remittances and other remittance materials processed through Customer's post office lockbox. Customer agrees to use the Service and Website only in accordance with this Agreement and any notices and information posted on the Website. Each person authorized by Customer to enter the Website (individually, "User", together "Users") must accept any "terms of use" for the Website that appears when such User initially logs on.
4. Authorization to Process Deposits. Customer hereby authorizes Lockbox Provider to open the envelopes addressed to Customer, process the contents, endorse the items on behalf of Customer, deposit the checks to Customer's account, and perform any other functions specified.
  - a. Disposition of Remittance Materials

On each Business Day, Lockbox Provider will collect from the Lockbox the envelopes and other contents of the Lockbox. Lockbox Provider will open the envelopes and determine whether they contain any Remittances, Remittance statements, invoices, checks, cash, or other correspondence. If cash is sent to the Lockbox with any materials sent to the Lockbox ("Remittance Materials"), the cash will be removed from the envelope containing the Remittance Materials and a credit advice for the amount of the cash will be placed in such envelope with the remainder of the envelope's contents. Lockbox Provider will process the checks and any cash in the envelopes as defined by Customer in "Lockbox Questionnaire", and deposit such checks and cash in the applicable Account.

Restrictive Notations. Checks bearing restrictive notations, such as "Paid in Full," will be handled on a reasonable efforts basis in accordance with the Lockbox Questionnaire as defined by Customer. Lockbox Provider will have no liability whatsoever, despite anything to the contrary in this Agreement, for its failure to comply with such request, unless the failure results directly from the willful misconduct of Lockbox Providers's officers or employees.

b. Deposit of Checks and Cash

During each Business Day, Lockbox Provider will make deposits of the acceptable checks and cash received in the Lockbox according to the Business Account Agreement.

c. Changes in Names or Designations of Payees

Customer may at any time upon ten (10) calendar days prior written notice to Lockbox Provider request that a name or designation on Customer's list of payees sent to Lockbox Provider be deleted or added, and Lockbox Provider will add or delete the name or designation if the request is acceptable to Lockbox Provider.

d. Mailing Remittance Materials

All checks in the envelope that are not deposited, together with any correspondence in the envelope shall be mailed by Lockbox Provider to Customer. All other Remittance Materials will be scanned by the Lockbox Provider, as directed by Customer and made available to Customer through the Website. All Remittance Materials will be stored by the Lockbox Provider for 5 days after they are available on the Website. After which time, Remittance Materials will be securely destroyed. Customer is responsible for making requests for original Remittance Materials within this stated timeframe.

5. Security.

- a. Lockbox Provider will provide each authorized User with a multi-factor authentication access compliant with FFIEC guidance.
- b. It is Customer's responsibility to ensure that any user names and passwords are known only to persons who have been properly authorized by Customer to access the Website.
- c. Customer agrees to notify Bremer immediately: (a) when Customer becomes aware of any loss or theft of, or any unauthorized use of, any user names, or passwords, and (b) when Customer becomes aware of any unauthorized entry into the Website.

**L. Secure File Transfer Protocol (SFTP) Service**

The Secure File Transfer Protocol (SFTP) Service enables secure file transfer capabilities between networked hosts. SFTP additionally provides remote file system management functionality, allowing applications to resume interrupted file transfers, list the contents of remote directories, and delete remote files.

1. **Security.** A Site ID and Password will be delivered that will provide access to the site through the SFTP process. Customer will assume responsibility for the use and confidentiality of such Site ID and Password, and such access to the data on the FTP server through use of this Site ID and Password. Bremer or its provider may suspend or revoke the access granted to the Site at any time at its sole discretion.
2. **Data Security.** PGP and FProtect encryption is used for data security with all transmissions. The I/P address must meet authorized requirements for approved transmission options.
3. **Third Party Agents.** Customer may be using special equipment, services or software provided by a third party to assist it in processing files hereunder ("Third Party"). Customer (i) agrees that any Third Party is acting as Customer's agent in the delivery of files to Bremer, and (ii) agrees to assume full responsibility and liability for any failure of that Third Party to comply with the Laws, Rules or this Agreement. Bremer will not be liable for any losses or additional costs incurred by Customer as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. Customer is solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates. Bremer shall not have any responsibility for any file handled by a Third Party until that point in time when Bremer accepts and approves a file from such Third Party for processing.