Terms and Conditions

Treasury Management Agreement

Prepared for: Resource Central
Effective date: 06/2019
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BBVA Treasury Management Services Agreement

This Treasury Management Services Agreement contains terms and conditions for the Treasury Management Services offered by BBVA. The General Provisions of this Agreement apply to all Treasury Management Services, and other provisions govern specific Treasury Management Services. For your convenience you may from time to time receive a copy of this Agreement with provisions applicable to Treasury Management Services you have not used or requested redacted. A full copy of the Agreement is available to you. By signing and submitting a Request for Treasury Management Services to BBVA, you agree to be bound by the General Provisions and the provisions contained in this Agreement governing each service requested or used by you. You also agree to the Implementation Process described in your Request, including the method by which BBVA will collect and confirm the Service Instructions for each requested service provided to you.

As a new service is added to the Treasury Management product line, this Agreement will be updated to include the terms and conditions for that service, and a revised Agreement will be made available.

Please review this Agreement carefully and retain it for your records. As you use additional services in the future, they will also be covered by the terms and conditions contained in this Agreement. This Agreement and the Non-Consumer Deposit Account Agreement serve as the governing documents for your BBVA Treasury Management relationship.

Should you have any questions about this Agreement, or the Non-Consumer Deposit Account Agreement, please contact your Relationship Manager or Treasury Management Representative. Thank you for choosing BBVA as your Treasury Management service provider. We appreciate your business and look forward to serving you.
In this Treasury Management Services Agreement (the “Agreement”), BBVA USA is referred to as “BBVA” and the customer obtaining services from BBVA is referred to as “Company.” The Service Instructions (as defined below) are part of and incorporated into this Agreement.

GENERAL PROVISIONS

1. General Provisions. The General Provisions set forth in this Agreement apply to each and every Treasury Management Service received by Company from BBVA (“Treasury Management Service” or “Service”), whether now or in the future, and whether or not that particular Service is provided for specifically in this Agreement or in other agreements between the Company and BBVA and further applies to any new Service introduced by BBVA and obtained by Company after the date on which this Agreement is delivered to Company.

2. Definitions. Except as otherwise expressly provided in this Agreement, the following capitalized terms shall have the following meanings for the entire Agreement, conflicting definitions should be controlled by the section therein:

- “Applicable Law” means any and all federal, state and local statutes, regulations, rules that govern a Service provided under this Agreement.
- “Authorized Administrator” means each officer or employee of Company who is authorized to administer Company’s use of one or more specific Services.
- “Authorized Person” means each officer or employee of Company who is authorized to request and obtain Services on Company’s behalf.
- “Business Day” means each Monday through Friday on which BBVA’s offices are open for business, excluding all holidays recognized by the Federal Reserve Bank System.
- “Check” includes all “items” as defined in Section 4-104(a)(9) of the UCC, and all “substitute checks” as defined in the Check Clearing for the 21st Century Act (sometimes referred to as Check 21 Act) and Regulation CC of the Board of Governors of the United States Federal Reserve Board.
- “NACHA Rules” mean the operating rules and operating guidelines of the applicable regional clearing house association and the National Automated Clearing House Association (“NACHA”), as they may be modified from time to time.
- “Payment System Rules” mean the rules of any private or governmental group that govern a payment system through which funds may be transmitted in connection with a Service provided under this Agreement, including without limitation, the NACHA Rules, the Visa rules, the MasterCard rules, the rules of the Electronic Check Clearing House Organization, and the rules of the Federal Reserve System.
- “Service Instructions” mean, for any Service provided under this Agreement, the specific instructions by which a Treasury Management Service will be provided to Company, and include the Set-Up form completed by Company along with any user guides, service guides, software licenses, templates, implementation forms, operating procedures, security procedures, specifications, service level agreements, definition of scope and deliverables (“DSD”) or other descriptions, materials or documentation provided or made available by BBVA and applicable to that Service.
- “Service Provider” means a third party that provides services, including, without limitation, subcontractors, couriers, vendors, processors and all other agents. With respect to BBVA, its Service Providers shall include any other financial institution and any payment system that BBVA may use in providing a Service.
- “UCC” means the Uniform Commercial Code, as adopted in the state in which BBVA maintains the Company Account.

3. Fees. Company will pay BBVA in immediately available funds when due the fees and charges listed in the then current fee schedule or otherwise chargeable to Company in connection with each Treasury Management Service provided. Notwithstanding anything herein to the contrary, BBVA may change the amount of such fees and charges, or add new fees and charges, after providing Company with at least 10 days notice prior to the effective date of the change or addition. Additionally, Company will pay and reimburse BBVA for all governmental and third party fees or taxes arising out of or related to BBVA’s providing Treasury Management Services to Company. For each Service provided to Company under this Agreement, Company authorizes and directs BBVA to debit the Company Account (as that term is defined in this Agreement) (a) on or before the 25th of each month for the amount of all such fees then due, and (b) at other times as necessary to pay all other amounts owing from time to time under and as provided for in this Agreement.

4. Company Account. Company will at all times maintain with BBVA one or more deposit accounts in the Company’s name (each a “Company Account”). Company will at all times maintain with BBVA in the Company Account collected balances sufficient to reimburse BBVA for all items, orders for payment, and other amounts which BBVA pays on Company’s behalf or are chargeable to Company in connection with any Treasury Management Service. Each Company Account and all other deposits and other accounts of the Company located at BBVA (or an affiliate of BBVA) shall each be subject to the terms and provisions of all deposit agreements and contracts relating to those accounts, as they may be amended and modified from time to time.

5. Data Review. Company has the sole responsibility for confirming the accuracy and validity of all information, data, entries, and processing services prepared and performed by BBVA. Company shall carefully review all reports prepared by BBVA and shall reject in writing incorrect daily reports within 5 Business Days after receipt and all other reports provided by BBVA within 10 Business Days after receipt. Company’s failure to so reject any report constitutes (a) Company’s acceptance of the report, and (b) notwithstanding the terms of Section 7 of these General Provisions, and except as prohibited by law, the release of BBVA from any liability arising under or in connection with the report.

6. Authorized Representative. Company shall designate an Authorized Representative. Company shall designate each Authorized Person in writing who is authorized to administer Company’s use of one or more specific Services. Each Authorized Person may designate in writing authorized administrators and authorized users for a specific Service, including but not limited to, authorized ACH users and authorized wire users. BBVA may require that the designation of any Authorized Person, authorized administrator, authorized user, authorized ACH user or authorized wire user be made on BBVA’s form of authorization certificate. BBVA is entitled to rely on the continuing authority of each Authorized Person, authorized administrator, authorized User, authorized ACH user and authorized wire user until BBVA is notified otherwise in writing by Company.

7. Standard of Care; Limitation of Liability; Indemnity.

(a) Standard of Care. BBVA agrees to use substantially the same type of procedures and equipment in performing the services requested by Company as BBVA uses in performing similar services on its own behalf. These standards of care, and BBVA’s compliance with any instructions given it by Company, or believed by BBVA to be given it by Company, shall constitute proper, reasonable, and ordinary standards of care.
8. Actual Receipt. Actual receipt by BBVA of proper notice or delivery of any information (including stop payment, return, process, dishonor, and similar notices required under this Agreement or any agreement executed by Company from time to time) from Company before the deadline required by BBVA in its sole discretion is an express and condition precedent to BBVA's related obligation to perform any service or to meet any deadline imposed by law, regulation, or any person. Company bears the burden of proof of the time and manner of BBVA's actual receipt of any notice or transmittal of information.

9. Term; Termination. Subject to the following provisions, the terms and conditions contained in this Agreement shall continue in effect so long as Company is using or has requested from BBVA a Treasury Management Service; provided, however, that either party shall have the right, upon 30 days written notice to the other, to terminate any or all Treasury Management Services then being provided by BBVA to Company with or without cause, provided that all obligations arising prior to termination shall not be affected by termination. Further, BBVA may terminate any or all existing Treasury Management Services at any time without notice to any party upon the happening of any of the following events or circumstances: (a) Company's violation or breach of any of the terms or conditions contained in this Agreement or in any agreement to provide specific Treasury Management Services; (b) misrepresentation by Company of any material fact in any statement, report, or representation given or made to BBVA in connection with any Treasury Management Service provided by BBVA to Company; (c) receipt by BBVA of any legal process with respect to any of Company's deposit accounts; (d) Company's business failure, insolvency, or bankruptcy; (e) the default or violation by Company, or any affiliate of Company, in any document, instrument, or agreement between BBVA and Company or between BBVA and that affiliate; or (f) BBVA is required to terminate pursuant to any law, regulation or supervisory regulatory agency. All sums Company owes to BBVA for any Treasury Management Service shall be due and payable in full immediately upon the termination of the service. All warranties, indemnities, representations, and covenants made before termination, including, but not limited to, all provisions of Section 7 of these General Provisions, shall survive and be binding and enforceable after termination of Treasury Management Services, and termination of this Agreement or any Service shall not affect the rights or obligations of either party which may have arisen or accrued prior to such termination. Upon termination of any Services for any reason, BBVA shall have no further obligations or duties.

10. No waiver. No delay or failure of BBVA to exercise any option or right set forth in this Agreement shall constitute a waiver of that option or right. BBVA’s waiver of any right, agreement or option on one occasion shall not constitute or be deemed a waiver as to any future occasion.

11. Representations and Warranties. (a) Company represents, warrants, and covenants to and with BBVA: (a) it is duly organized, validly existing, and in good standing in the state of its organization; (b) the execution, delivery and performance of all documents or agreements provided in connection with any Treasury Management Service are within its powers, have been duly and validly authorized, and do not contravene its charter, by-laws, or any indenture, agreement, undertaking, law, regulation or order binding it; (c) no approval, consent or authorization of any government authority is necessary for Company to obtain any Treasury Management Service from BBVA; and (d) the terms and conditions contained in this Agreement are valid and binding obligations of Company enforceable in accordance with their terms; and (e) Company expressly warrants that Company is not a "Consumer" as defined in section 205.2(e) of Regulation E of the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and that Company will use each Treasury Management Service solely for business, and not personal, family or household purposes.

(b) EXCEPT AS REQUIRED BY LAW, BBVA MAKES NO REPRESENTATIONS, WARRANTIES, AGREEMENTS, OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY ITEMS OR TREASURY MANAGEMENT SERVICES PROVIDED BY BBVA TO COMPANY; (ii) ANY WARRANTIES ARISING UNDER THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE IN WHICH BBVA MAINTAINS COMPANY'S ACCOUNTS; (iii) ANY WARRANTIES WITH RESPECT TO COMPLIANCE WITH THE ELECTRONIC FUNDS TRANSFER ACT OR REGULATION E OF THE FEDERAL RESERVE BOARD; (iv) ANY RULE OR REGULATION OF ANY AUTOMATED CLEARING SYSTEM; OR (v) ANY STATE ELECTRONIC FUNDS TRANSFER STATUTE OR REGULATIONS.

12. Arbitration; Actions; Jury Waiver. Except as permitted in Section 17 of these General Provisions, any controversy or claim arising out of or relating to any Treasury Management Service provided under this Agreement shall be settled by arbitration at a location in the State where BBVA maintains Company's accounts in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Unless specifically waived in writing, BBVA shall not be deemed to have waived its right to compel arbitration hereunder by institution legal action or taking any other action. Company submits to jurisdiction in the State where BBVA maintains Company's accounts for any action or cause of action arising out of this Agreement, agrees that venue shall be
in a county selected by BBVA. All parties hereto hereby waive all rights to a trial by jury in any action or proceeding arising out of or in connection with the Services or this Agreement.

13. Notices. Notices and communications from BBVA to Company regarding any Treasury Management Service may be in writing, postage prepaid by first class mail or hand-delivered, or may be delivered electronically by facsimile or e-mail or, if a Treasury Management Service is provided by access to an Internet website, then by the posting of a notice or communication on the website. Except as otherwise expressly permitted hereunder, notices and communications from Company to BBVA regarding any Treasury Management Service shall be in writing, postage prepaid by first class mail, or hand delivered. BBVA may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by BBVA; provided that approval of such procedures may be limited to particular notices or communications.


(a) BBVA may make changes to the terms and conditions contained in this Agreement at any time from time to time by notice thereof to Company. Such changes shall automatically become effective 10 days after the date of such notice unless rejected by the Company within such 10 day period. If the Company rejects any such change, in writing, then all Treasury Management Services shall automatically terminate. Notwithstanding the foregoing, BBVA may change any term or condition if BBVA, in its sole discretion, determines that the change is necessary (A) to avoid potential loss to BBVA or the Company, or (B) due to circumstances that substantially affect BBVA operations, and in either case the change shall be effective immediately upon delivery of notice to Company, or (ii) to maintain or restore the security of a funds transfer system or deposit account, in which case the change may be made without prior written notice to Company.

(b) Any changes or modifications requested by Company to the Treasury Management Services provided by BBVA are subject to the written approval of BBVA. If BBVA so elects, price changes may be implemented concurrently with the requested changes or modifications. The Company shall reimburse BBVA for all costs and expenses required to implement any such changes or modifications.

(c) The terms and conditions of this Agreement shall be deemed to be amended automatically, without notice to either party, to comply with any statute, regulation, or ruling of any government agency to whose jurisdiction BBVA is subject.

15. Eligible Accounts. BBVA, in its sole discretion, will designate the specific types of BBVA accounts that are eligible to be used in connection with any Service, and may change these designations from time to time. To the fullest extent permitted by law, BBVA reserves the right to refuse to provide a Service to any Company Account.

16. Joint Use of Services. If Company requests, authorizes, and/or allows one of Company’s affiliates or any other entity (such affiliate or other entity, a “Delegate Servicer”) to request, initiate, maintain or use any Service or on behalf of Company or to otherwise have access to any of Company’s Services, then Company agrees that any and all instructions, transactions, requests, documents, files, and/or information transmitted, received, or otherwise have access to any Service on behalf of such affiliate or other entity, (b) agrees that it shall be liable for obligations under this Agreement as if such instructions, transactions, requests, documents and/or files had been made on behalf of Company, and (c) agrees that any account of such affiliate or other entity maintained at BBVA and used in connection with the Services may be deemed a Company Account under this Agreement.

17. Third Party Processors. Upon Company’s submission of a request for Services on which Company has designated a third party to provide payment, processing or files transferring services related to a Company Account (“Processor”) and the approval of the Service Instructions for the applicable service, or upon use of service, with a Processor, the Company agrees:

(a) Company has separately authorized the Processor to initiate certain payment and processing electronically to and from a Company Account designated on the Service Instructions for the applicable service ("Designated Account").

(b) Company hereby authorizes BBVA: (i) to provide the Processor with all software, processor codes and instructional materials necessary for the Processor to initiate files or entries electronically to and from each Company Account electronically, (ii) to process each file or entry (including all related instructions or information) to or from a Designated Account that is initiated electronically using the processor codes in accordance with Company’s instructions (each, an “Authorized Transaction”).

(c) Each Authorized Transaction shall be deemed a file or transaction initiated by Company, and BBVA may rely upon each Authorized Transaction as a transaction properly authorized by Company without further verification. BBVA shall have no responsibility for erroneous data provided by the Processor. BBVA is authorized to process each Authorized Transaction until: (i) BBVA receives written notice from Company that Company has revoked its authorization for the Processor to initiate files or transactions or entries to and from any or all Company Accounts; and (ii) BBVA has had a reasonable opportunity to act upon Company’s notice.

(d) Company agrees to develop, implement and maintain effective policies and procedures to ensure that its Processors who may, at any time, initiate an entry or file on behalf of the Company are fully trained, aware of, and are following and electronic system or network rules, including the NACHA rules, and all state and federal laws and regulations.

(e) Company represents and warrants that its Processor will implement and maintain adequate information security measures to protect against unauthorized access to or use of as required for the applicable service.

(f) Company shall maintain a process for conducting due diligence and ongoing monitoring of its Processor to confirm that required security procedures and compliance standards are being met.

(g) Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (each, including BBVA, a “Provider”) shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) incurred by Company that arise from or relate to (i) Company’s authorization of Processor to initiate files or entries electronically to or from any Designated Account, (ii) the Processor’s use of any electronic system or network for the initiation of these files or entries, or (iii) any dispute of any nature whatsoever between the
Provider and the Company. The liability of BBVA or any other Provider for any Damages incurred by Company as a result of the acts or omissions of any Provider shall be limited to interest on the Damages at issue, which shall accrue at the "federal funds rate" for each day on which such act or omission remains uncorrected; provided, however, if BBVA or any other Provider is unable to recover any amount paid to an individual or entity that has no claim to such funds, such Provider shall be liable for Company's actual loss, not to exceed the unrecovered balance of the amount paid to the recipient that has no claim, plus interest rate described above. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages. Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages incurred by a Provider that arise from or relate to Company's authorization of Processor to initiate files or entries electronically to or from any Designated Account or the Processor's use of any electronic system or network for the initiation of these files or entries. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA with respect to the Processor's initiation of files or entries to or from any Designated Account, whether under this Agreement or any other agreement between BBVA and Company, shall apply equally to all other Providers.

(h) Notwithstanding any other provision regarding termination set forth in any third-party agreement, this Agreement or in any other agreement between BBVA and Company, BBVA may terminate at any time, effective immediately, Processor's ability to initiate files and entries. BBVA shall use reasonable efforts to promptly communicate notice of the termination to Company and the Processor, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. BBVA, at any time, may require Company or the Processor to execute additional documents or agreements in order for the Processor to continue to initiate files or entries electronically to or from any Company Account.

18. Miscellaneous.

(a) No Partnership. BBVA is an independent contractor and not Company’s agent, partner, or employee.

(b) Confidentiality. BBVA will use reasonable efforts to hold in confidence and not disclose to other than its affiliates, employees, agents and independent contractors all confidential information received by BBVA in the course of rendering its Treasury Management Services except to the extent disclosure is required by legal process or by any regulatory or supervisory agency. The Company acknowledges and agrees that BBVA may employ third-party servants, agents, independent contractors or other persons or entities to perform such service, and that BBVA will not be liable for disclosure by any third-party servants, agents, independent contractors or other persons or entities.

BBVA may advise potential users of its Services that Company has a relationship with BBVA and uses the Services provided under this Agreement.

Company agrees that all information regarding this Agreement, including pricing for Services shall be maintained by Company as confidential and shall not be disclosed to any third party other than Company’s Service Providers except as required by Applicable Law. If so required, Company shall immediately notify BBVA and, at BBVA’s request, cooperate with BBVA in pursuing a protective order.

(c) Information and Materials. Specifications, tapes, and programs generated by BBVA in connection with any Treasury Management Service are BBVA’s sole property unless otherwise provided in this Agreement. All data, reports, items or other materials which Company is required to furnish or perform, including computer tapes or data, will conform to BBVA computer and other specifications unless waived in writing by BBVA. BBVA is authorized, but not required, to electronically record telephone conversations between BBVA and Company’s agents or employees.

(d) Records. Absent manifest error, the records of BBVA shall be conclusive evidence with respect to the matters governed by this Agreement.

(e) Entire Agreement. The terms and conditions set forth in this Agreement constitute the entire agreement between the parties, supersede all prior agreements relating to the Treasury Management Services governed by this Agreement, and any other agreements (including but not limited to depository agreements) to the extent that they conflict with any terms herein, and except as provided in Section 14 of these General Provisions shall not be modified nor any provision waived by BBVA except by a written instrument duly executed by BBVA. Any waiver shall be effective only for the specific purposes, circumstances and duration provided in that waiver. Company acknowledges that, in entering into this Agreement, Company has not relied on any oral promises or on any representations made by BBVA other than those specifically set forth in this Agreement. These terms and conditions shall be deemed to be amended automatically, without notice to either party, to comply with any statute, regulation, or ruling of any government agency to whose jurisdiction BBVA is subject. All Treasury Management Services may be assigned by BBVA and may be assigned by Company upon BBVA’s prior written consent. These terms and conditions shall bind and inure to the benefit of the parties and their representatives, successors, and assigns.

(f) Force Majeure. Notwithstanding any other provision of this Agreement, neither BBVA nor any Service Provider acting on its behalf shall have any liability for any error, delay or failure to perform any obligation under this Agreement which is due, directly or indirectly, to any cause beyond the reasonable control of BBVA or its Service Provider, including, without limitation, fire, flood, natural catastrophe or other acts of God, pandemic, outbreak or escalation of hostilities, war, terrorism, riots or civil disorders, strikes or work stoppage, electrical, computer, mechanical, utility or telecommunications failures or fluctuations. Company agrees that no financial institution, payment system, communication carrier or other third party through which BBVA may transmit information or funds in performing its obligations under this Agreement will be deemed to be BBVA’s agent, and BBVA shall not be responsible for errors, delays, acts, or failures to act by such third party. All of BBVA’s obligations under this Agreement, whether express or implied, shall be suspended if at any time BBVA’s performance of these obligations is prevented by, or is in conflict with, any Applicable Law or Payment System Rules.

(g) Commitment to Lend. Nothing in this Agreement nor any course of dealing between the Company and BBVA constitutes a commitment or obligation to lend money or extend credit to the Company or to otherwise advance money to the Company for any reason, including payment
of any item contrary to BBVA’s published availability schedules.

(h) Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable for any reason, such holding shall not invalidate or render unenforceable any other provisions of this Agreement. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders unenforceable any provision hereof, and to the extent that such waiver is not permitted by applicable law, the parties intend that such provision be interpreted as modified to the minimum extent necessary to render such provision enforceable.

(i) Interpretation. The parties agree that the parties have carefully reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities be resolved against the drafting party shall not be employed in the interpretation of this agreement. The article and section headings contained in this agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

(j) Equitable Relief. Company acknowledges and agrees that, in the event of a breach or threatened breach of any provision in this Agreement involving Confidential Information or any infringement or misappropriation of any intellectual property rights with respect to any licensed products, money damages would be an inadequate remedy and BBVA shall be entitled to seek equitable relief from a court of law, including temporary or permanent injunctive relief.

(k) Terminology. Whenever terms such as “include” or “including” are used in this Agreement, they shall mean “include” or “including”, as the case may be, without limiting the generality of any description or word preceding such term. Whenever the expression “satisfactory to BBVA”, “in BBVA’s judgment” or similar words are used, or BBVA is granted the contractual right to choose between alternatives or to express its opinion, the satisfaction, judgment, choices and opinions are to be made in BBVA’s sole and absolute discretion. Whenever the terms “state” or “states” are used in this Agreement, it shall mean one or more of the 50 states that make up the United States of America, the District of Columbia, and/or one or more of the politically organized territories of the United States of America or, if the reference is to a Mexican political entity, the Federal Republic of Mexico and/or one or more of the states thereof.

(l) Applicable Law. This Agreement shall be governed by the laws of the state where we maintain your account or, if we maintain accounts for you in more than one state, the state where the first account with BBVA was opened and applicable federal laws and regulations in effect from time to time.

(m) Conflict of Terms. To the extent there is a conflict in the terms of the Agreement and any other agreement or contract between Company and BBVA, the terms of the Agreement will control.

(n) No Third Party Beneficiaries. Nothing contained in this Agreement, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their respective permitted successors and assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

(o) Compass Bank Name Change. Compass Bank has changed or intends to change its legal name to “BBVA USA” (the “Name Change”). Each of the parties hereto agrees that (a) prior to the effectiveness of the Name Change, any reference in this Agreement or any document related hereto to “BBVA USA” shall mean and refer to Compass Bank, (b) from and after the effectiveness of the Name Change, all references in this agreement or any document related hereto to “Compass Bank” or “BBVA Compass” (including on any signature hereto or thereto) shall mean and refer to BBVA USA, and (c) the Name Change shall not have any effect on Compass Bank/BBVA USA’s rights, interests or obligations under this agreement or any document related hereto.

19. Business Associate Agreement for Covered Entities. If Company is a “Covered Entity” as such term is defined in 45 C.F.R. § 160.103 ("Covered Entity") and, in providing Services to Covered Entity, BBVA is a “Business Associate” as such term is defined in 45 C.F.R. § 160.103 ("Business Associate") and may receive Protected Health Information, then the following provisions of this Business Associate Agreement ("BAA") also shall apply:

(a) Term

The term of this BAA shall commence on the Effective Date and shall continue for so long as Business Associate is providing the Services, unless earlier terminated pursuant to this BAA.

(b) Definitions Defined terms used but not capitalized herein shall have the meaning given to those terms in the Agreement of which this BAA is a part. As used in this BAA, the following terms shall have the following meanings:

(i) “Effective Date” shall mean the later of (i) the effective date of the oral or written agreements pursuant to which Business Associate is providing the Services, or (ii) such later date as may be prescribed in the Privacy Rules.

(ii) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R § 164.502 (g).

(iii) “Law” shall mean all applicable Federal and State Statutes and all relevant regulations thereunder.

(iv) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R part 160 and part 164, subparts A and E.

(v) “Protected Health Information” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(vi) “Secretary” shall mean the Secretary of the Department of Health and Human Services, or his designee.

(vii) “Services” shall mean the treasury management services and any related services that Business Associate provides to Covered Entity, and includes all such services presently provided as well as any such services provided in the future (including, without limitation, data aggregation services).

(viii) “Services Agreement” shall mean the one or more oral or written agreements, as may be modified from time to time, under which Business Associate provides Services to Covered Entity, including, but not limited to, the Agreement.

(c) Obligations and Activities of Business Associate
(i) Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this BAA or by Law.

(ii) Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BAA.

(iii) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information in material breach of this BAA within a reasonable time after Business Associate has actual knowledge of such use or disclosure.

(iv) Business Associate agrees to include in any written agreement with any agent, including a subcontractor, to whom it provides Protected Health Information, a requirement that such agent agrees to restrictions and conditions with respect to such information that are at least as restrictive as those that apply through this BAA to Business Associate.

(v) Upon reasonable notice, Business Associate agrees to make Protected Health Information and books and records relating to the use and disclosure of Protected Health Information available to the Secretary at Covered Entity’s expense in a reasonable time and manner, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

(vi) Upon reasonable notice, Business Associate agrees to make available to Covered Entity, in a reasonable manner and at Covered Entity’s expense, any Protected Health Information in Business Associates possession for the purpose of allowing Covered Entity to make any necessary amendments in accordance with 45 C.F.R § 164.526. Notwithstanding the foregoing, this BAA imposes no obligation on Business Associates to maintain Protected Health Information for Covered Entity’s benefit or purposes.

(vii) Business Associate agrees to notify Covered Entity without unreasonable delay in writing of the occurrence of a Breach, as that term is defined at 45 C.F.R. § 164.402, of which Business Associate becomes aware.

(viii) Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this BAA.

(ix) To the extent Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

(d) Permitted Uses and Disclosures by Business Associate

(i) Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information:

(A) as is reasonably necessary to perform the Services for, or on behalf of, Covered Entity;

(B) for the proper management and administration of the Business Associate;

(C) as may otherwise be required by Law;

(D) to provide data aggregation services relating to the healthcare operations of the Covered Party at the request and expense of the Covered Party; and

(E) except as provided otherwise in this BAA, as may be permitted by Law, provided that Business Associate obtains reasonable assurances from any person to whom the information is disclosed that (A) such information will remain confidential and used or further disclosed only as required by Law or for the purpose for which it was disclosed to the person, and (B) that the person will notify Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

(ii) Business Associate shall refer to Covered Entity all requests by Individuals for information about or accounting of disclosures of Protected Health Information in accordance with 45 C.F.R § 164.528.

(iii) Business Associate agrees to document disclosures of Protected Health Information, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, to the extent required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R § 164.528.

(iv) (A) Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Section 4(c) of this BAA, to the extent required to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R § 164.528.

(B) Covered Entity shall provide to Business Associate, within five (5) business days of the effective date of this BAA, a written explanation of Covered Entity’s requirements under this Section 4(d) in sufficient detail to enable Business Associate reasonably to comply with such requirements.

(C) Covered Entity agrees to respond promptly to requests from Business Associate for clarification of such requirements, and Business Associate may rely on such responses.

(D) The parties agree to work together in good faith to resolve any disagreement over the requirements of 45 C.F.R § 164.528.

(v) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R § 164.502(j)(1).

(e) Obligations of Covered Entity

(i) Covered Entity agrees not to use or disclose Protected Health Information other than as permitted or required by this BAA or by applicable Law.

(ii) Covered Entity agrees to use reasonable safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this BAA.
(iii) Covered Entity shall notify Business Associate of any changes in Company’s notice of privacy practices that may affect Business Associates use or disclosure of Protected Health Information. Business Associate shall have a reasonable period of time to act on such notices.

(iv) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associates permitted or required uses and disclosures thereof. Business Associate shall have a reasonable period of time of to act on such notice.

(v) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information prior to acceptance of such restriction by Covered Entity in accordance with 45 C.F.R § 164.522 so that Business Associate can determine whether it is infeasible to comply with such restriction. Once agreed to, Business Associate shall have a reasonable period of time of to act on such notice.

(vi) Covered Entity represents and warrants to Business Associate that Covered Entity will not disclose any Protected Health Information to Business Associate unless Covered Entity has obtained any consents and authorizations that may be required by Law or otherwise necessary for such disclosure.

(vii) Covered Entity shall have access to Business Associates information pursuant to the terms and conditions of this BAA. The information shall remain confidential and proprietary information. The information shall not be disclosed to any third person, business, or corporation, including any person who serves as Covered Entity’s agent, except as otherwise agreed to in writing by Business Associate. Nothing in this BAA shall be construed as granting Covered Entity any rights by license or any other intellectual property rights to the information.

(f) Permissible Requests by Covered Entity. Covered Entity warrants that it shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable Law if done by Covered Entity.

(g) Term and Termination.

(i) This BAA shall be effective as of the Effective Date and shall continue for as long as Protected Health Information is being exchanged by Covered Entity and Business Associate.

(ii) Either party may terminate this BAA for a material breach by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof.

(iii) It is not feasible for Business Associate to return or destroy Protected Health Information upon termination of the Services Agreement. Business Associate will maintain the protection required under this BAA of that Protected Health Information for the period of time required under applicable Law, or in accordance with Business Associate’s internal record retention schedule as in effect from time to time, whichever is longer, at which time Business Association shall destroy the Protected Health Information in accordance with procedures accepted in the financial services industry for destruction of financial records.

(h) General Provisions

(i) A specific waiver by either party of any provision of this BAA on any particular occasion and for any reason will not be deemed to be a basis for any automatic waiver of the same or any other provision in the future.

(ii) Any approvals required by either party to this BAA shall not be unreasonably withheld.

(iii) It is mutually agreed that neither party shall be responsible for damage caused by delay or failure to perform hereunder, when such delay or failure is due to government regulation, war, terrorism, Act of God, fire, flood, disaster, civil disorder, strike, or labor disruption or other cause that is beyond the control of the party that has failed to perform or that makes it illegal or impossible to perform this BAA or any of its terms.

(iv) All modifications to this BAA shall be in writing and signed by both parties.

(v) This BAA is intended to bind only the parties hereto and their corporate successors, and may not be otherwise assigned by either party without the express written consent of the other.

This BAA constitutes the entire agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on the same.

(vi) The law of the State of Alabama shall govern this BAA.

(vii) Neither party shall be responsible for consequential, incidental or special damages even if advised of the possibility of the same.

(viii) The parties agree that there shall be no incidental or intended third-party beneficiaries under this BAA, nor shall any other person or entity have rights arising from the same.

AUTOMATED CLEARING HOUSE AUTHORIZATION SERVICES

Upon Company’s submission of a request for Automated Clearing House Authorization Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Authorization of ACH Debit Items. BBVA Automated Clearing House Authorization Services allow Company to (a) authorize the payment of certain pre-defined ACH debit items (“ACH Debit Items”) presented for payment against the Company’s accounts maintained at BBVA (the “Accounts”) by an Originating Depository Financial Institution (“ODFI”) for credit to the account of a third-party (the “Debit Originator”), or (b) restrict the payment of any and all ACH Debit Items presented for payment against the Accounts, or (c) restrict the payment of all ACH Debit Items initiated by one or more Debit Originators (together with the services described in Section 2 hereof, collectively the “ACH Authorization Services”). If provided in the Service Instructions Company may, (a) designate to BBVA those ACH Debit Items that Company authorizes BBVA to pay upon presentation for payment against the Accounts (the “Payable Items,” or, singularly, a “Payable Item”), or (b) authorize and direct BBVA to return any and all ACH Debit Items presented for payment against the Accounts (the “Restricted Debit Accounts”), or (c) authorize and direct BBVA to return all ACH Debit Items initiated by one or more Debit Originators designated by Company on the
Service Instructions (the “Restricted Debit Originators”). With respect to Payable Items, Restricted Debit Accounts, and Restricted Debit Originators, the Company shall provide the information required by BBVA for the Service Instructions. By designating any Payable Items on the Service Instructions, Company authorizes BBVA to pay all Payable Items presented for payment against the Accounts. By designating any Restricted Debit Accounts on the Service Instructions, Company authorizes BBVA to return unpaid all ACH Debit Items presented for payment against the Restricted Debit Accounts. By designating any Restricted Debit Originators on the Service Instructions, Company authorizes BBVA to return unpaid all ACH Debit Items presented for payment against the Accounts that are initiated by any Restricted Debit Originators. Company agrees that an item is a Payable Item if the information transmitted by an ODFI to BBVA in connection with the item is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to that item. Company agrees that an Account is a Restricted Debit Account if the information identifying the Restricted Debit Account transmitted by an ODFI to BBVA is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to the Restricted Debit Accounts. Company agrees that an ACH Debit Item is deemed to be initiated by a Restricted Debit Originator if the information identifying the Debit Originator of the item transmitted by an ODFI to BBVA in connection with the item is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to the Restricted Debit Originators. If Company designates to BBVA any Payable Items that are presented against Restricted Debit Accounts or initiated by Restricted Debit Originators, BBVA will maintain in the BBVA ACH Authorization Services system a database (the “ACH Authorization Database”) which will contain the information received from the Company regarding Payable Items, Restricted Debit Accounts and Restricted Debit Originators. In the event Company wishes to add Payable Items, Restricted Debit Accounts, or Restricted Debit Originators to the ACH Authorization Database from time to time, Company will provide to BBVA complete and accurate input to the ACH Authorization Database by providing the information required by BBVA to accurately identify additional (a) Payable Items which are authorized by Company, (b) Restricted Debit Accounts, or (c) Restricted Debit Originators. BBVA shall be fully protected in acting in good faith without investigation on any request, direction or instruction purporting to be from an employee of Company (including a request to add or remove Payable Items, Restricted Debit Accounts or Restricted Debit Originators). Upon the presentation of a Payable Item against the Accounts by an ODFI, BBVA will pay the Payable Item so long as collected funds are sufficient to pay the Payable Item and are maintained in the Accounts at the time that the Payable Item is presented for payment. Upon the presentation of an ACH Debit Item by an ODFI (a) against a Restricted Debit Account, or (b) that was initiated by a Restricted Debit Originator, BBVA will return that ACH Debit Item. ACH Debit Items presented for payment against the Accounts which have not been designated by the Company as Payable Items, or which are Payable Items for which insufficient collected funds exist to pay the item, or which are presented by Restricted Debit Originators, the Company agrees that BBVA shall have no obligation to review or investigate the contents of any ACH Debit Item presented for payment against the Accounts, whether or not the item is a Payable Item. Upon its receipt of (a) a form from the Company requesting that Company add information to the ACH Authorization Database with respect to an additional Payable Item, Restricted Debit Account, or Restricted Debit Originator, or (b) written notice from the Company of a request that BBVA delete or modify information required by BBVA from the ACH Authorization Database, as the case may be, within a reasonable time of its receipt of the request. Company is solely responsible for the integrity and accuracy of the information provided to BBVA for input to the ACH Authorization Database, whether that information is provided at the inception of ACH Authorization Services or at a later date. If Company provides inaccurate information regarding ACH Debit Items, Restricted Debit Accounts or the identity of Restricted Debit Originators, Company acknowledges that Payable Items may be returned, and unauthorized ACH Debit Items, ACH Debit Items presented to a Restricted Debit Account, or ACH Debit Items initiated by a Restricted Debit Originator may be paid, and the Company shall bear any and all responsibility for any losses or other consequences that may occur in either event. Company waives any claim of wrongful dishonor arising from the return of any Payable Item which is returned due to (a) incorrect or incomplete information given by Company to BBVA regarding the Payable Item, (b) the fact that information for the Payable Item was received by BBVA before BBVA had an adequate time to add the information to the ACH Authorization Database, (c) the lack of sufficient funds in the Accounts to pay the Payable Item. Further, Company waives any claim of erroneous payment arising from the payment of any otherwise unauthorized ACH Debit Item, any ACH Debit Item presented to a Restricted Debit Account, or any ACH Debit Item initiated by a Restricted Debit Originator which is paid due to (a) incorrect or incomplete information given by Company to BBVA regarding the item, the Restricted Debit Account or the Restricted Debit Originator, as the case may be, or (b) the fact that information for the ACH Debit Item, Restricted Debit Account, or Restricted Originator, as the case may be, was received by BBVA before BBVA had an adequate time to add the information to the ACH Authorization Database. Company hereby authorizes BBVA and the ACH Debit Originator to pay all Payable Items for payment against the Accounts (a) to pay fees payable to BBVA that are associated with the Accounts, and (b) in connection with transfers of funds associated with other services provided Company by BBVA, and Company agrees that all of these items are Payable Items.

2. Authorization of ACH Credit Items. In addition to services provided in connection with ACH Debit Items, ACH Authorization Services allows Company to (a) authorize the receipt and posting of certain predefined ACH credit items (“ACH Credit Items”) presented by an ODFI for credit to the Accounts from the account of a third-party (the “Credit Originator”), or (b) restrict the receipt of any and all ACH Credit Items presented for credit to the Accounts, or (c) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (d) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (e) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (f) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (g) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (h) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (i) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (j) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (k) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (l) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (m) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (n) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (o) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (p) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (q) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (r) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (s) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (t) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (u) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (v) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (w) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (x) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (y) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”), or (z) authorize and direct BBVA to return all ACH Credit Items presented in connection with the Accounts (“Restricted Credit Accounts”).
Accounts that are initiated by any Restricted Credit Originators. Company agrees that an item is a Credit Posting Item if the information transmitted by an ODFI to BBVA is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to that item. Company agrees that an Account is a Restricted Credit Account if the information identifying the Restricted Credit Account transmitted by an ODFI to BBVA is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to the Restricted Credit Accounts. Company agrees that an ACH Credit Item is deemed to be initiated by a Restricted Credit Originator if the information identifying the Credit Originator of the item transmitted by an ODFI to BBVA in connection with the item is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to the Restricted Credit Originators. If Company designates to BBVA any Credit Posting Items, Restricted Credit Accounts, or Restricted Credit Originators, BBVA will maintain in the ACH Authorization Database the information received from the Company regarding Credit Posting Items, Restricted Credit Accounts, and Restricted Credit Originators. In the event Company wishes to add Credit Posting Items, Restricted Credit Accounts, or Restricted Credit Originators to the ACH Authorization Database from time to time, Company will provide to BBVA complete and accurate input to the ACH Authorization Database by providing the information required by BBVA to accurately identify additional (a) Credit Posting Items which are authorized by Company, (b) Restricted Credit Accounts, or (c) Restricted Credit Originators. BBVA shall be fully protected in acting in good faith without investigation on any request, direction or instruction purporting to be from an employee of Company (including a request to add or remove Credit Posting Items, Restricted Credit Accounts or Restricted Credit Originators). Upon the presentation of a Credit Posting Item for credit to the Accounts by an ODFI, BBVA will accept the Credit Posting Item and post the amount of the item as a credit to the Accounts. Upon the presentation of an ACH Credit Item (a) for credit to a Restricted Credit Account, or (b) that was initiated by a Restricted Credit Originator, BBVA will return that ACH Credit Item.

ACH Credit Items presented for credit to the Accounts which have not been designated by the Company as Credit Posting Items, or which are presented for credit to a Restricted Credit Account, or which are initiated by Restricted Credit Originators will be returned to the presenting ODFI. Company acknowledges and agrees that Credit Posting Items that are accepted, or ACH Credit Items that are returned, are accepted or returned, as the case may be, automatically and systematically without review or intervention by any BBVA employee or agent. Company agrees that BBVA shall have no obligation to review or investigate the contents of any ACH Credit Item presented for payment against the Accounts, whether or not the item is a Credit Posting Item. Upon its receipt of (a) a form from the Company requesting that Company add information to the ACH Authorization Database with respect to an additional Credit Posting Item, Restricted Credit Account, or Restricted Credit Originator, or (b) written notice from the Company of a request that BBVA delete from the ACH Authorization Database information regarding any Credit Posting Item, Restricted Credit Account or Restricted Credit Originator, BBVA will use its best efforts to add or delete that information to or from the ACH Authorization Database, as the case may be, within a reasonable time of its receipt of the request. Company is solely responsible for the integrity and accuracy of the information provided to BBVA for input to the ACH Authorization Database, whether that information is provided at the inception of ACH Authorization Services or at a later date. If Company provides inaccurate information regarding ACH Credit Items, Restricted Credit Accounts, or the identity of Restricted Credit Originators, Company acknowledges that Credit Posting Items may be returned, and unauthorized ACH Credit Items, or ACH Credit Items presented to a Restricted Credit Account, or ACH Credit Items initiated by a Restricted Credit Originator may be accepted, and the Company shall bear any and all responsibility for any losses or other consequences that may occur in either event. Company waives any claim of wrongful or erroneous return arising from the return of any Credit Posting Item which is returned due to (a) incorrect or incomplete information given by Company to BBVA regarding the Credit Posting Item, or (b) the fact that information for the Credit Posting Item was received by BBVA before BBVA had an adequate time to add the information to the ACH Authorization Database. Further, Company waives any claim of erroneous acceptance arising from the acceptance by BBVA of any otherwise unauthorized ACH Credit Item, or any ACH Credit Item presented to a Restricted Credit Account, or any ACH Credit Item initiated by a Restricted Credit Originator which is accepted and posted to the Accounts due to (a) incorrect or incomplete information given by Company to BBVA regarding the item, the Restricted Credit Account or the Restricted Credit Originator, as the case may be, or (b) the fact that information for the item, Restricted Credit Account, or Restricted Credit Originator, as the case may be, was received by BBVA before BBVA had an adequate time to add the information to the ACH Authorization Database. Company hereby releases BBVA to the fullest extent permitted by law from liability for any Credit Posting Items for credit to the Accounts in connection with transfers of funds associated with other services provided Company by BBVA, and Company agrees that all of these items are Credit Posting Items.

3. Liability. Company hereby releases BBVA from any claim, demand, loss, liability, or expense arising under, out of, or in connection with the ACH Authorization Services or BBVA’s performance under these provisions for ACH Authorization Services, provided such claim, demand, loss, liability or expense has not directly resulted from BBVA’s gross negligence or willful misconduct. In no event shall BBVA be liable for any consequential, special, punitive or indirect loss or damage which Company may incur or suffer in connection with its use of the ACH Authorization Services.

4. Additional Limitation; Indemnity. Notwithstanding anything contained herein to the contrary, or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) that Company asserts or incurs as a result of any Damages asserted by Company arising as a result of the acts or omissions of any Provider that shall constitute gross negligence or willful misconduct shall be limited to interest on the funds at issue at the “federal funds rate” paid by BBVA at the close of business on each day such act or omission remains uncorrected; provided, however, if BBVA or such other Provider is unable to recover funds from a person or entity who or which receives such funds as a result of such Provider’s acts or omissions that shall constitute gross negligence or willful misconduct and who has no claim to such funds, such Provider shall be liable for Company’s actual loss, not to exceed the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest at the rate described above.

Notwithstanding any other provision herein, neither BBVA nor any other Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or such other Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.
Company shall indemnify, protect and hold BBVA and the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to the ACH Authorization Services. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA, whether hereunder or under any other agreement between BBVA and Company applicable to the ACH Authorization Services shall apply equally to all other Providers with respect to use of, or any transaction initiated through or by use of, the ACH Authorization Services. The obligations of Company to indemnify the Providers hereunder shall survive (a) the termination of the ACH Authorization Services by either Company or BBVA, and (b) the passage of any and all periods of limitation applicable to any and all claims made against the Providers arising from or in connection with the ACH Authorization Services or BBVA’s performance hereunder or the performance of any of the Providers with respect to the ACH Authorization Services.

5. DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ACH AUTHORIZATION SERVICES ARE PROVIDED FOR COMPANY’S BENEFIT “AS IS” AND “WHERE IS”, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE ACH AUTHORIZATION SERVICES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BBVA DOES NOT WARRANT THAT THE OPERATION OF THE ACH AUTHORIZATION SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM ANY OTHER LIMITATIONS. BBVA DOES NOT MAKE ANY REPRESENTATION REGARDING THE RESULTS OF THE USE OF THE ACH AUTHORIZATION SERVICES IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE.

6. Company’s Representations and Warranties. Company represents and warrants that (a) each ACH Debit Item for which Company authorizes payment against the Accounts, and (b) each ACH Credit Item for which Company authorizes credit to the Accounts fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all Payable Items and all Credit Posting Items are for commercial purposes, and not for personal or household purposes.

7. Termination. BBVA may terminate the ACH Authorization Services with respect to Company for any reason by giving Company prior written notice of termination at least thirty (30) days prior to the date on which BBVA intends to terminate the ACH Authorization Services; provided, however, that if BBVA believes, in its discretion, (a) that a Payable Item or a Credit Posting Item, as the case may be, has been returned due to incorrect or incomplete information given by Company to BBVA regarding the Payable Item or Credit Posting Item, (b) an otherwise unauthorized ACH Debit Item has been paid or an otherwise unauthorized ACH Credit Item has been accepted due to incorrect or incomplete information given by Company to BBVA regarding the Item, (c) BBVA is unable to pay a Payable Item due to the lack of sufficient funds in the Accounts to pay the Payable Item, or (d) there exists facts or circumstances that support the reasonable conclusion that (i) BBVA or Company is or may be subject to losses for fraud, other illegal activity, mistake, negligence, or the communication of erroneous information arising from the actions of Company or any third party, and including Company’s employees or agents, (ii) Company may be unable in any respect to comply with these provisions for ACH Authorization Services, BBVA may terminate the ACH Authorization Services with respect to Company immediately and without notice. In the event BBVA terminates the ACH Authorization Services with respect to Company immediately in accordance with the terms of this Section, BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. BBVA may require Company to execute additional documents or agreements to continue its use of the ACH Authorization Services. The terms and provisions of Sections 3, 4, and 5 hereof shall survive the termination of the ACH Authorization Services.

8. ACH Rules. Company acknowledges that with respect to the ACH Authorization Services, under the current Operating Rules of the National Automated Clearing House Association (the “NACHA Rules”), BBVA is a Receiving Depository Financial Institution. Company further acknowledges that the NACHA Rules apply to all ACH Debit Items and ACH Credit Items subject to these ACH Authorization Services provisions, including Payable Items and Credit Posting Items.

9. No Third Party Beneficiaries. Nothing contained herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their respective permitted successors and assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement. The Services described in this Section are not intended to and shall not affect the authorization of any ACH Debit Item or ACH Credit Item as between Company and any Debit Originator or Credit Originator.

AUTOMATED CLEARING HOUSE PREPAID SERVICES

Upon Company’s submission of a request for Automated Clearing House Prepaid Services (“ACH Prepaid Services”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Definitions. For purposes of the services described in this section, the following terms shall have the designated meanings:

   (a) “Account” means the Company’s account, as well as any master or related accounts automatically linked to that account, that Company has designated as the account from which BBVA shall debit for Entries to be prepaid under this Agreement.

   (b) “Business Day” means each day that the Federal Reserve Bank’s Automated Clearing House (“ACH”) systems for transmitting Entries are open for processing and BBVA’s offices are open for business.

   (c) “Collected Funds” means (a) funds in the Account for which BBVA either has received final settlement or has posted a temporary credit or debit in anticipation of final settlement, (b) funds available to Company from a line of credit that may be drawn upon and swept into the Account on an automated basis, and (c) funds available to Company from an investment account that may be drawn upon and swept into the Account on an automated basis. Funds otherwise available from a line of credit or investment account that are or may be accessed on a manual sweep basis are not Collected Funds for the purposes of this section.
(d) "Corrected Entry" means an Entry submitted to correct an Incorrectly Formatted Entry.
(e) "Entry" or "Entries" means an ACH entry file, including any batches contained within a file, submitted by Company to BBVA for processing of the services under this section.
(f) "Entry Window" means those specific times in each Business Day during which BBVA may collect and process Entries via its ACH systems.
(g) "Fed" means the Federal Reserve Bank, to which all Entries for recipients to be paid through other financial institutions must be sent.
(h) "Incorrectly Formatted Entry" means an Entry for which the ACH file, as determined by BBVA in its sole discretion, fails to conform to the requirements of any and all applicable NACHA Rules.
(i) "In-Process Entries" means the aggregate dollar amount of all credit or debit Entries initiated by Company and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.
(j) "Intended Transmission Date" means the last date on which BBVA may transmit an Entry to the Fed in order for the Entry to settle with the recipient on the Requested Settlement Date.
(k) "Overlimit Prepaid Entry" means an Entry that would cause the aggregate amount of all Entries submitted for services under this section to exceed the Prepaid Entry Settlement Limit.
(l) "Prepaid Entry Settlement Limit" means the maximum aggregate amount of all In-Process Entries initiated by Company but not yet settled that BBVA will permit to be outstanding for services under this section at any given time. BBVA has separately communicated the Prepaid Entry Settlement Limit to Company in writing, and may increase or decrease this Limit by written notice to Company at any time.
(m) "Requested Settlement Date" means the date on which Company initially requests an Entry to settle with its recipient.

2. Prepayment for Entries. Company authorizes BBVA, immediately upon BBVA’s receipt of any Entry, to debit the Account for the Collected Funds required by that Entry. Company understands that, because of the automated systems used to provide ACH services, BBVA automatically will debit the Account for that Entry, even if the Entry subsequently will be suspended, as described in Section 5 regarding Incorrectly Formatted Entries, Section 6 regarding Entries that contain an ACH debit file, batch or item, or Section 7 regarding Overlimit Prepaid Entries and In-Process Entries. Company agrees that, whenever Company submits an Entry to BBVA for processing and transmission, Company must have Collected Funds in the Account in an amount equal to or greater than the Entry, or, if more than one Entry is submitted, the aggregate amount of the submitted Entries. Company understands that BBVA may debit the Account either by actually deducting funds from the Account or by placing a hold on funds in the Account. In either case, once BBVA has debited the Account for the funds required by the Entry, those funds will not be available to Company for any other purpose, including the payment or settlement of other items from that Account.

3. Timing for Prepayment of Entries. Company acknowledges that BBVA settles on a BBVA account items and also transmits Entries to the Fed only during certain Entry Windows. Company agrees that, regardless of Company’s requests or instructions to BBVA, BBVA has no obligation to originate any Entry on a particular day unless there are Collected Funds in the Account for that Entry before the last applicable window based on the effective date for that entry and the specified RDFI. Company agrees that, in the event the Collected Funds required for any Entry do not become available in the Account until after the last applicable window based on the effective date for that entry on the Intended Transmission Date, BBVA is authorized to debit the Account for the Collected Funds required for that Entry on the Intended Transmission Date, even though BBVA may not transmit the Entry until an Entry Window on the next Business Day.

Company acknowledges and agrees that, if the Collected Funds required for any Entry do not become available in the Account until after the last applicable window based on the effective date for that entry on the Intended Transmission Date, then the Entry may not settle with its intended recipient until a date after the Requested Settlement Date.

4. Insufficient Collected Funds. If Company does not have sufficient Collected Funds in the Account for any Entry, as required by Section 2 above, BBVA has no obligation to process or to transmit that Entry, and may suspend processing of that Entry. If Company has submitted more than one Entry, BBVA may process and transmit only those Entries for which Company has Collected Funds, as provided in Section 9. If BBVA receives an Entry for which there are insufficient Collected Funds in the Account, BBVA may attempt to notify Company, but Company agrees that BBVA shall have no liability to Company for failure to notify Company regarding the insufficiency of Collected Funds. BBVA will maintain the suspended Entry in BBVA’s ACH system until the Requested Settlement Date, checking at each Entry Window to see if sufficient Collected Funds have become available in the Account for that Entry. If sufficient Collected Funds are not available in the Account for the suspended Entry by 9 PM Central Time on the Requested Settlement Date, that Entry automatically will be deleted from BBVA’s ACH system.

Company acknowledges and agrees that, if Company submits an Entry for which there are insufficient Collected Funds in the Account at the time of submission, then

(a) The Entry may be deleted from BBVA’s ACH system and never settle with its intended recipient, or
(b) Even if Collected Funds should become available in the Account at a later time, the Entry may not settle with its intended recipient until a date after the Requested Settlement Date.

5. Incorrectly Formatted Entries. Company agrees to submit each Entry to BBVA via an ACH file that conforms to the requirements of any and all applicable NACHA Rules. Company agrees that BBVA has no obligation to process or to transmit any Incorrectly Formatted Entry and BBVA may suspend that Entry, even if Company has Collected Funds available in the Account for that Entry and BBVA already has debited the Account for those Funds. If BBVA receives an Incorrectly Formatted Entry, BBVA may attempt to notify Company regarding the suspension of the Incorrectly Formatted Entry’s formatting deficiencies, but Company agrees that BBVA shall have no duty to correct the formatting and no liability to Company for failure to provide this notice.

Company understands that any hold on Collected Funds covered by an Incorrectly Formatted Entry will remain until earlier of: (i) the Entry Window occurring after Company has submitted to BBVA an authorization to delete the Incorrectly Formatted Entry, and after BBVA has had a reasonable period of time to act on that authorization; or (ii) BBVA’s completion of nightly system processing on the Requested Settlement Date.

Company agrees that, in order to correct an Incorrectly Formatted Entry, Company must: (A) submit authorization to
delete the Incorrectly Formatted Entry to BBVA, which shall cause BBVA to initiate in a subsequent Entry Window a credit to the Account for the amount of Collected Funds previously debited for the Incorrectly Formatted Entry; and (B) submit a Corrected Entry to BBVA. Company acknowledges that, if BBVA receives the Corrected Entry before receiving the authorization to delete the Incorrectly Formatted Entry or if BBVA receives both the Corrected Entry and the authorization to delete during the same Entry Window, the Corrected Entry will be processed first, and the Collected Funds required for the Corrected Entry will be debited from the Account before the amount of Collected Funds previously debited for the Incorrectly Formatted Entry can be credited the Account.

BBVA makes no representation or warranty with respect to the amount of time that may pass before a credit posts to Company’s Account for the Incorrectly Formatted Entry. Company acknowledges that, depending on when BBVA receives the authorization to delete the Incorrectly Formatted Entry, the credit to the Account for the Incorrectly Formatted Entry may not be posted until the next Business Day following Company’s submission of that authorization.

Company acknowledges and agrees that, because of the automated systems used to provide ACH services:

(a) Unless Company has the Collected Funds required for both an Incorrectly Formatted Entry and a Corrected Entry in its Account at the time Company submits the Corrected Entry, the Corrected Entry may not be transmitted until the credit for the Collected Funds debited in connection with the Incorrectly Formatted Entry is posted to the Account; and

(b) If Company submits an Incorrectly Formatted Entry, then: (i) that Entry may be deleted from BBVA’s ACH system and never settle with its intended recipient, or (ii) even if Company corrects sends a Corrected Entry, that Entry may not settle with its intended recipient until a date after the original Requested Settlement Date.

6. Entries for ACH Prepaid Services May Not Contain Debit Files, Batches or Items. Company agrees to include only ACH credit files, batches and items within an Entry submitted for ACH Prepaid Services. Company agrees that, if any prepaid Entry submitted for ACH Prepaid Services contains an ACH debit file, batch or item, BBVA has no obligation to process or to transmit that Entry and BBVA may suspend that Entry, even if Company has Collected Funds available in the Account for that Entry and BBVA already has debited those Collected Funds from the Account. Company understands that, if Company wishes to submit ACH debit items, Company first must obtain BBVA’s permission and the submissions of those debit items will be governed by the ACH Authorization Services provisions of this Agreement, including applicable account set-up forms, service instruction forms and user guides.

If BBVA receives an Entry that contains an ACH debit file, batch or item, BBVA may attempt to notify Company regarding the suspension of that Entry, but Company agrees that BBVA shall have no duty to correct the Entry by deleting the ACH debit file, batch or item, and no liability to Company for failure to provide this notice.

Company understands that any hold on Collected Funds covered by an Entry that contains an ACH debit file, batch or item will remain until earlier of: (i) the Entry Window occurring after Company has submitted to BBVA an authorization to delete the Incorrectly Formatted Entry, and after BBVA has had a reasonable period of time to act on that authorization; or (ii) BBVA’s completion of nightly system processing on the Requested Settlement Date.

Company acknowledges that, if Company submits another Entry to replace an Entry that contains an ACH debit file, batch or item, and BBVA receives the replacement Entry before receiving Company’s authorization to delete the original Entry or BBVA receives both the replacement Entry and the authorization to delete during the same Entry Window, the replacement Entry will be processed first, and the Collected Funds required for the replacement Entry will be debited from the Account before the amount of Collected Funds debited for the original Entry can be credited to the Account.

BBVA makes no representation or warranty with respect to the amount of time that may pass before a credit posts to Company’s Account upon the deletion of any Entry. Company acknowledges that, depending on when BBVA receives the authorization to delete an Entry, the credit to the Account for the deleted Entry may not be posted until the next Business Day following Company’s submission of that authorization.

Company acknowledges and agrees that, because of the automated systems used to provide ACH services, if Company submits any Entry that contains an ACH debit file, batch or item, then:

(a) The Entry may be deleted from BBVA’s ACH system and never settle with its intended recipient; and

(b) The Entry may not settle with its intended recipient until a date after the original Requested Settlement Date.

7. Overlimit Prepaid Entries; Entries in Excess of Prepaid Entry Settlement Limit. Company agrees that BBVA has no obligation to process or to transmit an Overlimit Prepaid Entry. BBVA will treat each submission of an Overlimit Prepaid Entry as Company’s request for approval of an increased Prepaid Entry Settlement Limit, which BBVA may grant or deny at BBVA’s sole discretion. If Company submits an Overlimit Prepaid Entry, BBVA may suspend the Overlimit Prepaid Entry and any or all In-Process Entries, even if Company has Collected Funds available in the Account for the Overlimit Prepaid Entry and the In-Process Entries, and BBVA already has debited Collected Funds from the Account for any or all of those Entries. For each Entry suspended because Company’s In-Process Entries exceed the Prepaid Entry Settlement Limit, BBVA will evaluate Company’s request for an increased Prepaid Entry Settlement Limit and notify Company as promptly as practicable, but in no event later than two (2) business days after suspending the Entry, whether BBVA will: (i) process and transmit that Entry; or (ii) reject that Entry and credit the Account for the amount of that Entry.

Company acknowledges and agrees that, because of the automated systems used to provide ACH services, if Company submits any Overlimit Prepaid Entry, then:

(a) The Overlimit Prepaid Entry and any related In-Process Entry may be suspended and BBVA will determine whether to approve the processing of all of those Entries; and

(b) Even if BBVA determines to approve the processing of Entries in excess of Company’s Prepaid Entry Settlement Limit, the Overlimit Prepaid Entry and related In-Process Entries may not settle on the Requested Settlement Date unless Company has allowed an additional two (2) business days for processing those Entries.

8. Reversing Erroneous Files, Batches or Items. If Company sends an erroneous file, batch or item, Company, must contact BBVA to request BBVA to initiate a reversal of that file, batch or item.

9. Multiple Entries. If Company submits multiple Entries during a single Entry Window, BBVA may process those Entries in any order as determined by BBVA in its sole discretion. If there are insufficient Collected Funds in the Account to pay any Entry,
BBVA may suspend that Entry, as provided in Section 4 above, and process any remaining Entries. If Company submits one or more additional Entries while a previous Entry remains suspended, BBVA will process the additional Entries, and then will re-process each suspended Entry to determine whether there are sufficient Collected Funds in the Account for that Entry.

10. **Scope of ACH Prepaid Services.** Company acknowledges that the ACH Prepaid Services provisions of this Agreement covers only ACH credit entries, and that the ACH Prepaid Services provisions of this Agreement do not apply to the processing and transmission of ACH debit files, batches or items, which are governed by the ACH Authorization Services provisions of this Agreement, including applicable account setup forms, service instruction forms and used guides.

11. **Release; Indemnity.** Notwithstanding any other provision of this Agreement, or any other agreement between BBVA and Company, Company hereby releases BBVA, its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) from and agrees to indemnify the Providers for and against any liabilities, losses, damages, claims, judgments, costs or expenses incurred by or asserted against either the Providers or Company that arise from or are related to Company’s submission of: (a) any Entry for which there are insufficient Collected Funds at the time of submission; (b) any Incorrectly Formatted Entry, (c) any prepaid Entry submitted under this Agreement that contains an ACH debit file, batch or item, or (d) any Entry that later is suspended for any other reason, as provided in the ACH Authorization Services provisions of this Agreement.

12. **Additional Representations; Warranties and Covenants.** Company represents and warrants that each electronic communication Company submits to BBVA, including without limitation each Entry, shall comply with the NACHA Rules and all applicable law.

13. **Termination.** BBVA may terminate the ACH Prepaid Services at anytime without notice to Company or any other person if, on three (3) or more separate dates, Company submits any Entry for which there are insufficient Collected Funds in the Account at the time of submission.

**AUTOMATED CLEARING HOUSE SERVICES**

Upon Company’s submission of a request for Automated Clearing House Services (“ACH Services”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement the following terms shall have the following meanings:

   (a) “Account” means any account at BBVA owned by Company, whether a deposit, clearing, investment, special, or general account, into which or from which Company requests or authorizes Funds to be transferred.

   (b) “Customer” means the person, entity or other organization holding the account at a Participating Depository Institution to which an Entry relates. The term “Customer” includes, without limitation, Company’s customers and the employees of those customers, Company’s employees and, with respect to the concentration of Funds, Company and its affiliates.

   (c) “Designated Persons” at Company shall mean the individuals designated by an Authorized Person (or by a systems manager designated by an Authorized Person) to BBVA in writing who shall be the Designated Persons for purposes of this Agreement.

   (d) “Entry” or “Entries” mean an electronic transfer of Funds to Company’s accounts from third party accounts or from Company’s accounts to third party accounts and for automatic deposit programs.

   (e) “Entry Settlement Limit” means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Company by BBVA in writing from time to time.

   (f) “Funds” means Company’s funds held at BBVA or another financial institution which are available for transfer under this Agreement, whether held in the form of investments, instruments, or balances.

   (g) “In-Process Entries” means the aggregate dollar amount of all credit or debit Entries initiated by Company and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.

   (h) “Overlimit Entry” means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit.

   (i) “Participating Depository Financial Institutions” means, collectively, BBVA and all other financial institutions holding accounts of Company and Customers which are accessible through an applicable regional clearing house association.

   (j) “Rules” mean the operating rules and operating guides of the applicable regional clearing house association and the National Automated Clearing House Association (“N.A.C.H.A.”).

   (k) “Settlement Date” means, with respect to any Entry, the date on which such Entry is reported to the account of BBVA by the applicable Federal Reserve Bank in accordance with the Rules.

   (l) “Software” means the computer software used in connection with transfers made under this Agreement. All capitalized terms not defined in this Agreement shall have the meanings set forth in the Rules.

2. **Transfer Services Authorization.** Company authorizes and directs BBVA upon a Designated Person’s request and as otherwise permitted by this Agreement, to transfer Funds of Company, by automated clearing house, for payment directly to Company or to any third party designated by the Designated Person. Company further authorizes and directs BBVA to concentrate its Funds to or from all sources from which Funds are available for transfers made under this Agreement. In connection with the foregoing, BBVA agrees to process Entries. Company shall be responsible for generating, accepting, and authorizing all Entries and delivering the same to BBVA in the form specified in this Agreement and otherwise in accordance with these terms. BBVA shall not be obligated at any time to transfer from any Account any amount in excess of the collected balance on deposit in the Account at the time of the request or time of transfer. BBVA shall have the right, but shall not be obligated, to refuse any transfer for the purpose of determining whether Company has authorized the transfer and shall incur no liability for any delay caused by its determination.

3. **Obligations of Company.** Company shall provide all items specified in this Agreement, and any additional items reasonably requested by BBVA, in a complete, accurate, and timely manner, and in the form specified by BBVA. Company shall provide, at its expense, all magnetic tapes, electronic equipment, and other media required in order to satisfy the media and format requirements required by BBVA from time to time.
(a) Signed Authorization. Prior to the initiation of the first Entry to an Account, Company will execute on its own behalf and will obtain completed and duly executed written authorization agreements ("Authorization Agreements") from its Customers that desire preauthorized electronic transfers to or from their accounts with Participating Depository Financial Institutions ("Customer Accounts"). The Authorization Agreements shall authorize Company to initiate Entries with respect to its Customers' Accounts. The Authorization Agreements shall be in a form that complies with the Rules, Regulation E of the Board of Governors of the United States Federal Reserve Board, the Electronic Funds Transfer Act, and all other applicable federal and state laws and regulations. Company agrees to provide a copy of the Authorization Agreement to the Customer at the time it is executed. Company agrees to retain and maintain the original or a microfilm or other copy of the Authorization Agreement and its records relating to the Authorization Agreement as required by the Rules. Without limiting any term or provision of this Agreement, Company shall indemnify and hold BBVA harmless for its failure to comply with the terms of the preceding sentence. Upon request of BBVA, an Originating Depository Financial Institution, or a Receiving Depository Financial Institution, Company shall promptly furnish an original or copy of the Authorization Agreement to the requesting party. If the Customers' Authorization Agreements are changed, Company shall not initiate any Entries to or from those Customers' Accounts, except in accordance with the Authorization Agreement as changed. Company shall not initiate any Entries to or from any Customers' Accounts after expiration, termination, or cancellation of those Customers' Authorization Agreements. Company agrees to release and hold harmless BBVA from and against any loss, cost, demand, action or cause of action arising from any dispute between Company and any Customer with respect to any Authorization Agreement.

(b) Regularly Scheduled Debit Entries. Company shall comply in all respects with the requirements of the Rules and all state and federal laws and regulations, including notification to Customers (i) if the amount of any debit Entry differs from that of the next previous debit Entry relating to the same Authorization Agreement or the preauthorized amount or range of amounts; (ii) if any change is made by Company to the date on which a debit entry is scheduled to be transferred from a Customer's account; or (iii) under any other circumstances required under the Rules.

(c) Form and Format. All Entries shall be in the form of an unbalanced file. As used in this paragraph, an unbalanced file means an Entry that contains only the originating items for that Entry without any corresponding offset or settlement transaction. All Prenotifications and Entries shall be furnished to BBVA prior to the opening of business on the applicable Settlement Date in computer readable media as provided under the Rules, and in the record format specified by BBVA from time to time. BBVA may reject any Entry which BBVA determines in its sole discretion not to be in compliance with its then applicable media and format requirements, the Rules, any federal or state laws or regulations, or the terms and conditions of this Agreement. The parties agree that BBVA has no responsibility to determine whether Company has complied with any federal or state law or regulation.

(d) Delivery. Company shall be solely responsible for transporting, transmitting, or delivering to the delivery point, by the times and on the dates specified by BBVA, all Entries, Entries files, and other data, computer tapes, information, instruments, and documents to be supplied to BBVA in connection with ACH Services. BBVA may reject any Entry determined by BBVA, in its sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline.

(e) Other Duties. All Designated Persons shall be trained personnel familiar with the Software and Rules and procedures described in this Agreement and with the ACH Originators Handbook by N.A.C.H.A. (Company shall be responsible for providing necessary training).

(f) Limitations. Company agrees that BBVA will not process an Overlimit Entry. BBVA will suspend any Overlimit Entry submitted by Company and may, following its receipt of an Overlimit Entry, suspend all In-Process Entries. Company acknowledges that any Overlimit Entry or other In-Process Entries suspended by BBVA will not settle on their scheduled Settlement Date. If Company wishes to initiate an Entry that would cause the amount of In-Process Entries to exceed the Entry Settlement Limit, Company may submit to BBVA its request to initiate an Entry that otherwise would be an Overlimit Entry. Company must submit its request at least two (2) business days prior to the date on which Company wishes to initiate the Entry that otherwise would be an Overlimit Entry. BBVA may require from Company financial or other information in connection with BBVA’s consideration of the request. BBVA may grant or deny Company’s request at its sole discretion. In addition to the foregoing, BBVA generally reserves the right to limit the nature and amount of the preauthorized debit/credit Entries processed under this Agreement or to refuse to process any debit/credit Entries under this Agreement if, in BBVA’s sole judgment (i) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (ii) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (iii) a preauthorized credit Entry or the return of a preauthorized debit Entry would create an overdraft of Company’s Accounts. If any of the foregoing actions are taken by BBVA with respect to a particular preauthorized debit/credit Entry, BBVA will notify Company as promptly as practicable, but in no event later than two (2) business days after its decision.

(g) Providing Information Upon Request. Within five (5) business days of BBVA’s request, Company shall provide to BBVA all information necessary to respond to any inquiries from N.A.C.H.A about Company or Company’s WEB Entries.

(h) Prohibited Entries. Notwithstanding any provisions of this Agreement to the contrary, Company agrees that it will not act as a Third-Party Sender (as defined in the Rules) to initiate any Entry on behalf of another party unless BBVA has agreed Company may do so, and Company has entered into the Amendment to this Agreement for ACH Services By Third-Party Senders.

(i) Company also agrees to permit BBVA, its regulators and/or agents to examine Company’s books, records, practices and systems to confirm that Company maintains the security practices and procedures required by this Agreement to protect the financial information Company obtains from Customers and to verify Company’s ongoing compliance with the NACHA rules. Any such examination will be conducted during normal business hours upon written notice to Company, which agrees to cooperate fully by providing BBVA with access to reports of audits, tests and/or other evaluations of information security policies and procedures conducted in the ordinary course of Company’s business.

4. Scope of BBVA’s Services. If the Entries comply with the Rules and requirements of this Agreement, BBVA will process and transmit the Entries to the Participating Financial
Depositary Institutions, subject to the Rules. BBVA has no obligation to act on, correct, reverse, adjust, or stop payment or posting of Entries or Entry data that does not comply with the requirements or deadlines of BBVA or the Rules. BBVA has no obligation to detect errors with respect to any Entry. However, if BBVA detects an error with respect to any Entry, BBVA will attempt to give Company notice of the error, and Company agrees to furnish to BBVA corrections promptly via the Software or as BBVA shall direct. If Company discovers that any Entry is in error, Company immediately shall give telephonic notice to BBVA of the complete nature of the error and Entries affected, confirmed immediately thereafter in writing (“Company Error Notice”). Company has no right to reverse, adjust or stop payment or posting of any Entry after the Entry has been transmitted by BBVA or subsequent to any earlier time as the Rules or BBVA may prescribe from time to time, except in accordance with procedures contained in the Rules, or any other applicable agreement.

BBVA has no obligation to determine whether the recipient identified in any Entry, whether submitted alone or included within any batch of Entries, is the account holder for the account to or from which funds are to be transferred. If any Entry contains any inconsistent information or other discrepancy regarding the name of the intended recipient and the account to or from which the funds are to be transferred, BBVA shall make the transfer on the basis of the account number, even if that number identifies an account held by a person or entity other than the named recipient.

5. Payment.

(a) Credit Entries. BBVA reserves the right to require that Company pay BBVA in immediately available funds at the time of transmittal the amount of each credit Entry submitted by Company.

(b) Debit Entries. BBVA shall on the applicable Settlement Date credit the Account with the amount of each debit Entry transmitted to BBVA by its Automated Clearing House. In the event any Entry is properly returned by a Receiving Depository Financial Institution after BBVA has provided credit, (i) Company shall, upon demand, repay BBVA the amount of the returned Entry or Depository Transfer Check, or (ii) BBVA may, at its election, set off such amounts against any Company Account.

(c) Deletion/Reversal. Actual receipt by BBVA of proper notice or delivery of any information (e.g., stop payment, return, processing, dishonor and similar notices required by this Agreement, the Rules, or any other instrument) from Company before the deadline required by BBVA in its sole discretion is an express and condition precedent to BBVA’s related obligation to perform any service or to meet any deadline imposed by law or regulation. Company bears the burden of proof of the time and manner of BBVA’s actual receipt of any notice or transmittal of information.

6. Rejected Entries. Company shall be responsible for remaking any Entries rejected during processing or rejected by any Participating Depository Financial Institutions (“Rejected Entries”), except Entries rejected as a result of BBVA’s error, if sufficient data is made available to BBVA to permit it to remake those Entries in a correct manner (“Correcting Entries”). In the case of Rejected Entries which are debits or any adjustment memoranda or Entries relating to a debit Entry, upon notification by BBVA, Company immediately will provide BBVA with sufficient available collected funds to reimburse and informify BBVA for any funds which were received or subject to any adjustment. Company shall retain for not less than five (5) banking days after midnight of the Settlement Date all information necessary to remake any Entries, file or make any Correcting Entries, and, if requested by BBVA, shall supply such information to BBVA. Company agrees and acknowledges that if BBVA receives a Notification of Change (“NOC”) file from a Receiving Depository Financial Institution that results from an Entry you submitted, future entries containing certain related incorrect information may be modified by BBVA to reflect the corrected information received in the NOC and retransmitted. If the Entry that caused the NOC is a recurring Entry, subsequent transmissions may be modified to reflect the corrected information received in the NOC.

7. Returned and Disputed Entries. Returned Entries will be delivered by BBVA to Company and Company shall reimburse BBVA immediately in collected funds for the amount of these items and any fees associated with these items, including without limitation fees and/or fines assessed by a payment network against BBVA or Company. BBVA reserves the right to require that Company supply drafts for redeposited return items. If any Customer notifies BBVA that an Entry was in an incorrect amount, was not properly authorized, was erroneous or unauthorized under any applicable law or regulation, or was otherwise improperly, erroneously or unlawfully processed or paid, Company agrees to pay to BBVA, in immediately available funds, the full amount of the Entry, plus any expenses for costs (including legal fees) incurred by BBVA in connection with that Entry, including without limitation fees and/or fines assessed by a payment network against BBVA or Company. Company further agrees that BBVA may, as appropriate, pay the amount to the Customer or may return the amount to Company; provided, however, that upon payment of the amount by Company to the Customer, BBVA shall be absolved and released from any expenses or costs incurred by Company with respect to such Entry. When a returned Entry indicates a “payment stopped” as the reason for the return, Company shall not reinstate that Entry unless Company subsequently received the Customer’s authorization for reinstatement of that Entry.


(a) Company shall provide each Customer with positive written notice of each credit Entry to the Customer’s Account (“Positive Credit Notice”), and shall otherwise fully comply with the provisions of the Electronic Funds Transfer Act, Regulation E of the Board of Governors of the United States Federal Reserve Board and any applicable state law, rules or regulations governing electronic fund transfers.

(b) Company shall provide written notice to each Customer of the amount and scheduled date of each debit Entry prior to the scheduled date of the debit Entry. All such written notices of debit Entries, and any other means of debit Entry notice selected by Company, shall fully comply with the Electronic Funds Transfer Act, Regulation E of the Board of Governors of the United States Federal Reserve Board and any applicable state law, rules or regulations governing such electronic fund transfers.

9. Entry Settlement. Company shall provide BBVA with immediately available funds not later than 8:00 o’clock a.m. Central Time on each Settlement Date sufficient in amount to pay all Entries initiated by Company which are to be settled on that date. Company hereby authorizes and instructs BBVA to make deposits and withdrawals from any of Company’s Accounts as appropriate to provide the services specified in this Agreement. Notwithstanding anything in this Agreement to the contrary, BBVA reserves the right to require that sufficient collected funds be in Company’s Accounts prior to the time any Entry is processed by BBVA under this Agreement.

10. Effect of Rules. The parties hereto expressly agree to be bound by the Rules as now or hereafter in effect, including, without limitation, that Company shall be bound by and comply with all limitations and requirements imposed upon an "Originator" under the Rules. Any changes in the Rules shall be deemed to automatically amend this Agreement, effective as of the date the changes in the Rules become effective. It is agreed
that no Rule shall be deemed to diminish BBVA’s rights under this Agreement, except in the case of direct conflict, in which event the Rules shall control. Without limiting the foregoing, BBVA may issue from time to time operating rules and procedures to Company describing the operating procedures for each service provided under this Agreement. From time to time, BBVA may also issue updates to the operating rules and procedures. Company agrees that it will access and utilize all such services in accordance with the operating rules and procedures.

11. **File Suspension.** Notwithstanding anything in this Agreement to the contrary, BBVA shall not be liable if a file suspends in connection with an Entry as the result of an error by Company or BBVA’s inability to contact a Designated Person, after using reasonable efforts to make contact.

12. **ACH Services by Third-Party Processor.** Upon Company’s submission of a request for ACH Services on which Company has designated a third party to provide payment and processing services related to the Accounts (the “Processor”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:

**(a) Background**

(i) Company separately has authorized the Processor to initiate ACH Entries electronically to and from each Company Account designated on the Service Instructions for ACH Services (each, a “Designated Account” for the purposes of the ACH Services).

(ii) At Company’s request, BBVA and the Processor may enter into the Automated Clearing House Services Agreement for Third-Party Processors (the “Third-Party Agreement”). Among other points, the Third-Party Agreement establishes the security procedures applicable to all ACH Entries to and from a Designated Account to be initiated electronically by the Processor, including without limitation the security codes and other devices that the Processor or its “Designated Users” must use (collectively, the Processor Codes”).

**(b) Transaction Authorization.** Company hereby authorizes BBVA:

(i) To provide the Processor with all software, Processor Codes and instructional materials necessary for the Processor to initiate ACH Entries electronically to and from each Company Account electronically (the “ACH Instructions”).

(ii) To process each ACH Entry (including all related instructions or information) to or from a Designated Account that is initiated electronically using the Processor Codes in accordance with the Third-Party Agreement and the ACH Instructions (each, an “Authorized Transaction”).

**(c) Reliance on Authorized Transaction.** Each Authorized Transaction shall be deemed a transaction initiated by Company, and BBVA may rely upon each Authorized Transaction as a transaction properly authorized by Company without further verification. BBVA shall have no responsibility for erroneous data provided by the Processor. BBVA is authorized to process each Authorized Transaction until: (i) BBVA receives written notice from Company that Company has revoked its authorization for the Processor to initiate ACH Entries to and from any or all Designated Accounts; and (ii) BBVA has had a reasonable opportunity to act upon Company’s notice.

**(d) Compliance.** Company represents and warrants that Processor will comply in all respects with the requirements of the Rules of the National Automated Clearing House Association and all state and federal laws and regulations.

**(e) Security.** Company represents and warrants that its Processor will implement and maintain adequate information security measures to protect against unauthorized access to or use of File Transfer Services Service, including, without limitation: (i) access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing Access Devices (as defined below) to unauthorized individuals who may seek to obtain this information through fraudulent means; (ii) encryption of electronic Information while in transit over any network (LAN/WAN including MPLS) using well known (non-proprietary) encryption algorithms with a minimum key length of 128 bits; (iii) procedures designed to ensure that information system modifications are consistent with the Information Security Measures; (iv) monitoring systems and procedures to detect actual and attempted attacks on or intrusions into information systems; (v) response programs that specify actions to be taken when Processor detects unauthorized access to information systems, including, immediate reports to BBVA (vi) training of staff to implement the information security measures; (vii) maintain all systems and applications current with latest release of software and/or security patches, security packs, and security hot fixes; (viii) regular testing of key controls, systems and procedures of the information security measures by independent third parties or staff independent of those that develop or maintain the security measures; (ix) appropriate firewalls and access control lists between all Processor and BBVA networks, with only required traffic allowed between networks.

**(f) Obligation.** Company shall maintain a process for conducting due diligence and ongoing monitoring of its Processor to confirm that required security procedures and compliance standards are being met.

**(g) Equipment.** Company acknowledges that BBVA is not responsible for ensuring that Processor’s equipment and software is compatible with the Program and electronic software. All hardware and telecommunications equipment must be purchased and maintained by Processor.

**(h) Limitation of Liability; Indemnity.** Notwithstanding any other provision of this Agreement or any other Agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (each, including BBVA, a “Provider”) shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) incurred by Company that arise from or relate to Company’s authorization of Processor to initiate ACH Entries electronically to or from any Designated Account or the Processor’s use of any electronic system or network for the initiation of these ACH Entries.

The liability of BBVA or any other Provider for any Damages incurred by Company as a result of the acts or omissions of any Provider shall be limited to interest on the Damages at issue, which shall accrue at the “federal funds rate” for each day on which such act or omission remains uncorrected; provided, however, if BBVA or any other Provider is unable to recover any amount paid to an individual or entity that has no claim to such funds, such Provider shall be liable for Company’s actual loss, to not exceed the unrecovered balance of the amount paid to the recipient that has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, neither BBVA nor any other Provider shall have any
responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, pandemic, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of that Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages incurred by a Provider that arise from or relate to (i) Company’s authorization of Processor to initiate ACH Entries electronically to or from any Designated Account, (ii) the Processor’s use of any electronic system or network for the initiation of these ACH Entries or (iii) any dispute of any nature whatsoever between or amount the Processor and the Company. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA with respect to the Processor’s initiation of ACH Entries to or from any Designated Account, whether under this Agreement or any other agreement between BBVA and Company, shall apply equally to all other Providers.

(i) Representations, Warranties and Covenants. Company represents and warrants that each ACH Entry electronically submitted to or received by BBVA from the Processor will fully satisfy and comply with all applicable requirements of all applicable laws and regulations. Company expressly warrants (i) that neither Company nor the Processor is a “Consumer” as defined in Section 205.2 (e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (ii) that all ACH Entries initiated by the Processor are for commercial purposes, and not for personal or household purposes.

(j) Termination. Notwithstanding any other provision regarding termination set forth in the Third-Party Agreement, this Agreement or in any other agreement between BBVA and Company, BBVA may terminate at any time, effective immediately, Processor’s ability to initiate ACH Entries. BBVA shall use reasonable efforts to promptly communicate notice of the termination to Company and the Processor, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. BBVA, at any time, may require Company or the Processor to execute additional documents or agreements in order for the Processor to continue to initiate ACH Entries electronically to or from any Designated Account.

13. Returned Check Entries. If any Entry initiated by Company relates to a check or other item (within the meaning of Revised Article 4 of the Uniform Commercial Code) that previously was returned unpaid due to insufficient or uncollected funds (a returned check or “RCK Entry”), Company represents and warrants to BBVA that the RCK Entry complies with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each RCK Entry initiated by Company:

(a) The item to which the RCK Entry relates:

(i) Is a negotiable demand draft drawn on or payable through or at a Participating Depository Financial Institution, other than a Federal Reserve Bank or Federal Home Loan Bank;

(ii) Contains a pre-printed serial number;

(iii) Is in an amount less than $2,500;

(iv) Indicates on its face that it was returned due to insufficient or uncollected funds in the Customer’s account;

(v) Is dated 180 days or less from the date that Company initiated the RCK Entry;

(vi) Is drawn on an account held by a consumer Customer; and

(vii) Has been previously presented (A) no more than two times in its physical form, if the entry is an initial RCK Entry; or (B) no more than one time in its physical form and no more than one time as an RCK Entry, if the entry is a reinitiated RCK Entry;

(b) Company has good title or is otherwise entitled to enforce the returned item to which the RCK Entry relates;

(c) All signatures on the returned item to which the RCK Entry relates are authentic and authorized;

(d) The returned item to which the RCK Entry relates has not been altered;

(e) The returned item to which the RCK Entry relates is not subject to any defense or claim in recoupment that could be asserted against Company or BBVA;

(f) Company has no knowledge of the insolvency or bankruptcy of the maker or drawer of the returned item to which the RCK Entry relates;

(g) The amount of the returned item, item number and account number contained on the returned item to which the RCK Entry relates;

(h) The returned item to which the RCK Entry relates is not subject to any defense or claim in recoupment that could be asserted against Company or BBVA;

(i) The information encoded after issue in magnetic ink on the returned item to which the RCK Entry relates is correct;

(j) Any restrictive endorsement set forth on the returned item to which the RCK Entry relates is void or ineffective;

(k) Company will retain a reproducible and legible copy of the front and back of the returned item to which the RCK Entry relates for seven (7) years from the applicable Settlement Date and, within five (5) business days of BBVA’s request, shall provide to BBVA a copy of the front and back of that returned item (indicating, if applicable, that the item has been finally paid);

(l) Before receiving the item to which the RCK Entry relates, Company provided the Customer who signed that item with written notice that clearly and conspicuously stated Company’s policy for re-presenting electronically items returned for insufficient or uncollected funds.

Company agrees to indemnify BBVA from and against any fine action, claim, demand, loss, liability or expense, including attorneys’ fees and costs, resulting directly or indirectly from either Company’s breach of any representation, warranty or
14. Accounts Receivable Entries. If Company uses any check or share draft provided by a Customer via the U.S. Mail or at a dropbox location as the source document to initiate a debit Entry to that Customer’s account (an “ARC Entry”), Company represents and warrants to BBVA that the ARC Entry will comply with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each ARC Entry initiated by Company:

(a) The check or sharedraft to which the ARC Entry relates:
   (i) Contains a pre-printed serial number;
   (ii) Is drawn on the deposit account of a consumer Customer and not on any credit card or other loan account; and
   (iii) Was completed and signed by that Customer;
   (iv) Will not be presented or otherwise used to obtain payment;
   (v) Will be destroyed by Company within fourteen (14) days of the Settlement Date of that ARC Entry;

(b) The ARC Entry accurately reflects the amount, routing number, account number, and the serial number of the check or sharedraft to which the ARC Entry relates, and does not include any service charge, fee or other amount;

(c) Company shall retain a reproducible and legible image, microfilm, or copy of the front of the check or sharedraft to which the ARC Entry relates for two (2) years from the Settlement Date of the ARC Entry and, within five (5) business days of BBVA’s request, shall provide to BBVA a copy of that check or sharedraft (designated on its face as “Copy”);

(d) Before receiving the check or sharedraft to which the ARC Entry relates, Company provided clear and conspicuous written notice to the Customer that Company’s receipt of the Customer’s check will authorize Company to initiate an ARC Entry debiting Customer’s account according to the terms of the Customer’s check.

(e) (i) Company has reasonable procedures by which Customers may opt-out of the conversion of their checks or sharedrafts to ARC Entries; and
   (ii) At the time the ARC Entry was initiated, Company had not received any opt-out notice from the Customer who had signed the related check or sharedraft;

(f) In processing an ARC Entry, Company will electronically capture the MICR line from the check or sharedraft, and will not key-enter the routing number, account number or check serial number except to correct errors relating to MICR misreads, misencoding or processing rejects; and

(g) The ARC Entry is not being used to transmit a credit Entry, other than a reversal, to the Customer’s account;

Company agrees to indemnify BBVA from and against any fine, action, claim, demand, loss, liability or expense, including attorneys’ fees and costs, resulting directly or indirectly from either Company’s breach of any representation, warranty or promise in this paragraph or Company’s failure to comply with the Rules or this Agreement in connection with any ARC Entry.

15. Telephone-Initiated Entries. If Company obtains oral authorization from a consumer Customer via the telephone to initiate a single debit Entry to that Customer’s account (a telephone-initiated or “TEL Entry”), Company represents and warrants to BBVA that the TEL Entry complies with the Rules. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each TEL Entry initiated by Company:

(a) Company obtained the consumer Customer’s oral authorization for the TEL Entry either:
   (i) During a telephone call initiated by the Customer;
   (ii) While there was a written agreement in effect between the Customer and Company; or
   (iii) Within two (2) years after the Customer purchased goods or services from Company;

(b) Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the TEL Entry authorization was obtained, regardless of whether Company was otherwise in compliance with the Rules;

(c) Company either tape recorded the consumer Customer’s oral authorization of the TEL Entry or, before the Settlement Date of the TEL Entry, provided the Customer with written notice confirming the oral authorization;

(d) Company shall retain the original or a duplicate tape recording of the consumer Customer’s oral authorization of the TEL Entry, or a copy of the written notice confirming this authorization, as applicable, for two (2) years from the date of the authorization and, within five (5) business days of BBVA’s request, shall provide to BBVA a copy of the tape recording of or the written notice confirming the Customer’s oral authorization;

(e) The following information was provided in connection with the oral authorization and also in any written confirmation notice given to the consumer Customer:
   (i) The date on or after which the Customer’s account would be debited;
   (ii) The amount to be debited from the Customer’s account;
   (iii) The Customer’s name;
   (iv) A telephone number answered during normal business hours that the Customer could call with questions;
   (v) The date of the Customer’s oral authorization; and
   (vi) A clear and concise statement explaining that the Customer’s oral authorization will be used to initiate a single ACH debit Entry to the Customer’s account;

(f) If Company provided the consumer Customer with written notice confirming the Customer’s oral authorization of the TEL Entry, then:
   (i) Company disclosed to the Customer during the telephone call the method by which the notice would be provided; and
   (ii) The written notice contained the information specified in subparagraph (e) above, and explained the Customer’s right to contact Company at the designated telephone number to correct any errors appearing in the notice;

(g) Before initiating the TEL Entry, Company utilized commercially reasonable procedures to verify:
16. Internet-Initiated Entries. If Company obtains authorization from a consumer Customer via the Internet to initiate either a single debit Entry or recurring debit Entries to that Customer's account ("WEB Entry"), Company represents and warrants to BBVA that the WEB Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E. In addition to this general representation and warranty, Company represents and warrants to BBVA that the WEB Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E. In addition to this general representation and warranty, Company represents and warrants to BBVA that the WEB Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E. In addition to this general representation and warranty, Company represents and warrants to BBVA that the WEB Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E.

Company agrees to indemnify BBVA from and against any fine, action, claim, demand, loss, liability or expense, including attorney’s fees and costs, resulting directly or indirectly from either Company’s breach of any representation, warranty or promise in this paragraph or Company’s failure to comply with the Rules or this Agreement in connection with any TEL Entry.

(a) Company obtained authorization for that Entry in accordance with the technical specifications for WEB Entries that BBVA provided separately to Company.

(bb) Company agrees to provide a hard copy of the authorization to the Customer if requested to do so.

(b) Company has employed a commercially reasonable fraudulent transaction detection system to screen that Entry.

(c) Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the WEB Entry authorization was obtained, regardless of whether Company was otherwise in compliance with the Rules.

(d) Company has employed commercially reasonable methods of authentication to verify the identity of the Customer authorizing that Entry.

(e) Company has used commercially reasonable procedures to verify the validity of the routing numbers for the Customer’s account to be debited.

(f) All transmissions of information related to the WEB Entry (whether between the Company and its Customer, between the Company and BBVA, or between the Company and any third party), were either (1) encrypted using a commercially reasonable security technology, or (2) transmitted via a secure Internet session that utilizes a commercially reasonable security technology. In either case, the technology used to secure the transmission must comply with the technical specifications for WEB Entries that BBVA provided separately to Company.

(g) Company agrees:

(i) to develop, implement and maintain effective security policies and procedures (including administrative, technical and physical safeguards) to ensure that the financial information Company obtains from Customers is protected. These policies and procedures shall comply with the technical specifications for WEB Entries that BBVA provided separately to Company and, at a minimum, shall include adequate levels of:

(A) physical security to protect against theft, tampering, or damage;

(B) personnel and access controls to protect against unauthorized access and use; and

(C) network security to ensure secure capture, storage, and distribution.

(h) The Entry is not being used to transmit a credit Entry, other than a reversal, to the consumer Customer’s account. Company agrees:

(i) to conduct or cause to be conducted annual audits of Company’s security policies and procedures to protect Customer’s financial information. The results of each annual audit shall be documented in a written report. Company shall deliver a copy of this report to BBVA within ten (10) days after Company completes or receives the report, as applicable.

17. International ACH Transactions

(a) International ACH Transactions (IATs) are required to use the IAT Standard Entry Class (SEC) code and provide the additional information set forth in the applicable user guide as updated from time to time.

(b) An IAT is defined as a debit or credit entry sent through the U.S. ACH network that is part of a payment transaction involving a financial agency’s office that is not located in the territorial jurisdiction of the United States. For the purposes of this definition:

- “Financial agency” means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds.

- An office of a financial agency is involved in the payment transaction if it (i) holds an account that is credited or debited as part of the payment transaction, (ii) receives payment directly from a person/organization or makes payment directly to a person/organization as part of the payment transaction, or (iii) serves as an
connection with such Damages. Company will, at its own expense, defend any action or proceeding that arise from or relate to Company's initiation
and representatives (each, an "Indemnified Person") against any and all settlements, accounting entries, or disbursements that are necessary or appropriate to
carry out the instruction.

(c) Company agrees to develop, implement and maintain effective policies and procedures to ensure that its employees, agents, authorized representatives, contractors and/or third party processors who may, at any time, initiate an Entry on behalf of the Company are fully trained, aware of, and are following the NACHA rules, including, but not limited to, the rules governing IATs.

(d) IATs will be scanned by BBVA prior to posting the transaction to ensure that such transactions comply with all applicable statutes, laws, regulations and rules of the United States government, a State or any political subdivision thereof, including, but not limited to, the rules of the Office of Foreign Assets Control ("Applicable Law"). The Office of Foreign Assets Control ("OFAC") publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." All assets of SDNs are blocked and U.S. persons are generally prohibited from dealing with them.

(e) In the event that a scan of an IAT indicates the completion of the transaction may violate Applicable Law, BBVA will suspend the IAT until the IAT is determined to not violate Applicable Law or as otherwise directed by Applicable Law or the appropriate law enforcement authorities.

(f) Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (each, including BBVA, a "Provider") shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from the failure or refusal to complete an IAT.

(g) Because IATs are international transactions, they require additional time for settlement. Settlement for IAT origination complies with the standards timeframes for domestic ACH (on the effective date specified), but settlement with the foreign receiver may take an additional 1-2 business days. As a result, some IATs may take 3 or more business days for the recipient to receive credit. However, Company is required to have immediately available funds sufficient to pay all IAT Credit Entries at the time of transmission.

(h) Company shall indemnify, protect and hold BBVA and its respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all damages, losses, penalties, fines and/or assessments ("Damages") suffered or incurred that arise from or relate to Company's initiation of IAT Entries or the Company's use of any electronic system or network for the initiation of these ACH Entries. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages.

18. Interbank Same Day ACH. Upon opting-in by the Company inclusive of BBVA approval for the same day interbank settlement option, Company may originate qualified ACH transactions under the Rules, with a same-day effective date, so the receiver accounts at another financial institution can receive ACH transactions on a same day basis. In order to process same day, it is the Company’s responsibility to originate qualified ACH transactions under the Rules within the specific entry window for same day processing. Company is responsible for managing its use and selection of the same day settlement option and BBVA is under no obligation to confirm Company’s intention for ACH transactions to settle same day. Any unqualified same day effective-dated transactions originally intended for same day processing are subject to being originated on the next available processing day. Further, BBVA has no responsibility for Company selecting the same day settlement option in error even if Company’s intention is to settle on the following business day or later. Company is responsible for payment of all associated fees for the same day settlement option whether or not same day settlement option was selected in error.

AUTOMATIC STANDING FUNDS TRANSFERS
Upon Company's submission of a request for Automatic Standing Funds Transfer Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

An automatic standing funds transfer ("AST") is a standing order of Company instructing BBVA to make multiple transfers from a Company Account automatically and without further actions by Company (an "AST Order"). With each individual AST being in an amount established according to criteria defined by Company to a recipient and at intervals specified by Company. To initiate an AST Order, Company must provide the following information to BBVA:

1. The account number for Company Account from which funds are to be drawn;
2. Criteria to determine the amount to be transferred;
3. Bank to which funds are to be transferred;
4. Name of the recipient and account number to which funds are to be transferred; and
5. Dates or intervals on which the transfers are to be automatically made, including any date by which the transfers shall cease.

BBVA will make each AST according to Company's AST Order instructions, unless notified by Company in writing to cancel that AST Order. With respect to each AST and AST Order, BBVA has: (i) no duty to make any inquiries regarding the performance of any contract or the completion of any transaction between Company and any recipient of an AST; (ii) no obligation to Company other than to make each AST according to Company's instructions; and (iii) no liability if BBVA fails to make any AST if there are insufficient funds in the designated Company Account to make that AST. In order to cancel an AST, Company must notify BBVA in writing within at least two (2) business days prior to the next date on which an AST will be made to cancel the AST.

BBVA has no obligation to determine whether the recipient identified in any AST Order is the accountholder for the account to which funds are to be transferred. If Company's instructions for any AST Order contain any inconsistent information or other discrepancy regarding the name of the intended recipient and the account into which the funds are to be transferred, BBVA shall make the transfer on the basis of the account number, even if that number identifies an account held by a person or entity other than the named recipient. If a funds transfer order
issued by Company identifies an intermediary bank or beneficiary’s bank only by an identifying number or by both names and identifying number, the receiving bank may rely on the identifying number as the proper identification of the intermediary bank or beneficiary’s bank, even if such number identifies a person or entity different from the bank identified name; and the receiving bank need not determine whether the name and number refer to the same person or entity or whether the number refers to the bank. The foregoing is intended to be consistent with and subject to the terms and provisions of Sections 4A-207 and 4A-208 of the Uniform Commercial Code as in effect in the state in which BBVA maintains Company Accounts, except that knowledge (whether actual or constructive) by BBVA of any discrepancy or inconsistency in the information provided in connection with any AST shall not change or impair the right of BBVA to execute an AST as provided in this subsection. BBVA shall not be liable for executing any funds transfer request even when it has knowledge of the discrepancy or inconsistency.

BALANCE REPORTING SERVICES

Upon Company’s submission of a request for Balance Reporting Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

Balance Reporting Services. The Company authorizes BBVA to report to any Authorized Persons (as set forth in the Authorization Certificate) or to those persons designated by Company in the Service Instructions for Balance Reporting Services information concerning all accounts and account clearings and transactions, including, but not limited to, checking, savings, disbursement, zero balance, money market and loan balance accounts, which Company now or in the future maintains with BBVA (“Balance Reporting Accounts”). BBVA will make available this information at times specified by BBVA from time to time. Company authorizes BBVA to engage the services of and make Balance Reporting Accounts information available to independent contractors and other data processors as BBVA deems necessary or desirable in order to provide Balance Reporting Accounts information to Company.

BBVA e-LOCKBOX

Upon Company’s submission of a request for BBVA e-Lockbox (the “Service”) and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, and in addition to Company agreeing to the terms and conditions set forth elsewhere herein or by separate agreement for using certain payment channels and file transfer services as applicable to BBVA e-Lockbox, Company agrees:

1. Description of Service. The Service allows the Company to receive payments made by customers of Company (“Customers”) where Customers have used one of several bill payment services or bill collection agents (“Originators”) and Company is able to approve or reject Customer payments prior to receiving the data and funds into the Company Account (as defined below). The payments detail will be consolidated and Company will receive payment data electronically in a data file. Payment funds are transmitted via ACH to Company Account.

2. Network. “Network” means the network of parties, retained from time to time by BBVA, in its sole discretion, including Agent (as defined below). Collectively, the Network concentrates or consolidates payments from all of the Originators supported by the Network for disbursement to billers such as Company.

3. Authority/Agent. Company authorizes BBVA to utilize third-party service processors and facilitators as Company’s agent (the “Agent”) to perform all actions necessary to enroll Company in Services and to receive funds from such Company’s Customers and to otherwise process such funds on Company’s behalf. Specifically, Company authorizes the Agent to facilitate the transmission of funds from the Customers to the Company Account, such that receipt of funds into the designated trust account by the Agent for the acceptance and disbursement of funds (the “Designated Account”) shall be considered to be the same as receipt of funds by Company itself, and Customers will be given credit by Company for having made payment at the same time Company is notified of receipt of funds in the Designated Account.

4. Reliance on Network. Company acknowledges that BBVA’s ability to process payments and remittances are dependent upon the continued use and support of the Network and third-party computers housing the Network and its associated communications network. In the event that access to the Network or its computer communications system is terminated or suspended for any reason, BBVA shall not be liable to Company for any disruptions or failure to provide any part of this Service. BBVA assumes no responsibility for the accuracy, timeliness or the completeness of data delivered from the Network to BBVA. Further, Company acknowledges that upon its election to use the Service and register their bill payment address for electronic remittances, the discretion of the Network and the use by Originators to originate electronic remittances rather than paper remittances is not within the control of BBVA.

5. Company Duties. Company shall have the following duties:

(a) Company will maintain an Account at BBVA as the designated depository Account for the Services (“Company Account”). Company shall maintain balances in the Designated Account sufficient to offset any returns submitted for payment.

(b) Company will either approve or reject payments in the preprocessing queue on the same day, if possible, but in no event later than 2:00 PM CT one (1) business day after it receives notice of payments.

(c) Company will post payments to Customer’s account on the day it receives payment data, if possible, but in no event later than one (1) business day after it receives notice of payments.

(d) Company will not charge Customer any late fee if a Customer’s payment is late by reason of the fact that the payment was not timely posted in accordance with Section 5(c) above.

(e) Company shall notify BBVA of any payment which has not posted within two (2) business days after it receives notice of payments.

(f) Company will not return a payment unless such payment is incorrect, incomplete, and not identifiable or the account was blocked or closed prior to the time that the payment was received.

(g) Company is responsible for instructing all of its Customers about the requirements of the Services as applicable.

6. Optional Reversal Transactions. Reversals are Network-initiated debit messages from Originators informing of the cancellation of a previous transaction. Company hereby authorizes BBVA to debit the Company’s Account for the amount of the Reversals.

7. Optional Biller Stop Payment. This option allows Company to provide BBVA with instructions regarding payments that Company does not want posted to the Company Account. Company hereby authorizes BBVA to return the payment through the Network. Payments that are stopped will not be included in Company’s settlement transaction or the remittance data provided to company. Due to the nature of the Services,
BBVA makes no representation or warranty regarding its ability to honor a request by Company to stop a payment from posting to the Company Account.

8. Optional Substitution Value. This option allows the Company to make certain substitutions, corrections or adjustments to Customer remittance information based on Company internal accounting requirements which may differ from the Customer input with the Originators. Company agrees to indemnify and hold BBVA harmless for any substitutions, corrections or adjustments made that violates applicable law, payment network rules or causes application errors.

9. Compliance. Compliance with laws and regulations. Company agrees to comply with all applicable laws, rules and regulations (federal, state, county, city and local), including without limitation, those issued by: (i) the National Automated Clearing House Association; (ii) any governmental entity, including (without limitation) the requirements contained in the Electronic Fund Transfer Act, Regulation E, and the Electronic Signatures in Global and National Commerce Act; (iii) the American with Disabilities Act; (iv) Health Insurance Portability and Accountability Act, if applicable; and (v) any other entity or association that issues or sponsors a payment device, including (without limitation) the requirements of the Payment Card Industry (PCI) Data Security Standard and any credit card association, including Visa and MasterCard. Company further agrees to comply with all payment network regulations for ATM debit networks.

10. Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to the Services, at any time without giving notice, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing.

11. Audit Rights. Upon reasonable notice, BBVA may audit, at its own expense, Company’s hardware, Software, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA may, in its sole discretion and option, immediately terminate this Agreement.

12. Grant of License. BBVA hereby grants Company a limited, nonexclusive, non-transferable, limited term, royalty-free, revocable sublicense to use BBVA e-Lockbox and the software creating, maintaining and supporting BBVA e-Lockbox (the “Software”) and the printed user materials provided in connection therewith (the “Documentation”) solely to conduct transactions in connection with the BBVA e-Lockbox, for Company’s internal business purposes only. Except as specifically provided herein, BBVA does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to BBVA e-Lockbox the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA or a third party are the exclusive owners of and shall retain all right, title and interest in and to BBVA e-Lockbox, the Software, the Documentation and the Intellectual Property Rights (as defined herein).

13. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BBVA E-LOCKBOX, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY’S USE DURING THE TERM HEREOF “AS IS” AND “WHERE IS”, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO BBVA E-LOCKBOX, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF BBVA E-LOCKBOX BY COMPANY. INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. BBVA DOES NOT WARRANT THAT THE OPERATION OF BBVA E-LOCKBOX OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR FREE FROM ANY OTHER PROGRAM LIMITATIONS. BBVA DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF BBVA E-LOCKBOX, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER (“ISP”) SUITABLE TO ACCESS BBVA E-LOCKBOX AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY’S USE OF BBVA E-LOCKBOX, AND THAT BBVA SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA’S COMPUTERS, AND ASSUMES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT BBVA SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY’S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF BBVA E-LOCKBOX IS DONE AT COMPANY’S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

14. BBVA Representations and Warranties. BBVA Representations and Warranties. Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party’s rights, and use thereof is enjoined, BBVA shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software and Documentation.

15. Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers, Agents or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any damages, losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) that Company asserts or sustains as a result of Company’s use of BBVA e-Lockbox.

The liability of BBVA or any other Provider for any Damages asserted by Company arising as a result of the acts or omissions of any Provider shall be limited to interest on the funds at issue at the “federal funds rate” paid by BBVA at the close of business on each day such act or omission remains uncorrected.

Notwithstanding any other provision of this Agreement, no Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or such other Provider. In no event shall any
Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages. To the fullest extent permitted by law, Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to this Agreement and for any dispute of any nature whatsoever between or among Company and Customer. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA, whether under this Agreement or any other agreement between BBVA.

BBVA NET CASH USA

Upon Company’s submission of a request for BBVA Net Cash USA (“BBVA Net Cash” or “Net Cash”), or any service accessed only via Single Sign-On application and the approval of the Service Instructions for this service, or upon its use of the Net Cash service or Single Sign-On service, whichever occurs first, Company agrees to the following:

1. Description of the Service. Company may conduct certain Treasury Management Services (collectively, the “Online Services”) for eligible accounts through access to and by use of BBVA Net Cash, BBVA’s online and mobile application Treasury Management channel.

BBVA may make certain Online Services or certain features thereof accessible both online and through a mobile application (“BBVA Net Cash Mobile Application”) used by any data-enabled mobile device that can send and receive information using technology that supports the BBVA Net Cash Mobile Application (a “Mobile Device”). BBVA, in its sole discretion, will determine which Online Services and which features within any particular Online Service may be accessible through the BBVA Net Cash Mobile Application.

Company’s use of BBVA Net Cash shall be subject to these terms and conditions, all instructions and guidelines established from time to time by BBVA, all applicable online, mobile, software and user documentation terms and conditions, and all applicable state and federal laws and regulations. Company will only be granted access to, and agrees only to access BBVA Net Cash to, transact or conduct the Online Services for eligible Company Accounts. Company may only transact those Online Services for eligible Company Accounts that BBVA has implemented for Company. All Online Services shall be subject to all terms and conditions applicable to such Online Services set forth elsewhere in this Agreement or in any other agreement of Company with respect to such Online Services. Online Services include, but are not limited to, the following:

- Balance Reporting Services, Automated Clearing House Services (“ACH Services”), Lockbox Services, Wire Transfer Services and Risk Management Services allow Company certain services and features as further described elsewhere in this Agreement.
- Account Transfer Services allows Company to transfer funds between accounts maintained by Company at BBVA.
- Stop Payment Services allows Company to obtain the current status of items issued by Company and place stop payment instructions on a single item or range of items. Company or a Designated User (as defined hereinafter) may also cancel a previously placed stop payment instruction.
- Electronic Reports and Online Statements allows Company to obtain reports and statements. The form and content of the reports and statements shall be determined by BBVA.
- Alerts Services allows Company to receive notifications related to specific events, balances or transactions. The Company may subscribe to receive alerts for certain scenarios within the Reporting, Payments and Risk Management Services. Some alerts are delivered every day on a regular schedule while others are sent in real time depending on the alert type and configuration.
- Loan Services allows a Company to (i) obtain information (including transaction history and account balances) on any loan or line of credit account that BBVA has, in its discretion, allowed to be included in the Online Services ("BBVA Net Cash Accessible Loans"); (ii) make payments on any BBVA Net Cash Accessible Loan, if permitted; and (iii) if available, request advances on a BBVA Net Cash Accessible Loan and (if the advance request is approved) transfer the advanced funds to a Company Account that is accessible through the Online Services.


(a) Corporate Administrator. Company shall designate in writing to BBVA an individual (the “Corporate Administrator”) who is authorized by the Company to serve as Company’s system and security administrator for BBVA Net Cash. BBVA may require that the designation of any Corporate Administrator be made on BBVA’s form of authorization certificate (“Authorization Certificate”). The Corporate Administrator shall be responsible for (i) granting and revoking authority permissions as to himself/herself as the Corporate Administrator; (ii) granting and revoking authority to a designated user (each a "Designated User") to access BBVA Net Cash and use the Online Services, including but not limited to applications accessed via Single Sign-On; (iii) defining the scope of authority and setting authority limits (1) for each Designated User with respect to the Online Services selected by Company and (2) for each Designated User who is granted authority to initiate and access Wire Transfer Services, Account Transfer Services, Loan Services or ACH Services (each an “Authorized Payment User”), the designation of individual transaction amount and individual daily limits for such services; (iv) defining those Company Accounts for which each Designated User shall have access and responsibility; (v) determining which Designated Users shall receive reports delivered through Electronic Report and Online Statement Services (if that service is selected by Company); (vi) assigning Authentication Tokens (as hereinafter defined) to a Designated User; (vii) granting and revoking the authority for a Designated User to access BBVA net Cash through the BBVA Net Cash Mobile Application; (viii) selecting a back-up system and security administrator from among the Designated Users (the “Back-Up Administrator”) if the Company will have three or more Designated Users; and (ix) selecting a dual corporate administrator from among the Designated Users (“Dual Corporate Administrator”) if the Company wants to utilize dual Corporate Administrator controls.

The Corporate Administrator shall grant to the Back-Up Administrator (if applicable) the authority to perform the obligations of the Corporate Administrator in the Corporate Administrator’s absence. Company agrees that BBVA Net Cash shall be accessed, and Online Services shall be conducted or transacted, only by the Corporate Administrator or a Designated User, and that Wire Transfer, Account Transfer, Loan Service and ACH
Services shall be conducted only by an Authorized Payment User, in each case as authorized by the Company.

If Company desires to change its Corporate Administrator, Company shall provide prior written notice to BBVA of such change, signed by a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services. The notice may be electronically sent to BBVA, and BBVA may request it be followed by a document with original signatures on it. No change of Corporate Administrator by Company shall be effective until accepted by BBVA, and BBVA has had a reasonable opportunity to update its records.

After Company has designated to BBVA the identity of the Corporate Administrator, BBVA shall provide the Corporate Administrator with the internet address for BBVA Net Cash on which the Online Services shall be accessible and also the instructions to access the BBVA Net Cash Mobile Application from a Mobile Device. The Corporate Administrator shall be responsible for specifically granting and revoking the authority for a Designated User to access the BBVA Net Cash website and the BBVA Net Cash Mobile Application. Company acknowledges that it is the Corporate Administrator and not BBVA’s responsibility for selecting and controlling those Designated Users accessing the BBVA Net Cash website or BBVA Net Cash Mobile Application.

At all times, BBVA is authorized and directed to act on all instructions sent through BBVA Net Cash using the applicable Corporate Administrator, Back-Up Administrator or Designated User Security Codes (as defined below), without any responsibility to determine whether or not such authority actually rests with the Corporate Administrator, the Back-Up Administrator or a Designated User, as applicable.

(b) **Security Codes.** BBVA shall provide the Corporate Administrator a customer identification code (the “Customer ID”), a user identification code (“User ID”), and a user password (“User Password”). The Corporate Administrator shall provide to each Designated User the Customer ID and assign to each Designated User an individual User ID and User Password. It is the responsibility of the Corporate Administrator to set-up each Designated User on BBVA Net Cash.

In addition to the Customer ID, User IDs and User Passwords described in this Section, each Corporate Administrator and Designated User (sometimes called a “User”) will be required to select one or more Multi-Factor Authentication options (including hard token, soft token, and/or one time passcode) (“MFA Option”). The Customer ID, User IDs and User Passwords together with the selected MFA Option shall be referred to as “Security Codes”.

Company agrees that use of the Security Codes will authenticate the identity of each User and verify all requests, communications or other instructions submitted through BBVA Net Cash. In order to prevent unauthorized access to the Company Accounts and unauthorized use of BBVA Net Cash services, Company agrees to maintain the confidentiality of the Security Codes, and to instruct all Users to maintain the confidentiality of the Security Codes. Company also agrees to review promptly each statement sent by BBVA for any Company Account that is accessible through BBVA Net Cash in order to detect any unauthorized transactions. To the fullest extent permitted by applicable law, Company is responsible for all transactions on Company Accounts initiated using the Security Codes. Company is responsible for maintaining the confidentiality of all Security Codes, and for implementing the necessary internal controls, balancing and reconciliation functions, and audit procedures to prevent unauthorized use of BBVA Net Cash.

Company agrees that the use of the Security Codes constitutes a commercially reasonable security procedure for Company. Company also agrees to be bound by all requests, communications, or other instructions to BBVA that are initiated using BBVA Net Cash and in compliance with this security procedure (including any transfers, payment instruction initiation or cancellation), regardless of whether or not Company actually authorized the request, communications and other instructions. If any request, communications or other instructions initiated through BBVA Net Cash and accepted by BBVA in compliance with this security procedure contains any error, to the full extent allowed by law, Company shall be liable for, and shall indemnify BBVA against any claims, losses and expenses BBVA may incur that arises from or relates to the erroneous request, communications or other instructions. BBVA’s records demonstrating compliance with this security procedure will be deemed conclusive proof that the payment order received by BBVA was authorized and that Company is bound by those requests, communications or other instructions.

Company agrees to download and install any and all security software required by BBVA and to install all updates, patches and/or any other amendments or modifications to the same when directed by BBVA to do so. Company will not be allowed to access BBVA Net Cash and utilize its services unless any and all required security software is installed on all desktop computers and laptop computers accessing Net Cash (not applicable to the BBVA Net Cash Mobile Application).

If Company requests, based on technical or administrative constraints, that BBVA perform any or all set-up functions for Company, BBVA will do so; provided, however, that Company hereby acknowledges that Company and the Corporate Administrator remain responsible for all access to BBVA Net Cash and actions taken by the Corporate Administrator and Designated Users with respect to Online Services.

(c) **Multi-Factor Authentication.** The MFA Options that are available to the Company as part of the required security procedures and to authorize individuals to receive a randomly generated numeric authentication code and initiate certain Online Services are as follows:

1. **One Time Passcodes.** Once authorized by the Corporate Administrator, Designated Users will be required to set up the process to receive an authentication code, valid for one online validation, to verify each requested action in the form of a code delivered to the Designated User via text message or automated voice telephone call (“One Time Passcode”); or

2. **Authentication Token.** The Company may select that each Designated User receive a physical token or soft token via Mobile Device to receive authentication codes to verify request, communication or other instructions (“Authentication Token”). To receive an Authentication Token, the Designated User must (i) be authorized by the Company; (ii) provide certain information designated by BBVA regarding each Designated User with which BBVA can, when necessary, confirm the identification of each Designated User. BBVA will provide the Corporate Administrator with physical Authentication Tokens upon request by the Corporate Administrator. The Corporate Administrator is responsible for
assigning and delivering an Authentication Token to each applicable Designated User.

A Designated User should not request that One Time Passcodes or Authentication Token (soft) be sent to unsecure devices. Company agrees to instruct and monitor each Designated User accordingly.

Company agrees to instruct each Designated User; (i) to maintain the confidentiality and security of the MFA Option; (ii) to safeguard the security of the Authentication Token; (iii) immediately to notify Corporate Administrator if the Authentication Token is lost so the Authentication Token can be disabled and the mobile device can be unregistered and/or (iv) maintain the confidentiality and security of the process to initiate a One Time Passcode and any devices that may receive the same (including, but not limited to, computers, email accounts and cellular telephones).

Company agrees to hold harmless BBVA from and against any loss caused by the failure by any Designated User to select, change, or to maintain the confidentiality of the MFA Option, and/or the request that a One Time Passcode be sent to an unsecure device and expressly assumes the risk of loss with respect to any action initiated using any One Time Passcode, Authentication Token or MFA option that has not been maintained and/or protected according to the terms of this Agreement.

BBVA shall not be liable to Company FOR ANY DAMAGES INCURRED for its failure to provide the One Time Passcode if such failure is because of circumstances or events outside the reasonable control of BBVA, including, but not limited to, power failures, telecommunications failures, internet server outages, lack of cellular service, or failure by Company or the Designated User to provide BBVA with accurate and/or complete delivery instructions.

If information from a Designated User’s wireless carrier or third party provider indicates to BBVA that the mobile number provided to BBVA by such Designated User has been changed, changed networks, is no longer registered to a Designated User, or is otherwise not authorized or able to receive messages, BBVA may stop providing One Time Passcodes to that number. In that event, the Corporate Administrator or Designated User must update the applicable mobile number in BBVA Net Cash before such number can be used for One Time Passcodes again. Company further agrees that BBVA will in no event have any liability: (1) for any delays or failure in providing text messages or cellular telephone calls to a Designated User, (2) if the text message or cellular telephone call is intercepted altered and/or forwarded to any party other than the Designated User, or (3) if the text message or cellular telephone call is infected with intrusive or destructive programs during the delivery process. Under no circumstances will BBVA be liable for any consequential, special, punitive, incidental, or other damages arising from or in connection with any delay or failure to provide any One Time Passcode or Authentication Token.

(d) Safe-keeping of Security Codes.

Company acknowledges that while BBVA will attempt to ensure that the Customer ID, all User IDs, all User Passwords, MFA Option and all electronic communications between Company and BBVA are encrypted, scrambled or otherwise protected against interception by a person whose access to BBVA Net Cash is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA through BBVA Net Cash. Company, the Corporate Administrator and each Designated User are responsible for safeguarding Security Codes. Company, the Corporate Administrator and Designated Users shall not, at any time, permit access to BBVA Net Cash by any person who does not need to obtain access to BBVA Net Cash consistent with Company’s rights hereunder.

If a Corporate Administrator loses or forgets a Customer ID, the Back-Up Administrator, or, if there is none, another Designated User, should provide assistance. If a Corporate Administrator loses or forgets his or her User ID or a User Password, the Corporate Administrator should request BBVA for assistance. If a Designated User loses or forgets a Customer ID, User ID or a User Password, the Corporate Administrator should provide assistance.

If a Designated User loses an Authentication Token, the Designated User shall immediately notify their Corporate Administrator who shall disable the lost Authentication Token. A Designated User shall thereafter request from their Corporate Administrator a replacement Authentication Token. If the Corporate Administrator needs additional Authentication Tokens to assign to Designated Users, the Corporate Administrator must contact BBVA in writing. The request for a replacement Authentication Token may be electronically sent to BBVA. After receiving a written communication requesting one or more Authentication Tokens, BBVA will mail the Authentication Token(s) to the Corporate Administrator who will assign the Authentication Token(s) to Designated User(s).

If Company believes that one or more Security Codes have become known or obtained by unauthorized persons (whether or not employed by Company), the following procedures apply: if, under the terms of this Section 2, (a) the Security Code is one for which the Corporate Administrator would be responsible for changing if the Security Code was lost, the Corporate Administrator shall immediately change the Security Code; or (b) the Security Code is one for which the Corporate Administrator or Designated User would be required to contact BBVA if the Security Code was lost, the Corporate Administrator or Designated User shall immediately notify BBVA. If Company believes that an Authentication Token has become known or obtained by unauthorized persons (whether or not employed by Company), it is the responsibility of each Designated User to immediately to follow the procedures set forth above in this Section 2 for lost authentication tokens. Additionally, BBVA may change or disable any Security Code or Authentication Token at any time and for any reason. If BBVA takes such action, BBVA will make every reasonable effort to notify Company promptly. BBVA assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company’s agents or representatives or anyone else for unauthorized disclosure or use of Security Codes or Authentication Token(s). Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company’s business and the type and volume of transactions to be conducted hereunder.

If Company is unable to access BBVA Net Cash or transact or conduct any Online Services, Company shall immediately notify BBVA of such inability and shall transact or conduct such service through other means available to Company.

3. Authorized Transactions. BBVA may rely upon any Online Service transacted or conducted through or by use of BBVA Net Cash as properly authorized by Company (including, without limitation, any transfer of funds, any advance from a BBVA Net Cash Accessible Loan or any instructions or information related thereto it receives from Company through BBVA Net Cash). The
Corporate Administrator, each Designated User to whom BBVA or the Corporate Administrator has provided access to Security Codes, or who has otherwise obtained access to Security Codes, is deemed an authorized representative of Company for purposes of all Online Services transacted or conducted through or by use of BBVA Net Cash, whether or not such person is authorized by this Agreement or any other agreement between BBVA and Company. Those Designated Users who have received Authentication Tokens from the Corporate Administrator, or anyone who has otherwise received an Authentication Token by any means, are deemed authorized representatives of Company for purposes of Wire Transfer Services and/or ACH Services transacted or conducted through or by use of BBVA Net Cash, whether or not such person is authorized by this Agreement or any other agreement between BBVA and Company. The Company shall not permit Designated Users of BBVA Net Cash that are not specifically authorized by the Company or the Corporate Administrator to access or initiate Wire Transfer Services or ACH Services. Company agrees to be bound by any wire transfers or ACH transaction initiated in compliance with the security procedures.

Company acknowledges and agrees that its Corporate Administrator and/or a Designated User is authorized to request advances on any BBVA Net Cash Accessible Loans where advances are available, regardless of whether the Corporate Administrator and/or the Designated User is authorized to do so under the applicable loan documentation. Company authorizes BBVA to process and make advances on BBVA Net Cash Accessible Loans without further verification or authorization if requested by the Corporate Administrator and/or a Designated User in accordance with the procedures and processes set forth herein.

Notwithstanding the terms of any Treasury Management Services Agreement or any other agreement between Company and BBVA, once Company accesses BBVA Net Cash to transact or conduct any Online Service, BBVA will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by BBVA. BBVA is authorized by Company to process transactions in accordance with information BBVA receives electronically through BBVA Net Cash using the Security Codes. Company shall be solely responsible for the information contained in the instructions and BBVA shall have no responsibility for erroneous data provided by Company. BBVA shall have no liability for losses resulting from or related to Company’s failure to limit access to BBVA Net Cash or maintain the confidentiality of the Security Codes including Authentication Tokens. At the sole discretion of BBVA, BBVA may also require the use of other identifying information or other security procedures for certain Online Services and BBVA may add to, change or delete any security procedure.


(a) Wire Transfers: Wire transfers initiated through BBVA Net Cash are subject to the conditions and limitations provided below, the terms and conditions set forth in the Online Funds Transfer Service section of this Agreement and the terms and conditions set forth in any other agreement related thereto entered into from time to time between BBVA and the Company.

(i) For the purposes of this Agreement, the following definitions apply:

A “Domestic Wire Transfer” means an outgoing wire transfer in U.S. Dollars (USD) sent either: (a) to the beneficiary’s account at a bank located in the United States, or (b) to a bank located in the United States, for credit to the beneficiary’s account at a bank located outside the United States (this kind of transfer is commonly referred to as an “Internal Fed Wire”).

(ii) International Wire Transfers: International wire transfers initiated by Company through BBVA Net Cash and received by BBVA by its applicable designated cutoff time on a day that BBVA is open for business will be processed the same day. International wire transfers initiated by Company through BBVA Net Cash and received by BBVA after its applicable designated cutoff time on a day that BBVA is open for business or at any time on a day on which BBVA is not open for business will be processed on the next day BBVA is open for business. The foreign currency exchange rates quoted for International Wire Transfers on BBVA Net Cash will be used for each foreign currency International Wire Transfer initiated via BBVA Net Cash UNLESS Company obtains a custom rate and related confirmation number from BBVA and properly enters the custom rate confirmation number in the designated field when initiating the wire transfer. The foreign currency exchange rates quoted on BBVA Net Cash may differ from the exchange rates quoted by BBVA for other purposes. If BBVA makes an error in entering any foreign currency exchange rate on BBVA Net Cash, BBVA reserves the right, in processing any International Wire Transfer initiated at the incorrect exchange rate, to substitute the correct exchange rate or to decline to process that wire transfer, as BBVA may determine in its sole discretion.

(iv) Under no circumstances will BBVA be liable for any consequential, special, punitive, incidental, or other damages arising from or in connection with any delay or failure to provide any e-mail notice. Company, not BBVA, has final responsibility to confirm the receipt or transmission of any wire transmission to or from a Company Account.

(b) Automated Clearing House (ACH) Transactions: ACH transactions initiated through BBVA Net Cash and received by BBVA by 6:00 p.m. Central Time on a day BBVA is open for business will be processed the same
day. ACH transactions initiated through BBVA Net Cash and received by BBVA after 6:00 p.m. Central Time on a day BBVA is open for business or on a Saturday, Sunday, or holiday on which BBVA is not open for business will be processed on the next day BBVA is open for business. Company acknowledges that all ACH transactions fulfilled by the Online Services are subject to the terms and conditions of the Automated Clearing House Services section or Automated Clearing House Prepaid Services section of this Agreement, as applicable.

(c) **Recurring ACH Payments.** The Recurring ACH Payment feature available in the BBVA Net Cash system permits each of Company’s Designated Users who are authorized to establish a standing order of the Company to submit a group of one or more Entries (referred to as an “ACH Batch”) on an automated and recurring basis, without further act or instruction by Company unless payment requires approval by another user (a “Recurring ACH Payment”). In setting up a Recurring ACH Payment on the BBVA Net Cash system, Company shall specify when each ACH Batch is to be transmitted, including:

- The Start Date, which is the date requested by Company as the Settlement Date for the first transmission of this ACH Batch.
- The Creation Time, which is the time at which Company requests the BBVA Net Cash system to activate each ACH Batch.
- The Recurrence Pattern, which is the frequency with which Company requests the BBVA Net Cash system to create each ACH Batch: daily, weekly, monthly or yearly, and the day(s) within each week, month or year.
- End Date, date of when the recurring creation of the ACH batch should stop. May be set to a specific number of occurrences or for a specific date.
- The Previous business day or future business day designation, which indicates whether an ACH Batch should be back-dated or future-dated if the requested Settlement Date is a holiday or other non-business day.

BBVA Net Cash will activate and, subject to the overall terms of this Agreement and any additional approval required of Company, BBVA will process each Recurring ACH Payment according to the instructions provided by Company through the BBVA Net Cash system. If the Company has elected to require additional approval for recurring ACH Payment, BBVA will not process any ACH Batch until the necessary approval has been provided by Company. With respect to each properly established ACH Recurring Payment, BBVA has (a) no duty to make any inquiries regarding the performance of any contract or the completion of any transaction between Company and the recipient of any Entry, (b) no obligation to Company other than to transmit each ACH Batch according to Company’s instructions, and (c) no liability if BBVA fails to transmit any ACH Batch (i) due to an Overlimit Entry, or (ii) if Company is using Prepaid ACH services and there are insufficient funds in the designated Company Account to execute that ACH Batch. In order to cancel a Recurring ACH Payment, Company must use the BBVA Net Cash system (a) to delete the recurring payment feature from the ACH Batch, (b) to disable the ACH batch, or (c) to delete the ACH Batch.

(d) **Account Transfers:** Account Transfers initiated through BBVA Net Cash and received by BBVA from 7:00 a.m. to 9:00 p.m. Central Time on a day BBVA is open for business will be posted to the applicable accounts the same day. Account Transfers initiated through BBVA Net Cash and received by BBVA at any time other than from 7:00 a.m. to 9:00 p.m. Central Time or on Saturday, Sunday, or holiday on which BBVA is not open for business will be posted to the applicable account on the next day BBVA is open for business.

(e) **Stop Payment Requests:** Stop Payment Requests initiated through BBVA Net Cash and received by BBVA from 7:00 a.m. to 9:00 p.m. Central Time on a day BBVA is open for business will be filed in relation to the applicable account the same day. Reasonable notification of a Stop Payment Request must be given to BBVA at least twenty-four (24) hours prior to the relevant item being presented for payment. A stop payment request issued via BBVA Net Cash will expire and become null and void twenty-four (24) months from the date received, unless revoked or released prior to that time, or unless renewed for additional periods of not more than twenty-four (24) months. The stop payment fee applicable to a stop payment order initiated electronically will apply to each stop payment request.

To the extent the procedures and timing requirements set forth herein for stop payment requests initiated through BBVA Net Cash are inconsistent with any provisions applicable to stop payment requests set forth in the Uniform Commercial Code, then those provisions are deemed to be varied by agreement as contemplated by Section 1-302 of the Uniform Commercial Code. The undersigned agrees to hold BBVA harmless and indemnify it against any loss, expense, or cost incurred resulting from BBVA’s refusal to pay any item upon which customer places a stop payment request.

5. **Alerts.** The Corporate Administrator permissions the Alerts service to the Designated User. Each Designated User may request and receive from BBVA any of the alerts made available through the BBVA Net Cash Service and which have been permitted by the Corporate Administrator by making alert selections through the BBVA Net Cash Online Site or within the Mobile Application. BBVA may add new alerts or discontinue existing alerts at any time. According to a Designated User’s alert selections, alerts may be sent via phone, fax, e-mail, wireless device text, in-app notifications, push notifications, or via a combination of these delivery channels. Each message is customized to fit the particular channel through which it is being delivered. For added security, all alerts will mask the related account number(s). Alert notifications may be delivered worldwide. The wireless device messages are delivered in SMS format.

It is the Corporate Administrator’s and Designated Users’ sole responsibility to ensure that the email addresses and mobile numbers provided to BBVA are current and accurate. If information from a Designated User’s wireless carrier or third party provider indicates to BBVA that the mobile number provided to BBVA by such Designated User has been changed, changed networks, is no longer registered to a Designated User, or is otherwise not authorized to receive messages, BBVA may automatically stop delivery of any alerts to that number. In that event, the Corporate Administrator or Designated User must update the applicable mobile number in BBVA Net Cash before alerts can be delivered to such mobile number again.

BBVA shall not be liable to Company FOR ANY DAMAGES INCURRED for its failure to provide the Alerts Service if such failure is caused, directly or indirectly, by circumstances or events outside the reasonable control of BBVA, including, but not limited to, power failures, telecommunications failures, internet server outages, lack of cellular service, or failure by Company to provide BBVA with accurate delivery instructions.
BBVA’s liability to Company for its failure to provide the Alerts Services is hereby specifically limited to the amount paid by Company to BBVA for the Alerts Service. Further, BBVA shall not be liable under any circumstances for any consequential, special, punitive, incidental, or similar damages arising from or in connection with the Alerts Service to be provided to Company by BBVA.

COMPANY WILL INDEMNIFY AND HOLD BBVA, ITS OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, ATTORNEYS, AND CONTRACTORS, HARMLESS FROM ANY CLAIM, LOSS, PENALTY, ASSESSMENT, COST, OR DAMAGE, WHETHER IN CONTRACT OR IN TORT (INCLUDING REASONABLE ATTORNEY’S FEES), ARISING UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE ALERTS SERVICE PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THOSE ASSERTED BY THIRD PARTIES FOR REIMBURSEMENT OR DAMAGES AND THOSE WHICH ARISE OUT OF OR UNDER THE ELECTRONIC FUNDS TRANSFER ACT, ANY APPLICABLE STATE ELECTRONIC FUND TRANSFER RULES OR REGULATIONS, OR ANY RULES OR GUIDELINES OF ANY AUTOMATED CLEARING HOUSE.

6. Online Image Services

(a) Image Services. BBVA Net Cash Online Image Services (“BBVA Net Cash Online Image Services”) permits Company, using BBVA Net Cash, to retrieve and view online images of items, reports, and other documents issued or created in connection with Company’s Accounts (the “Image Services”). The type of items, reports, and documents for which Image Services are available are reflected on the Service Instructions for Image Services. The type of items, reports, and documents for which Image Services are available may be changed or updated from time to time by BBVA. Company must authorize a Designated User for Image Services.

(b) Image Processing. BBVA will use its best efforts to process and provide retrieval access to images of all items, reports, and documents for which Image Services are available, and which Company has selected. BBVA does not, however, guarantee that Company will be able to retrieve and view all images at all times or that all items, reports, and documents for which Image Services may be otherwise available will adequately process to the Image Services archive system. Company acknowledges that the Image Services archive system may not be accessible from time to time or a retrieval request may not be completed and a Designated User may be required to access Image Services at a later time. Company acknowledges that there exist many reasons and causes that certain images may not be available for retrieval or that certain items or documents may not adequately process to the Image Services system, including, but not limited to, (a) an item bearing a deficient MICR line that does not post to the Images Services archive, (b) errors based on account or routing number information, and (c) incompatible search criteria for certain items or documents. BBVA shall have no liability or obligation for Company’s inability to retrieve one or more images at any time.

(c) Image Quality. Company acknowledges that the visual quality of a retrieved image depends on the visual quality of the item or document from which the image was created. The darkness, tint, tone, and clarity of both written and background characters contained in the original source item or document affects directly the quality of the image created. BBVA shall have no responsibility or obligation to enhance or improve the visual quality of any image based on the condition or visual quality of the original source item, image, or document.

(d) Timeliness of Response. Company acknowledges that the timeliness of a response to a retrieval request for one or more images depends on the Company’s Internet Service Provider (“ISP”) and the medium through which Company connects to the Internet. Company acknowledges that certain ISPs and Internet medium connections produce a more rapid response than others, and that BBVA has no responsibility or obligation to enhance or improve the response time to Company’s Image Services retrieval requests.

(e) Time of Image Availability. BBVA from time to time will communicate to Company the time of day at which the various types of images created in connection with Image Services will be available for retrieval. The availability times may change from time to time as communicated to Company by BBVA.

(f) Inadvertent Retrieval. In the event, due to operating error, any Designated User inadvertently retrieves an image of an item, report, or document related to an account owned by an entity other than Company, Company agrees that the Designated User, upon recognition that the image is of an item, report, or document that does not relate to Company’s Account, will immediately take the action necessary to delete the image from the Designated User’s screen. Company agrees that neither Company nor any Designated User will use the inadvertently retrieved image for any purpose whatsoever. Company further waives any action or claim arising from the inadvertent retrieval of the image of any item, report, or document related to Company’s Accounts by another entity using Image Services.

7. Sharing of Data. BBVA Net Cash and the Online Services allow a Designated User to share reports, statements, images and other information (“Content”) from a computer or Mobile Device. Company hereby acknowledges and agrees that (a) any Content shared by a Designated User may pass through private and public networks with varying levels of security, (b) BBVA is not responsible for the security or privacy of the Content shared by a Designated User through a computer or Mobile Device, and (c) BBVA is not liable for any damages that occur as a result of any Content that is shared by a Designated User through a computer or Mobile Device.

8. Grant of License. BBVA hereby grants Company a limited, nonexclusive, limited-transferable, limited term, royalty-free, revocable sublicense to use BBVA Net Cash, software creating, maintaining and supporting BBVA Net Cash (the “Software”) and the printed, digital or electronic user materials provided in connection therewith (the “Documentation”) solely to conduct transactions in connection with the Online Services, for Company’s internal business purposes only. Except as specifically provided herein, BBVA does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to BBVA Net Cash, the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA, BBVA Group or a third party are the exclusive owners of and shall retain all right, title and interest in and to BBVA Net Cash, the Software, the Documentation and the Intellectual Property Rights (as defined herein).

9. Equipment and Internet Service. In connection with its use of BBVA Net Cash and Online Services for the purposes provided in this Agreement, or otherwise, Company shall be solely responsible for satisfying the minimum hardware, software, and Internet browser requirements specified by BBVA from time to time and maintaining Internet service sufficient to access and use
BBVA Net Cash as provided herein. Company shall be solely responsible for ensuring equipment and software compatibility with BBVA Net Cash and Online Services. All of the foregoing will be purchased and maintained by Company, at its sole expense. BBVA shall have no liability or responsibility for any failures or delays relating to any of the foregoing, including, without limitation, Company’s ISP’s performance or actions or omissions.

10. BBVA Representations and Warranties. Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party’s rights, and use thereof is enjoined, BBVA shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software and Documentation.

11. Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) that Company asserts or sustains as a result of Company’s use of BBVA Net Cash or Online Services or an account becoming ineligible for BBVA Net Cash.

The liability of BBVA or any other Provider for any Damages asserted by Company as a result of the acts or omissions of any Provider shall be limited to interest on the funds at issue at the “federal funds rate” paid by BBVA at the close of business on each day such act or omission remains uncorrected; provided, however, if BBVA or such other Provider is unable to recover funds from a person or entity who or which receives such funds as a result of such Provider’s acts or omissions and who has no claim to such funds, such Provider shall be liable for Company’s actual loss, not to exceed the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, no Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or such other Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to this Agreement, BBVA Net Cash or Online Services. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA, whether under this Agreement or any other agreement between BBVA and Company applicable to the Online Services, shall apply equally to all other Providers with respect to access to or use of, or any Online Service transacted through or by use of, BBVA Net Cash.

12. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BBVA NET CASH, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY’S USE DURING THE TERM HEREOF “AS IS” AND “WHERE IS”. AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO BBVA NET CASH, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF BBVA NET CASH BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. BBVA DOES NOT WARRANT THAT THE OPERATION OF BBVA NET CASH OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT COMPANY WILL NOT EXPERIENCE OTHER PROGRAM LIMITATIONS, OR VIRUS OR OTHER DISABLING ROUTINE. BBVA DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF BBVA NET CASH, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER (“ISP”) SUITABLE TO ACCESS BBVA NET CASH AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY’S USE OF BBVA NET CASH OR THE ABILITY TO CONDUCT OR TRANSMIT ONLINE SERVICES (INCLUDING, WITHOUT LIMITATION, COMPANY’S ABILITY TO ACCESS BBVA NET CASH), AND THAT BBVA SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA’S COMPUTERS, AND ABBREVIATES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT BBVA SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY’S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF BBVA NET CASH IS DONE AT COMPANY’S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

13. Proprietary Rights. Company acknowledges that BBVA or the other Providers shall retain all rights, title and interests in and to BBVA Net Cash, the Software (including, without limitation, the source code, listings, magnetic and digital media and any support materials related thereto) and Documentation, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereto and additions thereto, including ownership of all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto (collectively, the “Intellectual Property Rights”), except as granted hereunder. Company shall not take any action that is inconsistent with the Intellectual Property Rights of BBVA or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of BBVA or any other Provider. The Software and Documentation include trade secrets and other proprietary information of BBVA and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies), Company shall treat as confidential and shall not disclose or otherwise make available the Software, the Documentation (collectively, the “Confidential Information”), in any form, to any person other than Company’s employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon
such Confidential Information, or permit or authorize any third party to do any of the foregoing.

Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to BBVA Net Cash or the Software.

14. Company’s Additional Representations, Warranties and Covenant. Company represents and warrants that each electronic communication submitted to BBVA by the Company by use of BBVA Net Cash fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using BBVA Net Cash are for commercial purposes, and not for personal or household purposes.

15. Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to and its ability to transact any or all of the Online Services through BBVA Net Cash at any time for any reason, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. BBVA may require Company to execute additional documents or agreements to continue to conduct or transact Online Services through or by use of BBVA Net Cash at any time. The terms and provisions of Sections 7, 8, 11, 12 and 13 of this BBVANetCash section of this Agreement shall survive the termination of this Agreement and Company’s right to access and submit transactions through BBVA Net Cash.

BBVA E-TRANSMIT ONLINE SERVICES

Upon Company’s submission of a request for BBVA e-Transmit Online Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Online Access. Company may conduct online one or more of the following Treasury Management Services and functions (as shown in the Service Instructions for BBVA e-Transmit Services) through access to and by use of BBVA e-Transmit, one of BBVA’s online Treasury Management Internet Web sites: (a) Automated Clearing House Services; (c) Electronic Delivery Services; (d) receive a Lockbox file; and (e) receive Account Analysis Statements (collectively, the e-Transmit Services ).

Company’s use of BBVA e-Transmit shall be subject to these terms and conditions, all instructions and guidelines established from time to time by BBVA, all applicable software and user documentation terms and conditions, and all applicable state and federal laws and regulations. Company will only be granted access to, and agrees only to access, BBVA e-Transmit to transact or conduct the e-Transmit Services shown in the Service Instructions for BBVA e-Transmit. Company may only transact those e-Transmit Services that BBVA has agreed to provide and has implemented for Company.

Automated Clearing House Services shall mean those services described by those terms elsewhere in this Agreement. Automated Clearing House Services shall be subject to all other terms and conditions applicable to those services as set forth in this Agreement.

Electronic Delivery Services allow Company to obtain or send files, reports and statements. The format and content of the files, reports and statements shall be determined by BBVA.

Receipt of Lockbox files using e-Transmit Services is subject to all other terms and conditions applicable to Lockbox Services set forth elsewhere in this Agreement.

2. Internet Security. Company shall designate in writing to BBVA those individuals who will be permitted to access and conduct online services using BBVA e-Transmit ("Designated Users"). The designating document must contain the original signatures of a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. BBVA e-Transmit shall be accessed, and BBVA e-Transmit Services shall be conducted or transacted, only by the Designated Users. If Company desires to change or add a Designated User, Company shall provide prior written notice to BBVA of such change, signed by a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. The notice may be telefaxed to BBVA, but it must be followed by a document with an original signature on it. No change of Designated Users by Company shall be effective until accepted by BBVA, and BBVA has had a reasonable opportunity to update its records. After Company has designated to BBVA the identity of the Designated Users, BBVA shall provide the Designated Users with the World Wide Web address of BBVA e-Transmit on which the e-Transmit Services shall be accessible. BBVA shall also provide each Designated User with an identification code (the “Mailbox ID”), a password (the “Mailbox Password”), a unique user identification code (“User ID”) and all PINs (singularly, a “Company Code”, and collectively, the “Company Codes”). Company and each Designated User shall at all times keep the Mailbox ID, the Mailbox Password, all User IDs, all PINs and all electronic communications between Company and BBVA encrypted, scrambled or otherwise protected against interception by a person whose access to BBVA e-Transmit is unauthorized. Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA through BBVA e-Transmit. Each Designated User is responsible for safekeeping the Mailbox ID, the Mailbox Password, all User IDs, and all PINs (singularly, a “Company Code”, and collectively, the “Company Codes”). Company and each Designated User shall not, at any time, permit access to BBVA e-Transmit by any person who does not need to obtain access to BBVA e-Transmit consistent with Company’s rights hereunder.

If a Designated User loses or forgets a Mailbox ID, Mailbox Password, User ID or PIN, the Designated User should contact BBVA for assistance.

If Company or any Designated User believes that one or more Company Codes have become known or obtained by unauthorized persons (whether or not employed by Company), the Company shall immediately notify BBVA to enable BBVA to disable the affected Company Code(s). Additionally, BBVA may change or disable any Company Code at any time and for any reason. If BBVA takes such action, BBVA will make every reasonable effort to notify Company promptly. BBVA assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company’s agents or
representatives or anyone else for unauthorized disclosure or use of Company Codes. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company.

If Company is unable to access BBVA e-Transmit or transact or conduct any e-Transmit Services, Company shall immediately notify BBVA of such inability but shall transact or conduct such service through other means available to Company.

3. Authorized Transactions. BBVA may rely upon any e-Transmit Service transacted or conducted through or by use of BBVA e-Transmit as properly authorized by Company (including, without limitation, any instructions or information related thereto) that it receives from Company through BBVA e-Transmit. Each Designated User to whom BBVA has provided access to Company Codes, or who has otherwise obtained access to Company Codes, is deemed an authorized representative of Company for purposes of all e-Transmit Services transacted or conducted through or by use of BBVA e-Transmit, whether or not such person is authorized by this Agreement or any other agreement between BBVA and Company.

Notwithstanding the terms of any Treasury Management Services Agreement or any other agreement between Company and BBVA, once Company accesses BBVA e-Transmit to transact or conduct any e-Transmit Service, BBVA will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by BBVA. BBVA is authorized by Company to process transactions in accordance with information BBVA receives electronically from Company. Company shall be solely responsible for the information contained in the instructions and BBVA shall have no responsibility for erroneous data provided by Company. BBVA shall have no liability for losses resulting from or related to Company’s failure to limit access to BBVA e-Transmit or maintain the confidentiality of the Company Codes. At the sole discretion of BBVA, BBVA may also require the use of other identifying information or other security procedures for certain e-Transmit Services and BBVA may add to, change or delete any security procedure.


Automated Clearing House (ACH) Transactions: ACH transactions initiated through BBVA e-Transmit and received by BBVA at 6:00 p.m. Central Time on a day BBVA is open for business will be processed the same day; if the Federal Reserve is closed on a day BBVA is open for business, the ACH transactions will be processed by the Federal Reserve on the next business day the Federal Reserve is open for business. ACH transactions initiated through BBVA e-Transmit and received by BBVA after 6:00 p.m. Central Time on a day BBVA is open for business or on a Saturday, Sunday, or holiday on which BBVA is not open for business will be processed on the next day BBVA is open for business.

Positive Pay Files: Positive Pay files submitted through BBVA e-Transmit and received by BBVA at 7:00 p.m. Central Time on a day BBVA is open for business will be processed the next day. Positive Pay files submitted through BBVA e-Transmit and received by BBVA after 7:00 p.m. Central Time on a day BBVA is open for business or on a Saturday, Sunday, or holiday on which BBVA is not open for business will be processed the next day BBVA is open for business.

5. Grant of License. BBVA hereby grants Company a limited, nonexclusive, non-assignable, limited term, royalty-free, revocable sublicense to use BBVA e-Transmit and the software creating, maintaining and supporting BBVA e-Transmit (the “Software”) and the printed user materials provided in connection therewith (the “Documentation”) solely to conduct transactions in connection with the e-Transmit Services, for Company’s internal business purposes only. Except as specifically provided herein, BBVA does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to BBVA e-Transmit, the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA or a third party are the exclusive owners of and shall retain all right, title and interest in and to BBVA e-Transmit, the Software, the Documentation and the Intellectual Property Rights (as defined herein).

6. Equipment. In connection with its use of BBVA e-Transmit and e-Transmit Services for the purposes provided in this Agreement, or otherwise, Company shall obtain Internet browser software specified by BBVA. Company shall be solely responsible for ensuring equipment and software compatibility with BBVA e-Transmit and e-Transmit Services. All hardware and telecommunications equipment will be purchased and maintained by Company.

7. BBVA Representations and Warranties. Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party’s rights, and use thereof is enjoined, BBVA shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software and Documentation.

8. Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses, collectively, “Damages” that Company asserts or sustains as a result of Company’s use of BBVA e-Transmit.

The liability of BBVA or any other Provider for any Damages asserted by Company arising as a result of the acts or omissions of any Provider shall be limited to interest on the funds at issue at the “federal funds rate” paid by BBVA at the close of business on each day such act or omission remains uncorrected; provided, however, if BBVA or such other Provider is unable to recover funds from a person or entity who or which receives such funds as a result of such Provider’s acts or omissions and who has no claim to such funds, such Provider shall be liable for any actual losses or costs incurred in connection with the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, no Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or such other Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to this Agreement, BBVA e-Transmit or e-Transmit Services. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all waivers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA, whether under this Agreement or any other agreement between BBVA and Company applicable to the e-Transmit Services shall apply equally to all other Providers with respect
to access to or use of, or any e-Transmit Service transacted through or by use of, BBVA e-Transmit.

9. Disclaimers. Except as expressly provided herein, BBVA e-Transmit, the software and the documentation are provided for Company’s use during the term hereof “as is” and “where is”, and, to the maximum extent permitted by applicable law, BBVA and the other providers make no representations or warranties and disclaim all representations and warranties, express or implied, statutory or otherwise, with regard to BBVA e-Transmit, the software or the documentation, or use of BBVA e-Transmit by Company, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, quality and non-infringement. BBVA does not warrant that the operation of BBVA e-Transmit or software will be uninterrupted, error free or free from any other program limitations. BBVA does not make any representation regarding the use or the results of the use of BBVA e-Transmit, the software or the documentation in terms of their correctness, accuracy, reliability or otherwise. Company acknowledges that it must provide all equipment and provide and maintain service through an internet service provider (“ISP”) suitable to access BBVA e-Transmit and is solely responsible for all fees, costs and charges associated with and maintenance of such equipment or service. Company acknowledges that its ISP may have unintended effects on Company’s use of BBVA e-Transmit and the ability to conduct or transact e-Transmit services (including, without limitation, Company’s ability to access BBVA e-Transmit). And that BBVA shall have no responsibility for such effects. Company acknowledges that the software must interface with BBVA’s computers, and assumes the risk that BBVA’s computers might not be operational or compatible at all times. Company further acknowledges that BBVA shall have no liability or responsibility for the satisfactory performance of the company’s hardware and software used to initiate or receive communications over the Internet. Company also acknowledges that any material downloaded or otherwise obtained through the use of BBVA e-Transmit is done at Company’s own discretion and risk and that Company shall be solely responsible for any damage to Company’s computer system or loss of data that results from the download of any such material.

10. Proprietary Rights. Company acknowledges that BBVA or the other providers shall retain all rights, title and interests in and to BBVA e-Transmit, the software (including, without limitation, the source code, listings, magnetic media and any support materials related thereto) and documentation, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereof and additions thereto, including ownership of all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto (collectively, the “Intellectual Property Rights”), except as granted hereunder. Company shall not take any action that is inconsistent with the Intellectual Property Rights of BBVA or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of BBVA or any other provider.

The software and documentation include trade secrets and other proprietary information of BBVA and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies). Company shall treat as confidential and shall not disclose or otherwise make available the software, documentation (collectively, the “Confidential Information”), in any form, to any person other than Company’s employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon such Confidential Information, or permit or authorize any third party to do any of the foregoing.

Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to BBVA e-Transmit or the software.

11. Company’s Additional Representations, Warranties and Covenants. Company represents and warrants that each electronic communication submitted to BBVA by the Company by use of BBVA e-Transmit fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et seq. and (b) that all transactions initiated by Company using BBVA e-Transmit are for commercial purposes, and not for personal or household purposes.

12. Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to and its ability to transact e-Transmit Services through BBVA e-Transmit at any time, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. BBVA may require Company to execute additional documents or agreements to continue to conduct or transact e-Transmit Services through or by use of BBVA e-Transmit at any time. The terms and provisions of Sections 5, 8, 9 and 10 of this Agreement shall survive the termination of this Agreement and Company’s right to access and submit transactions through BBVA e-Transmit.

CASH SERVICES

BLUE STREAK DEPOSITS Upon Company’s submission of a request for Cash Services that includes Blue Streak Deposit Service and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:

1. Deposit Bag. Company will purchase, through BBVA’s approved vendor or from an outside vendor that meets BBVA’s approved security measures, special tamper resistant clear two-pocket disposable bags for making deposits, which bags will contain separate sealed compartments for (a) currency/coins and (b) checks and similar items (such bags are herein referred to as “Deposit Bags”). BBVA disclaims all implied warranties of merchantability and fitness for a particular purpose as to the Deposit Bags sold to Company through BBVA’s approved vendor. Any Deposit Bags purchased from an outside vendor must be submitted to BBVA’s for security testing approval. If approval is granted, Deposit Bags may be utilized for making Blue Streak Deposits. If the deposit bags do not meet BBVA’s security measures, the deposit bags may not be accepted for deposit and Company will be notified. BBVA will not accept
2. **Preparation of Deposits.** Company will prepare deposits in accordance with the requirements set forth in the Deposit Preparation Guidelines. A deposit ticket listing Company’s name, account number and the amount of funds must be included in each sealed deposit. If the deposit is improperly prepared, the deposit will be subject to immediate verification and any applicable fees.

3. **Deposit Receipt.** BBVA may accept deposits without immediately verifying the amount of cash and checks contained in the deposit (the “Unverified Deposit”). BBVA will issue a receipt reflecting the amount of the deposit as set forth on Company’s deposit ticket. Any credit to Company’s Designated Accounts prior to BBVA’s verification is provisional credit only subject to BBVA’s funds availability policy and may be adjusted.

4. **Deposit Verification.** Company acknowledges and agrees that BBVA shall have three (3) Business Days from receipt of any Unverified Deposit to verify the amount of cash or checks, or both, contained in the Unverified Deposit. Upon verification, BBVA will make any and all adjustments in the Company’s Designated Accounts to reflect the actual amount of the Unverified Deposit if differs from the amount set forth on the Company’s deposit ticket. BBVA’s determination of the amount of the Unverified Deposit is presumptively conclusive. Company shall have the evidentiary burden to prove that BBVA verification and determination of the amount of any deposit is incorrect.

5. **Adjustments.** In the event that the amount the Company has indicated for deposit does not equal the actual amount of the deposit determined by BBVA (an “Adjustments”), BBVA is hereby authorized to: execute a Deposit Correction Form, Debit Memo, and/or Credit Memo and, if applicable, debit (or credit) Company’s Designated Accounts, as appropriate, to reflect the accurate amount of the deposit. In lieu thereof however BBVA may in its sole discretion, abide by any special instructions with respect to such Adjustments provided for on the Special Instructions Addendum executed by Company, if any. However, nothing therein and no course of dealing shall be construed as prohibiting BBVA from executing a Deposit Correction Form, Debit Memo and/or Credit Memo and, if applicable, correcting the Company’s deposit slip and debiting (or crediting) Company’s Designated Accounts, as appropriate.

6. **Limitations of Liability; Risk of Loss.** BBVA shall have no responsibility or liability for any cash or any items contained in any deposit until the deposit is actually received and accepted by an employee at one of BBVA’s depository locations. The Company shall bear entirely the risk of loss for any deposit until received and accepted by the bank. If BBVA, in its sole discretion, determines that the deposit bags appear to be tampered, deposit may be refused and BBVA will not assume any responsibility or liability for loss. If BBVA, in its sole discretion, suspects that the deposit is fraudulent, the deposit may be verified through immediate verification and will subject to the applicable fees.

7. **Other Agreements.** Except as specifically provided in this Agreement, all other account agreements and all fees and charges relating to Designated Accounts remain applicable to the Designated Accounts, and BBVA’s remedies set forth in those agreements are cumulative.

**VAULT SERVICES** Upon Company’s submission of a request for Cash Services that include Vault Services, and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:

1. **Transportation.** The Company is required to employ a bonded and licensed armored carrier (“Transporter”), to provide transportation of deposits of cash, checks, coins, and other items (“Deposits”) from Company’s place(s) of business and other locations to BBVA vault identified in the Service Instructions for Vault Services (the “Vault”) and receive Change Orders (as defined below) from BBVA.

2. **Deposits.** Prior to making a deposit the customer shall:

   a. Insert the cash and checks, coins and other items for deposit in a polyseal deposit bag or other kind of bag BBVA may require (the “Deposit Bag”) accessible only by Company and BBVA.

   b. Clearly indicate the amount of cash, coin, etc., each Bag contains a complete deposit ticket, in duplicate, itemizing cash and checks and other items intended for credit to the Company’s account (NOTE: Checks are to be endorsed “For Deposit Only”).

   c. Seal the Bag and take all such precautions as may be necessary or appropriate to ensure that the Bag is secure and to prevent unauthorized persons from having access thereto.

3. **Delivery.** Upon delivery of each Deposit, the Company’s Transporter shall abide by all rules and regulations relating to security at the Vault and surrounding areas (the “Safety and Security Rules”), whether or not the same have been previously communicated to the Company or the Transporter. Company agrees that the Safety and Security Rules are subject to change without notice at any time. Company agrees that BBVA reserves the right to refuse to conduct business with any Transporter for any reason and that failure of a Transporter to abide by the Safety and Security Rules may result in immediate termination of the Company’s Vault Services and/or any other action BBVA may deem necessary or appropriate.

4. **Receipt of Deposit.** On the day of the Company’s or its designated Transporter’s delivery of a Deposit to the Vault and BBVA’s receipt and acceptance thereof, BBVA is authorized and instructed by Company to:

   a. Open the Deposit Bag(s) and verify the amount(s) of the Deposit(s).

   b. Process the Deposit(s) for credit to the Company’s Designated Account(s) in accordance with the Company’s deposit agreement subject to applicable law (collectively “Deposit Rules”). Deposits of coin will be subject to later verification from the time of the relevant Deposit except as is otherwise required by applicable Deposit Rules. If the amount of the Deposit as determined by BBVA is different from the amount indicated by the relevant deposit ticket or otherwise for deposit, BBVA will prepare and process an adjustment entry for the amount of the difference pursuant to the “Adjustment” provisions below.

   c. Provide the Company an advice of the transaction(s), except as noted above.

   d. If there are any defects or damage or any evidence of tampering to a Bag, BBVA may, in its sole discretion, refuse to accept the same for deposit. The cost of replacement of any Deposit Bag shall be borne by the Company.

5. **Change Orders.** The Company may request United States currency and/or coin (a “Change Order”) by contacting an authorized BBVA representative at the Vault. If BBVA has sufficient currency and/or coin available, the Company’s designated Transporter may retrieve, such Change Order at the Vault. BBVA is hereby authorized to debit the Company’s account for the amount of any such Change Order and any applicable fees associated with placing the Change Order. Notwithstanding the foregoing, in lieu of debiting Company’s Account, BBVA may, in its sole discretion, allow Company to make a cash settlement for a Change Order within twenty-four hours of BBVA’s delivery of the Change Order. Company has the sole responsibility for confirming the accuracy and quantity of
currency and coin upon receipt of the funds. Company is responsible for filing any disputes regarding the currency and coin received within 3 business days after receiving the funds.

6. **Records.** BBVA may, record electronic requests for (including but limited to Change Orders) by Company. Such recordings and BBVA’s other records shall evidence a Company’s Change Order request and its other transactions with BBVA, including, without limitation, the amount of any Change Order or other transaction. BBVA shall not be required to investigate the reasonableness or authorization for any Change Order, any transaction, or request for any other service.

7. **Adjustments.** In the event that the amount the Company has indicated for deposit does not equal the actual amount of the Deposit determined by BBVA (an “Adjustment”), BBVA is hereby authorized to: execute a Deposit Correction Form, Debit Memo, and/or Credit Memo and, if applicable, debit (or credit) Company’s account, as appropriate, to reflect the accurate amount of the Deposit. In lieu thereof however BBVA may in its sole discretion, abide by any special instructions with respect to such Adjustments provided for on the Special Instructions Addendum executed by Company, if any. However, nothing herein and no course of dealing shall be construed as prohibiting BBVA from executing a Deposit Correction Form, Debit Memo and/or Credit Memo and, if applicable, correcting the Company’s deposit slip and debiting (or crediting) Company’s account, as appropriate.

8. **Limitation on Liability; Risk of Loss.** The Vault Services are provided by BBVA as a convenience to and at risk of the Company, an BBVA shall have no responsibility or liability to Company or its Designated Transporter for any cash or any items contained in any deposit until the deposit is actually received and accepted by an employee at one of BBVA’s depository locations. The Company shall bear entirely the risk of loss for any deposit until received and accepted by the bank. If BBVA, in its sole discretion, determines that the deposit bags appear to be tampered, deposit may be refused and BBVA will not assume any responsibility or liability for loss.

9. **Company** agrees and warrants that it will order, deposit, or request delivery of currency or coin to or from BBVA only for its own purposes and not for or on behalf of any other person.

10. **Business Class QuickDrop Deposits.** Upon Company’s submission of a request for Vault Services that include Business Class QuickDrop Deposit Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:
    
    (a) **Deposit Receipt.** BBVA agrees to accept deposits without immediately verifying the amount of cash and checks contained in the deposit (the “Unverified Deposit”). BBVA will issue a receipt reflecting the amount of the deposit as set forth on Company’s deposit ticket.
    
    (b) **Deposit Verification.** BBVA shall have 3 business days from any Unverified Deposit to verify the amount of cash or checks, or both, contained in the Unverified Deposit. Upon verification, BBVA will make any and all adjustments in the Company’s account to reflect the actual amount of the Unverified Deposit if the same differs from the amount set forth on the Company’s deposit ticket. BBVA’s determination of the amount of the Unverified Deposit is presumptively conclusive. Company shall have the evidentiary burden to prove that BBVA’s verification and determination of the amount of any deposit is incorrect.
    
    (c) **Risk of Loss.** BBVA shall have no responsibility for any cash or any items contained in any deposit until the deposit is actually received by an employee of BBVA at one of BBVA’s depository locations. The Company shall bear entirely the risk of loss for any deposit until delivered to BBVA.

**DEPOSICASH® SERVICE**

1. **Description of Service.** Deposicash is a service whereby Company receives provisional credit for funds deposited into smart safe equipment (“Equipment”) that is serviced and provided through a smart safe program of a third party provider approved by BBVA (“Transporter”).

2. **General.** To utilize the Deposicash service, the Company must execute a Smart Safe Services Agreement (“Smart Safe Services Agreement”) for a smart safe program directly with the Transporter. Company agrees to comply with all stated terms and conditions of the Smart Safe Services Agreement for the smart safe program.

3. **Provisional Credit.** BBVA may provide Company’s account with provisional credit for deposits into the Equipment as reported electronically by Transporter. At BBVA’s sole discretion, credit to the Company’s account may be provided in the form of immediate or delayed posting as of the close of business of any processing day. Company acknowledges that Transporter is responsible for determining any shortages or overages during physical funds verification and for reporting and depositing any discrepancies to Company’s account in a timely manner. In the event of a discrepancy between the amount of funds reported by Transporter to BBVA and the actual amount after physical funds verification by Transporter, the verified amount will prevail. BBVA may adjust the account balance, without prior notice to Company, via credit or debit should there be any deposit discrepancy. Until receipt and final physical funds verification by BBVA has been completed, BBVA may, in its discretion and without prior notice to Company, reduce or revoke any provisional credit granted to company hereby for any reason, including without limitation actual or suspected damage, theft or destruction of the funds or Equipment, failure of Company to make the Equipment and funds available to BBVA or Transporter, or any other event that results in a delay in Transporter’s or BBVA’s receipt and verification of funds, whether or not due to any fault of BBVA or Transporter.

4. **Duties/Risk of Loss.** BBVA’s duties for this service are limited to processing the deposit funds for credit to the Company’s account(s) in accordance with the Company’s deposit agreement with BBVA and applicable law (collectively “Deposit Rules”) and these services are provided by BBVA as a convenience to and at the sole and absolute risk of the Company. BBVA shall have no responsibility or liability for the content, including but not limited to any cash or any items contained in the Equipment, until the deposit is actually and physically received and verified by an employee of BBVA at one of BBVA depository location. The Company shall bear entirely the risk of loss, damage, theft or destruction (or for any cost, expense liability related thereto) for any deposit until actually and physically received by BBVA as contemplated in this paragraph. In case of a loss, damage, theft or destruction of funds in which BBVA has already provided provisional credit and such funds have not been delivered to BBVA, BBVA will have the right to setoff against the Company’s account for those funds previously credited.

5. **Transporter.** Company agrees that BBVA will not bear any responsibility or liability for the smart safe program including the Equipment provided by the Transporter. Company understands that Transporter is responsible and liable for the deposit amount that is reported by Transporter on any given day and transmitted to BBVA for processing. The Transporter does not act as the agent of BBVA in performing activities for the Company.

6. **Insurance.** Company shall at all times during the term hereof maintain an excess liability/enhanced guarantee coverage with the Transporter or maintain commercial crime insurance with reputable insurance carriers, to cover the loss or destruction of the deposited funds that are deposited in the Equipment or handled, stored or transported by the Transporter. The insurance policies relating to such insurance coverage shall (a) name BBVA, at no cost or expense to BBVA, as an additional insured
and loss payee under such policies and Company shall cause such policies to include a provision whereby the insurance carrier waives its rights of subrogation against any named insured thereunder; and (b) contain provisions requiring the insurance carriers to notify Company in writing at least ten (10) days prior to the effective date of any termination or material change to the insurance coverage. Upon the reasonable request of BBVA, Company shall furnish BBVA with a Certificate of Insurance and a copy of the liability insurance endorsement evidencing such insurance coverage. BBVA is not an insurer of any deposits placed with and transported by the Transporter.

7. Billing. Transporter will bill the associated service fees for its smart safe program to Company as per the Smart Safe Services Agreement on a monthly basis. Company agrees to pay fees for the smart safe program directly to Transporter, unless BBVA has expressly agreed to apply the Smart Safe Services Agreement fees as part of Company’s monthly Account Analysis statement. If applicable, at BBVA’s sole discretion, BBVA may elect to no longer apply fees through Account Analysis.

8. Termination. If, for any reason, Company terminates the Transporter Smart Safe Services Agreement with Transporter or terminates its relationship with BBVA, Company agrees that they will immediately inform the mutual parties in writing of such termination in addition to any specific termination requirements as stated in the Transporter Smart Safe Services Agreement or this Agreement.

COMPASSVIEW® SERVICES

Upon Company’s submission of a request for CompassView Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, and in addition to its agreements set forth below with respect to provisions applicable generally to CompassView Services Company agrees:

1. PC Access. Use of the Program (as hereinafter defined) shall be subject to the terms and conditions contained in this Agreement applicable to the Program and Software (as hereinafter defined), all operating procedures established from time to time by BBVA, Company’s completion and delivery to BBVA of all questionnaires and information required for the Service Instructions for the service, and all applicable state and federal laws and regulations.

2. Software Security. The Software requires the Company to designate a “System Administrator” to maintain password security and grant software access authorization to designated users. After the “System Administrator” has followed the instructions from the User Manual, for assigning passwords to designate users, each designated user is responsible for safekeeping their individual password. The “System Administrator” is responsible for adding or deleting users and monitoring their corresponding passwords. BBVA assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company’s agents or representatives for unauthorized disclosure or use of the password. Company agrees that the security procedures in this Section constitute commercially reasonable security procedures for the Company. Company accepts sole responsibility for safeguarding information regarding the security password provided for in using the Software and for any unauthorized or fraudulent use of the Software purportedly on Company’s behalf. Company may not, at any time, disclose or disseminate the Software to any person who does not need to obtain access to the Software or the Program consistent with Company’s rights under this Agreement. Under no circumstances may Company “unlock” the code of the Software, as the term is generally used in the trade. BBVA claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Software, and in all system documentation related to the Software, as unpublished works.

Company acknowledges that, in the event of Company’s breach of any of the provisions, terms or conditions of any CompassView Services, BBVA will not have an adequate remedy in money or damages. BBVA shall therefore be entitled to obtain an injunction against the breach from any court of competent jurisdiction immediately upon request. BBVA’s right to obtain injunctive relief shall not limit its right to seek further remedies.

Company’s obligations hereunder shall remain in effect for as long as Company continues to possess or use the Software or any trade secrets derived therefrom.

Company may use the program (to the extent then available and as modified or upgraded from time to time) supplied by BBVA to Company (the “Program”), together with the software containing the Program (the “Software”) to retrieve and view images of paid checks, other paper debit items, and paper credit items from a CD-ROM that contains images of items posted during the Company’s designated statement period. Company may also request that paid checks or other MICR encoded items from a prior historical period be imaged onto a CD-ROM. BBVA shall have no liability to Company for checks or other items from a prior historical period that are destroyed prior to imaging, provided that BBVA will provide Company with a photocopy of checks or other items destroyed prior to imaging that were drawn on an account maintained by Company at BBVA. Company acknowledges that some checks or items from a prior historical period may not be in a physical condition adequate for imaging, and Company agrees to pay any processing fees for checks or items that are not capable of imaging and charges for the return of those checks and items.

PROVISIONS APPLICABLE TO SECURE FTP AND COMPASSVIEW SERVICES

The following provisions are each applicable to Secure FTP, and CompassView Services and are in addition to the provisions set forth above that are applicable specifically to those services. Upon Company’s submission of a request for and the approval of the Service Instructions for any of these services, or upon its use of any of these services, whichever occurs first, Company agrees:

1. Grant of Sub-License. BBVA grants to Company, and Company accepts from BBVA, a nontransferable, nonexclusive right and sublicense to use the current version of the Software for, as applicable and as requested by Company, Secure FTP, or CompassView Services. The Software shall be used solely by individuals designated by Authorized Persons of Company as “System Administrators” (who may then designate and monitor the actual users of the Software and any limitations of their use). Company agrees to pay a one-time fee for its sublicense of the Software. As used in these provisions applicable to Secure FTP, and CompassView Services, the terms “Program” and “Software” have the meanings as used, respectively, in the provisions of this Agreement specifically applicable to those services.

2. Copies. Company agrees that the source code and listings of Software shall not be copied except for backup and archival purposes. Software may not be copied onto any media (e.g., magnetic tape, paper tape, disk memory cartridges, read-only memory, etc.) for any other purpose without BBVA’s prior written authorization.

3. Ownership and Use of Software. The Software and all copies of the Software including partial copies, modifications or updated programs, are proprietary to BBVA and its licensor and title to the Software remains in BBVA’s licensor. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software are and shall remain in BBVA’s licensor. Company has no right to sell, assign, or in any other manner transfer or encumber the Software. Any modifications or additions to the Software made by Company shall not reduce BBVA’s rights or the responsibilities of Company under and this Agreement. At
BBVA’s request, all Software (and copies thereof) shall be returned to BBVA upon the termination of this Agreement.

4. **Agreements of Company.** In connection with its use of the Program and Software for the purposes provided in this Agreement, or otherwise, Company agrees to purchase hardware, software, support services, communication equipment and links as specified by BBVA. Company shall be solely responsible for ensuring equipment compatibility with BBVA’s equipment and the Program. All hardware and phone line(s) will be purchased and maintained by Company.

5. **Modifications; Format and Media.** Company acknowledges and agrees that, from time to time, the Software may be modified. BBVA agrees to convey any modifications to Company promptly upon receipt by BBVA, and Company agrees to utilize the modifications as so instructed. However, BBVA has no responsibility for the format and media guidelines, or any other characteristics of the Software, other than its obligation to make reasonable efforts to notify its licensor of problems when requested in writing by Company.

6. **Confidentiality.** The source code, listings, magnetic media, and any Company support materials and documentation supplied under this Agreement, as well as the ideas and concepts incorporated in those items, are confidential to and trade secrets of BBVA and its licensor (“PC Confidential Information”). Company agrees to provide PC Confidential Information only to those employees, agents, and independent contractors who are required to know of its existence. Company shall inform all such individuals of the confidential nature of the PC Confidential Information, and such persons shall be bound by the terms and conditions of this Agreement. Company further agrees to take all other actions necessary or appropriate to preserve the confidentiality of the PC Confidential Information and to protect and secure the Software in a manner consistent with BBVA’s rights. Except as specifically provided in this Agreement, Company agrees not to publish, disclose, display, or otherwise make available any PC Confidential Information without the advance written consent of BBVA.

7. **Company’s Additional Representations, Warranties and Covenants.** Company represents and warrants that all instructions or communications submitted to BBVA by the Company by use of the Program and the Software fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using the Program or Software are for commercial purposes, and not for personal or household purposes.

8. **BBVA’s Representations and Warranties.** Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sub-license to the Software. In the event the Software of any portion of the Software is held to constitute an infringement of any third party’s rights, and use of the Software by Company is enjoined, BBVA shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software.

9. **Disclaimer of Warranty.** COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA’S COMPUTERS, AND ASSUMES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. EXCEPT AS PROVIDED IN THE WARRANTY BELOW, BBVA MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE OR ITS USE AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY ACKNOWLEDGES THAT THE SOFTWARE AND MAY NOT OPERATE ERROR-FREE OR WITHOUT INTERRUPTION. COMPANY AGREES THAT BBVA SHALL NOT HAVE LIABILITY TO COMPANY BASED ON NONPERFORMANCE, DEFECT OR FAILURE OF THE SOFTWARE OR BBVA’S COMPUTER TO PERFORM PROPERLY.

10. **Warranty and Exclusive Remedy.** BBVA does not warrant that the Software is error-free and BBVA shall not be liable for any loss, associated with any errors in the Software. If Company discovers what it believes to be an error in the Software, it shall bring the error to the attention of BBVA. Upon verification of the error, BBVA shall request its vendor to make reasonable efforts to correct the error or find alternative means of accomplishing the task in question provided that neither BBVA nor its vendor shall be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Software if Company has made any changes to the Software, if the Software has been misused or damaged in any respect, or if Company has not reported to BBVA the existence and nature of such nonconformity or defect promptly upon its discovery. If BBVA or its vendor are unable to do this, Company may, at its option, terminate the service. Company shall not receive any refund. This right to terminate constitutes Company’s sole and exclusive remedy for any failure of the Software to operate properly or failure to operate in accordance with its documentation.

**CONSOLIDATED RECEIVABLES**

Upon Company’s submission of a request for Consolidated Receivables (the “Service”) and the approval of the Service Instructions for this Service, as defined below, or upon its use of the Service, whichever occurs first, and in addition to its agreement set forth herein with respect to the terms and conditions to Host-to-Host Service as applicable to Company (“Host to Host Service”), Company acknowledges and agrees as follows:

1. **Service Instructions and Condition Precedents.** These terms and conditions for the Service are supplemented by BBVA’s Consolidated Receivable Instructions (the “Service Instructions”), a copy of which has been delivered by BBVA and Company acknowledges receiving. As a condition precedent for use of this Service, Company accepts and agrees to the terms and conditions for the Host-to-Host Service as set forth herein. Failure to meet the condition precedents and comply with the terms and conditions of Host-to-Host Service may lead to immediate termination of this Service.

2. **Consolidated Receivables Service.** BBVA will provide Company with payment and remittance notification services, through its Data Transmission Services, and related transmission medium and formats mutually selected by BBVA and Company. BBVA will provide a data transmission to Company on transaction basis: (i) designated lockbox transaction information related to check deposits and the related remittance information, (ii) designated ACH transaction information and related information for each incoming ACH entry credited or debited to a Company Account, and/or (iii) designated wire transaction information and related remittance data for each incoming wire entry credited or debited to a Company Account. Transmission method, protocol, scope of transaction inclusion, mapping and timing of transaction types, related data and transmit is mutually agreed upon in implementation documentation and definition of scope and deliverables (“DSD”) between BBVA, Company and pertinent parties, such as but not limited to, Company’s designated vendors and/or third parties as mutually agreed.

3. **Reporting.** Company acknowledges that any reporting is not intended to be used as a substitute of your bank statement of your accounts but for informational purposes only.

4. **Formatting.** Company acknowledges and agrees that formatting and payment conventions by the Company, its vendors, and/or third parties may vary thereby resulting in exceptions not
contemplated in the DSD. Company agrees to indemnify and hold harmless BBVA nor any of its suppliers, licensors, service providers or vendors (each, including BBVA, a “Provider”) for any trade-related deficiency, loss of contractual compliance and actual and consequential damages resulting from any exception resulting from payment and/or data provided by Company or Company’s vendors beyond the control of BBVA in the commercially reasonable performance of this Service.

5. Timing. Company acknowledges that the receivable information and payment information is subject to certain cut-off times and, therefore, BBVA is not responsible for any delays in payment from the Service due to a missed cut-off time by the Company.

6. Limitation of Liability. Company hereby releases BBVA from any claim, demand, loss, liability, or expense arising under, out of, or in connection with the Service or BBVA’s performance under these provisions for the Service, provided such claim, demand, loss, liability or expense has not directly resulted from BBVA’s gross negligence or willful misconduct. In no event shall BBVA be liable for any consequential, special, punitive or indirect loss or damage which Company may incur or suffer in connection with its use of the Service.

7. Indemnity. In addition to the Indemnification contained in the General Terms section of this Agreement and Section 4 herein, Company agrees to indemnify and hold BBVA, its affiliates, directors, officers, employees, and agents (“Indemnified Parties”) harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which BBVA may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of the Service, or data transmitted to BBVA by Company or Company’s vendors, or reports provided by BBVA Company. Company shall also hold the Indemnified Parties harmless from and against any claims which might arise from or out of Company’s use of or the failure of any software or hardware provided, required or suggested by the BBVA. The Company’s indemnity obligations under this section shall survive termination of this Agreement.

CONTROLLED DISBURSEMENT SERVICES

Upon Company’s submission of a request for Controlled Disbursement Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Disbursement Services. BBVA is authorized and instructed to establish a demand deposit account in Company’s name (the “Disbursement Account”) and to transfer collected funds from the Company’s demand deposit account located at BBVA (or an affiliate of BBVA, as the case may be) (the “Master Account”) or any other account of Company, to the Disbursement Account in order to pay checks and items drawn on, and charges against, the Disbursement Account. Company agrees to maintain in the Master Account (which may be a Company Account) at all times in collected, immediately available funds, from whatever source, an amount equal to the sum of all charges to and checks or other items presented against the Disbursement Account. Company authorizes and directs BBVA, at any time and without prior notice to Company, to transfer to the Disbursement Account from the Master Account funds in the amount needed to pay any checks, items or charges presented against or payable from the Disbursement Account.

2. Checks Drawn on Disbursement Account. All deposit slips and all checks drawn on the Disbursement Account shall be in a format approved by BBVA and shall contain routing transit numbers and other information required by BBVA. Specifically, all checks will be printed on MICR-Bond paper, having a minimum weight of 24 pounds. The magnetic encoding on each check will include correct routing number, account number, and serial number. Company will provide a sample of checks to BBVA from each check printing (as directed on the check printing specifications), including subsequent reorders, for the purpose of testing MICR quality. BBVA is not responsible for incorrect posting of items that do not meet these requirements.

3. Overdrafts. If, at any time, the Master Account, after deducting any amounts payable from or chargeable to the Master Account, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items, and charges payable against or chargeable to the Disbursement Account, the Company shall be liable for BBVA’s demand deposit checking account “insufficient funds” charges and any other applicable fees or charges in effect from time to time and BBVA may, in its sole discretion, do any one or more of the following, without the necessity of any prior written notice to Company:

(a) Pay in any order any one or all of the checks, items, or charges and charge the amount of any payment to the Disbursement Account, thereby causing an overdraft to be created in the Disbursement Account subject to BBVA’s overdraft policies and charges; or

(b) Dishonor in any order any one or all of checks or items and return the checks or items to the presenter, in which case BBVA’s demand deposit checking account terms shall apply, including, but not limited to, BBVA’s insufficient funds and returns policies or charges.

4. Presentment Procedures. Daily notification of the checks presented against the Disbursement Account will occur no later than 10:00 a.m., Central time. BBVA shall make available this information to Company daily by electronic balance reporting, or other means acceptable to BBVA and Company. Should BBVA be unable to determine, prior to 1:00 p.m. Central time, the exact amount of checks presented for payment, then the Company and BBVA will estimate and the Company will fund a mutually agreed upon amount. Any excess or deficit between the estimated amount and the amount of actual checks presented will be compensated by (over or under) funding on the following business day. This (over or under) funding will achieve a net zero collected balance average over the two business day time period. If on any day checks are presented and the Company is closed for business, the Company must make prior arrangements regarding estimated funds to be deposited in the Master Account for that day’s checks. The Company recognizes and agrees that BBVA reserves the right at all times to return, unpaid, by the applicable midnight deadline, any checks presented against the Disbursement Account which have not been paid and to close the Disbursement Account should BBVA deem advisable. The term “midnight deadline” means the time by which BBVA must return an item in order to dishonor it under applicable provisions of the Uniform Commercial Code, or, if applicable, local clearinghouse or other rules. Company agrees that BBVA and each of its affiliates where the Disbursement Account or the Master Account is located have a right to set-off any sums owing respectively to BBVA or any affiliate of BBVA’s by Company in the event of a breach of this Agreement by Company. Nothing in this Agreement shall effect or modify BBVA’s or any of BBVA’s affiliate’s rights of set-off as allowed under applicable law. Company pledges and grants a security interest in all deposits on deposit at BBVA and each of its affiliates as security for any credit, including payment of items without sufficient funds, extended by BBVA or any of its affiliates to the Company.

DRAFT SERVICES
Upon Company’s submission of a request for Draft Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

For purposes of the services described in this section, the following terms shall have the designated meanings:

1. Definitions.
   (a) “Accompanying Documentation” means documents presented by the payee of a Draft or their authorized agent that are required by Company.
   (b) “Available Funds” means funds on deposit in a Designated Account and available for withdrawal in accordance with BBVA’s applicable funds availability schedule.
   (c) “Designated Account(s)” means, for the purposes of the Draft Services, the account or accounts of Company maintained at BBVA and designated from time to time in the Service Instructions for the Draft Services. BBVA shall provide the Draft Services only with regard to Designated Accounts of Company.
   (d) “Disposition Deadline” means the time by which Company is required to provide BBVA with a “pay” (honor) or “return” (dishonor) decision on each Draft presented for payment on Appropriate Banking Day (as defined below). Due Dates stated on a collection letter or a Draft shall determine the Disposition Deadline.
   (e) “Draft or Drafts” means drafts drawn on Company, payable at or through BBVA and received in collection letters or as demand items
   (f) “Draft Service” means the presentment to Company as a Draft is received and its disposition in accordance with any user guide, reference material, applicable law, regulation, rule or industry practice.

2. Presentment of Drafts.
   All Drafts that are received by BBVA pursuant to this Agreement shall contain on the face of the instrument the words “draft” and that such draft is “payable through BBVA.” Any item that does not contain the words required hereunder, or that is ambiguous on its face, may be treated by BBVA as a draft, and Company shall indemnify and hold BBVA harmless for any liability that BBVA might incur as a result of so treating such item. The effect of a Draft is to designate BBVA as a collecting bank to make presentment, and the Draft does not authorize BBVA to pay the Draft. Company shall specify the due date on any Draft (the “Due Date”). Due Dates may be from twenty-four (24) hours to seven (7) days from presentment of the Draft for payment. If a Draft fails to specify a Due Date, BBVA will assume a Due Date of twenty-four (24) hours from presentment of a Draft. BBVA shall make presentment of the Drafts and all Accompanying Documentation to Company on the same banking day if received by BBVA’s published notice time (as modified from time to time), or if not received prior to the published time on the following banking day (an “Appropriate Banking Day”).

Automobile Dealer Drafts: BBVA will deliver the drafts to Company, or their designate in one of our branches, by commercial courier, or delivery to your agent at BBVA offices, as provided in the Service Instructions. BBVA will notify Company of any Drafts received by our published notice time on the same business day, or the following business day depending on your proximity to our Houston, Texas processing center, that we receive them. The day of this notice is called the “Appropriate Banking Day.”

Oil & Gas Lease Drafts: Each time we receive an Oil and Gas Lease Draft, BBVA will produce a collection letter specifying the draft payee(s), draft amount, receiving date of the draft and the draft due date. BBVA will fax to Company a copy of the collection letter, an image of the front and back of the draft, and any attachments. If Company receives the fax and deems it illegible, it is the responsibility of Company to notify BBVA immediately upon receipt.

3. Draft Disposition.

4. Automobile Dealer Drafts: If Company wishes to dishonor any Draft, Company must do so by the due date. To dishonor it, the Company must physically return the draft to BBVA. If Company dishonors a draft, BBVA will return it to the payee stamped “returned at request of drawer.” The records of BBVA with regard to dishonor of Draft shall be deemed conclusive and binding upon Company. If Company fails to notify BBVA of a “return” (dishonor) decision and deliver the Draft to BBVA by the Disposition Deadline, BBVA will (provided there are Available Funds in the Designated Accounts to pay the Draft) pay the same and charge the Designated Accounts.

Oil & Gas Lease Drafts: Payment Instructions must be received on or before the “due date” on the collection letter. These instructions should be in written form and may be faxed to BBVA. Company must include in your payment instructions the following information:
- Maker’s Name
- Amount of Draft
- Draft Number
- Payment Instructions
- Your Account Number
- Authorized Signature of Account Holder

Once payment is made of your draft(s), BBVA will either mail the draft(s) to you or you may arrange to have them picked up at a BBVA office of your choice. If a Banking Office location is specified, please allow one (1) day delivery to the location.

5. Payment for Drafts. Company must tender sufficient Available Funds to pay all Drafts that have been dishonored by the applicable Dishonor Deadline. If Company does not have sufficient available funds in the Designated Account through which a Draft is payable, BBVA may deem that Draft dishonored and may return it, regardless of Company’s instructions to BBVA, without liability for wrongful dishonor. Company authorizes BBVA to immediately and without notice charge Company’s Designated Accounts or any other account of Company for the amount of any Draft it has accepted.

6. Responsibilities of Bank. BBVA assumes no responsibility for the genuineness of any Draft or endorsements on any Draft or the sufficiency or genuineness of the Accompanying Documentation.

7. Indemnification and Release of BBVA. Company agrees to indemnify and hold BBVA harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever arising out of its use of Draft Services (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding, whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence
or willful misconduct of such indemnified person. BBVA shall have the right to set off immediately, and without demand, any account or credit of Company in BBVA’s possession for the amount of any such damage or loss. Company does hereby remise, release, acquit, satisfy and forever discharge BBVA, and all of the past, present and future officers, directors, employees, agents, attorneys, representatives, and assigns of BBVA from and all manner of controversies, arguments, liabilities, obligations, expenses, damages, actions, claims, demands and causes of action of any nature whatsoever, whether at law or in equity, either now accrued or hereafter maturing or whether known or unknown, which Company now has or hereafter can, shall or may have by reason of any manner, cause or things, from the date of this Agreement to the termination of this Agreement in connection with or related to this Agreement or the Draft Services.

8. **No Extension of Credit**. Nothing herein nor any course of dealing between Company and BBVA constitutes a commitment or obligation of BBVA to lend money to Company or obligates BBVA to extend any credit to Company, to make a loan to Company, or otherwise to advance funds to Company to pay for any Draft contrary to BBVA’s published availability schedules. If BBVA pays a Draft when Company has insufficient funds in a Designated Account, Company shall immediately pay and reimburse BBVA for the resulting overdraft.

9. **Limitation of Liability**. The sole duty of BBVA is to exercise ordinary care in the performance of the obligations under the Service Instructions and this Agreement. In no event shall BBVA be liable for any indirect damages, including without limitation any consequential, incidental, special or exemplary damages, even if BBVA has been specifically advised of the possibility of such damages. THE MAXIMUM LIABILITY OF BBVA UNDER ANY CIRCUMSTANCE SHALL BE LIMITED TO COMPANY’S FEES FOR DRAFT SERVICES HEREBUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. BBVA AND AFFILIATES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OF ANY OF THE DRAFT SERVICES PROVIDED UNDER THIS AGREEMENT. NO ACTION UNDER THIS AGREEMENT, MAY BE BROUGHT BY COMPANY MORE THAN ONE YEAR AFTER SUCH CAUSE OF ACTION ACCRUES.

10. **Fees**. Company agrees to pay BBVA’s prevailing charges in effect from time to time for the Draft Services, which charges will be recouped by applying accumulated earnings credits if Company subscribes to Account Analysis. Company agrees to reimburse BBVA upon demand if such charges are not paid when due in arrears.

11. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

12. **General Rules and Regulations Applicable**. Company acknowledges that all Designated Accounts of Company maintained at BBVA shall be subject to the applicable Deposit Account Agreement of BBVA.

13. **Foreign Currency**. In the event that the Draft Services shall require the payment, transfer or deposit of funds in a currency other than U.S. dollars, all such transactions shall be at the rate established by BBVA from time to time.

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**EDI NOTIFICATION**

Upon Company’s submission of a request for EDI Notification Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

BBVA will provide Company with EDI notification services. By facsimile, BBVA Net Cash USA, Compass e-Access Online Services, BBVA e-Transmit Online Services, United States Mail or other transmission medium mutually selected by BBVA and Company, BBVA will transmit to Company on a transaction basis the ACH text and addenda information for each incoming ACH entry credited or debited to a Company Account.

**Electronic Bill Presentment and Payment Service**

Upon Company’s submission of a request for Electronic Bill Presentment and Payment Service (“Service”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, and in addition to Company agreeing to the terms and conditions set forth elsewhere herein or by separate agreement for using certain payment channels and file transfer services as applicable and required to Electronic Bill Presentment and Payment Service, Company agrees:

1. **Description of Service**. The Electronic Bill Presentment and Payment Service allows Company and its payers (“Payers”) to utilize one or more integrated payment channels consisting of electronic bill presentment and payment modules accessible via, including but not limited to, the Internet, Interactive voice response phone system (“IVR”), real-time payment API and a web-based CSR payment entry module. Payments may be made by a Payer using the Automated Clearing House to debit the Payer’s bank account, or credit/debit card. All of the payments are routed through a common payment engine which provides, among other things, the core payment processing capabilities including debiting, settlement, remittance, data warehousing, and transaction ID generation. The Service also allows the Company to securely display electronic bills and invoices to Company’s Payers.

2. **Compliance**. Compliance with laws and regulations. Company agrees to comply with all applicable laws, rules and regulations (federal, state, county, city and local), including without limitation, those issued by: (i) the National Automated Clearing House Association; (ii) any governmental entity, including (without limitation) the requirements contained in the Electronic Fund Transfer Act, Regulation E, and the Electronic Signatures in Global and National Commerce Act; (iii) the American with Disabilities Act; (iv) Health Insurance Portability and Accountability Act, if applicable; and (v) any other entity or association that issues or sponsors a payment device, including (without limitation) the requirements of the Payment Card Industry (PCI) Data Security Standard and any credit card association, including Visa and MasterCard. Company further agrees to comply with all payment network regulations for ATM debit networks.

3. **Internet Payments**.

(a) **Company Payment Site**. A “Company Payment Site” means the interactive Internet Payment site hosted by BBVA where Payers may optionally view bills and make payments to Company over the Internet. BBVA will configure, implement, host and support the Company Payment Site. All information associated with such payments (hereinafter, “Payment Data”) is collected at the Company Payment Site and then transmitted to BBVA via secured data transmission services. Company agrees to indemnify and hold BBVA harmless for any content that violates applicable law or payment network rules and for any content provided directly by the Company for the Company Payment Site.
4. Integrated Voice Response (IVR). To make an automated payment via a phone, Payers may access the IVR system by calling a toll-free or other number provided by BBVA or Company. Company shall have previously forwarded a one-time file of existing Payers (“pre-registration file”) to BBVA. In order to make a payment via the IVR system, Payers are required to input information that matches their user information in the preregistration file.

5. Customer Service Representative. If this option is selected by Company, Payers may make a payment by phone by calling a call center hosted by Company or its agent(s). Payer’s identity shall be authenticated in the manner specified by Company, and agreed to by BBVA, in the Service Instructions. Company acknowledges and agrees that the authentication of the Payer’s identity in such manner shall constitute a commercially reasonable fraud transaction detection system and that BBVA shall have no liability for all payments so authenticated.

6. Payment Authorization. If payment is made via the Internet, Payer will be prompted to authorize the payment and will be provided a confirmation that Payer may retain. Once Payer has reviewed the Payment Data and input the information necessary to complete the payment. If payment is made via the IVR or customer service representative, the confirmation number will be read to Payer. BBVA is not responsible for the detection of errors made by Payer or Company and may rely on the information submitted or communicated by Payer or Company. Company shall maintain authorization proof and provide such proof of authorization of payment by customer as may be requested by BBVA or Payer Bank from time-to-time.

7. Payment Frequency Options. The Services provide Company with the ability to offer Payers the option of making one-time payments or fixed or variable recurring payments.

(a) One-Time Payments Without Enrollment. If this option is selected by Company, the Services permit Payers to enter one-time payments from a bank account (i.e., “ACH”), credit card or debit card. Payers need not enroll and store personal or financial information. Banking, credit or debit card information is not retained for future use; Payers must enter it each time they make a payment. Payers provide basic identification information each time they access the Services to make one-time payments. An account number or other unique identifier (such as a government ID number or tax ID) is required and multiple additional key pieces of data are recommended in order to more securely authenticate each Payer. System-generated confirmation numbers are provided for each payment and a confirmation is made available to the Payer, as further described above.

(b) One-Time or Recurring Payments With Enrollment. The Services permit Payers to enroll and create a user profile inclusive of payment preferences. User information is stored for future use. The user profile includes login information and preferences. Payers have the option of entering manual one-time payments or, if permitted by Company and in compliance with applicable law and regulation, setting up an automatic payment method and date or schedule for each enrolled billing account/payer. Payments may be made using any active provisioned payment channel. Where permitted, Payers have the ability to initiate a recurring periodic installment payment. Automatic payment schedules allow the Payer to specify date, amount, duration and payment method options.

8. Payment Processing. Payments shall be processed in the manner mutually agreed to between BBVA and Company, which may include ACH debit entries, debit cards, credit cards or other payment processing methods, including but not limited to, Internet, IVR, Call Centers, over the counter as set forth in the Service Instructions. Company or their authorized agents shall at all times be considered the originator of Payer’s payment. Depending on the applicable payment processing
channel, payment processing may also be subject to the terms of any other agreement between BBVA and Company and between Company and the payment transaction processor supported by BBVA. Payments may be initiated through the Company Payment Site, IVR system or Administrative Portal. BBVA will notify Company of the payments that were initiated either through the Administrative Portal or by delivering a file in the manner set forth in the Service Instructions. Company acknowledges and agrees that all payments are subject to adjustment, reversal and/or chargeback in accordance with the rules governing the applicable payment processing channel and as required by applicable law or court order. Company agrees to be liable to BBVA for any such adjustment, return, reversal or chargeback.

   (a) If permitted by applicable regulations, a convenience or service fee option may be available that allows Company or BBVA to define and collect a convenience fee to be charged to Payers in connection with the payment transaction. Payers are provided with the opportunity to stop the payment process if they do not wish to pay the convenience fee.
   (b) If Company desires to collect the convenience fee, Company shall be responsible for ensuring that convenience fee assessments comply with the relevant laws, rules and regulations.

10. Transaction Controls. Company agrees to notify BBVA of any material change or anticipated material change in daily dollar activity or type of transaction processing, and obtain BBVA’s consent to such change. BBVA may, in its sole discretion, immediately upon written notice to Company, place a maximum dollar limit on the Services’ transactions or require Company to provide reasonable security for BBVA’s continued handling of such transactions. Company has the responsibility to report to BBVA immediately, without delay, upon any suspicion of fraud, intrusions, breaches or unauthorized transactions made through this Service.

11. Electronic Bill Presentment. Company may elect to securely present electronic bills and invoices (“Presentment Item”) to Company’s Payers through the Company Payment Site. The Presentment Item can be presented as an image rendered from a data file only or an image provided in pdf format with an index file by the Company (“Presentment Item”). All content associated with the Presentment Item, including but not limited to text, amounts, customer information, logos and associated disclosures, are the responsibility of the Company and BBVA has no responsibility to verify such content. Company will validate and approve the rendition of the Presentment Item prior to presentment. Company agrees to indemnify and hold BBVA harmless for any content that violates applicable rules, laws, regulations or payment network rules and for any content provided directly by the Company for the Presentment Item.

12. Maintenance and Outages. Company acknowledges that occasional maintenance windows or system upgrades involving a planned outage may occur. All planned outages for maintenance and material system updates will be communicated to Company in advance before the event. BBVA is not responsible for any late fees or damages that may arise due to any planned or unplanned outages.

13. Taxes. BBVA is not responsible for determining whether taxes apply to any transaction, or for collecting, reporting or remitting any taxes arising from any transaction made through this Service.

14. Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to the Services, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing.

15. Audit Rights. Upon reasonable notice, BBVA may audit, at its own expense, Company’s hardware, Software, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA may, in its sole discretion and option, immediately terminate this Agreement.

16. Grant of License. BBVA hereby grants Company a limited, nonexclusive, non-transferable, limited term, royalty-free, revocable sublicense to use Electronic Bill Presentment and Payment and the software creating, maintaining and supporting Electronic Bill Presentment and Payment (“the Software”) and the printed user materials provided in connection therewith (the “Documentation”) solely to conduct transactions in connection with the Electronic Bill Presentment and Payment, for Company’s internal business purposes only. Except as specifically provided herein, BBVA does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to the Electronic Bill Presentment and Payment, the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA or a third party are the exclusive owners of and shall retain all right, title and interest in and to the Electronic Bill Pay and Presentment, the Software, the Documentation and the Intellectual Property Rights (as defined herein).

17. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ELECTRONIC BILL PRESENTMENT AND PAYMENT, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY’S USE DURING THE TERM HEREOF “AS IS” AND “WHERE IS”. AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO ELECTRONIC BILL PRESENTMENT AND PAYMENT, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF ELECTRONIC BILL PRESENTMENT AND PAYMENT BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. BBVA DOES NOT WARRANT THAT THE OPERATION OF ELECTRONIC PRESENTMENT AND PAYMENT OR SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM ANY OTHER PROGRAM LIMITATIONS. BBVA DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF ELECTRONIC BILL PRESENTMENT AND PAYMENT, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER ("ISP") SUITABLE TO ACCESS ELECTRONIC BILL PRESENTMENT AND PAYMENT AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY’S USE OF ELECTRONIC BILL PRESENTMENT AND PAYMENT, AND THAT BBVA SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA’S COMPUTERS, AND ASSUMES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT
BBVA SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY’S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF ELECTRONIC BILL PRESENTMENT AND PAYMENT IS DONE AT COMPANY’S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

18. BBVA Representations and Warranties. Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party’s rights, and use thereof is enjoined, BBVA shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software and Documentation.

19. Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) that Company asserts or sustains as a result of Company’s use of Electronic Bill Presentment and Payment.

The liability of BBVA or any other Provider for any Damages asserted by Company arising as a result of the acts or omissions of any Provider shall be limited to the amount paid by BBVA at the close of business on each day such act or omission remains uncorrected; provided, however, if BBVA or such other Provider is unable to recover funds from a person or entity who or which receives such funds as a result of such Provider’s acts or omissions and who has no claim to such funds, such Provider shall be liable for Company’s actual loss, not to exceed the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, no Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or such other Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

To the fullest extent permitted by law, Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to this Agreement and for any dispute of any nature whatsoever between or among Company and Customer. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA, whether under this Agreement or any other agreement between BBVA.

FILE TRANSFER SERVICES

Upon Company’s submission of a request for File Transfer Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, and in addition to its agreements set forth below with respect to provisions applicable generally to File Transfer Services, Company agrees:

1. Description of Service. File Transfer Services (“File Transfer Services”) is a file transfer method for companies to exchange large files and sensitive data (and images if applicable) with BBVA over the internet. Through access to and use of File Transfer Services, Company may conduct certain Treasury Management services and functions, as designated in the File Transfer Services implementation forms, Request for Treasury Management Services and Data Transmissions Guides (the “Treasury Management Services”).

2. Access. Company’s use of File Transfer Services shall be subject to these terms and conditions, all instructions and guidelines established from time to time by BBVA, all applicable software and user documentation terms and conditions, and all applicable state and federal laws and regulations. Company will only be granted access to, and agrees only to access, File Transfer Services to transact or conduct Treasury Management Services. Company may transact only those File Transfer Services that BBVA has agreed to provide and has implemented for Company.

The Treasury Management Services using File Transfer Services shall be subject to all other terms and conditions applicable to those specific services as set forth in this Agreement.

3. Security. For accessing the File Transfer Services both parties will carry out the confirmation and authentication processes necessary for the applicable protocol (FTPS, SFTP, or any other mutually agreed upon communication protocols, hereinafter “File Transfer Services Protocols” and Company will comply with all security requirements set forth herein.

Company shall designate in writing to BBVA those individuals who will be the system administrator (“System Administrator”) for File Transfer Services. The designating document must contain the original signatures of the person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. The System Administrator will be the person who receives the Company’s user identification (“User ID”), user password (“User Password”) and any other information required to utilize File Transfer Services. The System Administrator will also be responsible for providing all information to BBVA, including, but not limited to, public keys, necessary for the applicable protocol (FTPS, SFTP, or any other mutually agreed upon communication protocols, hereinafter “File Transfer Services Protocols”) and Company will comply with all security requirements set forth herein.

If Company desires to change or add a designated System Administrator, Company shall provide prior written notice to BBVA of such change, signed by a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. The notice may be telefaxed or emailed to BBVA, but it must be followed by a document with an original signature on it. No change of designated System Administrator by Company shall be effective until accepted by BBVA, and BBVA has had a reasonable opportunity to update its records.

Company shall be responsible for initiating, undertaking and supervising all safety and security precautions and programs under its control, dominion or supervision in connection with the File Transfer Services.

Company shall implement and maintain adequate information security measures to protect against unauthorized access to or use of File Transfer Services, including, without limitation: (i) access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing Access Devices (as defined below) to unauthorized individuals who may seek to obtain this information through fraudulent means; (ii) encryption of electronic Information while in transit over any network (LAN/WAN including MPLS) using well known
(non-proprietary) encryption algorithms with a minimum key length of 128 bits; (iii) procedures designed to ensure that information system modifications are performed only with the approval of the information security measures; (iv) monitoring systems and procedures to detect actual and attempted attacks on or intrusions into information systems; (v) response programs that specify actions to be taken when Company detects unauthorized access to information systems, including immediate reports to BBVA; (vi) training of staff to implement the information security measures; (vii) maintain all systems and applications current with latest release of software and/or security packs, security patches, and security hot fixes; (viii) regular testing of key controls, systems and procedures of the information security measures by independent third parties or staff independent of those that develop or maintain the security measures; (ix) appropriate firewalls and access control lists between all Company and BBVA networks, with only required traffic allowed between networks.

Company will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, User ID, User Password and any other applicable credentials and similar security codes or identifiers (each an “Access Device”) issued to Company personnel. This obligation will include, but not be limited to, development and implementation of written procedures and processes for safekeeping and security of the Access Devices. Company will make its written safekeeping and security procedures and processes available to BBVA at or prior to the Effective Date of this Agreement and thereafter from time to time, at BBVA’s reasonable request. BBVA will have the right to review and audit Company’s safekeeping and security procedures, processes, and activities. Company will be responsible for any losses or damages BBVA incurs in connection with a lost or stolen Access Device or other breaches of these security requirements.

Company acknowledges that while BBVA will attempt to ensure that all electronic communications between Company and BBVA are encrypted, scrambled or otherwise protected against interception by a person whose access to the File Transfer Services is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA through a File Transfer Service.

If Company, System Administrator or any designated contact believes that one or more Access Device have become known or obtained by unauthorized persons (whether or not employed by Company), the Company shall immediately notify BBVA to enable BBVA to disable the affected Access Device(s). Additionally, BBVA may change or disable any Access Device at any time and for any reason. If BBVA takes such action, BBVA will make every reasonable effort to notify Company promptly. BBVA assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company’s agents or representatives or anyone else for unauthorized disclosure or use of Access Devices. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company.

If Company is unable to access File Transfer Services or transact or conduct any business through the File Transfer Services, Company shall immediately notify BBVA of such inability but shall transact or conduct such business through other means available to Company.

BBVA claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Software, and in all system documentation related to the Software, as unpublished works. Company hereby authorizes BBVA to enter Company’s premises in order to inspect the Software in any reasonable manner during regular business hours.

Company acknowledges that, in the event of Company’s breach of any of the foregoing provisions, BBVA will not have an adequate remedy in money or damages. BBVA shall therefore be entitled to obtain an injunction against the breach from any court of competent jurisdiction immediately upon request. BBVA’s right to obtain injunctive relief shall not limit its right to seek further remedies.

Company’s obligations hereunder shall remain in effect for as long as Company continues to use File Transfer Services.

4. Authorized Transactions. BBVA may rely upon any Treasury Management Service transacted or conducted through or by use of File Transfer Services as properly authorized by Company (including, without limitation, any instructions or information related thereto it receives from Company through a File Transfer Service). Each System Administrator to whom BBVA has provided access to Company Codes, or who has otherwise obtained access to Company Codes, is deemed an authorized representative of Company for purposes of all Treasury Management Services transacted or conducted through or by use of File Transfer Services, whether or not such person is authorized by this Agreement or any other agreement between BBVA and Company.

Notwithstanding the terms of any Treasury Management Services Agreement or any other agreement between Company and BBVA, once Company accesses BBVA File Transfer Services to transact or conduct any Treasury Management Service, BBVA will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by BBVA. BBVA is authorized by Company to process transactions in accordance with information BBVA receives electronically from Company. Company shall be solely responsible for the information contained in the instructions and BBVA shall have no responsibility for erroneous data provided by Company. BBVA shall have no liability for losses resulting from or related to Company’s failure to limit access to File Transfer Services or maintain the confidentiality of the Company Codes. At the sole discretion of BBVA, BBVA may also require the use of other identifying information or other security procedures for certain Treasury Management Services and BBVA may add to, change or delete any security procedure.

HEALTHCARE RECEIVABLES SOLUTION

Upon Company’s submission of a request for Healthcare Receivables Solution (the “Service”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Service Instructions and Condition Precedents. These terms and conditions for the Service are supplemented by the Service Instructions. As a condition precedent for use of this Service, Company accepts and agrees to the terms and conditions in this Agreement for Lockbox Services and File Transfer Services or Host to Host Services (as applicable, “Data Transmission Services”). Failure to meet the condition precedents and comply with the terms and conditions of Lockbox Services and Data Transmission Services may lead to immediate termination of this Service.

2. Healthcare Receivables Solution (“HCRS”). BBVA is authorized and instructed by the Company to receive, consolidate and extract certain receivable information, and facilitate the reconciliation and matching of this receivable information with payments received from Company’s payers to one or more Company Accounts.

3. Receipt of Payment Information and Receivable Information. Company will authorize and direct its payers to deliver payment to BBVA in the format and manner established by BBVA in the Service Instructions. Company assumes all risk...

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and responsibility for the compilation, format, accuracy, transmission and delivery of any and all payment information or data sent to or received by BBVA. Company will deliver receivable information to BBVA in the format and manner established by BBVA in the Service Instructions. Company assumes all risk and responsibility for the compilation, format, accuracy, transmission and delivery of any and all receivable information or data sent to or received by BBVA. Further, BBVA has no obligation to identify discrepancies or errors or to insure or verify the compilation, format, accuracy, transmission and delivery of the receivable information or payment information received from the Company or the payers. Company hereby authorizes BBVA, without investigation or inquiry, to rely and act upon the contents of any payment information, receivable information or data received from Company or payers. BBVA reserves the right to reject and may not process any receivable information that is not compliant with the formats, standards or other requirements as set forth in the Service Instructions.

4. **Matching of Receivable Information.** BBVA is authorized and instructed by Company to extract data from the received receivables information from the Company or the payers into the necessary formats for use within the Service. The Service will use its best efforts to match said extracted data with receivable information against the payments credited to Company’s Account. The reconciliation and matching of the receivable information and payment information will be done according to the Service Instructions, or as otherwise established by BBVA from time to time. BBVA is not responsible for the completeness, accuracy or timeliness of any receivable information received or extracted from the receivable information or payment information. Company agrees to indemnify and hold BBVA harmless from any transaction matched or processed in error.

5. **Timing.** Company acknowledges that the receivable information and payment information is subject to certain cut-off times and, therefore, BBVA is not responsible for any delays in payment from the Service due to a missed cut-off time by the Company or any payer.

6. **Reporting.** BBVA will make available to the Company electronic data reports and transmissions regarding the Company’s receivables and related invoice matching payments. Company acknowledges that such reporting is not intended to be used as a substitute of bank statements of the Company Account(s) but is for informational purposes only.

7. **Liability.** Company hereby releases BBVA from any claim, demand, loss, liability, or expense arising under, out of, or in connection with the Service or BBVA’s performance under these provisions for the Service, provided such claim, demand, loss, liability or expense has not directly resulted from BBVA’s gross negligence or willful misconduct. In no event shall BBVA be liable for any consequential, special, punitive or indirect loss or damage which Company may incur or suffer in connection with its use of the Service.

8. **Company Indemnification.** In addition to the indemnification contained in the General Terms section of this Agreement and Section 4 herein, Company agrees to indemnify and hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which BBVA may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of or the failure of any software or hardware provided, required or suggested by BBVA. The Company’s indemnity obligations under this section shall survive termination of this Agreement.

9. **Online Portal.** Company shall designate to BBVA an individual (the “Corporate Administrator”) to serve as its system and security administrator for HCRS. The Corporate Administrator is responsible for (a) granting and revoking authority to users ("Designated Users") to access HCRS and use the online services, and (b) defining the scope of authority for each Designated User. After Company has designated to BBVA the identity of the Corporate Administrator, BBVA shall provide the Corporate Administrator with the internet address of the HCRS online portal on which the online services will be accessible. The Corporate Administrator shall set-up each Designated User on HCRS.

Each Designated User will be required to use a User Name and Password and perform a one-time set up of three security questions and associated answers to each question to access the HCRS system. The User Name and Password must be used to gain access to HCRS, and BBVA will not allow access to HCRS without the User Name and Password. Company agrees that use of the User Name and Password will authenticate the identity of each Designated User. Company, the Corporate Administrator and each Designated User is responsible for maintaining the confidentiality and security of all user ID’s, passwords, security questions and answers, Mobile Devices, web browsers, and computer systems, and for implementing the necessary internal controls, balancing and reconciliation functions, and audit procedures to prevent unauthorized use of HCRS. Company agrees that the use of a User Name and Password constitutes a commercially reasonable security procedure for Company. Company also agrees to be bound by all requests, communications, or other instructions to BBVA that are initiated using HCRS and in compliance with this security procedure, regardless of whether or not Company actually authorized the instruction. If any instruction initiated through HCRS and accepted by BBVA in compliance with this security procedure contains any error, to the full extent allowed by law, Company shall be liable for, and shall indemnify BBVA against any claims, losses and expenses BBVA may incur that arises from or relates to the erroneous instructions. BBVA’s records demonstrating compliance with this security procedure will be deemed conclusive proof that the instruction received by BBVA was authorized and that Company is bound by those instructions.

**HOST TO HOST SERVICE**

BBVA, agrees to render and Company agrees to use the banking transaction delivery service through a communications channel between computer systems and equipment (“Host to Host Service” or the “H2H Service”) pursuant to the terms and conditions established in this agreement.

THE COMPANY shall perform all the necessary adjustments to their computer systems to allow for their systems to connect to and communicate with BBVA systems in accordance with the security stands set forth herein.

Both parties agree to: (1) grant access to shared files on each other’s designated servers necessary to provide the H2H Service and (2) send and receive electronic files containing information regarding Treasury Management Services pursuant to the Communication protocols FTPS, SFTP, AS2 or Connect Direct.

Both parties agree that BBVA shall freely set the terms, requirements and conditions of THE H2H SERVICE, as well as the operation dates and schedules referred to in this agreement pursuant to the provisions of this Agreement, the Implementation Forms, Request for Treasury Management Services and Implementation Guides.
1. Service terms and conditions. It is expressly agreed that the operations carried out under the Host to Host Service shall be governed by the general terms and conditions set forth in the respective agreements of each particular operation in accordance to the following:

(a) The information and instructions THE COMPANY conveys or communicates to BBVA in files transmitted or sent as well as the issued and transmitted receipts from BBVA, will be conclusive evidence of the executed operation, the amount thereof, its nature, as well as its requirements and extent of its instructions.

(b) Both parties agree that BBVA may amend the terms, conditions and requirements of THE H2H SERVICE, days and hours of operations or transfer provisions at any time.

(c) THE COMPANY will designate each account linked to the Treasury Management Services that will be accessed through the H2H Service (the "Accounts").

2. Security. For accessing "THE H2H SERVICE" both parties will carry out the confirmation and authentication processes necessary for the applicable protocol (FTPS, SFTP, AS2 or Connect Direct hereinafter "H2H Communication Protocols") and Company will comply with all security requirements set forth herein.

Company shall designate in writing to BBVA those individuals who will be the contracts for the H2H Service ("Designated Contacts"). Company shall also designate in writing to BBVA an individual who will be the system administrator (the "System Administrator") for the H2H Service. The System Administrator will be the person who receives the Company’s user identification ("User ID"), user password ("User Password") and any other information required to utilize the H2H Service. The System Administrator will also be responsible for providing all information to BBVA, including, but not limited to, public keys, necessary to utilize the H2H Service. If Company desires to change or add a Designated Contact or System Administrator, Company shall provide prior written notice to BBVA of such change, signed by a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. The notice may be telefaxed to BBVA, but it must be followed by a document with an original signature on it. No change of Designated Contacts or System Administrator by Company shall be effective until accepted by BBVA, and BBVA has had a reasonable opportunity to update its records.

Company shall be responsible for initiating, undertaking and supervising all safety and security precautions and programs under its control, dominion or supervision in connection with the H2H Service.

Company shall implement and maintain adequate information security measures to protect against unauthorized access to or use of the H2H Service, including, without limitation; (i) access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing Access Devices (as defined below) to unauthorized individuals who may seek to obtain this information through fraudulent means; (ii) encryption of electronic Information while in transit over any network (LAN/WAN including MPLS) using well known (non-proprietary) encryption algorithms with a minimum key length of 128 bits; (iii) procedures designed to ensure that information system modifications are consistent with the information security measures; (iv) monitoring systems and procedures to detect actual and attempted attacks on or intrusions into information systems; (v) response programs that specify actions to be taken when Company detects unauthorized access to information systems, including immediate reports to BBVA (vi) training of staff to implement the information security measures; (vii) maintain all systems and applications current with latest release of software and/or security patches, security patches, and security hot fixes; (viii) regular testing of key controls, systems and procedures of the information security measures by independent third parties or staff independent of those that develop or maintain the security measures; (ix) appropriate firewalls and access control lists between all Company and BBVA networks, with only required traffic allowed between networks.

Company will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, User ID, User Password and any other applicable credentials and similar security codes or identifiers (each an “Access Device”) issued to Company personnel. This obligation will include, but not be limited to, development and implementation of written procedures and processes for safekeeping and security of the Access Devices. Company will make its written safekeeping and security procedures and processes available to BBVA at or prior to the Effective Date of this Agreement and thereafter from time to time, at BBVA’s reasonable request. BBVA will have the right to review and audit Company’s safekeeping and security procedures, processes, and activities. Company will be responsible for any losses or damages BBVA incurs in connection with a lost or stolen Access Device or other breaches of these security requirements.

Company acknowledges that while BBVA will attempt to ensure that all electronic communications between Company and BBVA are encrypted, scrambled or otherwise protected against interception by a person whose access to the H2H Service is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA through the H2H Service.

If Company or any Designated Contact believes that one or more Access Devices have become known or obtained by unauthorized persons (whether or not employed by Company), the Company shall immediately notify BBVA to enable BBVA to disable the affected Access Device(s). Additionally, BBVA may change or disable any Access Device at any time and for any reason. If BBVA takes such action, BBVA will make every reasonable effort to notify Company promptly. BBVA assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company’s agents or representatives or anyone else for unauthorized disclosure or use of Access Devices. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company.

If Company is unable to access the H2H Service or transact or conduct business through the H2H Communication Protocols, Company shall immediately notify BBVA of such inability but shall transact or conduct business through other means available to Company.

Company’s obligations hereunder shall remain in effect for as long as Company continues to utilize or have access to the H2H Service.

3. Formatting. All instructions received from Company shall be in the record format specified by or agreed to by BBVA in the Implementation Forms for the Company. BBVA may reject any instruction which BBVA determines in its sole discretion not to be in compliance with its then applicable media and format requirements.

4. Software warranty. Company warrants to BBVA that Company will not transmit any Self-Help Code or any virus, Trojan Horse, worm or other software routines or hardware components designed to permit unauthorized access; to disable, erase or otherwise harm software, hardware or data; or to perform any other such actions to BBVA’s systems. As used in this Agreement, “Self-Help Code” means any back door, time bomb, drop dead device or other software routine designed to damage or disable a computer program or hardware automatically with the passage of time or under the positive control of a person other than a licensee of the program.

5. Conditions for service provision. The parties agree that BBVA will provide the H2H Service in accordance with the terms of this
Agreement whenever they are requested. Notwithstanding the foregoing, BBVA is not bound to provide THE H2H SERVICE in the following cases:

1. When the information provided is insufficient, inaccurate, misleading, incomplete, it fails to meet any security or authentication protocol;
2. When any of THE COMPANY IP addresses provided to BBVA have changed without previous notice;
3. When the ACCOUNTS are not registered in THE H2H SERVICE or are canceled or blocked for any reason;
4. When charges cannot be made because there are not sufficient available funds in THE ACCOUNTS, or when THE ACCOUNTS have a zero or negative balance;
5. Due to unforeseeable circumstances or force majeure, or any cause beyond the control of "BBVA";
6. When the Treasury Management Service being accessed through the H2H Service is no longer available or the Account is not linked to the Treasury Management Service that is being accessed; or
7. When BBVA declines to provide the H2H Service to prevent loss or potential loss to itself or to the Company.

6. Ownership of process. BBVA claims and reserves all rights and benefits afforded under applicable law, including, but not limited to, federal copyright law in all software programs and user materials that constitute the H2H Service, and in all system documentation related to the Software, as unpublished works.

Company acknowledges that, in the event of Company’s breach of any of the foregoing provisions, BBVA will not have an adequate remedy in money or damages. BBVA shall therefore be entitled to obtain an injunction against the breach from any court of competent jurisdiction immediately upon request. BBVA’s right to obtain injunctive relief shall not limit its right to seek further remedies.

IMAGE CASH LETTER SERVICES

Upon Company’s submission of a request for BBVA’s Image Cash Letter services (hereinafter “ICL Service” or “ICL Services”) and the approval of the Company for this service Company agrees:

1. General. The terms and provisions of this BBVA Image Cash Letter Service agreement (hereinafter the “Agreement”) provide for the collection of check transaction data, including, but not limited to, check images, between organizations and systems for the purposes of clearing the check payments electronically without the physical presentation of the check (the “Transactions”). BBVA may from time to time agree to accept Transactions from Company, or its actual or apparent agent in the event that Company utilizes the lockbox or similar services of a third party for the collection and processing for deposit checks and other items, and in such case the Transactions shall be governed by the terms and conditions set forth herein or incorporated herein by reference.

2. System Description. BBVA’s Image Cash Letter service is a delivery mechanism used to transport check transaction data, including check images, between organizations and systems for the purposes of clearing the check payments electronically. To create an “Image Cash Letter”, Company captures the check transaction data including an image of the front (including the MICR line) and back of the original check for transmission to BBVA (hereinafter “Image Cash Letter”).

3. Authorized Transactions. BBVA shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, Company: (i) if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or (ii) if BBVA reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or (iii) in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and BBVA reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.

4. Representations and Warranties of Company. As to the Transactions transmitted to BBVA, Company represents and warrants to BBVA that: (i) the Transactions and authorization, preparation and presentment of the Transactions comply with the terms and conditions set forth in this Agreement; (ii) the Image Cash Letter of the checks transmitted to BBVA is a true and correct image of the original paper check and has not been altered in any manner by Company or any third party acting on behalf of Company, (iii) Company, or any third party acting on behalf of Company, has reviewed and confirmed that the image captured is identical in all respects to the original paper check and that the amount and the Routing Transit Number of the check captured are accurate, (iv) the original paper check has not previously been deposited for collection with BBVA or any other financial institution, (v) Company represents that it will retain the original check or, in the event Company utilizes the lockbox services of a third party or other similar services, that the third party will retain the original check for at least five (5) days and for such additional period as may be required in the event of a disputed electronic image or substitute check, (vi) Company agrees that in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may subject to additional terms of dishonor, (vii) Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check, (viii) Company or its actual or apparent agent or any third party acting on Company’s behalf will not cause or allow the original of any truncated check to be deposited with BBVA or any other financial institution, or otherwise presented for payment; (x) Company agrees to and will follow the procedures (hereinafter “Procedures”) for transmitting Image Cash Letters set forth in the separately distributed Image Cash Letter User Guide as the same may be updated from time to time at the sole discretion of BBVA, (xi) Company will give BBVA full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the services provided under this Agreement, (xii) only checks made payable to Company will be presented via the ICL Service, (xiii) Company will secure all checks deposited through the ICL Service in such a manner that they are accessible only to those employees, agents and authorized representatives that have a need to access the checks in the performance of their duties for the Company until the same are destroyed, returned to the maker, delivered to BBVA or surrendered to law enforcement authorities, (Company agrees that, at a minimum, the checks will be kept in a locked compartment, secure filing cabinet, safety box, etc.); (xiv) Company will restrict access to the ICL Service software and hardware only to those employees, agents and authorized representatives that have a need to access the same in the performance of their duties for the Company. The ability to access the ICL Service will be treated as confidential information and protected at least to the extent that the Company would protect its own trade secrets, secure processes, proprietary information, customer list or other confidential information; and (xv) Company will comply with any applicable rules instituted by ECCHO (Electronic Check Clearing House Organization).

5. Image & MICR Quality. Each Image Cash Letter transmitted by Company to BBVA shall contain images of the front and the back of the scanned checks and remotely deposited by Company. Each image of each check shall be of such quality
that the following information can clearly be read and understood by sight review by BBVA of such image:

(a) the amount of the check;
(b) the payee of the check;
(c) the signature of the drawer of the check;
(d) the date of the check;
(e) the check number;
(f) all other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check.

Each image shall also meet all standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association.

Company shall also capture and transmit to BBVA the full-field MICR encoding on each check including spaces and dashes.

6. Receipt of File. Company shall be solely responsible for transporting, transmitting, or delivering Image Cash Letters to BBVA by the times and on the dates specified by BBVA. BBVA may reject any Image Cash Letter determined by BBVA, in its sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline. Company agrees that Company shall be solely liable for, and BBVA shall not have any liability whatsoever to Company for, any Image Cash Letter or other information contained therein that are not received by BBVA or for any Image Cash Letter or other information contained therein that are intercepted or altered by an unauthorized third party. Company agrees that BBVA has no obligation to accept an Image Cash Letter and, therefore, may reject any Image Cash Letter or other information contained therein submitted by Company. BBVA has no obligation to notify Company of the rejection of an Image Cash Letter or other information contained therein. BBVA shall have no liability to Company for the rejection of an Image Cash Letter or other information contained therein or for the failure to notify Company of such rejection. Upon receipt of an Image Cash Letter submitted by Company, BBVA may examine such Image Cash Letter and other information contained therein to ensure that Company has complied with this Agreement and followed the Procedures. If BBVA determines that Company has not complied with this Agreement or followed the Procedures or if errors exist in the Image Cash Letter or other information contained therein, BBVA, in its sole discretion, may reject the Image Cash Letter. BBVA also reserves the right to charge Company for rejected images at the rates disclosed in the fee schedules or otherwise communicated to Company from time to time as provided for in this agreement. BBVA may, at its option, also perform a risk management analysis of one or more Image Cash Letters submitted by Company to detect potentially fraudulent checks, and, in its sole discretion, BBVA may reject any such Image Cash Letter or other information contained therein. If the Image Cash Letter is balanced and the Check and other information contained therein meet the requirements of Section 5 of this Agreement, then BBVA may accept Image Cash Letter for deposit to Company’s Account. Upon acceptance of the Image Cash Letter, BBVA shall electronically notify Company of receipt and acceptance of the Image Cash Letter for deposit via email address provided to BBVA. (hereinafter the “Acknowledgment Email”). The Acknowledgment Email confirms the Image Cash Letter has been received and confirms information contained in the Image Cash Letter such as check volumes and total deposit amount. Information and data reported in the Acknowledgment Email: (a) may be received prior to final posting and confirmation and is subject to correction and (b) is for informational purposes only and may not be relied upon. Company agrees that BBVA shall have no liability for the content of payment-related information.

7. Deposit Processing. All deposits submitted prior to the cutoff time will be processed by the end of the day, except when a deposit requirement described in Section 5 above is unmet, or if BBVA experiences interruptions in its systems operations or there are “quality issues”, or if BBVA declines one or more Transactions. If any such situation shall have occurred, BBVA will communicate such action to the Company and provide information to remedy such situation if a remedy is possible and practical (in BBVA’s sole discretion). Company shall provide BBVA with the names and telephone numbers of Company personnel responsible for resolution of pre-encoded items rejections and other processing matters. Company will notify BBVA of any changes to such list. Company bears all responsibility and liability for any errors in encoding and for the overall quality of encoding of checks and other items. All items shall be endorsed as “Bank of First Deposit” in accordance with Regulation CC guidelines established by the Federal Reserve Bank. Information and funds available for withdrawal pertaining to the previous evening’s deposit shall be available according to the funds availability schedule applicable to Company’s account(s). An Acknowledgment Email will also provide information, including volumes and total deposit amount and will be available to Company upon successful receipt of its Image Cash Letter.

Electronic images of items from the previous evening’s deposit received prior to the cutoff time will be available to Company pursuant to the guidelines in the User Guide via “Internet” retrieval from BBVA images archive. Such electronic images may be obtained at 7 AM for the previous evening’s deposit. There will be a 24-hour turnaround time for BBVA to Company for: (i) encoding errors (conditional credit) and (ii) items posted twice. There will be a 48-hour turnaround time by BBVA for: (i) disputed items and (ii) interest adjustments.

8. Adjustments. Company shall make all requests for adjustments of any kind to BBVA’s Business Relationship Services Team. The requests may be made via telephone, fax or e-mail. Each such request must be for an adjustment amount greater than Fifty Dollars ($50.00). Company shall provide members of the Business Relationship Services Team with all necessary documentation requested by BBVA to enable it to research and complete the requested adjustments. All debit and credit advices, including the adjustment and accompanying information, will be delivered to Company via first class USPS mail. Requests for adjustment received by BBVA from Company shall be input by BBVA into its adjustments system no later than the following day. BBVA will undertake and exercise reasonable efforts for a period of one hundred twenty (120) days to follow up with other banking institutions concerning each deposit item for which restitution has been requested BBVA will check the status of pending requests every 15 days during this period. After such period, the item will either be charged off or be charged back to Company, as shall be warranted under the circumstances in BBVA’s sole discretion. Notwithstanding the previous sentences of this paragraph, in those instances when such 120 day period shall have expired without resolution, Company may nonetheless request that BBVA undertake continued efforts (subject to the responsiveness of all other parties involved in the transaction in question, e.g., the Federal Reserve Bank and its operating rules) for a period not to exceed three hundred sixty-five (365) days from the date of deposit of the item for which restitution has been requested, and report its findings to Company.

9. Provisional Settlement; Returns. Company acknowledges that Transactions may be returned by the receiving institution for insufficient funds or other reasons. In addition, the Uniform Commercial Code and other applicable law may permit the
Transactions to be returned for reason of alleged lack of authorization. Any credit or consideration given by BBVA to Company with respect to any Transactions shall be deemed provisional, and BBVA shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to BBVA. In the event one or more Transactions are returned for reason of alleged lack of authorization, Company may (i) promptly submit to BBVA such proof of authorization and request that BBVA forward such proof to the receiving institution for its consideration, or (ii) present the original paper check for collection in lieu of the electronic image. Company acknowledges and agrees that BBVA may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors. BBVA has no obligation to credit Company for amount of disputed Transaction after proof of authorization is submitted if still deemed insufficient by the receiving institution.

10. **ICL Services by Third-Party Processor.** Upon Company’s submission of a request for ICL Services on which Company has designated a third party to provide ICL processing services related to the Accounts (the “Processor”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:

(a) **Background**

(i) Company separately has authorized the Processor to initiate Image Cash Letters electronically to each Company Account designated on the Services Instructions for ICL Services (each, a “Designated Account” for the purposes of the ICL Service).

(ii) At Company’s request, BBVA and the Processor have entered into the Image Cash Letter Service Agreement for Third-Party Processors (the “Third-Party Agreement”). Among other points, the Third-Party Agreement establishes the security procedures applicable to all Image Cash Letters to a Designated Account initiated electronically by the Processor, including without limitation the security codes and other devices that the Processor or its “Designated Users” must use (collectively, the Processor Codes”).

(b) **Transaction Authorization.** Company hereby authorizes BBVA:

(i) To provide the Processor with all software, Processor Codes and instructional materials necessary for the Processor to initiate Image Cash Letters electronically to each Company Account electronically (the “ICL Instructions”).

(ii) To process Image Cash Letters to a Designated Account that is initiated electronically using the Processor Codes in accordance with the Third-Party Agreement and the ICL Instructions (each, an “Authorized Transaction”).

(c) **Reliance on Authorized Transaction.** Each Authorized Transaction shall be deemed a transaction initiated by Company, and BBVA may rely upon each Authorized Transaction as a transaction properly authorized by Company. BBVA is authorized to process each Authorized Transaction until: (i) BBVA receives written notice from Company that Company has revoked its authorization for the Processor to initiate Image Cash Letters to any or all Designated Accounts; and (ii) BBVA has had a reasonable opportunity to act upon Company’s notice.

(d) **Limitation of Liability; Indemnity.** Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (each, including BBVA, a “Provider”) shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) incurred by Company that arise from or relate to Company’s authorization of Processor to initiate Image Cash Letters electronically to any Designated Account or the Processor’s use of any electronic system or network for the initiation of these Image Cash Letters or the Processors misuse or misappropriation of information, technology or accounts. Notwithstanding any other provision of this Agreement, neither BBVA nor any other Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, pandemic, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or Provider. In no event shall BBVA or Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages. Company shall indemnify, protect and hold BBVA and Provider and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages incurred by a Provider that arise from or relate to Company’s authorization of Processor to initiate Image Cash Letters electronically to any Designated Account or the Processor’s use of any electronic system or network for the initiation of these Image Cash Letters. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA with respect to the Processor’s initiation of Image Cash Letters to any Designated Account, whether under this Agreement or any other agreement between BBVA and Company, shall apply equally to all other Providers.

(e) **Representations, Warranties and Covenants.** Company represents and warrants that each Image Cash Letter electronically submitted to BBVA from the Processor will fully satisfy and comply with all applicable requirements of all applicable laws and regulations. Company expressly warrants (i) that neither Company nor the Processor is a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (ii) that all Image Cash Letters initiated by the Processor are for commercial purposes, and not for personal or household purposes.

(f) **Termination.** Notwithstanding any other provision regarding termination set forth in the Third-Party Agreement, this Agreement or in any other agreement between BBVA and Company, BBVA may limit, restrict, suspend or terminate, at any time, effective immediately, Processor’s ability to initiate Image Cash Letters. BBVA shall use reasonable efforts to promptly communicate notice of such action to Company and the Processor, and will thereafter provide written confirmation of such action if the initial notice of termination was not communicated in writing. BBVA, at any time, may require Company or the Processor to execute additional documents or agreements in order for the Processor to continue to initiate Image Cash Letters electronically to any Designated Account.

11. **Company Indemnification.** Company agrees to indemnify and hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which BBVA may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of BBVA’s ICL Service or the processing of any check images or IRD’s transmitted to BBVA by Company or Company’s actual or apparent agent. Company
shall also hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of or the failure of any software or hardware provided, required or suggested by BBVA. The Company’s indemnity obligations under this section shall survive termination of this Agreement.

12. **BBVA’s Right of Refusal.** BBVA may, in its sole discretion, refuse to process any electronic image at any time without prior notification to Company.

13. **Limitation of Remedies.** In the event that BBVA undertakes to correct any error caused by the Equipment or a third party vendor or any other third party acting on behalf of Company, BBVA shall not have any liability with respect thereto. It is Company’s responsibility to verify that all Transactions were delivered to BBVA and that the Transactions received by BBVA were complete and accurate. A CONFIRMATION OF DELIVERY BY BBVA DOES NOT RELIEVE COMPANY OF THIS OBLIGATION. Company’s only remedy for an error by BBVA employees, agents or representatives is for BBVA to correct the error.

14. **Audit Rights.** Upon reasonable notice, BBVA may audit, at its own expense, Company’s hardware, Software, security, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA may, in its sole discretion and option, immediately terminate this Agreement.

15. **Security.** Company is advised that certain of the Services may be provided by way of the Internet. Use of any such method of communication requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections. Company acknowledges that data, including e-mail, electronic communications, and confidential financial data, may be accessed by unauthorized third parties when communicated to BBVA using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. With respect to BBVA Internet System access, Company agrees to use software produced by third parties, including, but not limited to, “browser” software that supports a data security protocol compatible with the protocol used by BBVA. Until notified otherwise by BBVA, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by BBVA and to follow BBVA’s log-on procedures that support such protocols. Company acknowledges that BBVA is not responsible for (i) notifying Company of any upgrades, fixes or enhancements to any such software; or (ii) any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by BBVA in writing, Company agrees not to (i) use any software, program, application or any other device to access or log on to BBVA’s computer systems, web site or proprietary software; or (ii) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from BBVA’s computer systems, web site or proprietary software. In the event of any system failure, BBVA may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company’s access to the BBVA Internet System. Company assumes full responsibility for its selection of, access to, and use of products purchased from BBVA as indicated on the Implementation Form. Company shall be responsible for the confidentiality, maintenance, and use both of its financial information on the BBVA Internet System, and of its access number(s), password(s), log-in ID(s), and account number(s). If Company requires more than one authorized signer’s signature or authorization to conduct certain transactions related to Company’s account(s) or the Services, this requirement will be deemed solely for Company’s own purposes. BBVA will not be liable to Company as long as at least one authorized signer’s signature appears on the Company’s checks, drafts, instructions, or orders, or if BBVA’s records indicate that a transaction, payment or other product use was made by or on behalf of one authorized signer by telephone, BBVA Internet System, or other method. This includes situations in which Company has provided its access number(s), password(s), log-in ID(s) and/or account number(s) either directly or through lack of proper protection of the information to someone else to use. Company agrees not to hold BBVA liable for following Company’s written orders or instructions. Company agrees not to hold BBVA liable for any damages of any kind resulting from Company’s disclosure of its access number(s), password(s), log-in ID(s), or account numbers to any person identified or not identified on the Implementation Form. Company will be responsible for all orders and instructions entered through and under Company’s access number(s), password(s), log-in ID(s), and/or account number(s), and any orders or instructions so received by BBVA will be deemed to have been received from Company. All orders and instructions shall be deemed to be made at the time received by BBVA and in the form received. Company agrees to immediately notify (in the manner prescribed by BBVA from time to time) BBVA if Company learns of:

- any loss or theft of Company’s access number(s), password(s), log-in ID(s) and/or account number(s); or
- any unauthorized use of any of Company’s access number(s), password(s), log-in ID(s), and/or account number(s), or of the electronic Services or any of Company’s information; or
- any receipt by Company of confirmation of an order that Company did not place; or any similarly inaccurate or conflicting report or information.

Company agrees to use only the software provided or instructed by BBVA with the ICL service and to install all updates, patches and/or any other amendments or modifications to the same when directed by BBVA to do so.

Company will restrict access to the hardware and software involved in providing the ICL service to only those employees that have a need to access the same in the performance of their duties for the companies and employ reasonable security measures to prohibit unauthorized access.

Company will restrict access to the non-public information contained on the checks transmitted using the ICL service to only those employees that have a need to access the same in the performance of their duties for the companies and employ reasonable security measures to prohibit unauthorized access.

16. **Training.** Company agrees to require its employees to complete the training courses and materials supplied by BBVA prior to implementing the ICL service and to complete all supplemental training that may be required by BBVA from time to time.

**INTEGRATED PAYABLES**

Upon Company’s submission of a request for the Integrated Payables Service or the Spend Net Payables Service (each referred to in this section as "Integrated Payables") and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement the terms below shall have the following meanings:
“Agreed Format” means the format of the file that Company sends to BBVA which has been setup and tested by BBVA before the Payment File is sent.

“Cashier’s Check” means a check issued by BBVA, on its own accounts, at the Company’s request and payable to person or entity designated by the Company.

“Check” means those checks drawn on a Company Account.

“Check Setup” means the necessary information to complete the design of the checks to be printed, including, but not limited to, company logos, digitized signatures, addresses and other information to be printed on the check.

“Corporate Administrator” means an individual designated by Company who is responsible for designating the access of each Designated User within the Company to the system. This person will be responsible for adding, deleting and maintaining the Designated Users.

“Designated User” refers to individuals who are given access to the Integrated Payables application by Company’s Corporate Administrator.

“Electronic Payment” refers to a payment that is fulfilled via an Automated Clearing House (ACH) file.

“Funds Transfers” is used to collectively refer to either or both “Domestic Wire Transfers” and “International Wire Transfers”.

“Domestic Wire Transfer” means an outgoing funds transfer in U.S. Dollars (USD) sent either: to the beneficiary’s account at a bank located in the United States, or to a bank located in the United States, for credit to the beneficiary’s account at a bank located outside the United States. “International Wire Transfer” means an outgoing funds transfer sent either: in USD or in foreign currency to the beneficiary’s account at a bank located outside the United States.

“Integrated Payables” means a payments outsourcing service that provides one or more of the following: check print & mail, card payment, Funds Transfer, and Electronic Payment processing options. For purposes of this Agreement, Integrated Payables refers to both BBVA’s Integrated Payables and Spend Net Payables services.

“Payee” or “Vendor” refers to the recipient of each payment in the payment file. A Payee must be a non-consumer (i.e. business) to access the Vendor Portal.

“Payee Number” is a unique number assigned by Company to identify the Payee.

“Payment File” refers to a file containing one or more Payment iRecords sent by Company to BBVA for processing.

“Payment Number” is assigned by Company to each payment within their payment file. The number is used to facilitate payment reconciliation.

“Payment Record” means a detailed instruction to execute a payment and will include the amount, Payee name, Payment Number and other applicable information.

“Transmission Method” refers to the secure file transmission protocol, such as FTPS/SSL or SFTP/SSH, that may include the use of file encryption, public/private keys, passwords and/or digital authentication certificates, used by Company to send Payment Files to BBVA. The specific transmission protocol and communication is established between Company and BBVA during service implementation and must be set up before the first Payment File is transmitted to BBVA.

“Vendor Portal” refers to a self-enrollment website where Payees can complete online enrollment to create their user profile and provide the necessary information to receive electronic payments. Vendor data captured by the Vendor Portal may be stored in a database (the “Vendor Database”). Enrolled Vendors receive payment notification via secure email and can access the Vendor Portal to view payments electronically. Vendors also have the ability to download payment and remittance details in an electronic data file.

“Virtual Token” refers to a unique one-time password generated for Designated Users each time they access the Integrated Payables system. It is used to prove one’s identity electronically as a form of authentication. A text containing a password is sent to each Designated User’s mobile telephone number or email address for every logon to Integrated Payables. Designated Users need to enter the 6-digit one-time use password that they receive to complete the logon process.

2. Payment Processing. Company agrees to provide Payment File to BBVA in the Agreed Format using the Integrated Payables website or Transmission Method. Company is responsible for ensuring that any information or data which it introduces into the Integrated Payables system is accurate, complete and fully authorized by Company. BBVA will submit payments to vendors using data stored within the Vendor Database, which may include information provided either by Company or via the Vendor Portal. Company is responsible for ensuring that any vendor data introduced into the Vendor Database is accurate, complete, and fully authorized by Company before submitting a Payment File. BBVA will send an automated email notification to Company upon receipt of the Payment File. BBVA is authorized and directed by Company to analyze the Payment File to identify (1) transactions designated to be paid with Company’s BBVA commercial card account and/or (2) transactions designated to be paid by Funds Transfers from a BBVA designated account, and/or (3) any and all of the remaining Company’s Payees that have enrolled with Integrated Payables to receive Electronic Payments. For any of these identified transactions or payees, each payment will be executed either as a card transaction, a Funds Transfer or as an Electronic Payment, as specified in the Service Instructions.

Integrated Payables will create a file containing the National Automated Clearing House Associations (NACHA) compliant Automated Clearing House (ACH) records for Electronic Payments. The system will automatically transmit the NACHA-formatted ACH file directly to BBVA. Payment Records received by the applicable cut-off time on a business day settled via ACH will have an effective date of the next business day following the submission of the Payment File to Integrated Payables. Payment Files received after the applicable cut-off time or on a non-business day will have an effective Settlement date of the two (2) business days following the submission of the Payment File to Integrated Payables. If an ACH Entry did not post to a Payee’s account (“ACH Return”), BBVA or its Providers will notify Company so that Company can resubmit the payment, which will be processed as a check until BBVA or its Providers resolved the reason for the ACH Return.

Integrated Payables will create a file containing Funds Transfers in the format necessary for BBVA to process such Funds Transfers. The system will automatically transmit the Domestic and/or International Wire Transfer payments file to BBVA. Payment Records containing Domestic and/or International Wire Transfer orders received by the applicable cut-off time on a business day will be processed the same business day.BBVA may offer Company automated confirmations of all Company initiated wire transfer transactions and payment orders. These confirmations will be made available to Company the same business day as the execution of the transaction or payment order. BBVA shall have no obligation or duty to cancel or amend Funds Transfers received from Company after BBVA accepts the Payment File.

Integrated Payables provides a print option for Payees that require paper checks. The layout of the check and all remittance documents are determined during service implementation. If Company subscribes to BBVA’s Positive Pay
3. Payroll Service. If Company elects to use Payroll Service, Company agrees to provide payroll file(s) to BBVA in the Agreed Format using the Integrated Payables website or Transmission Method. Company is responsible for ensuring that any information or data which it introduces into the Integrated Payables system is accurate and complete. Company will agree to provide BBVA the information necessary to develop the Company branded website for Company employees to self-enroll for electronic payments. BBVA will incorporate Company’s supplied design elements into an online site that Company’s employees can use to self-enroll for electronic payments. BBVA is authorized and directed by Company to analyze the payroll file(s), to identify any and all of Company’s employees that have enrolled with Integrated Payables to receive Electronic Payments. For any of these identified employees, each payment will be executed as an Electronic Payment.

Company authorizes BBVA to process Company’s payroll file(s), and post data for online presentment as well as distribute all printed items via Company’s instructions. Estimated postage for the printed items will be billed to Company in advance. Online presentment and print forms will be created to closely resemble payroll stubs. A confirmation of file(s) receipt will be transmitted to Company’s designee within one (1) hour of receipt. Upon completion of file processing and availability of data for online presentment, Company’s designee will receive written notification. BBVA will maintain availability of Company processed files for online presentment for a maximum of twelve (12) calendar months.

Company may elect to utilize this service for reporting of IRS W-2, 1099-MISC and 1042-S information. Company authorizes BBVA to process company’s file containing W-2, 1099-MISC and 1042-S information and present such information on the Company’s Integrated Payables- Payroll website.

Company agrees that setup fee is a one-time charge which will include branding of a web site for Company’s employees to view direct deposit advice and remittance online, as well as integration of Company’s flat ASCII data file, or other mutually acceptable format, for use with the Integrated Payables system. It will also include design of an electronic form template for printing of payroll stubs and IRS W-2, 1099-MISC, 1042-S forms. Setup fee is per application so that the payroll file and W-2 is one application; 1099-MISC is a second application, and 1042-S is a third application. A 20% cancellation may be levied for orders placed and for which file(s) are not submitted. Custom programming work above and beyond the services listed here may be assessed at a minimum of $250 USD per programming hour.

Company agrees that Integrated Payables Payroll Services is a funds distribution service only. Company agrees that Company is solely responsible for compliance with all applicable federal, state and local laws, rules and regulations relating to payroll, compensation and employment matters, including, without limitation, as applicable, (i) federal and state wage and hour laws and regulations, (ii) proper withholding and timely remittance of any and all taxes related thereto (e.g., local, state and federal income, payroll, social security, or Medicare taxes), and (iii) delivery of pay stubs and similar payroll information to employees.

4. ACH Services. Company acknowledges that all Electronic Payments fulfilled by the Integrated Payables service are subject to the terms and conditions of the Automated Clearing House Services or Automated Clearing House Prepaid Services, whichever is applicable, listed in another section of this Agreement.

5. Commercial Card Services. Company acknowledges that all card transactions fulfilled by the Integrated Payables service are subject to the terms and conditions of the agreement governing the provision of commercial card services to Company by BBVA, separately executed by the Company.

6. Funds Transfer Services. Company acknowledges that all Domestic and International Wire Transfer orders fulfilled by the Integrated Payables service are subject to the terms and conditions of the Online Funds Transfer Service section of this Agreement.

7. Payment Record Retention. Company will have access to all inbound payment data, including Payment Numbers, via the secure Integrated Payables archive, regardless of the Payment Type, for a minimum period of seven years. The most recent twelve months of payment history will be available via online access.

8. Payment File Specifications. Payment File format will be mutually agreed to by Company and BBVA. Regardless of file format, the required data elements for each Payment Record are: (a) Payee Number, (b) Payment Number, (c) date of payment, (d) payment amount, (e) Payee name and (f) payee address. Company may optionally include remittance information, such as invoice numbers, invoice dates and descriptions, invoice amounts, etc. associated with each Payment Record.

Payment Records for Funds Transfers must also include the following information prior to initiating the Funds Transfers: (a) the designated account from which the funds are to be drawn, (b) amount to be transferred, (c) bank to which funds are to be transferred, (d) name of the receiving party and account number to which the funds are to be transferred.

9. Vendor Enrollment Campaign. BBVA will design a custom vendor adoption campaign to enroll Company’s Vendors to receive payment via card transactions or Electronic Payments. BBVA and its Providers will contact the selected vendors through formal mailings, proactive phone calls, check inserts, emails and other methods as designated by the Company. The campaign may include providing invitations to Vendors to enroll via the Vendor Portal. The campaign will be executed by BBVA and/or its Providers with the approval of the Company, providing reasonable direct support to Payees requiring assistance in completing the online registration steps. Verified Vendor accounts will be activated in the system so that future payments to registered Vendors of Company will be fulfilled as card transactions or Electronic Payments.

10. Internet Security. Company shall designate in writing to BBVA the Corporate Administrator to serve as its system and security administrator for Integrated Payables. The Corporate Administrator shall be responsible for (a) granting and revoking authority to Designated Users to access Integrated Payables and use the online tool, (b) defining the scope of authority for
12. **Grant of License.** BBVA hereby grants Company a limited, nonexclusive, non-transferable, limited term, royalty-free, revocable sublicense to use the online tool provided in connection with the Integrated Payables Service, and the software creating, maintaining and supporting the online tool (the “Software”) and the printed, electronic user materials provided in connection therewith (the “Documentation”) solely for Company’s internal business purposes only. Except as specifically provided herein, BBVA does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA, BBVA Group or a third party are the exclusive owners of and shall retain all right, title and interest in and to the Software, the Documentation and the intellectual property rights pertaining thereto.

13. **Limitation of Liability; Indemnity.** Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) that Company asserts or sustains as a result of Company’s use of Integrated Payables Services.

14. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, INTEGRATED PAYABLES, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY’S USE DURING THE TERM HEREOF “AS IS” AND “WHERE IS”, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO INTEGRATED PAYABLES, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF INTEGRATED PAYABLES BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NONINFRINGEMENT. BBVA DOES NOT WARRANT THAT THE OPERATION OF INTEGRATED PAYABLES OR SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM ANY OTHER PROGRAM LIMITATIONS. BBVA DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF INTEGRATED PAYABLES, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER (“ISP”) SUITABLE TO ACCESS INTEGRATED PAYABLES AND IS SOLELY RESPONSIBLE FOR THE SECURITY, PERFORMANCE AND RESULTS OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY’S USE OF INTEGRATED PAYABLES AND THEABILITY TO CONDUCT OR TRANSACT ONLINE SERVICES (INCLUDING, WITHOUT LIMITATION, COMPANY’S ABILITY TO ACCESS INTEGRATED PAYABLES), AND THAT BBVA SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA’S COMPUTERS, AND ASSUMES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT BBVA SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY’S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF INTEGRATED PAYABLES IS DONE AT COMPANY’S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

15. **Proprietary Rights.** Company acknowledges that BBVA or the other Providers shall retain all rights, title and interests in and to Integrated Payables, the Software (including, without limitation, the source code, listings, magnetic media and any support materials related thereto) and Documentation, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereof and additions thereto, including ownership of all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto (collectively, the “Intellectual Property Rights”), except as granted hereunder. Company shall
not take any action that is inconsistent with the Intellectual Property Rights of BBVA or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of BBVA or any other Provider.

The Software and Documentation include trade secrets and other proprietary information of BBVA and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies). Company shall treat as confidential and shall not disclose or otherwise make available the Software, the Documentation (collectively, the “Confidential Information”), in any form, to any person other than Company’s employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon such Confidential Information, or permit or authorize any third party to do any of the foregoing. Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to Integrated Payables or the Software.

16. Company’s Additional Representations, Warranties and Covenants. Company represents and warrants that each electronic communication submitted to BBVA by the Company by use of Integrated Payables fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using Integrated Payables are for commercial purposes, and not for personal or household purposes.

17. Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to and its ability to transact online services through Integrated Payables at any time, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. BBVA may require Company to execute additional documents or agreements to continue to conduct or transact services through or by use of Integrated Payables at any time.

18. Cashier’s Check Service. If Company elects to use the Cashier’s Check Service of Integrated Payables, Company agrees to provide the Payment File to BBVA in the Agreed Format using the Integrated Payables website or Transmission Method. Company is responsible for ensuring that any information or data which it introduces into the Integrated Payables system is accurate and complete. The Agreed Format for the Cashier’s Check Service may be different than the Agreed Format used for other types of Integrated Payables applications.

Guaranteed Funds. Company agrees that a Cashier’s Check must be funded by guaranteed funds. Upon receipt of the Payment File from Company, BBVA will withdraw the amount equal to the amount printed on the Cashier’s Check from the designated Company Account. Company shall at all times during the term hereof maintain in the Company Account collected balances sufficient to pay or reimburse BBVA for the amount of all Cashier’s Checks and all other fees and expenses that are chargeable to Company in connection with any Cashier’s Check and any Services to be provided to Company by BBVA.

Company shall not request any Cashier’s Check in an amount greater than the balance of the Company Account (after deduction of all fees and other expenses that are chargeable to Company in connection with such Cashier’s Check and all Services to be provided to Company by BBVA). The Company Account and any additional accounts that Company shall have with BBVA shall be subject to debit for reimbursement for all Cashier’s Checks and other fees, expenses, debts, obligations and liabilities of Company to BBVA under this Agreement.

No Stop Payments for 90 Days. Company shall not have any right to request for BBVA to correct, reverse, adjust or stop payment or posting of any Cashier’s Check that has been printed or any counterfeit items ressembling cashier’s checks. BBVA shall have no obligation with respect to any of the foregoing.

Processing Deadlines. A Cashier’s Check through Integrated Payables has a different processing deadline than a regular check printed using Integrated Payables. All printed Cashier’s Checks will be processed for postal cleansing and discounts, with postage billed at the lowest possible rate first class rate, unless otherwise specified by Company. Cashier’s Checks are distributed by the United States Postal Service (USPS), unless otherwise specified, the next business day for all Payment Files delivered to Integrated Payables by 3:30 p.m. Central Time. Files received after 3:30 p.m. Central Time or on a non-business day will be printed and distributed the second business day.

LINE OF CREDIT SWEEP SERVICES

Upon Company’s submission of a request for Line of Credit Sweep Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Sweep Service. The Company authorizes BBVA to determine, on a daily basis, based on clearing items for that day, the balance of, and the amount available under, the Company’s Revolving Line of Credit provided to Company by BBVA (the “Line of Credit”). The Company further authorizes BBVA, on a daily basis, to (a) (the extent available, apply funds in Company’s demand deposit account maintained at BBVA and designated by Company as its “Master Account” (which may be a Company Account, as defined in this Agreement) to reduce the outstanding principal balance of the Line of Credit, or (b) automatically draw funds under the Line of Credit, if available, and deposit those funds into the Master Account if necessary to fund disbursements from the Master Account on that day.

2. Statements. All transactions related to Line of Credit Sweep Services will appear on Company’s regular monthly checking account statement.

LOCKBOX DISTRIBUTED CAPTURE SERVICES

Upon Company’s submission of a request for Lockbox Distributed Capture Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. General. The terms and provisions of this Services Agreement provide for use by the Company of BBVA’s lockbox distributed capture service for the collection of checks and associated remittance documents by creating a digitized image of each check and remittance document; and truncate the original check for the electronic transmission of a file to BBVA where the image of the check is processed and/or printed as a substitute paper check, referred to as an Image Replacement Document (“IRD”), collectively referred to herein as “Transactions” and individually referred to herein as a “Transaction.” BBVA may from time to time agree to accept Transactions from Company, or its actual or apparent agent in the event that Company utilizes the lockbox
services of a third party for the collection and processing for deposit checks and other items, and in such case the Transactions shall be governed by the terms and conditions set forth herein or incorporated herein by reference.

2. System Description. By using BBVA’s lockbox distributed capture service, Company may process original paper checks by capturing the images, front and back along with the MICR line, of the original check and remittance documents for transmission to BBVA using the transmitted image file. BBVA will process the digital image or print an IRD and process the IRD check as if it were an original paper check. IRD’s and digital images of checks (but not remittance documents) are processed for collection through the local Federal Reserve or other clearinghouses, or directly to the paying institution. Remittance documents are processed by capturing the image of the remittance document and electronically transmitting the image to the Vicor system.

BBVA’s check image deposit service is intended to reduce transportation costs for delivery of deposits to BBVA, expedite the deposit process and reduce the overall collection time for deposits.

3. Authorized Transactions. Under any of the following circumstances, BBVA shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, Company: (i) if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or (ii) if BBVA reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or (iii) in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and BBVA reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.

4. Representations and Warranties of Company. As to the Transactions transmitted to BBVA, Company represents and warrants to BBVA that: (i) the Transactions and authorization, preparation and presentment of the Transactions comply with the terms and conditions set forth in this Agreement; (ii) the digital image of the check and associated remittance documents transmitted to BBVA are true and correct images of the original paper check and remittance documents and have not been altered in any manner by Company or any third party acting on behalf of Company, (iii) Company, or a third party acting on behalf of Company, has reviewed and confirmed that the images captured are identical in all respects to the original paper check and remittance documents, and that the amount of the check captured is accurate, (iv) the original paper check has not previously been deposited for collection with BBVA or any other financial institution, (v) Company represents that it will retain the original check and remittance documents, or in the event Company utilizes the lockbox services of a third party or other similar services that the third party will retain the original check for at least five (5) days and for such additional period as may be required in the event of a disputed electronic image or IRD, and that Company or such third party will take all necessary efforts to safeguard any checks until they are destroyed, (vi) Company agrees that in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may be subject to additional terms of dishonorment, (vii) Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check, (viii) Company or its actual or apparent agent or any third party acting on Company’s behalf will not cause or allow the original of any truncated check to be deposited with BBVA or any other financial institution, or otherwise presented for payment; (x) Company agrees to and will follow the procedures for transmitting image files set forth in the separately distributed Lockbox Distributed Capture Services User Guide as the same may be updated from time to time at the sole discretion of BBVA, (xi) Company will give BBVA full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the services provided under this Agreement; and (xii) only checks made payable to Company will be presented via the Lockbox Distributed Capture Service.

5. Provisional Settlement; Returns. Company acknowledges that Transactions may be returned for the receiving institution for insufficient funds or other reasons. In addition, the Uniform Commercial Code and other applicable law may permit the Transactions to be returned for reason of alleged lack of authorization. Any credit or consideration given by BBVA to Company with respect to any Transactions shall be deemed provisional, and BBVA shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to BBVA. In the event one or more Transactions are returned for reason of alleged lack of authorization, Company may (i) promptly submit to BBVA such proof of authorization and request that BBVA forward such proof to the receiving institution for its consideration, or (ii) present the original paper check for collection in lieu of the electronic image or the IRD.

Company acknowledges and agrees that BBVA may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors.

6. Equipment. To utilize the services provided in this Agreement, the Company must use the equipment designated by BBVA (the “Equipment”) from time to time. Company may purchase the Equipment from BBVA or from a third party vendor approved by BBVA in writing.

7. Software. BBVA may select software and related user materials (“Software”) for utilization of the Lockbox Distributed Capture Service and the processing of Transactions. Company acknowledges that any Software supplied by BBVA for use in Transactions, including, but not limited to, any Software created or modified by BBVA to be specific to Company’s environment is the property of BBVA and that BBVA claims and reserves all rights and benefits therein afforded under copyright and other laws. Company’s license of and permission to use the Software is non-exclusive and nontransferable, and it extends only to Company’s own use of such Software for the purpose of processing Transactions as set forth in this Services Agreement. BBVA’s Software may not be used to process transactions with or through any other party without the express written consent of BBVA and only BBVA’s Software may be used for the services described herein. Company further acknowledges that BBVA’s Software contains confidential information and trade secrets, which BBVA has acquired in confidence. Company shall protect BBVA’s property and its interest in the trade secrets contained in the Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of BBVA to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, Company specifically agrees that it will not delete, mask or obscure any proprietary notices, which BBVA places on any Software. Company further agrees to install all new versions, upgrades, patches, protocols and/or any other changes, amendments or alterations (collectively referred to herein as “Upgrades”) to the Software within 10 days of receipt of the same or receipt of notice from the BBVA of where and how to retrieve the Upgrades. Company may make one (1) copy of the software licensed hereunder to be used exclusively for backup purposes. Otherwise, Company shall not copy the software and shall not transfer or disclose it to any other person, firm or corporation except for those employees of Company who require such knowledge of the Software in the ordinary course and scope of their employment.

8. Company Indemnification. Company agrees to indemnify and hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees
and cost of litigation) to which BBVA may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of BBVA’s lockbox distributed capture service or the processing of any check images, IRD’s, or remittance documents transmitted to BBVA by Company or Company’s actual or apparent agent. Company shall also hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of or the failure of any software or hardware provided, required or suggested by the BBVA. The Company’s indemnity obligations under this section shall survive termination of this Agreement.

9. **BBVA’s Right of Refusal.** BBVA may, in its sole discretion, refuse to process any electronic image, IRD, or remittance document at any time without prior notification to Company.

10. **Limitation of Remedies.** In addition to the limitation of liability contained in the General Terms section of this agreement, BBVA will use due care in its performance under this Services Agreement and it will, at its own expense, correct any data in which (and to the extent that) errors have been made by BBVA’s personnel or by malfunction of BBVA’s Software. However, the expense to BBVA of correcting such data shall constitute BBVA’s only responsibility in connection with such errors or in connection with any other performance or nonperformance by BBVA under this Agreement. In the event that BBVA undertakes to correct any error caused by the Equipment or a third party vendor or any other third party acting on behalf of Company, BBVA shall not have any liability with respect thereto.

   It is Company’s responsibility to verify that all Transactions were delivered to BBVA and that the Transactions received by BBVA were complete and accurate. A CONFIRMATION OF DELIVERY BY BBVA DOES NOT RELIEVE COMPANY OF THIS OBLIGATION.

11. **Audit Rights.** Upon reasonable notice, BBVA may audit, at its own expense, Company’s hardware, Software, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA may, in its sole discretion and option, immediately terminate this Agreement.

12. **Equipment Purchase and Maintenance.** If the Service Instructions for Lockbox Distributed Capture Services recognize that Company has requested BBVA to sell and maintain the Equipment (as defined in Section 6 above), then the following provisions also shall apply:

   (a) **Purchase Price.**

      (i) **Amount.** The total purchase price of the Equipment (the “Purchase Price”) will be determined by mutual agreement between BBVA and the Company.

      (ii) **Payment.** Company may choose one of the following three (3) options for payment of the Purchase Price:

         (A) Contemporaneously with the purchase of the Equipment, Company shall pay the Purchase Price to BBVA in cash or otherwise pay, or agree to pay, in full in a single installment, and BBVA would thereby acknowledge receipt of such payment or agreement to pay in full via a method other than cash;

         (B) BBVA shall offset the Purchase Price against deposit account earnings credits available to Company as reflected on Company’s account analysis statement in six (6) equal, successive, monthly installment amounts (“Monthly Installments”). No interest shall accrue on the unpaid portion of the Purchase Price. If such earnings credits are insufficient to pay any Monthly Installment when the same becomes due and payable, then BBVA may deduct the Monthly Installment, as well as any past due Monthly Installment(s), from any of Company’s accounts; or

   Obligation of Payment in Full. If Customer has elected to pay the Purchase Price in installments pursuant to Section 12(a)(i) or (ii) hereof, then such obligation is absolute and unconditional and shall be unaffected by and survive any termination of the Agreement, the BBVA Lockbox Distributed Capture Services or any deposit account relationship(s) or other services to which the Agreement and lockbox distributed capture services relate. In the event of termination of any of the foregoing (by either Company or BBVA), any unpaid balance of the Purchase Price shall be due and payable immediately, and BBVA may deduct such unpaid balance from any Company Account.

   Maintenance. BBVA shall provide maintenance services (“Maintenance”) for the Equipment through a third party vendor in accordance with the following:

      (i) Scope of Maintenance. Maintenance will cover repair or replacement of the Equipment so that it performs in accordance with its applicable documentation. Maintenance does not include replacement of consumable items. The foregoing is the sole and exclusive Maintenance obligation of BBVA as it relates to the Equipment.

      (ii) Conditions of Availability of Maintenance Services. To be eligible for Maintenance, Customer shall promptly notify BBVA of any error in the operation of the Equipment, and Company must maintain the Equipment in accordance with requirements and recommendations contained in the Equipment manufacturer’s documentation. Maintenance Service does not include repairs for Equipment that has been subjected to unusual or extreme physical, environmental or electrical stress, or from which the original identification marks have been removed or altered, or which is damaged due to accident, misuse, neglect, or unauthorized or improper alteration, repair, installation, testing or modification. BBVA will charge Company the then-current service rates in effect for maintenance that is necessitated by any of the foregoing conditions.

      (iii) Termination of Maintenance. BBVA may terminate Maintenance in accordance with the terms and conditions of Section 6 (Term: Termination) of the General Provisions of this Agreement.

      (iv) Communication. To receive Maintenance, call BBVA Business Relationship Services at (800) 607-4444.

Warranty. BBVA HEREBY DISCLAIMS AND TRANSFERS TO COMPANY ALL APPLICABLE MANUFACTURER’S WARRANTIES COVERING THE EQUIPMENT. BBVA MAKES NO REPRESENTATIONS OR WARRANTIES.
13. **DFARS.** If Company is subject to Defense Federal Acquisition Regulation Supplement (DFARS), the following provisions apply:

(a) Company agrees that the Software qualifies as "commercial" computer software within the meaning of all federal acquisition regulation(s) applicable to this procurement, and that the Software was developed exclusively at private expense.

(b) If Company determines that it is unable to accept any of the license restrictions under which the Software is provided to Company because those restrictions fail to meet Company’s needs or are inconsistent in any respect with federal law, Company immediately and before any use will return the Software to BBVA.

(c) Company’s use, modification, reproduction, release, display, or disclosure of the Software or related documentation is subject solely to the terms of the license provided in Section 7 above.

14. **SECURITY.** Company is advised that certain of the Services may be provided by way of the Internet using the BBVA Image Lockbox (collectively “BBVA Internet System.”) Use of any such method of communication requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections. Company acknowledges that data, including e-mail, electronic communications, and confidential financial data, may be accessed by unauthorized third parties when communicated to BBVA using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. With respect to BBVA Internet System access, Company agrees to use software produced by third parties, including, but not limited to, “browser” software that supports a data security protocol compatible with the protocol used by BBVA. Until notified otherwise by BBVA, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by BBVA and to follow BBVA’s log-on procedures that support such protocols. Company acknowledges that BBVA is not responsible for (i) notifying Company of any upgrades, fixes or enhancements to any such software; or (ii) any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by BBVA in writing, Company agrees not to (i) use any software, program, application or any other device to access or log on to BBVA’s computer systems, web site or proprietary software; or (ii) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from BBVA’s computer systems, web site or proprietary software. In the event of any system failure, BBVA may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company’s access to the BBVA Internet System. Company assumes full responsibility for its selection of, access to, and use of products purchased from BBVA or otherwise indicated on the Implementation Form. Company shall be responsible for the confidentiality, maintenance, and use both of its financial information on the BBVA Internet System, and of its access number(s), password(s), log-in ID(s), and account number(s). If Company requires more than one authorized signer’s signature or authorization to conduct certain transactions related to Company’s account(s) or the Services, this requirement will be deemed solely for Company’s own purposes. BBVA will not be liable to Company as long as at least one authorized signer’s signature appears on the Company’s checks, drafts, instructions, or orders, or if BBVA’s records indicate that a transaction, payment or other product use was made by or on behalf of one authorized signer by telephone, BBVA Internet System, or other method. This includes situations in which Company has provided its access number(s), password(s), log-in ID(s) and/or account number(s) to someone else to use. Company agrees not to hold BBVA liable for following Company’s written orders or instructions. Company agrees not to hold BBVA liable for any damages of any kind resulting from Company’s disclosure of its access number(s), password(s), log-in ID(s), or account numbers to any person identified or not identified on the Implementation Form. Company will be responsible for all orders and instructions entered through and under Company’s access number(s), password(s), log-in ID(s), and/or account number(s), and any orders or instructions so received by BBVA will be deemed to have been received from Company. All orders and instructions shall be deemed to be made at the time received by BBVA and in the form received. Company agrees to immediately notify (in the manner prescribed by BBVA from time to time) BBVA if Company learns of:

* any loss or theft of Company’s access number(s), password(s), log-in ID(s) and/or account number(s); or

* any unauthorized use of any of Company’s access number(s), password(s), log-in ID(s), and/or account number(s), or of the electronic Services or any of Company’s information; or

* any receipt by Company of confirmation of an order that Company did not place; or any similarly inaccurate or conflicting report or information.

**LOCKBOX SERVICES**

Upon Company’s submission of a request for Lockbox Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:
1. **Service Instructions.** These terms and conditions for Lockbox Services are supplemented by BBVA’s Lockbox Service Instructions (the “Lockbox Instructions”), a copy of which has been delivered by BBVA to Company.

2. **Lockbox Services.** BBVA is authorized and instructed by Company to receive, open, and dispose of mail addressed to Company at the lockbox address provided in the welcome letter or Service Instructions for Lockbox Services, including, without limitation, registered and certified mail, and to endorse on Company’s behalf as its attorney-in-fact remittances for purposes of collecting and depositing the proceeds to Company’s account(s) designated on the Service Instructions for Lockbox Services. BBVA will receive mail in accordance with the schedule for mail pickup established by BBVA (which BBVA may change from time to time without the necessity of consent of or notice to Company). Except as otherwise provided in this Agreement or in the account processing instructions executed in connection with Lockbox Services, the credit and collection of all such remittances shall be subject to the normal terms and conditions applicable to deposits received by BBVA directly from Company.

3. **Lockbox.**
   
   (a) All envelopes containing checks to be processed under this Agreement shall be mailed to the address provided by BBVA, which shall be the lockbox address (which BBVA may change from time to time by written notice to Company).
   
   (b) In the event a check to be processed under this Agreement is to be delivered by hand delivery, the delivery should be made to the address provided by BBVA (hand delivery shall constitute deposit into the lockbox).

4. **Record Maintenance.** BBVA will create a permanent image of all checks, drafts and other instruments processed in connection with Lockbox Services. BBVA will retain the image for seven years or for such other period, whether longer or shorter, if any, required by law. BBVA will provide photocopies to Company upon request. Company shall provide date, the total amount of the deposit and the amount of the item in question as indexing information for photocopies requested. Also upon request, BBVA will capture images of checks and/or related documents and provide them via Compass e-Access, BBVA Net Cash USA, CD-ROM, DVD or Secure FTP, as described in more detail within the separate “Lockbox Service Instructions.”

5. **Holidays.** No processing activity will be conducted and no deposits will be made by BBVA on holidays officially recognized by BBVA. Lockbox activity will be resumed the following business day.

6. **Credit Card Receipt Processing.** BBVA will process credit card receipts deposited to the lockbox as point of sale transactions on behalf of Company. In this capacity and under this Agreement, BBVA is not acting as a merchant processor. BBVA shall not be liable for, and Company agrees to indemnify and hold BBVA harmless from, any data entry error, chargeback or any other fee, cost or assessment (collectively referred to herein as “Losses”) incurred by Company relating to any transaction or transactions processed under this Agreement even if such Losses could have been prevented by BBVA. Company agrees that any and all exchange fees between it and its merchant processor will continue under the terms of its current agreement.

7. **Stop Files.** Certain identified payments may be stopped by the Company pursuant to the Stop File Instructions as distributed and modified from time to time. The Company must identify and communicate the information for stopping a payment or payments. Company agrees to indemnify and hold BBVA harmless from any transaction stopped in error or any transaction that is processed in error.

8. **Online Decisioning.** Upon Company’s submission of a request for Online Decisioning and approval of the Service Instructions for Online Decisioning, BBVA will provide Online Decisioning for the Designated Accounts specified by Company. For an additional fee, BBVA will notify Company via email (a valid and monitored email account is required for email notification) when transactions are available for review.

Company shall review transactions via secure online connection and notify BBVA of any items or transactions that need to be returned. Company shall notify BBVA of items or transactions to be returned no later than 12:00 p.m. local time. Local time is determined by the time zone of the location where the lockbox is processed. BBVA shall finally deposit and credit to the applicable Designated Account all transactions or items unless the Company instructs BBVA to withhold an item or items from further processing. Presented items that the Company instructs BBVA to withhold from processing will be forwarded by BBVA to the Company and it will be Company’s sole responsibility to comply with any applicable deadlines for further processing, negotiation or returning such items.

If Company fails to instruct BBVA to withhold processing by the applicable deadline, Company authorizes and directs BBVA to deposit or return the presented items to the Company per the Company’s default requirements set up at the time the service is implemented, unless BBVA determines in its sole discretion that a presented check is not or may not be properly payable. If Company sends in payment instructions after the disposition deadline, BBVA will attempt to honor the request but the Company must reimburse and hold BBVA harmless from any cost, suits, expenses, liabilities, damages and attorney's fees related to the request.

Company agrees to indemnify and hold BBVA harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever for any encoding errors in the report provided to the Customer listing presented items and/or transactions, any missed deadlines for returning checks or otherwise arising out of its use of the Online Decisioning service (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding, whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence or willful misconduct of such indemnified person.

From time to time, BBVA shall establish or modify procedures relating to Online Decisioning, which procedures may include security procedures and a format for reports and data. The Company agrees to follow and be bound by those procedures. BBVA shall have the right in its discretion to change all or any of the procedures at any time upon prior notice to Company (or without prior notice if BBVA has reason to believe that those changes are necessary to protect the safety or integrity of any account held at BBVA). Notwithstanding the foregoing, BBVA will use reasonable efforts to notify Company of any change in the procedures at least ten (10) days prior to any change.

Company hereby assumes all risk and responsibility for the compilation, accuracy, transmission and delivery of any and all information or data, including, without limitation, any payment instructions delivered by Company to BBVA. BBVA shall have no obligation to insure the receipt or accuracy of any information or data furnished by Company in connection with the Online Decisioning Service, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of any such information or data. Company hereby authorizes BBVA, without investigation or inquiry, to rely and act upon the contents of any information or data received from Company which BBVA reasonably believes is authorized by Company. Company is solely
responsible for assuring that the payment instructions are in the format required by, and otherwise complies with, the procedures for Online Decisioning.

**UCC Article 4 and Regulation CC.** In accordance with Section 4-103 of the UCC, this Agreement shall vary the effect of any provisions of Article 4 of the UCC and of Regulation CC (12 C.F.R. Section 229.1 et seq.) which are inconsistent with this Agreement.

With regard to the secure online access required for Online Decisioning, Company shall designate in writing to BBVA those individuals who will be permitted to access and transmit decisions on behalf of the Company (“Designated Users”). The designating document must contain the original signatures of a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. Online Decisioning shall only be accessed and services shall only be conducted or transacted, only by the Designated Users. If Company desires to change or add a Designated User, Company shall provide prior written notice to BBVA of such change, signed by a person whose signature appears on the Authorization Certificate for the BBVA Treasury Management Services Agreement. The notice may be telefaxed to BBVA, but it must be followed by a document with an original signature on it. No change of Designated Users by Company shall be effective until accepted by BBVA, and BBVA has had a reasonable opportunity to update its records. After Company has designated to BBVA the identity of the Designated Users, BBVA shall provide the Designated Users with the World Wide Web address where the Online Decisioning Services shall be accessible. BBVA shall also provide each Designated User a password (the “Password”), a unique user identification code (“User ID”) the use of which permits general recognition of the Designated User by the Online Decisioning Services system, and a user personal identification number (“PIN”). Every Designated User must change the PIN when the Designated User first initiates a transaction using Online Decisioning and every ninety (90) days thereafter. Company agrees to hold harmless BBVA from and against any loss caused by the failure by any Designated User to change the PIN when required by this agreement, and expressly assumes the risk of loss with respect to any transaction initiated by any Designated User whose PIN has not been maintained according to the terms of this Agreement.

Company acknowledges that while BBVA will attempt to ensure that the Password, all User IDs, all PINs and all electronic communications between Company and BBVA are encrypted, scrambled or otherwise protected against interception by a person whose access to Online Decisioning is unauthorized. Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA through Online Decisioning. Each Designated User is responsible for safekeeping the Password, all User IDs, and all PINs (singularly, a “Company Code”, and collectively, the “Company Codes”). Company and each Designated User shall not, at any time, permit access to Online Decisioning by any person who does not need to obtain access to Online Decisioning consistent with Company’s rights hereunder. If a Designated User loses or forgets a Password, User ID or PIN, the Designated User should contact BBVA for assistance.

If Company or any Designated User believes that one or more Company Codes have become known or obtained by unauthorized persons (whether or not employed by Company), the Company shall immediately notify BBVA to enable BBVA to disable the affected Company Code(s). Additionally, BBVA may change or disable any Company Code at any time and for any reason. If BBVA takes such action, BBVA will make every reasonable effort to notify Company promptly. BBVA assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company’s agents or representatives or anyone else for unauthorized disclosure or use of Company Codes. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company.

If Company is unable to access Online Decisioning or transact or conduct any Online Decisioning, Company shall immediately notify BBVA of such inability.

BBVA may rely upon any Online Decisioning instruction communicated or conducted through or by use of Online Decisioning as properly authorized by Company (including, without limitation, any instructions or information related thereto it receives from Company through Online Decisioning). Each Designated User to whom BBVA has provided access to Company Codes, or who has otherwise obtained access to Company Codes, is deemed an authorized representative of Company for purposes of all Online Decisioning transacted or conducted through or by use of Online Decisioning, whether or not such person is authorized by this Agreement or any other agreement between BBVA and Company.

Notwithstanding the terms of any Treasury Management Services Agreement or any other agreement between Company and BBVA, once Company accesses Online Decisioning, BBVA will not verify that any transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by BBVA. BBVA is authorized by Company to process transactions in accordance with information BBVA receives electronically or otherwise from Company. Company shall be solely responsible for the information contained in the instructions and BBVA shall have no responsibility for erroneous data provided by Company. BBVA shall have no liability for losses resulting from or related to Company’s failure to limit access to Online Decisioning or maintain the confidentiality of the Company Codes. At the sole discretion of BBVA, BBVA may also require the use of other identifying information or other security procedures for certain Online Decisioning and BBVA may add to, change or delete any security procedure.

**Grant of License.** BBVA hereby grants Company a limited, nonexclusive, non-transferable, limited term, royalty-free, revocable sublicense to use Online Decisioning and the software creating, maintaining and supporting Online Decisioning (the “Software”) and the printed user materials provided in connection therewith (the “Documentation”) solely to conduct transactions in connection with the Online Decisioning, for Company’s internal business purposes only. Except as specifically provided herein, BBVA does not grant to Company any other right or license express or implied. Company may not sublicense, sell, lease, distribute or provide access to Online Decisioning, the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA or a third party are the exclusive owners of and shall retain all right, title and interest in and to Online Decisioning, the Software, the Documentation and the Intellectual Property Rights (as defined herein).

**Equipment.** In connection with its use of Online Decisioning services for the purposes provided in this Agreement, or otherwise, Company shall obtain Internet browser software specified by BBVA. Company shall be solely responsible for ensuring equipment and software compatibility with the Online Decisioning service. All hardware and telecommunications equipment will be purchased and maintained by Company.

**BBVA Representations and Warranties.** Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party’s rights, and use thereof is enjoined, BBVA shall, at its option: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software and Documentation.
Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses collectively, “Damages”) that Company asserts or sustains as a result of Company’s use of Online Decisioning.

The liability of BBVA or any other Provider for any Damages asserted by Company arising as a result of the acts or omissions of any Provider shall be limited to interest on the funds at issue at the “federal funds rate” paid by BBVA at the close of business on each day such act or omission remains uncorrected; provided, however, if BBVA or such other Provider is unable to recover funds from a person or entity who or which receives such funds as a result of such Provider’s acts or omissions and who has no claim to such funds, such Provider shall be liable for Company’s actual loss, not to exceed the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, no Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA or such other Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”) harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to this Agreement or Online Decisioning. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA and the obligation of Company to indemnify BBVA, whether under this Agreement or any other agreement between BBVA and Company applicable to the Online Decisioning shall apply equally to all other Providers with respect to access to or use of, or any Online Decisioning transacted through or by use of, BBVA e-Transmit.

Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ONLINE DECISIONING, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY’S USE DURING THE TERM HEREOF AS “IS” AND “WHERE IS”, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO ONLINE DECISIONING, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF ONLINE DECISIONING BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. BBVA DOES NOT WARRANT THAT THE OPERATION OF ONLINE DECISIONING OR SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM ANY OTHER PROGRAM LIMITATIONS. BBVA DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF ONLINE DECISIONING, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER (“ISP”) SUITABLE TO ACCESS BBVA E-TRANSMIT AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY’S USE OF ONLINE DECISIONING AND THE ABILITY TO CONDUCT OR TRANSACT ONLINE DECISIONING (INCLUDING, WITHOUT LIMITATION, COMPANY’S ABILITY TO ACCESS ONLINE DECISIONING), AND THAT BBVA SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA’S COMPUTERS, AND ASSUMES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT BBVA SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY’S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET; COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF ONLINE DECISIONING IS DONE AT COMPANY’S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

Proprietary Rights. Company acknowledges that BBVA or the other Providers shall retain all rights, title and interests in and to Online Decisioning, the Software (including, without limitation, the source code, listing, any support materials related thereto) and Documentation, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereof and additions thereto, including ownership of all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto (collectively, the “Intellectual Property Rights”), except as granted hereunder. Company shall not take any action that is inconsistent with the Intellectual Property Rights of BBVA or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of BBVA or any other Provider.

The Software and Documentation include trade secrets and other proprietary information of BBVA and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies). Company shall treat as confidential and shall not disclose or otherwise make available the Software, the Documentation (collectively, the “Confidential Information”), in any form, to any person other than Company’s employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon such Confidential Information, or permit or authorize any third party to do any of the foregoing.

Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to Online Decisioning or the Software.

Company’s Additional Representations, Warranties and Covenants. Company represents and warrants that each electronic communication submitted to BBVA by the Company by use of Online Decisioning fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using Online
Decisioning are for commercial purposes, and not for personal or household purposes.

Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to and its ability to transact Online Decisioning through Online Decisioning at any time, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination If the initial notice of termination was not communicated in writing. BBVA may require Company to execute additional documents or agreements to continue to conduct or transact Online Decisioning through or by use of Online Decisioning at any time.

ACCOUNTS RECEIVABLE INVOICE MATCHING

Upon Company’s submission of a request for Accounts Receivable Invoice Matching (the “Service”) and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Service Instructions and Condition Precedents. These terms and conditions for the Service are supplemented by the Service Instructions (including, but not limited to, BBVA’s Accounts Receivable Matching Service Instructions). As a condition precedent for use of this Service, Company accepts and agrees to the terms and conditions in this Agreement for Lockbox Services and File Transfer Services or Host to Host Service (as applicable, “Data Transmission Services”). Failure to meet the condition precedents and comply with the terms and conditions of Lockbox Services and Data Transmission Services may lead to immediate termination of this Service.

2. Accounts Receivable Invoice Matching Service. BBVA is authorized and instructed by the Company to receive, consolidate and extract certain receivable information, and facilitate the reconciliation and matching of this receivable information with payments received from Company’s payers to one or more Company Accounts.

3. Receipt of Payment Information and Receivable Information. Company will authorize and direct its payers to deliver payment to BBVA in the format and manner established by BBVA in the Service Instructions. Company assumes all risk and responsibility for the compilation, format, accuracy, transmission and delivery of any and all payment information or data sent to or received by BBVA.

Company will deliver receivable information to BBVA in the format and manner established by BBVA in the Service Instructions. Company assumes all risk and responsibility for the compilation, format, accuracy, transmission and delivery of any and all receivable information or data sent to or received by BBVA. Further, BBVA has no obligation to identify discrepancies or errors or to insure or verify the compilation, format, accuracy, transmission and delivery of the receivable information or payment information received from the Company or the payers. Company hereby authorizes BBVA, without investigation or inquiry, to rely and act upon the contents of any payment information, receivable information or data received from Company or payers. BBVA reserves the right to reject and may not process any receivable information that is not compliant with the formats, standards or other requirements as set forth in the Service Instructions.

4. Matching of Receivable Information. BBVA is authorized and instructed by Company to extract data from the received receivables information from the Company or the payers into the necessary formats for use within the Service. The Service will use its best efforts to match said extracted data with receivable information against the payments credited to Company’s Account. The reconciliation and matching of the receivable information and payment information will be done according to the Service Instructions, or as otherwise established by BBVA from time to time. BBVA is not responsible for the completeness, accuracy or timeliness of any receivable information received or extracted from the receivable information or payment information. Company agrees to indemnify and hold BBVA harmless from any transaction matched or processed in error.

5. Timing. Company acknowledges that the receivable information and payment information is subject to certain cut-off times and, therefore, BBVA is not responsible for any delays in payment from the Service due to a missed cut-off time by the Company or any payer.

6. Reporting. BBVA will make available to the Company electronic data reports and transmissions, if requested, regarding the Company’s receivables and related invoice matching payments. Company acknowledges that such reporting is not intended to be used as a substitute of bank statements of the Company Account(s) but is for informational purposes only.

7. Liability. Company hereby releases BBVA from any claim, demand, loss, liability, or expense arising under, out of, or in connection with the Service or BBVA’s performance under these provisions for the Service, provided such claim, demand, loss, liability or expense has not directly resulted from BBVA’s gross negligence or willful misconduct. In no event shall BBVA be liable for any consequential, special, punitive or indirect loss or damage which Company may incur or suffer in connection with its use of the Service.

8. Company Indemnification. In addition to the indemnification contained in the General Terms section of this Agreement and Section 4 herein, Company agrees to indemnify and hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which BBVA may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of BBVA’s Accounts Receivable Invoice Matching Service, or reconciliation and matching of the receivable information and payment information, or data transmitted to BBVA by Company or Company’s payers, or reports provided by BBVA. Company shall also hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of or the failure of any software or hardware provided, required or suggested by BBVA. The Company’s indemnity obligations under this section shall survive termination of this Agreement.

ONLINE FUNDS TRANSFER SERVICE

Upon Company’s submission of a request for the Online Funds Transfer Service and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

1. Description of the Service. With this Service, Company may initiate funds transfers under Article 4A of the UCC, which are commonly referred to as “wire transfers.” Company’s use of the Online Funds Transfer Service is subject to the General Provisions of this Agreement, the following terms and conditions for this Service, the applicable Service Instructions, and all Applicable Laws.

2. Definitions. For purposes of this Agreement, the following definitions apply:
3. **Company Designations.** In the Set-Up Form for this Service, as it may be modified from time to time, Company shall designate, among other items:

   (a) Each Authorized Wire User;

   (b) Each Company Account from which payment orders may be made (a "Wire Transfer Account");

   (c) The maximum amount of any single payment order that may be made by an Authorized Wire User.

4. **Authorization for Funds Transfers.** BBVA is authorized and directed to act upon Company’s instructions to transfer funds of Company in accordance with the terms and conditions for this Service. Company authorizes BBVA (a) to provide an Authorized Wire User any information related to this Service; (b) to execute payment orders upon the request of any Authorized Wire User, and (c) to take any other actions requested by an Authorized Wire User with regard to this Service. Without limiting application of the Manual Security Procedures described below, BBVA is authorized and directed to act on any oral or written directions from a person representing himself as an Authorized Wire User which BBVA believes to have been signed, sent or made by an Authorized Wire User. BBVA may, but is not required to, record any voice instructions transmitted to BBVA.

5. **Manual Security Procedures.** The following security procedures apply to wire transfers initiated manually under this Service (the "Manual Security Procedures"). For the purposes of this Service, funds transfers are initiated manually when they are submitted in person, over the phone, or by telefax. Wire transfers initiated online are not submitted manually.

   To each Authorized Wire User, BBVA will assign a unique personal identification number ("PIN"), which the Authorized Wire User must provide to BBVA when initiating, amending, or canceling a payment order. Company may request BBVA to change a PIN upon prior written request, and BBVA may change a PIN by providing written notice of the new PIN to Company. If the Authorized Wire User does not provide BBVA with the correct PIN, BBVA will refuse to accept, amend, or cancel any payment order.

   Company agrees that the Manual Security Procedures constitute commercially reasonable security procedures for the Company. Company agrees to be bound by any payment order, whether or not authorized, issued in Company’s name and accepted by BBVA in compliance with the Manual Security Procedures. If a payment order is accepted by BBVA in compliance with the Manual Security Procedures and the payment order contains any error, to the full extent allowed by law Company shall be liable for, and indemnify BBVA against, the amount of the payment order and all claims and all of BBVA’s losses and expenses, including attorney’s fees, relating to the erroneous payment order. BBVA’s records demonstrating the use of the Manual Security Procedures will be deemed conclusive proof that any payment orders received by BBVA were authorized and approved by the Company.

   If a payment order (or request for cancellation or amendment of a payment order) received by BBVA was transmitted or authorized by Company, Company shall be obligated to pay the amount of the payment order whether or not BBVA complied with the Manual Security Procedures with respect to that payment order and whether or not that payment order was erroneous in any respect or whether or not that error would have been detected if BBVA had complied with such procedures.

6. **Transfer Requests.**

   (a) **Initiating Transfers.** Except as otherwise provided in this Agreement, Company may use this Service to transfer funds from a Wire Transfer Account to any other account with BBVA or an affiliate of BBVA, or to an account at another bank or financial institution. Funds transfer requests will be accepted during the normal business hours of BBVA’s Wire Transfer Department, which are subject to change upon notice to Company. Company agrees that, except as otherwise provided for herein, all funds transfers originated by or on behalf of Company shall comply with this Agreement, Applicable Law, including Article 4A of the UCC.

   (i) **Domestic Wire Transfers and Drawdown Requests:** Domestic wire transfers and Drawdown Wire Transfer Requests initiated by Company and received by BBVA by its designated cutoff time on a day that both BBVA and the Federal Reserve are open for business or at any time on a day that both BBVA and the Federal Reserve are open for business or at any time on a day that both BBVA and the Federal Reserve are open for business.

      (A) **Drawdown Wire Transfer Requests:** BBVA assumes no responsibility for the failure by any financial institution receiving a
Drawdown Wire Transfer Request to approve the Request, and has no duty to notify Company if the Request is not approved.

(B) (Incoming Drawdown Wire Transfer Requests: BBVA assumes no responsibility for wire transfer requests initiated by Company-authorized third parties. Company must authorize such requests in accordance with the procedures and policies set out by BBVA from time to time.

(ii) International Wire Transfers: International wire transfers initiated by Company and received by BBVA by its current time on a day that BBVA is open for business will be processed the same day. International wire transfers received by BBVA after its designated cutoff time on a day that BBVA is open for business or at any time on a day on which BBVA is not open for business will be processed on the next day BBVA is open for business.

(A) For any International Wire Transfer initiated in Mexican Pesos, the scheduled "Value Date" (i.e., the date the wire transfer posts to the beneficiary’s account) will be the same Business Day on which processing of the wire transfer is completed. For any International Wire Transfer initiated in Canadian Dollars, the scheduled Value Date will be one (1) Business Day after the day on which processing of the wire transfer is completed.

(B) For International Wire Transfers initiated in any other foreign currency, the scheduled Value Date will be two (2) Business Days after the day on which processing of the wire transfer is completed. The foreign currency exchange rates quoted for International Wire Transfers will be used for each foreign currency International Wire Transfer initiated UNLESS Company obtains a custom rate and related confirmation number from BBVA and properly enters the custom rate confirmation number in the designed field when initiating the wire transfer.

(C) Unless Company instructs otherwise, Correspondent Charges will be deducted from any payment made to the beneficiary. Beneficiary Bank fees may also apply, and may be deducted from the payment made to the beneficiary.

7. **USD Auto Conversion.** The following section is applicable to Non-Consumer transactions only. If Company requests that United States Dollars (USD) be sent to a foreign country by initiating an international wire transfer in USD through BBVA, BBVA may (but is under no obligation to do so) automatically convert, or arrange with any of its designated correspondent banks to automatically convert, the Company’s USD wire transfer to the foreign currency of the beneficiary’s account (“AutoConvert”).

In the alternative, the beneficiary’s bank (or its correspondent) may upon receipt convert the payment into the relevant foreign currency. Neither alternative requires any action or processing change on the Company’s part. However, the Company may, if it chooses to, opt out of AutoConvert, either in full (i.e., as to all beneficiaries and foreign currencies), or in part (i.e., only as to certain beneficiaries and currencies), by sending a written notice to BBVA clearly detailing its request, in which event, neither BBVA nor its designated correspondent banks will convert such wire transfer amounts from USD.

In the event that the Company’s wire is automatically converted by BBVA or its designated correspondent bank under AutoConvert, and the foreign beneficiary requires the payment to be received in USD, the wire will be re-converted by our designated correspondent bank and settled in USD.

If the Company’s transfer is returned for any reason, the Company agrees to accept the refund in USD. BBVA will calculate the refund based on the buying rate of exchange of the foreign currency on the date of the refund. The exchange rate will include a commission to BBVA for making the exchange. The Company agrees to accept this amount as a full refund, even if it is less than the original amount BBVA transferred. The Company also agrees to pay BBVA all other charges and expenses BBVA incurs either as a result of a USD or foreign currency funds transfer.

Transactions processed in foreign currency denominations are subject to daily (or more frequent) changes in exchange rates. When BBVA or our specified correspondent bank converts a transaction under AutoConvert, BBVA may determine at its discretion the currency exchange rate and then assign that currency exchange rate to the Company’s transaction. The Company agrees to this procedure and agrees to accept the resulting determination of the currency exchange rate. BBVA and its designated correspondent banks may consider many factors in setting currency exchange rates for these purposes. These factors include exchange rates set by others, its desired rates of return, market risk, and credit risk. Neither BBVA nor any of its correspondent banks shall be responsible for any liability the Company may incur if its currency exchange rates are different from rates (1) offered or reported by third parties; (2) offered by BBVA (or our correspondent) at a different time, at a different location or for a different transaction amount; or (3) that involve different payment media (such as bank notes, checks and wire transfers). The Company further acknowledges that: (a) its currency exchange rates for retail and commercial transactions, and for transactions affected after its regular business hours or on weekends, are different (and usually less favorable to the Company) than the exchange rates for large interbank transactions affected during a business day, and (b) revenue resulting from fees and rates assessed or applied by our designated correspondent banks in connection with currency conversions under AutoConvert may be shared between BBVA and its correspondent.

Alternatively, when a beneficiary’s bank (or its correspondent bank) converts a USD transaction into a foreign currency, such conversion will be subject to rates and fees assessed by such banks, and may be further subject to various local laws and practices. BBVA has no control over those rates, fees or conditions, and the Company authorizes BBVA to process any resulting charges or credits to the Company’s account.

8. **Foreign Exchange Rates.** A daily exchange rate for each supported currency will be set and published each business day. Those rates will be applied to all transactions initiated on the same day unless Company contacts us to request a custom rate quote. Any exchange rates quoted are subject to change without notice until accepted by the Company. BBVA is not liable for exchange rate changes that may adversely affect Company prior to acceptance of any quote. BBVA reserves the right to correct any misquoted or mistaken rates, including, but not limited to, the right to substitute the correct exchange rate or decline to process the wire transfer.

Acceptance of the exchange rate by Company is an irrevocable agreement to complete the referenced transaction(s). Company will be liable for any and all losses, costs, commissions, fees and/or damages suffered and/or paid by BBVA if the transaction(s) is not completed, if the foreign exchange transaction is reversed and/or if the transaction(s) is cancelled.
9. Honoring Transfers. BBVA is obligated to honor a request for a funds transfer from an Authorized Wire User only if the request is in accordance with the terms and conditions of this Agreement. BBVA is under no obligation to honor, either in whole or in part, any funds transfer request or amendment thereto that (i) exceeds the aggregate collected balance in the Wire Transfer Account designated for that transfer; (ii) is not in accordance with each term and condition provided for in this Agreement (iii) is not, or BBVA believes may not be, authorized or correct; or (iv) is impracticable or not feasible to accept. In addition, BBVA shall be excused from failure to transmit or delay acceptance of a payment order if such acceptance would result in BBVA exceeding any regulatory limitation upon its intra-day net funds position or in BBVA’s otherwise violating any provision of any Applicable Laws. If the designated Wire Transfer Account does not contain sufficient funds to accomplish a transfer, BBVA, at its sole discretion, may but shall have no obligation to accept the payment order and debit that Account into overdraft, and BBVA shall not be liable for damages to Company as a result thereof. If BBVA creates an overdraft to complete a funds transfer, Company agrees to pay to BBVA the amount of the overdraft upon demand, together with interest accruing on the amount of the overdraft from the date of its creation at the maximum rate of interest permitted under Applicable Laws. Company authorizes BBVA to charge any Company Account (even if not a Wire Transfer Account) at any time for the amount of both the overdraft and the accrued interest.

Notwithstanding anything herein to the contrary, BBVA agrees to use reasonable efforts to execute each properly authorized funds transfer request on the same day it is received, unless it is future payment date is specified, provided (x) the request is received by BBVA before the applicable cut-off time; and (y) that day is a Business Day for BBVA, the communication facility selected by BBVA, and the receiving bank. In executing any funds transfer requests, BBVA may utilize such means of transmission as BBVA reasonably selects. If Company initiates multiple payment orders for execution on the same Business Day, BBVA may execute the payment orders in any order convenient to BBVA. If Company directs BBVA to use a specific intermediary bank or specific means of execution, Company assumes all risks of failure or of non-payment by the intermediary bank and all risks of loss by the means directed. Until BBVA receives final settlement in collected funds, BBVA has no obligation to accept or pay Company the amount of a payment order showing Company as beneficiary. If BBVA does not receive such final settlement, Company agrees to refund all amounts BBVA paid to Company relating to the payment order and the originator of the payment order shall be deemed not to have paid Company.

10. Canceling and Amending Payment Orders. If Company wishes to cancel or amend a payment order previously transmitted to BBVA, Company must transmit notice of the requested cancellation or amendment in compliance with the Security Procedures, and must include the amount and recipient of the payment order in the notice. BBVA will make a reasonable effort to comply with any request by Company to cancel or amend a payment order that is made before BBVA’s acceptance of that payment order, but only if BBVA’s Wire Transfer Department has been given sufficient notice and a reasonable opportunity to act on it. BBVA shall have no obligation or duty to cancel or amend a payment order received from Company after BBVA accepts the payment order. If BBVA consents to cancel or amend an accepted payment order, Company shall indemnify and hold BBVA harmless for all loss and expense, including attorney’s fees, relating to the cancellation and amendment or attempted cancellation and amendment. Federal regulations require that BBVA include certain information about Company in any funds transmittal order by Company, including Company’s true name and street address. BBVA’s system will include Company’s street address contained in its account records unless no such address is on record, in which case BBVA will include the street address provided by Company in the Set-Up Form for this Service. Company agrees to promptly notify BBVA of any changes or corrections to Company’s information maintained by BBVA, including Company’s street address. Company agrees that, upon and by requesting any transfers of funds, it has verified that the information about Company that is maintained by BBVA is both accurate and complete.

11. Repetitive Funds Transfers. BBVA will assign a unique “Repetitive Number” to each manual repetitive wire transfer request (i.e., funds transfer requests made routinely with instructions remaining constant except for the date and dollar amount) except for those repetitive wires transfer templates established on Compass e-Access or BBVA Net Cash. Manual instructions for repetitive wire transfers must be specified on a form supplied to Company by BBVA for that purpose. To initiate a manual repetitive wire transfer, an Authorized Wire User, or an individual designated by an Authorized Wire User for that repetitive wire transfer, must provide BBVA, in addition to compliance with the Manual Security Procedures, with the following information prior to initiating the wire funds transfer:

(a) Wire Transfer Account Number from which funds are to be drawn;
(b) Appropriate Repetitive Number; and
(c) Amount to be transferred.

If an incorrect Repetitive Number or other incorrect information is provided in connection with a repetitive wire transfer request, BBVA will not execute the funds transfer request pursuant until the correct Repetitive Number and/or information is provided. If for any reason the Authorized Wire User, or the individual designated by an Authorized Wire User for that repetitive wire transfer, does not provide any Repetitive Number (incorrect or otherwise), then BBVA will consider such funds transfer request to be a non-repetitive wire transfer under Section 7 below.

12. Non-Repetitive Funds Transfers. A non-repetitive wire transfer is a funds transfer request for which the requesting designated representative does not provide BBVA with a Repetitive Number. To initiate a non-repetitive wire transfer request, the requesting designated representative must provide BBVA with the following information prior to initiating the funds transfer:

(a) Wire Transfer Account Number from which funds are to be drawn;
(b) Amount to be transferred;
(c) Bank to which funds are to be transferred; and
(d) Name and address of the beneficiary to receive the funds and account number to which funds are to be transferred.

NOTICE. IF A FUNDS TRANSFER ORDER ISSUED BY CUSTOMER IDENTIFIES THE BENEFICIARY OF THE FUNDS TRANSFER INCONSISTENTLY BY NAME WITH THE BANK ACCOUNT OR THE BANK ACCOUNT NUMBER PROVIDED IN CONNECTION WITH THE FUNDS TRANSFER, PAYMENT OF SUCH FUNDS TRANSFER ORDER SHALL BE MADE ON THE BASIS OF THE BANK ACCOUNT NUMBER OR IDENTIFYING NUMBER EVEN IF SUCH NUMBER IDENTIFIES A PERSON OR ENTITY DIFFERENT FROM THE NAMED BENEFICIARY; AND BBVA NEED NOT DETERMINE WHETHER THE NAME AND NUMBER REFER TO THE SAME PERSON OR ENTITY, IF A FUNDS TRANSFER ORDER ISSUED BY CUSTOMER IDENTIFIES AN INTERMEDIARY BANK OR BENEFICIARY’S BANK ONLY BY AN IDENTIFYING NUMBER OR BY BOTH NAME AND IDENTIFYING NUMBER, THE RECEIVING BANK MAY RELY ON THE IDENTIFYING NUMBER AS THE PROPER IDENTIFICATION OF THE INTERMEDIARY BANK OR BENEFICIARY’S BANK, EVEN IF SUCH NUMBER IDENTIFIES A BANK OR INSTITUTION DIFFERENT FROM THE BANK IDENTIFIED BY NAME; AND THE RECEIVING BANK NEED NOT DETERMINE WHETHER THE NAME AND NUMBER REFER TO THE SAME INSTITUTION OR WHETHER THE
NUMBER REFERS TO THE BANK. THE FOREGOING IS INTENDED TO BE CONSISTENT WITH AND SUBJECT TO THE TERMS AND PROVISIONS OF SECTIONS 4A-207 AND 4A-208 OF THE UCC. EXCEPT THAT KNOWLEDGE (WHETHER ACTUAL OR CONSTRUCTIVE) BY BBVA OF ANY DISCREPANCY OR INCONSISTENCY IN THE INFORMATION PROVIDED IN CONNECTION WITH ANY FUNDS TRANSFER SHALL NOT CHANGE OR IMPAIR THE RIGHT OF BBVA TO EXECUTE A FUNDS TRANSFER REQUEST AS PROVIDED IN THIS SUBSECTION. BBVA SHALL NOT BE LIABLE FOR EXECUTING ANY FUNDS TRANSFER REQUEST EVEN WHEN IT HAS KNOWLEDGE OF THE DISCREPANCY OR INCONSISTENCY.

13. **Automatic Standing Funds Transfers.** An automatic standing funds transfer (“AST”) is a standing order of Company authorizing BBVA to make multiple transfers from a Company Account automatically and without further actions by Company (an “AST Order”), with each individual AST being in an amount established according to criteria defined by Company to a recipient and at intervals specified by Company. To initiate an AST Order, Company must provide the following information to BBVA:

(a) The account number for the Company Account from which funds are to be drawn;

(b) Criteria to determine the amount to be transferred;

(c) Routing number of the financial institution to which funds are to be transferred;

(d) Name of the recipient and account number to which funds are to be transferred; and

(e) Dates or intervals on which the transfers are to be automatically made, including any date by which the transfers shall cease.

BBVA will make each AST according to Company’s AST Order instructions, unless notified by Company in writing to cancel that AST Order. With respect to each AST and AST Order, BBVA has: (i) no duty to make any inquiries regarding the performance of any contract or the completion of any transaction between Company and any recipient of an AST; (ii) no obligation to Company other than to make each AST according to Company’s instructions; and (iii) no liability if BBVA fails to make any AST if there are insufficient funds in the designated Company Account to make that AST. In order to cancel an AST, Company must notify BBVA in writing within at least two (2) Business Days prior to the next date on which an AST will be made to cancel the AST.

14. **Identifying Information.** Company understands and agrees that all wire transfers shall be executed on the basis of the following information provided by Company in its payment order (which is referred to collectively as “Identifying Numbers”): (i) account number or other identifying number for the beneficiary or, for a wire transfer shall not change or impair the right of BBVA to execute a payment order for a wire transfer as provided in this subsection. Neither BBVA nor any Processing Bank shall have any liability for executing any payment order, even if it has knowledge of the discrepancy or inconsistency.

15. **Confirmations.** If offered by BBVA in its discretion, Company may elect to receive from BBVA an automated confirmation message that BBVA has received and executed a payment order for a wire transfer from any of the Company Accounts designated by Company (“Automated Confirmation”). If Company elects to receive Automated Confirmations, it shall provide BBVA with a list of the Company Accounts for which the Company elects to receive Automated Confirmation and a telephone facsimile number and/or e-mail address to which BBVA will send the Automated Confirmations, shall diligently monitor the Automated Confirmations received from BBVA, and will act upon the information in a responsive manner. Company agrees that, even though facsimile and e-mail notices are commonly used for many business communications, BBVA cannot guarantee the security or delivery of such notice, and BBVA will have no liability: (1) for any delays or failure in providing this facsimile or e-mail notice to Company, (2) if the facsimile or e-mail notice is intercepted and altered or forwarded to any party other than Company, or (3) if the e-mail is infected with intrusive or destructive programs during the delivery process.

16. **Termination.** Notwithstanding any provision of this Agreement to the contrary, BBVA may terminate Company’s use of this Service at any time and without any prior notice to Company.

17. **Additional Security Procedures for Wire Transfers.** Company shall require Authorized Wire Users to use one of the following security procedures to initiate a wire transfer through BBVA e-Access or BBVA Net Cash. If Company does not request Authentication Tokens to be issued to Authorized Wire Users, One Time Pass Codes must be used to initiate wire transfers.

- **One Time Passcodes.** Authorized Wire Users may set up the process to receive an authorization code to verify each wire transfer request, which will be good for one online session and will be delivered to the Authorized Wire User via email, text message or automated voice telephone call (“One Time Passcode”). BBVA shall not be liable to Company for any damages arising from or related to BBVA’s delay or failure to provide a One Time Passcode if such delay or failure results from any cause beyond the reasonable control of BBVA or its Service Provider, or from the failure by Company or the Authorized Wire User to provide BBVA with accurate and/or complete delivery instructions. Company acknowledges that BBVA cannot guarantee the security or delivery of any e-mail, text message or cellular telephone call and will be delivered to the Authorized Wire User via email, text message or cellular telephone call, BBVA shall not be liable to Company (1) for any delay or failure in providing the e-mail, text message or cellular telephone call to the Authorized Wire User, (2) if the e-mail, text message or cellular telephone call is intercepted, altered and/or forwarded to any party other than the Authorized Wire User, or (3) if the e-mail, text message or cellular telephone call is infected with intrusive or destructive programs during the delivery process.

- **Company agrees to instruct each Authorized Wire User utilizing One Time Passcodes (i) not to request that One Time Passcodes be sent to unsecure devices, and (ii) to maintain the confidentiality and security of the process to initiate a One Time Passcode and of any devices that may receive a One Time Passcode (including, but not limited to, computers, email accounts and cellular telephones).**

- **Authentication Token.** Authorized Wire Users may receive a physical token to receive authorization codes to initiate wire transfers (“Authorization Token”). BBVA will provide each Authorized Wire User who is issued an Authorization Token.
with a unique user identification code ("Wire User ID"). Each Authorized Wire User utilizing an Authentication Token is required to select a personal identification number ("Personal ID") when first using this ACH Transactions, and to change that Personal ID periodically when prompted thereafter. If any Authorized Wire User utilizing an Authentication Token does not select a Personal ID within ninety (90) days after receipt of the Authentication Token, BBVA may disable the token.

- Company agrees to instruct each Authorized Wire User utilizing an Authentication Token (i) to maintain the confidentiality and security of the Wire User ID or Personal ID, and not to disclose this ID; (ii) to safeguard the security of the token; and (iii) immediately to notify BBVA if the token is lost and/or stolen.

- If Company is utilizing the Host to Host Service, Company agrees to follow the security procedures set forth in the Agreement and the User Guides for such Service.

Company agrees to be bound by any wire transfer initiated in compliance with the additional security procedures and devices described above, which are part of the "Security Codes" described in the Provisions for Online Services. Company agrees to hold harmless BBVA from and against any loss caused by the failure by any Authorized Wire User to select, change, or to maintain the confidentiality of the Wire User ID, Personal ID, and/or by the request that a One Time Passcode be sent to an unsecure device. Company expressly assumes the risk of loss with respect to any wire transfer initiated using any One Time Passcode, Authentication Token, Wire User ID or Personal ID that has not been maintained and/or protected according to the terms of this Agreement.

18. Security Codes. For each Online Service, Company’s Authorized Administrator and/or each Authorized User may be required to select or create one or more alphanumeric codes, images, phrases, questions with a matching answer, or to use other types of security techniques or devices (including without limitation, all of which are referred to together and separately as the "Security Codes.") The Security Codes issued to or to be used by Company’s Authorized Administrators and/or Authorized Users are referred to as “Company’s Security Codes.” The specific kinds of Security Codes established for use with an Online Service are described in the Service Instructions for that Service provided to Company. BBVA will require use of these Security Codes to gain access to each Online Service, and no Authorized Administrator or Authorized User will be allowed to access an Online Service without using the appropriate Security Codes. From time to time, BBVA may require the Authorized Administrator or Authorized Users to select, create or use different Security Codes and may change the types of Security Codes used to access any Online Service. Company agrees that use of the Security Codes will authenticate the identity of each Authorized Administrator and Authorized User and verify the instructions about a Service provided to us.

19. Company also agrees that BBVA may send notices and other communications about its security techniques and Company’s Security Codes, including designations and confirming confirmations of specific Security Codes, to Company’s current address and/or e-mail address shown on BBVA’s records. Company also agrees that BBVA will not be responsible or liable to Company in any way if information is intercepted by an unauthorized person, either in transit or at Company’s place of business.

20. In order to prevent unauthorized access to Company Accounts and unauthorized use of any Online Service, Company agrees to maintain the confidentiality and security of the Security Codes, and to instruct each Authorized Administrator and Authorized User also to maintain the confidentiality and security of the Security Codes. Company agrees to notify BBVA immediately if Company believes any Security Codes may have become subject to unauthorized use. BBVA will have no liability to Company for any unauthorized payment or transfer initiated using Company’s Security Codes that occurs before Company has notified BBVA of possible unauthorized use and BBVA has had a reasonable opportunity to act on that notice. BBVA may suspend or cancel Company’s Security Codes even without receiving such notice from Company if BBVA suspects Company’s Security Codes are being used in an unauthorized or fraudulent manner. Company also agrees to review promptly each statement and other report that Company receives from BBVA for any Company Accounts accessed through an Online Service in order to detect any unauthorized transactions. Company recognizes that anyone possessing the Security Codes may access Company Accounts and, depending on the Online Service, may be able to initiate transactions on those Accounts. Company agrees that it is responsible for maintaining the confidentiality and security of all Company’s Security Codes, and for implementing the necessary internal controls, balancing and reconciliation functions, and audit procedures to protect all Company Accounts from theft or misuse.

21. Commercially Reasonable Security Procedures. Company agrees that the use of the Security Codes that BBVA has established for each Online Service constitutes a commercially reasonable security procedure for Company. Company agrees to be bound by all requests, communications, or other instructions to BBVA that are initiated using this security procedure (including any transfer requests, payment requests, stop payment orders and, if applicable, payment orders and requests for cancellation or amendment of payment orders for ACH entries and wire transfers), regardless of whether or not Company or any Authorized User actually authorized the instruction. If any instruction initiated through an Online Service and accepted by BBVA in compliance with this security procedure contains any error, to the full extent allowed by law Company shall be liable for, and shall indemnify BBVA against any claims, losses and expenses BBVA may incur that arise from or relate to the erroneous instructions. BBVA’s records demonstrating compliance with this security procedure become conclusive proof that the payment order received by BBVA was authorized and that Company is bound by those instructions.

22. Company’s Liability. Company agrees that BBVA is entitled to rely on and deem the use of Company’s Security Codes to gain access to any Online Service as Company’s authorization for every transaction involving any Company Account until Company has notified BBVA of any possible unauthorized use or transactions. Neither BBVA nor its Service Providers or affiliates will have any liability to Company for any unauthorized payment or transfer made using Company’s Security Codes that occurs before Company has notified BBVA of possible unauthorized use and BBVA has had a reasonable opportunity to act on that notice. Authorization of transfer requests and payment requests made through any Online Service by means of Company’s Security Codes shall be considered the same as Company’s signed authorization and instruction for BBVA to perform any and all actions relating to the requested transaction. Company agrees to be bound by any transaction on any Company Accounts using an Online Service that is initiated by means of Company’s Security Codes and accepted by BBVA in accordance with the security procedure outlined in this Agreement (including the applicable Service Instructions), regardless of whether or not Company actually authorized the transaction. Company agrees not to attempt to use, and to instruct its Authorized Administrators and Authorized Users not to use any Online Service if there is any reason to believe this Service is not functioning properly.

**PAYSOURCE™ CARD SERVICES**

Upon Company's submission of a request for PaySource Card Services and the approval of the Service Instructions for this service,
or upon its use of the service, whichever occurs first, Company agrees:

1. **PaySource Card Services.** PaySource Card Services allow Company to offer to employees and agents (hereinafter collectively referred to as “Cardholders” or singularly as “Cardholder”) of Company a Visa-branded PaySource Card to which funds representing the Cardholder’s remuneration (net of taxes and other deductions) will be transferred from Company as provided herein. PaySource Card Services are subject to the General Provisions and all terms and provisions for Automated Clearing House Services set forth in this Agreement. Any Cardholder that (i) authorizes Company to enroll Cardholder and (ii) who is accepted by BBVA to receive a PaySource Card shall be referred to as a “Participating Cardholder.”

2. **PaySource Card Employer’s Obligations Regarding Customer Identification Program (CIP) for BBVA**

   For each BBVA PaySource Card established by Company for any of its Cardholders, Company agrees to perform the following obligations related to BBVA Customer Identification Program. The Company agrees: (1) to provide a notice to all Cardholders about the collection and verification requirements of Section 326 of the USA PATRIOT Act; (2) to collect the identifying information from the Cardholder as required by Section 326; and (3) to verify the identity of each Cardholder. This Agreement will apply to all PaySource Cards established by Company after October 1, 2008. In addition, Company agrees that it will not enroll anyone in the PaySource Card who is not an actual Cardholder of Company and who does not provide the identifying information identified below.

   (1) **Notice to Employees**

      The following written notice will be provided to all Cardholders prior to or at account set-up:

      **CUSTOMER IDENTIFICATION PROGRAM NOTICE**

      IMPORTANT INFORMATION ABOUT OPENING A NEW ACCOUNT

      To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person opening an account.

      Prior to establishing a new PaySource Card account with BBVA, the Bank generally must

      obtain your legal name, physical residential street address, date of birth, taxpayer identification number or other identifying number (e.g., Social Security number or employer identification number) and other information that will allow the Bank to identify you. The Bank also may ask to see documentation verifying your identity, such as an unexpired driver’s license or passport. With the PaySource Card, your Company may request this information on behalf of the Bank during the card set-up phase.

      With respect to the PaySource Card, this notice will be prominently displayed in the PaySource Card Cardholder Brochure to be provided to Company by BBVA as part of the pre-enrollment packet. Company can satisfy this part of the Agreement by providing a copy of the Cardholder Brochure to each Cardholder at or prior to enrollment.

      **Cards.** Cardholder must complete the Employee or Cardholder Acknowledgement of Receipt of Documents for the PaySource Card which will be returned to the Company or payor prior to Transmittal of a PaySource Card. Documents specified on the form are required to be delivered to prospective cardholder prior to enrollment. The Employee or Cardholder Receipt of Documents for PaySource Card form must be retained by Company or payor for at least 3 years subsequent to the Cardholder’s last date of employment or termination of the relationship between Company and Cardholder. This form may be requested by BBVA at any time and Company must provide this document to BBVA within 5 business days upon request.

   (2) **Collection of Identifying Information**

      The following information will be obtained from the Cardholder prior to or at the time of account set-up:

      (a) **Cardholder name.** Company will obtain the Cardholder’s full legal name, which the Company will record in the name field of the on-line Cardholder Profile screen.

      (b) **Cardholder address.** Company will obtain the Cardholder’s current residential street address, military P.O. Box or, in the event that the Cardholder does not have a current street address or military P.O. Box, the street address of the Cardholder’s next of kin or of a “contact person,” which the Company will record in the address field of the on-line Cardholder Profile screen.

      (c) **Cardholder identification number.** Company will obtain the following identifying information from the Cardholder, which Company will record on the on-line Cardholder Profile screen: For a U.S. citizen, a taxpayer identification number (e.g., a social security number or Cardholder identification number); for a non-U.S. citizen, a taxpayer identification number, passport number (along with the country of issuance), or an alien identification card number or the number and country of issuance of a government issued identification card which shows the Cardholder’s nationality or residency and contains a photograph or similar safeguard.

      (d) **Cardholder date of birth.** Company will obtain the Cardholder’s date of birth, which Company will record on the on-line Cardholder Profile screen.

   (3) **Verification of Cardholder identity**

      (a) Verification methods. Company will use the following method to verify the identity of Cardholders on all PaySource Cards:

      (i) Comparison of I.D. documents: Each Cardholder will be required to present a government issued photo I.D. containing a unique identification number. The Company will compare the information contained thereon to one or both of the following:

      (a) comparable information already on file with the Company; and/or

      (b) information presented orally by the Cardholder in response to the Company’s request for the name, street address, date of birth, or taxpayer identification number during the Cardholder Profile screen entries.

      (b) Response when Company cannot form a reasonable belief as to the identity of a Cardholder.

      If Company cannot form a reasonable belief as to the identity of a Cardholder, it will respond as follows:
(i) Decline to Enroll Cardholder for a PaySource Card. If the Cardholder is unable to resolve any discrepancies in his/her identifying information to the satisfaction of Company, the PaySource Card will be declined and Company must notify the BBVA BSA Department at 205.297.3000. Methods used by Company to resolve discrepancies include: obtaining a satisfactory explanation from the Cardholder, obtaining additional documentation from the Cardholder or a 3rd party; or the use of a 3rd party database.

(ii) Use of account pending verification. Since Company intends to perform the verification prior to account opening, the Cardholder will not be able to use the account unless and until the Company has completed the verification.

(iii) Closure of an account. Company is required to report any suspicion of fraud, including identity theft, relating to any PaySource Card to BBVA's BSA Department for investigation. In the event that the Bank determines that, after a PaySource Card has funded, there was no basis for Company to develop a "reasonable belief" as to the identity of the Cardholder, the Bank, in consultation with the Legal Department and Compliance Department, will determine what action is required. This will include a determination of whether the PaySource Card account should be closed.

(4) Record-keeping

For all funded PaySource Cards, Company shall preserve a description of the resolution of any discrepancies for five years after the PaySource Card is closed.

3. Enrollment; Issuance and Delivery of PaySource Cards.

(a) Enrollment. Company shall deliver to each prospective Participating Cardholder that requests enrollment for a PaySource Card a package containing (i) the documents listed on the Employee or Cardholder Acknowledgement of Receipt of Documents for BBVA PaySource Card (ii) other information and instructions regarding PaySource Card Services. Each of these forms and items will be provided to Company by BBVA. Company agrees to offer PaySource Card Services only to Company's bona fide, current Cardholders and agents. Company represents and warrants that (i) each prospective Participating Cardholder voluntarily requested enrollment, (ii) and enrollment was executed by bona fide, current Cardholders of Company, and (iii) Company delivered to the prospective Participating Cardholder the document(s) specified on the Employee or Cardholder Acknowledgement of Receipt of Documents for PaySource Card and information and instructions that BBVA provided to Company to give to Participating Cardholder.

(b) Issuance and Delivery of PaySource Cards. After enrollment, BBVA will consider the prospective Participating Cardholder for a PaySource Card. BBVA reserves the right, in BBVA's sole discretion, to close an issued PaySource Card to any of Company's Cardholders for any lawful reason. Unless other delivery instructions are requested by Company, BBVA will deliver each PaySource Card directly to the approved Participating Cardholder at the address specified during enrollment. If Company has elected to maintain a supply of temporary non-personalized PaySource Cards, Company may issue a temporary non-personalized PaySource Card to a Participating Cardholder for use until BBVA delivers a personalized PaySource Card directly to the approved Participating Cardholder at the address specified during enrollment. Each PaySource Card issued to a Participating Cardholder will be accompanied by (i) a copy of the PaySource Card Terms and Conditions governing the Participating Cardholder’s use of the PaySource Card, and (ii) a then current fee schedule(s) for PaySource Card Services applicable to the Participating Cardholder. BBVA may change the PaySource Card Terms and Conditions, including the fees to be imposed on Participating Cardholders, at any time, as provided therein, by delivering to Company and each Participating Cardholder notice of the changes. BBVA will additionally issue a PaySource Card to as many as three (3) authorized users ("Authorized Users") per Participating Cardholder as requested by the Participating Cardholder under the PaySource Card Terms and Conditions. BBVA may, in its sole discretion, decline or approve any or all individuals requested by the Participating Cardholder to be Authorized Users of the PaySource Card.

(c) Each Participating Cardholder will have a cardholder account number established for the sole purpose of direct deposits to the PaySource Card from the designated Company Account(s). Company covenants and agrees to keep the cardholder account number confidential and not disclose the same to the Participating Cardholder or any third party (with the exception of a third party payroll processor).

4. SECURITY: Company is advised that certain of the Services may be provided by way of the Internet using the Visa Prepaid Administration Tool (PAT). Use of any such method of communication requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections. Company acknowledges that data, including e-mail, electronic communications, and confidential financial data, may be accessed by unauthorized third parties when communicated to BBVA using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. With respect to PAT access, Company agrees to use software produced by third parties, including, but not limited to, “browser” software that supports a data security protocol compatible with the protocol used by PAT. Until notified otherwise by BBVA, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by BBVA and to follow BBVA’s log-on procedures that support such protocols. Company acknowledges that BBVA is not responsible for (i) notifying Company of any upgrades, fixes or enhancements to any such software; or (ii) any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by BBVA in writing, Company agrees not to (i) use any software, program, application or any other device to access or log on to BBVA's computer systems, web site or proprietary software; or (ii) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from BBVA's computer systems, web site or proprietary software. In the event of any system failure, BBVA may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company’s access to PAT. Company assumes full responsibility for its selection of, access to, and use of products purchased from BBVA as indicated on the Implementation Form. Company shall be responsible for the confidentiality, maintenance, and use both of its financial information on PAT, and of its access User Names, Passwords and answers to security questions. If Company requires more than one authorized signer’s signature or authorization to conduct certain transactions related to Company’s account(s) or the Services, this requirement will be deemed solely for Company's own purposes. BBVA will not be liable to Company as long as at least one authorized signer’s signature appears on the Company's checks, drafts, instructions, or orders, or if BBVA's records indicate that a transaction, payment or other product
5. Funds Transfer.

(a) Transfers. Company may transfer funds to Participating Cardholders by initiating an Automated Clearing House ("ACH") entry to BBVA from Company’s Account (as defined in this Agreement) that (i) contains the information and data required by BBVA (as communicated to it by Company), (ii) identifies each Participating Cardholder to receive funds, and (iii) sets forth the amount of funds to be allocated to each specific Participating Cardholder’s PaySource Card. Company’s failure to provide the funds or to initiate the ACH entry at the time or in the manner required by BBVA may cause funds to be unavailable either to Participating Cardholders or to Company at the time or in the amount that Company requested. Company agrees that BBVA shall not be responsible to Company or to any Participating Cardholder for any delay, loss or damage, and Company agrees to indemnify and hold harmless BBVA from any delay, loss or damage, in the event BBVA is unable to complete a requested ACH transfer of funds to or from any Participating Cardholder at the time, in the amount or in the manner Company requested as a result of Company’s failure to provide BBVA with the funds or to initiate the ACH entry in the manner required by BBVA necessary to complete the requested transfer.

(b) Deductions. Company agrees that Company will initiate an ACH reversal or ACH debit entry only: (a) (i) if the Participating Cardholder was not entitled to receive either some or all of the funds transferred, and (ii) for the amount of the erroneous transfer, or (b) the Participating Cardholder has consented in writing to the reversal or debit entry. At BBVA’s request, Company shall deliver to BBVA, as applicable, (i) data and information confirming the circumstances of any erroneous transfer for which an ACH reversal or debit entry is initiated, (ii) the Participating Cardholder’s written consent. Company agrees to be responsible, and agrees to indemnify and hold harmless BBVA, for any losses that BBVA may incur as a result of Company’s initiating a reversal or debit entry of funds transferred to the PaySource Card of any Participating Cardholder.

(c) Qualification for ACH Services. Company agrees that it will apply for BBVA ACH Services according to the terms and provisions for ACH Services set forth in this Agreement. Company acknowledges that in the event Company does not qualify for ACH Services according to BBVA’s criteria for the approval of entities for ACH Services, Company will not be permitted to obtain PaySource Card Services.

6. Transactions with PaySource Cards. Each Participating Cardholder may access or use the funds available on the PaySource Card at ATMs displaying the VISA or PLUS® logos, at merchants participating in the VISA or Interlink networks, at the teller of any financial institution displaying the VISA logo, or through other methods or services approved by BBVA (collectively, the “Networks”). Company agrees that (i) funds available on a Participating Cardholder’s PaySource Card become the property of that Participating Cardholder and are maintained by BBVA in a limited-purpose account for that Participating Cardholder, which account is insured by the FDIC, (ii) neither Company nor any Participating Cardholder will be paid interest on funds that are available on a Participating Cardholder’s PaySource Card, and (iii) BBVA is authorized and directed to transfer funds from each Participating Cardholder’s PaySource Card in accordance with any instructions received from the Networks and to pay the amount of any such transfer, plus any fees charged in connection with the transfer, to the appropriate party or parties.

7. Termination.

(a) Right to Terminate. BBVA may, in its sole discretion, for any reason or for no reason, with thirty (30) days prior written notice, discontinue PaySource Card Services to Company or terminate (i) any Participating Cardholder’s right to have funds transferred to a PaySource Card ("Loading Rights"), or (ii) the rights of any Participating Cardholder or any Authorized Users to use a PaySource Card ("Use Rights"); provided, however, that in the event BBVA, in its sole discretion, believes that there exists any fraud with respect to the use of a PaySource Card or any other misuse or inappropriate use of a PaySource Card, BBVA may terminate immediately and without notice PaySource Card Services and any Participating Cardholder’s Loading Rights and Use Rights.

Company may cease using PaySource Card Services at any time by notifying BBVA in writing, at which time all Participating Cardholders’ Loading Rights will be automatically terminated.

If a Participating Cardholder’s Loading Rights are terminated automatically or by BBVA, BBVA may, in its sole discretion, (i) terminate the Use Rights of the Participating Cardholder and all Authorized Users and send a check to the Participating Cardholder for any funds remaining on the PaySource Card, or (ii) permit the Participating Cardholder and any or all Authorized Users to continue to access funds stored on the PaySource Card at the time of termination using the PaySource Card under the PaySource Card Terms and Conditions until no funds remain on the PaySource Card. If BBVA elects not to terminate the Use Rights, BBVA will honor any request by the Participating Cardholder for a check for any funds remaining on the PaySource Card. All Use Rights automatically terminate on a PaySource Card when Loading Rights have been terminated and no funds remain on the PaySource Card.

(b) Terminated Cardholders. Company agrees that if (i) any Participating Cardholder’s employment, or other relationship, with Company is terminated for any reason, or (ii) any Participating Cardholder notifies Company that the Participating Cardholder no longer wishes to participate in PaySource Card Services, it shall be Company’s responsibility to delete the information and
data regarding that Cardholder from future ACH entries initiated to transfer funds from Company to Participating Cardholders. BBVA shall have no liability for Company's failure to delete information from an ACH entry that results in a funds transfer from Company to an individual whose employment has been terminated or who is no longer a Participating Cardholder.

8. Compliance with Payroll and Employment Laws and Other Rules. Company agrees that PaySource Card Services is a funds distribution service only. Company agrees that Company is solely responsible for compliance with all applicable federal, state and local laws, rules and regulations relating to payroll, compensation and employment matters, including, without limitation, as applicable for the relationship between Company and a Cardholder, (i) federal and state wage and hour laws and regulations, (ii) proper withholding and timely remittance of any and all taxes related thereto (e.g., local, state and federal income, payroll, social security, or Medicare taxes), (iii) delivery of pay stubs and similar payroll information to Participating Cardholders, and (iv) any and all applicable Visa rules and/or regulations.

REMOTE DEPOSIT CAPTURE® SERVICES

Upon Company's submission of a request for Remote Deposit Capture Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. General. The terms and provisions of this Services Agreement provide for use by the Company of BBVA’s remote deposit service for the collection of checks by creating a digitized image of each check and truncate the original check for the electronic transmission of a file to BBVA where the image is processed and/or printed as a substitute paper check, referred to as an Image Replacement Document (“IRD”), collectively referred to herein as “Transactions” and individually referred to herein as a “Transaction.” BBVA may from time to time agree to accept Transactions from Company, or its actual or apparent agent in the event that Company utilizes the lockbox services of a third party for the collection and processing for deposit checks and other items, and in such case the Transactions shall be governed by the terms and conditions set forth herein or incorporated herein by reference. To utilize the Automated Clearing House module within the Remote Deposit Capture Services, Company must accept and agree to terms and conditions of Automated Clearing House service as set forth elsewhere in this Agreement.

2. System Description. By using BBVA’s remote deposit service, Company may process original paper checks by capturing the image, front and back along with the MICR line, of the original check for transmission to BBVA using the transmitted image file. BBVA will process the digital image or print an IRD and process the IRD check as if it were an original paper check. IRD's and digital images are processed for collection through the local Federal Reserve or other clearinghouses, or directly to the paying institution. BBVA’s check image deposit service is intended to reduce transportation costs for delivery of deposits to BBVA, expedite the deposit process and reduce the overall collection time for deposits.

3. Authorized Transactions. Under any of the following circumstances, BBVA shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, Company: (i) if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or (ii) if BBVA reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or (iii) in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and BBVA reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.

4. Representations and Warranties of Company. As to the Transactions transmitted to BBVA, Company represents and warrants to BBVA that: (i) the Transactions and authorization, preparation and presentation of the Transactions comply with the terms and conditions set forth in this Agreement; (ii) the digital image of the check transmitted to BBVA is a true and correct image of the original paper check and has not been altered in any manner by Company or any third party acting on behalf of Company; (iii) Company, or a third party acting on behalf of Company, has reviewed and confirmed that the image captured is identical in all respects to the original paper check and that the amount of the check captured is accurate, (iv) the original paper check has not previously been deposited for collection with BBVA or any other financial institution, (v) Company represents that it will retain the original check, or in the event Company utilizes the lockbox services of a third party or other similar services that the third party will retain the original check for at least five (5) days and for such additional period as may be required in the event of a disputed electronic image or IRD, and that Company or such third party will take all necessary efforts to safeguard any checks until they are destroyed, (vi) Company agrees that in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may be subject to additional terms of dishonorment, (vii) Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check, (viii) Company or its actual or apparent agent or any third party acting on Company's behalf will not cause or allow the original of any truncated check to be deposited with BBVA or any other financial institution, or otherwise presented for payment; (x) Company agrees to and will follow the procedures for transmitting image files set forth in the separately distributed Remote Deposit Services User Guide which may be updated from time to time at the sole discretion of BBVA; (xi) Company will give BBVA full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the services provided under this Agreement; and (xii) only checks made payable to Company will be presented via the Remote Deposit Service; (xii) Company will not transmit ineligible items; (xiii) only checks made payable to Company will be presented under this Agreement; (xiv) Company will only use the Service to deposit checks drawn on financial institutions within the United States; (xv) each check submitted for deposit through the Service will meet the image quality standards established by BBVA (xvi) all information Company provides to BBVA is accurate and true; and (xvii) Company will comply with this Agreement and all applicable rules, laws and regulations in using the Service.

During the period that the Company maintains the original checks, the Company understands and agrees that it must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Service) and (ii) unauthorized use of information derived from the original checks. When Company destroys, and disposes of, the original checks pursuant to the requirements of this Agreement, the Company understands and agrees that it must use a high degree of care when selecting and implementing destruction and disposal procedures. Among other things, these procedures must be designed to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed (e.g., through the use of competent shredding equipment).
5. **Provisional Settlement; Returns.** Company acknowledges that Transactions may be returned by the receiving institution for insufficient funds or other reasons. In addition, the Uniform Commercial Code and other applicable law may permit the Transactions to be returned for reason of alleged lack of authorization. Any credit or consideration given by BBVA to Company with respect to any Transactions shall be deemed provisional, and BBVA shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to BBVA. In the event one or more Transactions are returned for reason of alleged lack of authorization, Company may (i) promptly submit to BBVA such proof of authorization and request that BBVA forward such proof to the receiving institution for its consideration, or (ii) present the original paper check for collection in lieu of the electronic image or the IRD.

Company acknowledges and agrees that BBVA may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors.

6. **Equipment.** To utilize the services provided in this Agreement, the Company must use the equipment designated by BBVA (the “Equipment”) from time to time. Company may purchase the Equipment from BBVA or from a third party vendor approved by BBVA in writing. Further, Company acknowledges and agrees that BBVA must know where the Equipment is physically located at all times. Company will give BBVA notice where the Equipment will be installed and Company shall request permission from BBVA in advance of any change in the location of the Equipment, which permission BBVA may grant or refuse in its sole discretion. In addition, to and not in lieu of the foregoing, Company acknowledges that Equipment may not be moved outside the state it was initially installed and/or continental United States without permission from BBVA.

7. **Software.** BBVA may select and/or require specific Software to be used for the Remote Deposit Service (the “RDC Software”), including, but not limited to, (1) software to operate the Equipment and Service; (2) software to track the location of the Equipment using the Global Positioning System (“GPS”) and (3) software to track, record and monitor the Equipment’s use. Company acknowledges that any RDC Software is the property of BBVA or BBVA is the holder of a license for the RDC Software and that Company is a licensee or sublicensee of the RDC Software. BBVA claims and reserves all rights and benefits herein afforded under copyright and other laws. Company’s license of and permission to use the Software is non-exclusive and nontransferable, and it extends only to Company’s own use of such Software for the purpose of processing Transactions as set forth in this Agreement. RDC Software may not be used to process transactions with or through any other party without the express written consent of BBVA and only RDC Software may be used in connection with this Service. Company further acknowledges that RDC Software contains confidential information and trade secrets, which BBVA has entrusted to Company in confidence. Company shall protect BBVA’s property and the interest in the trade secrets contained in the RDC Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of BBVA to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, Company specifically agrees that it will not delete, mask or obscure any proprietary notices, which BBVA places on any RDC Software. Company further agrees to install all new versions, upgrades, patches, protocols and/or any other changes, amendments or alterations (collectively referred to herein as “Upgrades”) to the Software within ten (10) days of receipt of the same or receipt of notice from the BBVA of where and/or how to retrieve the Upgrades. Company may make one (1) copy of the RDC Software to be used exclusively for backup purposes. Otherwise, Company shall not copy the software and shall not transfer or disclose it to any other person, firm or corporation except for those employees of Company who require such knowledge of the RDC Software in the ordinary course and scope of their employment.

8. **Account Number Keying.** Account number keying allows Company to modify account numbers read by the RDC Equipment and/or Software. BBVA reserves the right in its sole discretion to approve or deny any request by Company to enable account number keying. Upon Company’s submission of a request for account number keying and the approval of its use of account number keying, or upon its use of account number keying, whichever occurs first, Company agrees to hold harmless BBVA for the amount of any loss or damage sustained by Company (including any and all costs (including attorney’s fees), charges, fees, penalties, or fines associated with the same, whether charged by BBVA or a third party) from all Returned Items. The amount of any Returned Item resulting from miskeying an account number will be charged to any or all accounts of Company where sufficient funds exist to pay the same. If the aggregate amounts of Company’s accounts are insufficient to cover the amount of Returned Items, or if Company no longer has accounts with BBVA, Company agrees to pay to BBVA immediately upon demand, any amount of Returned Items. For purposes of this paragraph, Returned Item means any check, check image, IRD or other item transmitted to BBVA, negotiated, or deposited by, or on behalf of, Company through use of account number keying that is returned unpaid to BBVA by any payor bank, collecting bank, or clearinghouse, or that is disputed by Company or Company’s client or any third party.

9. **Company Indemnification.** In addition to the indemnification contained in the General Provisions section of this Agreement, company agrees to indemnify and hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which BBVA may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of BBVA’s remote deposit service or the processing of any check images or IRD’s transmitted to BBVA by Company or Company’s actual or apparent agent. Company shall also hold BBVA, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys’ fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company’s use of or the failure of any software or hardware provided, required or suggested by the BBVA. The Company’s indemnity obligations under this section shall survive termination of this Agreement.

10. **BBVA’s Right of Refusal.** BBVA may, in its sole discretion, refuse to process any electronic image or IRD at any time without prior notification to Company.

11. **Limitation of Remedies.** In addition to the limitation of liability contained in the General Terms section of this agreement, BBVA will use due care in its performance under this Services Agreement and it will, at its own expense, correct any data in which (and to the extent that) errors have been made by BBVA’s personnel or by malfunction of BBVA’s Software. However, the expense to BBVA of correcting such data shall constitute BBVA’s only responsibility in connection with such errors or in connection with any other performance or nonperformance by BBVA under this Agreement. In the event that BBVA undertakes to correct any error caused by the Equipment or a third party vendor or any other third party acting on behalf of Company, BBVA shall not have any liability with respect thereto.

It is Company’s responsibility to verify that all Transactions were delivered to BBVA and that the Transactions received by BBVA were complete and accurate. A CONFIRMATION OF
DELIVERY BY BBVA DOES NOT RELIEVE COMPANY OF THIS OBLIGATION.

12. Audit Rights. Upon reasonable notice, BBVA may audit, at its own expense, Company’s hardware, Software, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA may, in its sole discretion and option, immediately terminate this Agreement.

13. Equipment Purchase and Maintenance. If the Service Instructions for Remote Deposit Services recognize that Company has requested BBVA to sell and maintain the Equipment (as defined in Section 6 above), then the following provisions also shall apply:

(i) Purchase Price.

(ii) Payment. Company may choose one of the following three (3) options for payment of the Purchase Price:

(A) Contemporaneously with the purchase of the Equipment, Company shall pay the Purchase Price to BBVA in cash or otherwise pay, or agree to pay, in full in a single installment, and BBVA would thereby acknowledge receipt of such payment or agreement to pay in full via a method other than cash;

(B) BBVA shall offset the Purchase Price against deposit account earnings credits available to Company as reflected on Company’s account analysis statement in six (6) equal, successive, monthly installment amounts (“Monthly Installments”). No interest shall accrue on the unpaid portion of the Purchase Price. If such earnings credits are insufficient to pay any Monthly Installment when the same becomes due and payable, then BBVA may deduct the Monthly Installment, as well as any past due Monthly Installment(s), from any of Company’s accounts; or

(C) BBVA shall offset the Purchase Price against deposit account earnings credits available to Company as reflected on Company’s account analysis statement in twenty-four (24) equal, successive, Monthly Installments. No interest shall accrue on the unpaid portion of the Purchase Price. If such earnings credits are insufficient to pay any Monthly Installment when the same becomes due and payable, then BBVA may deduct the Monthly Installment, as well as any past due Monthly Installment(s) from any of Company’s accounts.

Obligation of Payment in Full. If Customer has elected to pay the Purchase Price in installments pursuant to Section 1(b)(ii) or (iii) hereof, then such obligation is absolute and unconditional and shall be unaffected by and survive any termination of the Agreement, the BBVA Remote Deposit Online Services or any deposit account relationship(s) or other services to which the Agreement and remote deposit services relate. In the event of termination of any of the foregoing (by either Company or BBVA), any unpaid balance of the Purchase Price shall be due and payable immediately, and BBVA may deduct such unpaid balance from any Company Account.

Maintenance. BBVA shall provide maintenance services (“Maintenance”) for the Equipment through a third party vendor in accordance with the following:

(i) Scope of Maintenance. Maintenance will cover repair or replacement of the Equipment so that it performs in accordance with its applicable documentation. Maintenance does not include replacement of consumable items. The foregoing is the sole and exclusive Maintenance obligation of BBVA as it relates to the Equipment.

(ii) Conditions of Availability of Maintenance Services. To be eligible for Maintenance, Customer shall promptly notify BBVA of any error in the operation of the Equipment, and Company must maintain the Equipment in accordance with requirements and recommendations contained in the Equipment manufacturer’s documentation. Maintenance Service does not include repairs for Equipment that has been subjected to unusual or extreme physical, environmental or electrical stress, or from which the original identification marks have been removed or altered, or which is damaged due to accident, misuse, neglect, or unauthorized or improper alteration, repair, installation, testing or modification. BBVA will charge Company the then-current service rates in effect for maintenance that is necessitated by any of the foregoing conditions.

(iii) Termination of Maintenance. BBVA may terminate Maintenance in accordance with the terms and conditions of Section 6 (Term; Termination) of the General Provisions of this Agreement.

(iv) Communication. To receive Maintenance, call BBVA Business Relationship Services at the phone number provided in the Service Instruction for this Service.
INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGE) ARISING OUT OF THE EQUIPMENT OR COMPANY’S USE OF OR INABILITY TO USE IT, EVEN IF BBVA OR AN AUTHORIZED REPRESENTATIVE OF BBVA IS AWARE, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE. IN NO EVENT WILL BBVA BE LIABLE TO COMPANY FOR ANY REASON FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE. BBVA NEITHER ASSUMES NOR AUTHORIZES ANY PERSON OR ENTITY TO ASSUME FOR IT ANY OTHER LIABILITIES.

Risk of Loss. Title to, and risk of loss of, or damage to, the Equipment shall pass to Company upon delivery of the Equipment.

14. DFARS. If Company is subject to Defense Federal Acquisition Regulation Supplement (DFARS), the following provisions apply:

(a) Company agrees that the Software qualifies as "commercial" computer software within the meaning of all federal acquisition regulation(s) applicable to this procurement, and that the Software was developed exclusively at private expense.

(b) If Company determines that it is unable to accept any of the license restrictions under which the Software is provided to Company because those restrictions fail to meet Company’s needs or are inconsistent in any respect with federal law, Company immediately and before any use will return the Software to BBVA.

(c) Company’s use, modification, reproduction, release, display, or disclosure of the Software or related documentation is subject solely to the terms of the license provided in Section 7 above.

15. SECURITY. Company is advised that certain of the Services may be provided by way of the Internet using the BBVA Remote Deposit (collectively “BBVA Internet System.”) Use of any such method of communication requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections. Company acknowledges that data, including e-mail, electronic communications, and confidential financial data, may be accessed by unauthorized third parties when communicated to BBVA using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. With respect to BBVA Internet System access, Company agrees to use software produced by third parties, including, but not limited to, “browser” software that supports a data security protocol compatible with the protocol used by BBVA. Until notified otherwise by BBVA, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by BBVA and to follow BBVA’s log-on procedures that support such protocols. Company acknowledges that BBVA is not responsible for (i) notifying Company of any upgrades, fixes or enhancements to any such software; or (ii) any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by BBVA in writing, Company agrees not to (i) use any software, program, application or any other device to access or log on to BBVA’s computer systems, web site or proprietary software; or (ii) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from BBVA’s computer systems, web site or proprietary software. In the event of any system failure, BBVA may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company’s access to the BBVA Internet System. Company assumes full responsibility for its selection of, access to, and use of products purchased from BBVA as indicated on the Implementation Form. Company shall be responsible for the confidentiality, maintenance, and use both of its financial information on the BBVA Internet System, and of its access number(s), password(s), log-in ID(s), and account number(s). If Company requires more than one authorized signer’s signature or authorization to conduct certain transactions related to Company’s account(s) or the Services, this requirement will be deemed solely for Company’s own purposes. BBVA will not be liable to Company as long as at least one authorized signer’s signature appears on the Company’s checks, drafts, instructions, or orders, or if BBVA’s records indicate that a transaction, payment or other product use was made by or on behalf of one authorized signer by telephone, BBVA Internet System, or other method. This includes situations in which Company has provided its access number(s), password(s), log-in ID(s) and/or account number(s) to someone else to use. Company agrees not to hold BBVA liable for following Company’s written orders or instructions. Company agrees not to hold BBVA liable for any damages of any kind resulting from Company’s disclosure of its access number(s), password(s), log-in ID(s), or account numbers to any person identified or not identified on the Implementation Form. Company will be responsible for all orders and instructions entered through and under Company’s access number(s), password(s), log-in ID(s), and/or account number(s), and any orders or instructions so received by BBVA will be deemed to have been received from Company. All orders and instructions shall be deemed to be made at the time received by BBVA and in the form received. Company agrees to immediately notify (in the manner prescribed by BBVA from time to time) BBVA if Company learns of:

- any loss or theft of Company’s access number(s), password(s), log-in ID(s) and/or account number(s); or
- any unauthorized use of any of Company’s access number(s), password(s), log-in ID(s), and/or account number(s), or of the electronic Services or any of Company’s information; or
- any receipt by Company of confirmation of an order that Company did not place; or any similarly inaccurate or conflicting report or information.

BBVA REAL TIME ACCOUNT RECONCILIATION (ARP) SERVICES

Upon Company’s submission of a request for Real Time ARP and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees that BBVA is authorized and directed by the Company to perform the following reconciliation services for items drawn against Company’s demand deposit checking accounts maintained with BBVA (“items”) or, with respect to deposits made by Company, to its checking or deposit accounts maintained with BBVA, as specified and for the period selected by Company from time to time:

(a) Partial Reconciliation. Produce a report showing items posted by check number sequence and dates of items, and reconcile report with Company’s DDA paid statement for the period.

(b) Full Reconciliation. Using file transmission supplied by Company, (i) balance Company’s account(s); (ii) produce a report showing items paid in check number sequence,
dates paid, and items outstanding; and (iii) reconcile the report with the Company’s statement for the period.

(c) Partial Deposit Reconciliation. Produce a report for the period showing deposits posted, sorted by location sequence and date of deposit, including deposit subtotals for each location sequence.

(d) High Order Prefixing. Produce a report for the period showing items sorted by serial number, location sequence and dates of items, including debit subtotals for each location sequence.

(e) Partial Combination Reconciliation. Produce a report for the period showing checks and deposits posted by check/deposit slip number sequence and dates of items. Deposits will be sorted by location sequence including deposit subtotals for each location sequence.

BBVA REAL TIME POSITIVE PAY SERVICES

Upon Company’s submission of a request for BBVA Real Time Positive Pay Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Definitions. For purposes of the services described in this section, the following words or terms have the designated meanings:

(a) “ACH Real Time Positive Pay” means payment fraud protection on Designated Account(s) with verification of Presented ACH Transaction(s) against Business Rule(s) criteria provided to BBVA by the Company when Presented ACH Transaction(s) is submitted to BBVA for payment.

(b) “Available Funds” means funds on deposit in a Designated Account and available for withdrawal in accordance with BBVA’s applicable funds availability schedule.

(c) “Business Rule(s)” means instructions provided by the Company to BBVA that determine whether or not Presented ACH Transaction and/or Presented Check Item are presented as Exception Item(s).

(d) “Default Disposition” means the pre-determined decision to pay or return Exception Items provided by the Company to BBVA to be used when the Company does not provide a pay or return decision to BBVA relative to Exception Items prior to the Disposition Deadline.

(e) “Designated Account(s)”, for the purposes of Real Time Positive Pay Services, means the account(s) of the Company maintained at BBVA and designated in the Service Instructions for Real Time Positive Pay Services. BBVA shall provide Real Time Positive Pay Services only with regard to Designated Accounts of Company.

(f) “Exception Item(s)” means a Presented ACH Transaction or a Presented Check Item that does not match a Business Rule and/or Issue File provided by Company to BBVA.

(g) “Exception Report” means Exception Item(s) and corresponding image(s) available through BBVA Net Cash USA.

(h) "Issue File" means a file provided by Company describing checks drawn by the Company (or its authorized agent) on a Designated Account, which

(i) Includes the exact and complete date, check number, amount and payee name (if Company subscribes to Payee (Check) Real Time Positive Pay) of each Presented Check Item drawn on a Designated Account;

(ii) Is received by BBVA in the format and medium, by the deadlines, and at the place(s) specified in BBVA’s Service Instructions for Positive Pay Services; and

(iii) Is verified by BBVA in compliance with the security procedures provided by BBVA.

(i) “Payee (Check) Real Time Positive Pay” means payment fraud protection on Designated Account(s) with verification of Presented Check Item(s) against Business Rules and information included in the outstanding Issue Files, including payee name, provided to BBVA by the Company when Presented Check Item(s) is submitted to BBVA for payment.

(j) “Payment Instructions” means instructions provided by the Company to BBVA ordering BBVA to pay or return Presented Check Items or Presented ACH Transactions specified by Company, which instructions are received by BBVA in the format and medium, and by the deadline, specified by BBVA’s Service Instructions for Positive Pay Services.

(k) “Presented ACH Transaction” is an ACH debit or credit presented to BBVA for processing through the Automated Clearing House or other designated clearing systems.

(l) “Presented Check Item” is a check apparently drawn by the Company on a Designated Account and presented to BBVA for payment either electronically or at a BBVA branch.

(m) “Regular (Check) Real Time Positive Pay” means payment fraud protection on Designated Account(s) with verification of Presented Check Item(s) against Business Rules and information included in the outstanding Issue Files provided to BBVA by the Company when Presented Check Item(s) is submitted to BBVA for payment.

(n) All capitalized and defined terms in the General Provisions shall have the meanings provided for in the General Provisions. All other terms, not otherwise defined in these terms and conditions for Real Time Positive Pay Services or in the General Provisions, shall have the meanings set forth in Articles 3, 4 and 4A of the Uniform Commercial Code, as adopted in the state in which BBVA maintains Company’s accounts (“UCC”) and the operating rules and guidelines of the National Automated Clearing House Association (“NACHA Rules”).

2. Other Agreements. Except as specifically provided in this Agreement, all other account agreements and all fees and charges relating to Designated Accounts remain applicable to the Designated Accounts, and BBVA’s remedies set forth in those agreements are cumulative.

3. Real Time Positive Pay Services. BBVA will provide the Real Time Positive Pay Services for the Designated Accounts specified by Company. Company may subscribe to one or more of the following Real Time Positive Pay Services:

I. Regular (Check) Real Time Positive Pay

II. Payee (Check) Real Time Positive Pay

III. ACH Real Time Positive Pay

4. Issue File. Company agrees to provide BBVA an Issue File before disbursing checks to payees. Failure to send an Issue File prior to disbursement could result in checks presented for payment that do not have corresponding Issue Files, thus checks deposited at a BBVA branch or ATM or through the check clearing network will be treated as “Exception Items” and
be included in the Exception Report with the exception reason of “paid-no-issues (PNI).” If Company provides a payee name but does not subscribe to Payee (Check) Real Time Positive Pay, BBVA may, but is not obligated to, compare the payee name to the corresponding Presented Check Item. If Company subscribes to Payee (Check) Real Time Positive Pay and does not provide a payee name in the Issue File, BBVA may, but is not obligated to, treat the corresponding Presented Check Item as an Exception Item.

5. Validation Process. BBVA shall compare each Presented Check Item(s) by date, check number, amount (as encoded) and payee name (if Company subscribes to Payee (Check) Real Time Positive Pay) against all Issue Files received and all established Business Rules. Presented ACH Items will be validated against all established Business Rules. BBVA shall (a) finally pay and charge to the applicable Designated Account all Presented Check Items which match the Issue File and Business Rules, and all Presented ACH Items which match the associated Business Rules provided that the Designated Account has sufficient Available Funds; and (b) unless service is disrupted or delayed for operational reasons; provide Company with Exception Reports as Exception Items are presented to and processed by BBVA. Items presented to BBVA after 4:00 p.m. Central Time may not be processed by BBVA and included in an Exception Report provided to Company until the next business day. Company shall provide BBVA with Payment Instructions regarding the Exception Items by 6:00 p.m. Central Time (“Disposition Deadline”) on the following business day after the Presented Check Item and/or Presented ACH Item is presented to BBVA for payment. If Company fails to meet the Disposition Deadline, Company authorizes and directs BBVA to pay or return the Presented Check Item and/or Presented ACH Item according to the Default Disposition provided by the Company to BBVA if the Designated Accounts upon which they are drawn have sufficient Available Funds, unless BBVA determines in its sole discretion that an Exception Item is not or may not be properly payable. BBVA cannot accommodate any Payment Instructions after the Disposition Deadline. Checks that are presented for payment at a BBVA branch will be immediately compared to Business Rules and the Issue Files Company provided to BBVA. If no corresponding Issue File is found or the check does not match the corresponding Issue File or Business Rules, the check will be returned to the payee as unpaid with instructions to contact Company.

6. Warranties, Remedies and Limitation of Liabilities.

(a) Checks Paid Under Agreement. With respect to any check paid by BBVA in accordance with this Agreement:

(i) Company waives and releases any claim that the check is not properly payable, with respect to any drawer's signature(s) on, or alteration of the amount of, the check;

(ii) If the name of the payee of the check is altered, (A) if Company subscribes to Payee (Check) Real Time Positive Pay, Company waives and releases any claim that the check is not properly payable with respect to the payee name, and (B) if Company does not subscribe to Payee (Check) Real Time Positive Pay, BBVA, without waiving any defenses under the UCC, shall be accountable for the amount of the check to the extent required by applicable provisions of the UCC, including UCC 4-401; and

(iii) if the check is not properly payable based on a forged endorsement, BBVA, without waiving any defenses under the UCC, shall be accountable for the amount of the check to the extent required by applicable provisions of the UCC, including UCC 4-401.

(b) Checks Dishonored Under Agreement. With respect to any check dishonored and returned by BBVA in accordance with this Agreement, the Company waives and releases any claim that the check is properly payable and any claim against BBVA for wrongful dishonor under UCC 4-402, any other agreement between BBVA and Company or otherwise.

(c) Dispute over Return of Presented ACH Transaction Entry. Company acknowledges that the return of a Presented ACH Transaction is subject to dispute on part of sender. In event of such a dispute, BBVA must act according to applicable laws, regulations and rules, including the NACHA rules, for which the Company hereby holds BBVA harmless and free of liability under this Agreement.

(d) Identification of Presented ACH Transaction. Company and BBVA acknowledge that ACH transactions are originated according to certain NACHA Rules which require the use of an originator name and originator identification number imbedded in the transaction to identify its source, and this imbedded data is a critical component of BBVA’s ability to monitor transactions which Company desires to review. BBVA shall act in good faith to process Company’s instructions entered in the Business Rules. However, if the identifying information in the transaction is inconsistent or is described inconsistently by Company in the Business Rules, BBVA shall be held harmless for posting a Presented ACH Transaction to Company’s Designated Account and any dispute related to such transaction shall be between Company and the originator of the transaction. BBVA may at its sole discretion make modifications to the originating ACH Company identifying information listed in the Business Rules is there is inconsistency between historical transaction information and the Business Rules, in which case, BBVA will notify Company that a modification was made.

(e) Company shall accept liability to any party and hold BBVA harmless for any damages, losses, fines, fees, taxes, legal expenses or action at law arising from the return (dishonor) of any Presented ACH Transaction if such return resulted from the correct application of the Company’s Payment Instructions and/or Business Rules.

(f) Properly Payable. Any Presented ACH Transaction that is paid in accordance with the Service shall be considered properly payable and company agrees that BBVA shall have no liability to Company for paying Presented ACH Transactions in accordance with this service.

(g) Company agrees to indemnify and hold BBVA harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever for any encoding errors in the validation process, any missed deadlines for returning checks or otherwise arising out of its use of the Real Time Positive Pay Services (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding, whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence or willful misconduct of such indemnified person.

7. Procedures. From time to time, BBVA shall establish or modify procedures relating to the Real Time Positive Pay Services, which procedures may include security procedures and a format for reports and data. The Company agrees to follow and be bound by those procedures and acknowledge that those procedures, including the security procedures, are commercially
reasonable. BBVA shall have the right in its discretion to change all or any of the procedures at any time upon prior notice to Company (or without prior notice if BBVA has reason to believe that those changes are necessary to protect the safety or integrity of any account held at BBVA). Notwithstanding the foregoing, BBVA will use reasonable efforts to notify Company of any change in the procedures at least ten (10) days prior to any change.

8. **Information.** Company hereby assumes all risk and responsibility for the compilation, accuracy, transmission and delivery of any and all information or data, including, without limitation, any Payment Instructions delivered by Company to BBVA. BBVA shall have no obligation to insure the receipt or accuracy of any information or data furnished by Company in connection with Real Time Positive Pay Services, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of any such information or data. Company hereby authorizes BBVA, without investigation or inquiry, to rely and act upon the contents of any information or data received from Company which BBVA reasonably believes is authorized by Company. Company is solely responsible for assuring that the issue File is in the format required by, and otherwise complies with, the procedures for Real Time Positive Pay Services.

9. **UCC Article 4 and Regulation CC.** In accordance with Section 4-103 of the UCC, this Agreement shall vary the effect of any provisions of Article 4 of the UCC and of Regulation CC (12 C.F.R. Section 229.1 et seq.) which are inconsistent with this Agreement.

10. **No Extension of Credit.** Nothing herein nor any course of dealing between the Company and BBVA constitutes a commitment or obligation of BBVA to lend money to the Company or obligates BBVA to extend any credit to the Company, to make a loan to the Company, or otherwise to advance funds to the Company to pay for any check contrary to BBVA’s published availability schedules. If BBVA pays a check when Company has insufficient funds in a Designated Account, Company shall immediately pay and reimburse BBVA for the resulting overdraft.

### REAL TIME DEPOSIT POSITIVE PAY SERVICES

Upon Company’s submission of a request for Real Time Deposit Positive Pay Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **Definitions.** For purposes of the service described in this section, the following words or terms have the designated meanings:

   (a) “Available Funds” means funds on deposit in a Designated Account and available for withdrawal in accordance with BBVA’s applicable funds availability schedule.

   (b) “Default Disposition” means the pre-determined decision to pay or return Presented Checks provided by the Company to BBVA to be used when the Company does not provide Payment Instructions to BBVA relative to Presented Checks prior to the Disposition Deadline.

   (c) "Designated Account(s)" for the purposes of the Real Time Deposit Positive Pay Services, means the account or accounts of the Company maintained at BBVA and designated in the Service Instructions for Real Time Deposit Positive Pay Services. BBVA shall provide Real Time Deposit Positive Pay Services only with regard to Designated Accounts of Company.

   (d) “Exception Check” means (i) a Presented Check that Company instructs BBVA (whether through Payment instructions or as a result of a Default Disposition) to return to the bank of first deposit or to not pay or (ii) all Presented Checks with respect to the Designated Account(s) if Company elects not to receive Presentment Reports.

   (e) “Payment Instructions” means instructions by the Company to BBVA ordering BBVA to pay or return checks specified by Company, which instructions specify the exact and complete dates, check numbers and amount of the checks, and which instructions are received by BBVA by the Disposition Deadline (as hereinafter defined).

   (f) “Presented Check” is a check apparently drawn by the Company on a Designated Account and presented to BBVA for payment through the check collection system.

   (g) “Presentment Report” means a report provided by BBVA, describing checks presented on a Designated Account, which

      (i) includes the date, check number, amount and image of the Presented Check(s); and

      (ii) is received by BBVA from the bank of first deposit and is not reviewed for further validation.

   (h) “Real Time Deposit Positive Pay” means payment fraud protection on Designated Accounts with real-time verification of Presented Checks submitted to BBVA for payment. Deposit Positive Pay accounts are not expected to disburse checks.

   (i) All capitalized and defined terms in the General Provisions shall have the meanings provided for in the General Provisions. All other terms, not otherwise defined in these terms and conditions for Deposit Positive Pay Services or in the General Provisions, shall have the meanings set forth in Articles 3 and 4 of the Uniform Commercial Code, as adopted in the state in which BBVA maintains Company’s accounts (“UCC”).

2. **Other Agreements.** Except as specifically provided in this Agreement, all other account agreements and all fees and charges relating to Designated Accounts remain applicable to the Designated Accounts, and BBVA’s remedies set forth in those agreements are cumulative.

3. **Real Time Deposit Positive Pay Services.** BBVA will provide the Real Time Deposit Positive Pay Services for the Designated Accounts specified by Company. BBVA agrees to provide Company with Presentment Reports as Presented Checks are presented to and processed by BBVA. Company shall provide BBVA with Payment Instructions regarding the Presented Checks by 6:00 p.m. Central Time (“Disposition Deadline”) on the following business day after the Presented Check is presented to BBVA for payment. If Company fails to meet the Disposition Deadline, Company authorizes and directs BBVA to pay or return the Presented Checks according to the Default Disposition provided by the Company to BBVA if the Designated Accounts upon which they are drawn have sufficient Available Funds, unless BBVA determines in its sole discretion that a Presented Check is not or may not be properly payable. Company may elect to not receive Presentment Reports. If Company selects this option, Company authorizes BBVA to consider any Presented Check as an Exception Check and automatically return the check to the bank of first deposit or not pay.

BBVA shall finally pay and charge to the applicable Designated Account all Presented Checks which are not Exception Checks, provided that the Designated Account has sufficient Available Funds, unless BBVA determines in its sole discretion that a Presented Check is not or may not be properly payable.
Exception Checks will be returned by BBVA to the bank of first deposit. If Company fails to meet the Disposition Deadline, Company authorizes and directs BBVA to pay or return the Presented Checks according to the Default Disposition provided by the Company to BBVA if the Designated Accounts upon which they are drawn have sufficient Available Funds, unless BBVA determines in its sole discretion that a Presented Check is not or may not be properly payable. BBVA cannot accommodate any Payment Instructions after the Disposition Deadline.

4. Warranties, Remedies and Limitation of Liability.

(a) Checks Paid Under Agreement. With respect to any check paid by BBVA in accordance with this Agreement:

(i) Company waives and releases any claim that the check is not properly payable, with respect to any drawer's signature(s) on, or alteration of the amount of, or payee of, the check; and

(ii) if the check is not properly payable based on a forged endorsement, BBVA, without waiving any defenses under the UCC, shall be accountable for the amount of the check to the extent required by applicable provisions of the UCC, including UCC 4-401.

(b) Checks Dishonored Under Agreement. With respect to any check dishonored and returned by BBVA in accordance with this Agreement, the Company waives and releases any claim that the check is properly payable and any claim against BBVA for wrongful dishonor under UCC 4-402, any other agreement between BBVA and Company or otherwise. If BBVA acts in accordance with the agreement in paying Real Time Deposit Positive Pay items, it will be deemed to have exercised ordinary care, as defined by Articles 3 and 4 of the UCC.

(c) Company agrees to indemnify and hold BBVA harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever for any encoding errors in the Presentment Report, any missed deadlines for returning checks or otherwise arising out of its use of the Real Time Deposit Positive Pay Services (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding, whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence or willful misconduct of such indemnified person.

5. Procedures. From time to time, BBVA shall establish or modify procedures relating to the Real Time Deposit Positive Pay Services, which procedures may include security procedures and a format for reports and data. The Company agrees to follow and be bound by those procedures and acknowledge that those procedures, including the security procedures, are commercially reasonable. BBVA shall have the right in its discretion to change all or any of the procedures at any time upon prior notice to Company (or without prior notice if BBVA has reason to believe that those changes are necessary to protect the safety or integrity of any account held at BBVA). Notwithstanding the foregoing, BBVA will use reasonable efforts to notify Company of any change in the procedures at least ten (10) days prior to any change.

6. Information. Company hereby assumes all risk and responsibility for the compilation, accuracy, transmission and delivery of any and all information or data, including, without limitation, any Payment Instructions delivered by Company to BBVA. BBVA shall have no obligation to insure the receipt or accuracy of any information or data furnished by Company in connection with Real Time Deposit Positive Pay Services, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of any such information or data. Company hereby authorizes BBVA, without investigation or inquiry, to rely and act upon the contents of any information or data received from Company which BBVA reasonably believes is authorized by Company. Company is solely responsible for assuring that the Payment Instructions are in the format required by, and otherwise complies with, the procedures for Real Time Deposit Positive Pay Services.

7. UCC Article 4 and Regulation CC. In accordance with Section 4-103 of the UCC, this Agreement shall vary the effect of any provisions of Article 4 of the UCC and of Regulation CC (12 C.F.R. Section 229.1 et seq.) which are inconsistent with this Agreement.

8. No Extension of Credit. Nothing herein nor any course of dealing between the Company and BBVA constitutes a commitment or obligation of BBVA to lend money to the Company or obligates BBVA to extend any credit to the Company, to make a loan to the Company, or otherwise to advance funds to the Company to pay for any check contrary to BBVA’s published availability schedules. If BBVA pays a check when Company has insufficient funds in a Designated Account, Company shall immediately pay and reimburse BBVA for the resulting overdraft.

**REVERSE REAL TIME POSITIVE PAY SERVICES**

Upon Company’s submission of a request for Reverse Real Time Positive Pay Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. Definitions. For purposes of the service described in this section, the following words or terms have the designated meanings:

   (a) “Available Funds” means funds on deposit in a Designated Account and available for withdrawal in accordance with BBVA’s applicable funds availability schedule.

   (b) “Reverse Real Time Positive Pay” means payment fraud protection on Designated Accounts with real-time verification of Presented Checks submitted to BBVA for payment.

   (c) “Check Report” means a report provided by BBVA to Company, describing Presented Checks, which

   (i) includes the date, check number, amount and image of the Presented Check(s); and

   (ii) is received by BBVA from the bank of first deposit and is not reviewed for further validation.

   (d) "Designated Account(s)" for the purposes of the Reverse Real Time Positive Pay Services, means the account or accounts of the Company maintained at BBVA and designated in the Service Instructions for Reverse Real Time Positive Pay Services. BBVA shall provide Reverse Real Time Positive Pay Services only with regard to Designated Accounts of Company.

   (e) "Exception Check" means a Presented Check that Company instructs BBVA to return to the bank of first deposit or to not pay.

   (f) “Presented Check” is a check apparently drawn by the Company on a Designated Account and presented to BBVA for payment through the check collection system.
(g) "Return Instructions" means instructions by the Company to BBVA ordering BBVA to return checks specified by Company, which instructions specify the exact and complete dates, check numbers and amount of the checks, and which instructions are received by BBVA by the Disposition Deadline (as hereinafter defined).

(h) All capitalized and defined terms in the General Provisions shall have the meanings provided for in the General Provisions. All other terms, not otherwise defined in these terms and conditions for Reverse Real Time Positive Pay Services or in the General Provisions, shall have the meanings set forth in Articles 3 and 4 of the Uniform Commercial Code, as adopted in the state in which BBVA maintains Company’s accounts (“UCC”).

2. Other Agreements. Checks presented to BBVA over-the-counter are subject to these terms and conditions regarding Reverse Real Time Positive Pay Services. Except as specifically provided in this Agreement, all other account agreements and all fees and charges relating to Designated Accounts remain applicable to the Designated Accounts, and BBVA’s remedies set forth in those agreements are cumulative.

3. Reverse Real Time Positive Pay Services. BBVA will provide the Reverse Real Time Positive Pay Services for the Designated Accounts specified by Company. BBVA agrees to provide Company with Check Reports as呈Presented Checks are presented to and processed by BBVA. Company shall compare each Presented Check by check number and amount against their check issue information and provide BBVA with Return Instructions regarding the Presented Checks by 6:00 p.m. Central Time (“Disposition Deadline”) on the following business day after the Presented Check is presented to BBVA for payment. BBVA shall finally pay and charge to the applicable Designated Account all Presented Checks which are not Exception Checks, provided that the Designated Account has sufficient Available Funds. Exception Checks will be notified by BBVA to the bank of first deposit, provided that Company has reason to believe that those changes are necessary to protect the safety or integrity of any account held at BBVA. BBVA shall have the right in its discretion to change all or any of the procedures at any time upon prior notice to Company (or without prior notice if BBVA has reason to believe that those changes are necessary to protect the safety or integrity of any account held at BBVA).

4. Warranties, Remedies and Limitation of Liabilities.

(a) Checks Paid Under Agreement. With respect to any check paid by BBVA in accordance with this Agreement:

(i) Company waives and releases any claim that the check is not properly payable, with respect to any drawer's signature(s) on, or alteration of the amount of, or payee of, the check.

(ii) ; and

(iii) if the check is not properly payable based on a forged endorsement, BBVA, without waiving any defenses under the UCC, shall be accountable for the amount of the check to the extent required by applicable provisions of the UCC, including UCC 4-401.

(b) Checks Dishonored Under Agreement. With respect to any check dishonored and returned by BBVA in accordance with this Agreement, the Company waives and releases any claim that the check is properly payable and any claim against BBVA for wrongful dishonor under UCC 4-402, any other agreement between BBVA and Company or otherwise. If BBVA acts in accordance with this Agreement in paying Reverse Real Time Positive Pay Items, it will be deemed to have exercised ordinary care, as defined by Articles 3 and 4 of the UCC.

(c) Company agrees to indemnify and hold BBVA harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever for any encoding errors in the Check Report, any missed deadlines for returning checks or otherwise arising out of its use of the Reverse Real Time Positive Pay Services (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding, whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence or willful misconduct of such indemnified person.

5. Procedures. From time to time, BBVA shall establish or modify procedures relating to the Reverse Real Time Positive Pay Services, which procedures may include security procedures and a format for reports and data. The Company agrees to follow and be bound by those procedures and acknowledge that those procedures, including the security procedures, are commercially reasonable. BBVA shall have the right in its discretion to change all or any of the procedures at any time upon prior notice to Company (or without prior notice if BBVA has reason to believe that those changes are necessary to protect the safety or integrity of any account held at BBVA).

6. Information. Company hereby assumes all risk and responsibility for the compilation, accuracy, transmission and delivery of any and all information or data, including, without limitation, any Return Instructions delivered by Company to BBVA. BBVA shall have no obligation to insure the receipt or accuracy of any information or data furnished by Company in connection with Reverse Real Time Positive Pay Services, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of any such information or data. Company hereby authorizes BBVA, without investigation or inquiry, to rely and act upon the contents of any information or data received from Company which BBVA reasonably believes is authorized by Company.

7. UCC Article 4 and Regulation CC. In accordance with Section 4-103 of the UCC, this Agreement shall vary the effect of any provisions of Article 4 of the UCC and of Regulation CC (12 C.F.R. Section 229.1 et seq.) which are inconsistent with this Agreement.

8. No Extension of Credit. Nothing herein nor any course of dealing between the Company and BBVA constitutes a commitment or obligation of BBVA to lend money to the Company or obligates BBVA to extend any credit to the Company, to make a loan to the Company, or otherwise to advance funds to the Company to pay for any check contrary to BBVA’s published availability schedules. If BBVA pays a check when Company has insufficient funds in a Designated Account, Company shall immediately pay and reimburse BBVA for the resulting overdraft.

ROUTING TABLE LIST

Upon Company’s submission of a request for access to the routing table list (the “Directory”) offered by the Federal Reserve Banks, or by using, downloading, or obtaining any Code (as defined below)
that was or is hereafter provided to the Company by BBVA,
Company agrees:

1. **Access Code.** Upon BBVA’s approval of the Company’s
   access to the Directory, BBVA will provide the Company with
   (a) a downloadable code (a “Code”), which Code will allow the
   Company to download the Directory and which is necessary in
   order to automate the Company’s access to the Directory with a
   script or program, and (b) a copy of the Directory Quick Start
   Guide (or such other guide as may be developed in time for
time for distribution to Directory users) in the form and to
   the extent provided to BBVA by the Federal Reserve Banks (as it
   may be updated, amended or otherwise modified from time to
time, the “Guide”). Company agrees to use the Code solely for
   the purpose of downloading the Directory with an automated
   program in order to process and settle electronic payment
   transactions. Except as provided herein, the information in the
   Directory may not be sold, relicensed or otherwise used for
   commercial gain. The Company agrees that it will keep the
   Code confidential and not distribute the Code to any Person
   other than employees of the Company who require the Code in
   order to implement the Company’s access to the Directory.

2. **Technical Support.** BBVA’s sole obligation in respect of the
   Directory is to provide a Code and any applicable Guide to
   Company. Access to the Directory may require certain minimum
   hardware and software requirements and BBVA makes no
   guaranty or other assurance that the Company will be able to
   access or download the Directory through the use of a Code.
   While BBVA may use good faith efforts to assist with technical
   support issues, neither BBVA nor the Federal Reserve Banks
   shall have an obligation to provide any technical or other
   support to the Company in connection with the Code or the
   Company’s access to or use of the Directory.

3. **DISCLAIMER OF WARRANTY.** BBVA and the Federal
   Reserve Banks are not responsible for the accuracy of a routing
   number or any other data contained in the Directory. The
   information in the Directory may change after the effective date
   of the publication, list or file. BBVA AND THE FEDERAL
   RESERVE BANKS PROVIDE NO WARRANTY, EXPRESS OR
   IMPLIED, AS TO THE ACCURACY, TIMELINESS,
   COMPLETENESS, MERCHANTABILITY, FITNESS FOR ANY
   PARTICULAR PURPOSE, TITLE, QUALITY, OR
   NONINFRINGEMENT OF ANY INFORMATION CONTAINED
   IN THE DIRECTORY OR THE GUIDE. ALL INFORMATION,
   DATA, AND MATERIALS IN THE DIRECTORY AND THE
   GUIDE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE”
   BASIS WITHOUT WARRANTY OF ANY KIND.

4. **RELEASE AND INDEMNITY.**
   (a) BBVA AND THE FEDERAL RESERVE BANKS ARE NOT
       LIABLE FOR ANY DIRECT OR INDIRECT, SPECIAL OR
       CONSEQUENTIAL DAMAGES OR FOR ANY OTHER
       KIND OF DAMAGES WHATSOEVER (INCLUDING,
       WITHOUT LIMITATION, DAMAGES FOR LOSS OF
       PROFITS, LOSS OF REVENUES, BUSINESS
       INTERRUPTION, LOSS OF INFORMATION AND
       ATTORNEYS’ FEES) THAT ARE IN ANY WAY DUE TO,
       RESULTING FROM, OR ARISING IN CONNECTION
       WITH THE USE OR PERFORMANCE OF, OR INABILITY
       TO USE, INFORMATION AVAILABLE FROM THE
       DIRECTORY, REGARDLESS OF WHETHER BBVA OR
       ANY FEDERAL RESERVE BANK HAS BEEN ADVISED
       OF THE POSSIBILITY OF SUCH DAMAGE, INCLUDING
       LIABILITY FOR ANY VIRUSES THAT MIGHT INFECT A
       USER’S COMPUTER SYSTEM
   (b) TO THE MAXIMUM EXTENT PERMITTED BY LAW,
       COMPANY RELEASES FROM ANY AND ALL LIABILITY,
       AND WAIVES ALL CLAIMS AGAINST, BBVA, THE
       FEDERAL RESERVE BANKS AND EACH OF THEIR
       RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES,
       AFFILIATES, CONTRACTORS, ATTORNEYS AND
       AGENTS FOR CLAIMS, LOSSES, DAMAGES
       (WHETHER ACTUAL AND/OR CONSEQUENTIAL),
       COSTS, AND EXPENSES (INCLUDING LITIGATION
       COSTS AND REASONABLE ATTORNEYS’ FEES)
       ARISING FROM OR IN ANY WAY RELATED TO
       COMPANY’S USE OF THE DIRECTORY, ITS
       MANAGEMENT OF THE CODE, ITS DISTRIBUTION OF
       THE CODE TO ANY OTHER PERSON, ITS USE OF
       THE DIRECTORY, OR ANY USE OF THE DIRECTORY BY
       A THIRD PARTY WHERE SUCH USAGE DERIVES FROM
       THE COMPANY’S DISTRIBUTION OF THE CODE. THE
       COMPANY AGREES TO INDEMNIFY AND HOLD
       HARMLESS BBVA, THE FEDERAL RESERVE BANKS
       AND EACH OF THEIR RESPECTIVE OFFICERS,
       DIRECTORS, EMPLOYEES, AFFILIATES,
       CONTRACTORS, ATTORNEYS AND AGENTS FROM
       AND AGAINST ANY AND ALL LIABILITY FOR CLAIMS,
       LOSSES, DAMAGES (WHETHER ACTUAL AND/OR
       CONSEQUENTIAL), COSTS, AND EXPENSES
       (INCLUDING LITIGATION COSTS AND REASONABLE
       ATTORNEYS’ FEES) ARISING FROM OR IN ANY WAY
       RELATED TO COMPANY’S USE OF THE DIRECTORY,
       ITS MANAGEMENT OF THE CODE, ITS DISTRIBUTION
       OF THE CODE TO ANY OTHER PERSON, ITS USE OF
       THE DIRECTORY, OR ANY USE OF THE DIRECTORY
       BY A THIRD PARTY WHERE SUCH USAGE DERIVES
       FROM THE COMPANY’S DISTRIBUTION OF THE
       CODE, INCLUDING ANY VIOLATION OF THESE TERMS
       OF USE BY THE COMPANY OR BY ANY THIRD PARTY
       WHERE SUCH VIOLATION DERIVES FROM
       THE COMPANY’S DISTRIBUTION OF THE CODE.

5. **Termination of Access.** The Federal Reserve Banks or BBVA
   may terminate any Code and access to the Directory at any
   time in their absolute discretion and without notice, either
generally or with respect to the Company, and shall not be
   responsible for any losses or other damages caused as a result
   thereof.

**SPEND NET INVOICING**

Upon Company’s submission of a request for the Spend Net
Invoicing service (formerly known as and/or sometimes referred to as
e-Invoicing (“Spend Net Invoicing”) and the approval of the
instructions for this service, or upon its use of this service, whichever
occurs first, Company agrees:

1. **Definitions.** In addition to the capitalized terms defined
   elsewhere in this Agreement the terms below shall have the
   following meaning:
   (a) “Designated User” refers to employees at Company who
       are given access to the Spend Net Invoicing service by
       Company’s Corporate Administrator.
   (b) “Document Management Imaging System” means the use of
       a computer system and software to store, manage and
       track electronic documents and electronic images of paper
       based information captured through the use of a document
       scanner. Documents can be shared by all Designated
       Users on the system and routed through an established
electronic workflow.
   (c) “PO Box” refers to a uniquely addressable lockable box
       that is assigned to Company and located on the premises
       of a United States Postal Office (USPS), where mail for
       Company is kept until collected.
   (d) “Maintenance Window” is a period of time designated in
       advance by BBVA, during which software updates that
could cause disruption of Spend Net Invoicing may be
       performed.
(e) “Virtual Token” refers to a unique one-time password generated for Designated Users each time they access the Spend Net Invoicing System. It is used to prove one’s identity electronically as a form of authentication. A text containing a password is sent to each Designated User’s mobile telephone number for every logon to Spend Net Invoicing. Designated Users need to enter the 6-digit one-time use password that they receive via SMS message on their cell phone to complete the logon process.

2. Installation and Maintenance; Mobile Application. BBVA or its Provider (as defined below) will configure and install the Document Management Imaging System for Company on a server at a secure data center used for Spend Net Invoicing. Occasional Maintenance Windows involving a planned outage may occur. All planned outages for maintenance and software updates will be communicated to Company in advance before the event. BBVA may make certain Spend Net Invoicing services or certain features of the Document Management Imaging System accessible through a mobile application (the “Spend Net Invoicing Mobile Application”) used by any data-enabled mobile device that can send and receive information using technology that supports the Spend Net Invoicing Mobile Application. BBVA, in its sole discretion, will determine which Spend Net Invoicing services and features may be accessible through the Spend Net Invoicing Mobile Application.

3. Dedicated PO Box. BBVA will open and maintain a dedicated PO Box specifically for the Company where Company can direct its vendors and suppliers to mail paper invoices. BBVA will pick up mail from the dedicated PO Box at the USPS facility on a pre-determined schedule defined in the user guide for Spend Net Invoicing.

4. Dedicated Fax. BBVA will maintain a dedicated fax number for Company, if requested. Company can direct its vendors and suppliers to fax paper invoices to the dedicated fax number. BBVA agrees to monitor incoming faxes during regular business hours and deliver the incoming faxes directly to the scanning and indexing department.

5. Dedicated Email Address. BBVA will maintain a dedicated email address for Company, if requested. Company can direct its vendors and suppliers to email electronic invoices to the dedicated email address. An invoice may be considered electronic even if it originated as a paper invoice and was digitally converted to a Portable Document Format (PDF). BBVA agrees to monitor incoming emails during regular business hours (Central Time) and electronically deliver the emails directly to the scanning and indexing department.

6. Scanning and Indexing of Invoices. BBVA agrees to have all invoices scanned, indexed and available for viewing on the Document Management Imaging System within forty-eight (48) hours from receipt of the documents at the secure production facility. The facility is closed on U.S. federal holidays and Sundays. After the data is inputted into the Document Management Imaging System, Company will notify BBVA within five (5) business days of availability on the Document Management Imaging System of any errors or omissions. BBVA will use its best efforts to correct any resulting errors in its own records, or in any reports it has prepared and provided to Company. BBVA is not liable or responsible for any errors not reported by Company within five (5) business days from the availability of the data on the Document Management Imaging System.

7. Electronic Archive of Invoice Images. Images of invoices and associated metadata will be retained for a minimum of seven (7) years and may be accessed by Company using the Document Management Imaging System.

8. Ownership of Invoice Data and Images. All data resident on the server maintained by BBVA will remain the sole property of Company. If Company requests the data, BBVA will download all the images and respective index fields onto a remote hard drive or CD-ROM and render these images in a TIFF image format. Programming charges and fees per CD-ROM or hard drive may apply.


10. Reports. Spend Net Invoicing includes certain reports as set forth in the user guide. Any additional reports are considered custom reports and will incur a programming fee to build each initial report and a monthly hosting fee will be assessed thereafter.

11. Vendor and Supplier Master List. BBVA requires Company to provide an initial vendor and supplier data file for developing the electronic workflow rules and establishing indexing parameters. After the initial file, Company will need to provide BBVA with an updated vendor and supplier data file on a regular basis to ensure the integrity of the invoice data captured. BBVA is not responsible for mismatches on invoice indexing and processing due to inaccuracies on Company’s vendor and supplier master list.

12. Purchase Order and Shipping/Receiving Master Lists. Depending on Company’s processing rules, Company may elect to transmit data from its purchase ordering system and/or its shipping/receiving system to match against incoming invoices. BBVA will process the data according to the rules established during implementation. It is the responsibility of Company to ensure that purchase order data and/or shipping/receiving manifests are electronically transmitted to BBVA on a timely basis to match against incoming invoices. BBVA is not responsible for mismatches on invoice indexing and processing due to inaccuracies on Company’s purchase order or supplier/receiver master lists.

13. Internet Security. Company shall designate in writing to BBVA an individual (the “Corporate Administrator”) to serve as its system and security administrator for Spend Net Invoicing. The Corporate Administrator shall be responsible for (a) granting and revoking authority to Designated Users to access Spend Net Invoicing and use the online services and the Spend Net Invoicing Mobile Application, (b) defining the scope of authority for each Designated User, and (c) defining those accounts maintained by Company at BBVA for which each Designated User shall have access and responsibility. After Company has designated to BBVA the identity of the Corporate Administrator, BBVA shall provide the Corporate Administrator with the internet address of Spend Net Invoicing on which the online services shall be accessible and instructions on accessing the Spend Net Invoicing Mobile Application. The Corporate Administrator shall set-up each Designated User on Spend Net Invoicing.

Each Designated User will be required to use Virtual Tokens in addition to a User Name and Password with the Spend Net Invoicing system. The Virtual Tokens must be used to gain access to Spend Net Invoicing, and BBVA will not allow access to Spend Net Invoicing without the Virtual Tokens.

Company agrees that use of the Virtual Tokens will authenticate the identity of each Designated User. Company, the Corporate Administrator and each Designated User is responsible for maintaining the confidentiality and security of all user ID’s, passwords, Mobile Devices, web browsers, computer systems and Virtual Tokens, and for implementing the necessary internal controls, balancing and reconciliation functions, and audit procedures to prevent unauthorized use of Spend Net Invoicing. Company agrees that the use of the Virtual Tokens constitutes a commercially reasonable security procedure for Company. Company also agrees to be bound by all requests, communications, or other instructions to BBVA that are initiated using Spend Net Invoicing and in compliance with this security
procedure, regardless of whether or not Company actually authorized the instruction. If any instruction initiated through Spend Net Invoicing and accomplished by BBVA in compliance with this security procedure contains any error, to the full extent allowed by law, Company shall be liable for, and shall indemnify BBVA against any claims, losses and expenses BBVA may incur that arises from or relates to the erroneous instructions. BBVA’s records demonstrating compliance with this security procedure will be deemed conclusive proof that the payment order received by BBVA was authorized and that Company is bound by those instructions.

14. Sharing of Data. Spend Net Invoicing may allow a Designated User to share reports, statement(s), images and other information (“Content”) from a computer or Mobile Device. Company hereby acknowledges and agrees that (a) any Content shared by a Designated User may pass through private and public networks with varying levels of security, (b) BBVA is not responsible for the security or privacy of the Content shared by a Designated User through a computer or Mobile Device, and (c) BBVA is not liable for any damages that incur as a result of any Content that is shared by a Designated User through a computer or Mobile Device.

15. BBVA Representations and Warranties. Subject to all terms of this Agreement, BBVA warrants that it has the right to grant the sublicense to the Document Management Imaging System and the Spend Net Invoicing Mobile Application. In the event the Document Management Imaging System or Spend Net Invoicing Mobile Application, or any portion thereof, is held to constitute an infringement of any third party’s rights, and use thereof is enjoined, BBVA shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Document Management Imaging System or the Spend Net Invoicing Mobile Application, as applicable.

16. Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA and Company, neither BBVA nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA, the “Providers”) shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, “Damages”) that Company asserts or sustains as a result of Company’s use of Spend Net Invoicing.


EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER (“ISP”) SUITABLE TO ACCESS SPEND NET INVOICING AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY’S USE OF SPEND NET INVOICING AND THE ABILITY TO CONDUCT OR TRANSMIT ONLINE OR MOBILE SERVICES (INCLUDING, WITHOUT LIMITATION, COMPANY’S ABILITY TO ACCESS SPEND NET INVOICING OR THE SPEND NET INVOICING MOBILE APPLICATION), AND THAT BBVA SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE DOCUMENT MANAGEMENT IMAGING SYSTEM AND THE SPEND NET INVOICING MOBILE APPLICATION MUST INTERFACE WITH BBVA’S COMPUTERS, AND ASSUMES THE RISK THAT BBVA’S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT BBVA SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY’S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF SPEND NET INVOICING IS DONE AT COMPANY’S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

18. Proprietary Rights. Company acknowledges that BBVA or the other Providers shall retain all rights, title and interests in and to Spend Net Invoicing, the Document Management Imaging System and the Spend Net Invoicing Mobile Application, including in each case, without limitation, the source code, listings, magnetic media and any support materials related thereto, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereof and additions thereto, including ownership of all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto (collectively, the “Intellectual Property Rights”), except as granted hereunder. Company shall not take any action that is inconsistent with the Intellectual Property Rights of BBVA or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of BBVA or any other Provider.

The Document Management Imaging System and the Spend Net Invoicing Mobile Application includes trade secrets and other proprietary information of BBVA and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies). Company shall treat as confidential and shall not disclose or otherwise make available the Document Management Imaging System or the Spend Net Invoicing Mobile Application (collectively, the “Confidential Information”), in any form, to any person other than Company’s employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon such Confidential Information, or permit or authorize any third party to do any of the foregoing. Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to
Spend Net Invoicing, the Document Management Imaging System or the Spend Net Invoicing Mobile Application.

19. **Company’s Additional Representations, Warranties and Covenants.** Company represents and warrants that each electronic communication submitted to BBVA by the Company by use of Spend Net Invoicing fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a “Consumer” as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using Spend Net Invoicing are for commercial purposes, and not for personal or household purposes.

20. **Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA and Company, BBVA may terminate Company’s access to and its ability to transact online or mobile services through Spend Net Invoicing at any time, effective immediately. BBVA shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. BBVA may require Company to execute additional documents or agreements to continue to conduct or transact online or mobile services through or by use of Spend Net Invoicing at any time.

**ZERO BALANCE ACCOUNT SERVICES**

Upon Company’s submission of a request for Zero Balance Account Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **Account Services.** Company shall designate one or more demand deposit accounts as a “Zero Balance Account”, and a single separate demand deposit account as the “Master Account”. At the close of each banking day, BBVA shall create a zero balance in each Zero Balance Account by depositing funds from or transferring funds to the Master Account. Company agrees to maintain, or to cause to be maintained, in the Master Account and Zero Balance Accounts at all times and in collected, immediately available funds, an aggregate amount sufficient to pay all charges to and checks or other items presented against each Zero Balance Account and Master Account. Company authorizes and directs BBVA, at any time and without prior notice to Company, to transfer to each Zero Balance Account from the Master Account, or other deposit accounts of Company maintained at BBVA, funds in the amount sufficient to pay any checks, items or charges presented against or payable from each Zero Balance Account. Upon prior written agreement with BBVA, Company may add, remove, or change the designation of an account as a Zero Balance Account or the Master Account, and BBVA may make any changes without prior notice to Company. Subject to approval of BBVA and receipt of such approval documentation as BBVA may require, Company may (a) designate a BBVA demand deposit account held by an affiliate of Company as a Zero Balance Account or a Master Account for purposes of this Agreement, and/or (b) designate or permit the use of any Company Account as a Zero Balance Account or Master Account for an affiliate’s Zero Balance Account Services; in each such case the full terms of this Zero Balance Account Services section shall apply as if all Zero Balance Accounts and Master Accounts used in connection with such Zero Balance Account Services were Company Accounts.

2. **Items Drawn on Zero Balance Account.** All items drawn on or presented in connection with Zero Balance Accounts must be in a format approved by BBVA and shall contain such routing transit numbers and other information required by BBVA. Specifically, all items will be printed on MICR-Bond paper, having a minimum weight of 24 pounds. The magnetic encoding on each item will include correct routing number, account number and serial number. Company will provide a sample of checks and deposit slips (as directed on the check printing specifications) to BBVA from each check printing, including subsequent reorders, for the purpose of testing MICR quality. BBVA is not responsible for incorrect posting of items that do not meet these requirements.

3. **Overdrafts.** If at any time the Master Account, after deducting any amounts payable from or chargeable to the Master Account, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items and charges payable against or chargeable to the Master Account and each Zero Balance Account, the Company shall be liable for BBVA’s demand deposit checking account “insufficient funds” charges as in effect from time to time and BBVA may, in its sole discretion, do any one or more of the following:

   (a) Pay in any order any or all of the checks, items, or charges and charge the amount of any payment to the applicable account thereby causing an overdraft to be created in the account subject to BBVA’s overdraft policies and charges; or

   (b) Dishonor in any order any or all of the checks or items and return the same to the presenter, in which case the policies, charges, and rules provided for in BBVA’s deposit agreement shall apply, including but not limited to, provisions in the deposit agreement relating to insufficient funds and returns policies or charges.

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