

Original

**Notice of Negative Information (Pre-sharing)**

Federal law requires us to provide the following notice to customers before any "negative information" may be furnished to a nationwide consumer reporting agency. "Negative information" means information concerning delinquencies, late payments, insolvency, or any form of default. This notice does not mean that we will be reporting such information about you, only that we may report such information about customers that have not done what they are required to do under our agreement.

After providing this notice, additional negative information may be submitted without providing another notice.

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**We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.**

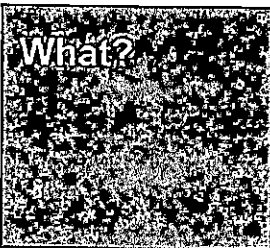


# FACTS

## WHAT DOES PROSPERITY BANK DO WITH YOUR PERSONAL INFORMATION?



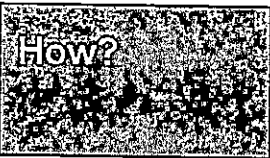
Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.



The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and account balances
- Payment History and transaction or loss history
- Checking account information and account transactions

When you are *no longer* our customer, we may continue to share your information as described in this notice.



All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Prosperity Bank chooses to share; and whether you can limit this sharing.

Reasons financial companies can share your personal information	Does Prosperity Bank share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	Yes	No
For our affiliates' everyday business purposes— information about your transactions and experiences	No	We don't share
For our affiliates' everyday business purposes— information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For nonaffiliates to market to you	No	We don't share



Contact your local banking center or go to [www.prosperitybankusa.com](http://www.prosperitybankusa.com)

What we do	
How does Prosperity Bank protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Prosperity Bank collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> <li>• Open an account or deposit money</li> <li>• Apply for a loan or give us your income information</li> <li>• Give us your contact information</li> </ul> We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes—information about your creditworthiness</li> <li>• Affiliates from using your information to market to you</li> <li>• Sharing for nonaffiliates to market to you</li> </ul> State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.
Definitions	
<b>Affiliates</b>	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> <li>• <i>Prosperity Bank does not share with our affiliates</i></li> </ul>
<b>Nonaffiliates</b>	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> <li>• <i>Prosperity Bank does not share with nonaffiliates for marketing purposes</i></li> </ul>
<b>Joint marketing</b>	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> <li>• <i>Our joint marketing partner is another financial institution that executes securities transactions for our customers</i></li> </ul>
Other important information	
<p>Prosperity Bank® is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Banking. Any consumer wishing to file a complaint against Prosperity Bank® should contact the Texas Department of Banking.</p> <p>Consumers may file complaints with the Texas Department of Banking by contacting the Department through one of the means indicated below.</p> <p>In Person or by U.S. Mail: Texas Department of Banking 2601 North Lamar Boulevard, Suite 300 Austin, Texas 78705-4294</p> <p>By Telephone: 1-877/276-5554 (toll free)</p> <p>By Fax: 1-512/475-1313</p> <p>By Email: consumer.complaints@dob.texas.gov</p> <p>Via the Internet Website: www.dob.texas.gov</p>	

# Terms and Conditions of Your Account

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**(1) Important Information about Procedures for 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 who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**(2) Agreement.** This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully and retain it for future reference. If you sign the signature card or open or continue

to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement is subject to applicable federal laws, the laws of the state of Texas and other applicable rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

1. summarize some laws that apply to common transactions;
2. establish rules to cover transactions or events which the law does not regulate;

3. establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
4. give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document. Nothing in this document is intended to vary our duty to act in good faith and with ordinary care when required by law.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. However, this agreement does not intend, and the terms "you" and "your" should not be interpreted, to expand an individual's responsibility for an organization's liability. If this account is owned by a corporation, partnership or other organization, individual liability is determined by the laws generally applicable to that type of organization. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

"Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

**(3) Liability.** You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges, without notice to you, directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

You will be liable for our costs as well as for our reasonable attorneys' fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your account. This includes, but is not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming

an interest in your account. This also includes any action that you or a third party takes regarding the account that causes us, in good faith, to seek the advice of an attorney, whether or not we become involved in the dispute. All costs and attorneys' fees can be deducted from your account when they are incurred, without notice to you.

**(4) Deposits.** We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Unless prohibited by law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing indorsement, claim of alteration, encoding error or other problem which in our judgment justifies reversal of credit. You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check for deposit, we may require any third-party indorsers to verify or guarantee their indorsements, or indorse in our presence.

**(5) Withdrawals.**

**Generally.** Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs to open the account or has authority to make withdrawals may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person who signs or has authority to make withdrawals to indorse any item payable to you or your order for deposit to this account or any other transaction with us.

**Postdated Checks.** A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. Because we process checks mechanically, your notice will not be effective and we will not be liable for failing to honor your notice unless it

precisely identifies the number, date, amount and payee of the item.

**Checks and Withdrawal Rules.** If you do not purchase your check blanks from us, you must be certain that we approve the check blanks you purchase. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us or by any method we do not specifically permit. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. In addition, we may place limitations on the account until your identity is verified.

Even if we honor a nonconforming request, we are not required to do so later. If you violate the stated transaction limitations (if any), in our discretion we may close your account or reclassify it as a transaction account. If we reclassify your account, your account will be subject to the fees and earnings rules of the new account classification.

If we are presented with an item drawn against your account that would be a "substitute check," as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts to which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. An item may be returned after the funds from the deposit of that item are made available for withdrawal. In that case, we will reverse the credit of the item. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the time we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

**A Temporary Debit Authorization Hold Affects Your Account Balance.** On debit card purchases, merchants may request a temporary hold on your account for a specified sum of money, which may be more than the actual amount of your purchase. When this happens, our processing system cannot determine that the amount of the hold exceeds the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it may be up to three days before the adjustment is made. Until the adjustment is made, the amount of funds in your account available for other

transactions will be reduced by the amount of the temporary hold. If another transaction is presented for payment in an amount greater than the funds left after the deduction of the temporary hold amount, that transaction will be a nonsufficient funds (NSF) transaction if we do not pay it or an overdraft transaction if we do pay it. You will be charged an NSF or overdraft fee according to our NSF or overdraft fee policy. You will be charged the fee even if you would have had sufficient funds in your account if the amount of the hold had been equal to the amount of your purchase.

Here is an example of how this can occur - assume for this example the following: (1) you have opted-in to our overdraft services for the payment of overdrafts on ATM and everyday debit card transactions, (2) we pay the overdraft, and (3) our overdraft fee is \$35 per overdraft, but we do not charge the overdraft fee if the transaction overdraws the account by less than \$10.

You have \$120 in your account. You swipe your card at the card reader on a gasoline pump. Since it is unclear what the final bill will be, the gas station's processing system immediately requests a hold on your account in a specified amount, for example, \$80. Our processing system authorizes a temporary hold on your account in the amount of \$80, and the gas station's processing system authorizes you to begin pumping gas. You fill your tank and the amount of gasoline you purchased is only \$50. Our processing system shows that you have \$40 in your account available for other transactions ( $\$120 - \$80 = \$40$ ) even though you would have \$70 in your account available for other transactions if the amount of the temporary hold was equal to the amount of your purchase ( $\$120 - \$50 = \$70$ ). Later, another transaction you have authorized is presented for payment from your account in the amount of \$60 (this could be a check you have written, another debit card transaction, an ACH debit or any other kind of payment request). This other transaction is presented before the amount of the temporary hold is adjusted to the amount of your purchase (remember, it may take up to three days for the adjustment to be made). Because the amount of this other transaction is greater than the amount our processing system shows is available in your account, our payment of this transaction will result in an overdraft transaction. Because the transaction overdraws your account by \$20, your account will be assessed the overdraft fee of \$35 according to our overdraft fee policy. You will be charged this \$35 fee according to our policy even though you would have had enough money in your account to cover the \$60 transaction if your account had only been debited the amount of your purchase rather than the amount of the temporary hold or if the temporary hold had already been adjusted to the actual amount of your purchase.

**Overdrafts.** You understand that we may, at our discretion, honor withdrawal requests that overdraw your account. However, the fact that we may honor withdrawal requests that overdraw the account balance does not

obligate us to do so later. So you can NOT rely on us to pay overdrafts on your account regardless of how frequently or under what circumstances we have paid overdrafts on your account in the past. We can change our practice of paying overdrafts on your account without notice to you. You can ask us if we have other account services that might be available to you where we commit to paying overdrafts under certain circumstances, such as an overdraft protection line-of-credit or a plan to sweep funds from another account you have with us. You agree that we may charge fees for overdrafts. For consumer accounts, we will not charge fees for overdrafts caused by ATM withdrawals or one-time debit card transactions if you have not opted-in to that service. We may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees.

**Multiple Signatures, Electronic Check Conversion, and Similar Transactions.** An electronic check conversion transaction is a transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation. In these types of transactions the check or similar item is either removed from circulation (truncated) or given back to you. As a result, we have no opportunity to review the check to examine the signatures on the item. You agree that, as to these or any items as to which we have no opportunity to examine the signatures, you waive any requirement of multiple signatures.

**Notice of Withdrawal.** We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit or demand deposit, or from any other savings account as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

**(6) Uniform Single-Party or Multiple-Party Account Selection Form Notice.** The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts. You may choose to designate one or more convenience signers on an account, even if the account is not a convenience account. A designated convenience signer may make transactions on your behalf during your lifetime, but does not own the account during your lifetime. The designated convenience signer owns the account on your death only if the convenience signer is also designated as a P.O.D. payee or trust account beneficiary.

**Single-Party Account Without "P.O.D." (Payable on Death) Designation.** The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

**Single-Party Account With "P.O.D." (Payable on Death) Designation.** The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.

**Multiple-Party Account Without Right of Survivorship.** The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

**Multiple-Party Account With Right of Survivorship.** The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties.

**Multiple-Party Account With Right of Survivorship and "P.O.D." (Payable on Death) Designation.** The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

**Convenience Account.** The parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party's estate under the last surviving party's will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties' ownership of the account.

**Trust Account.** The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

**(7) Business, Organization, and Association Accounts.** Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. You represent that you have the authority to open and conduct business on this account on behalf of the entity. We may require the governing

body of the entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the entity.

**(8) Stop Payments.** Unless otherwise provided, the rules in this section cover stopping payment of items such as checks and drafts. Rules for stopping payment of other types of transfers of funds, such as consumer electronic fund transfers, may be established by law or our policy. If we have not disclosed these rules to you elsewhere, you may ask us about those rules.

We may accept an order to stop payment on any item from any one of you. You must make any stop-payment order in the manner required by law; it must be made in a dated, authenticated record that describes the item with certainty. (Generally, a "record" is information that is stored in such a way that it can be retrieved and can be heard or read and understood - you can ask us what type of stop payment records you can give us). We must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. Because stop-payment orders are handled by computers, to be effective, your stop-payment order must precisely identify the number, date, and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not. Your stop-payment order is effective for six months. Your order will lapse after that time if you do not renew the order in writing before the end of the six-month period. We are not obligated to notify you when a stop-payment order expires. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

If you stop payment on an item and we incur any damages or expenses because of the stop payment, you agree to indemnify us for those damages or expenses, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal actions that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

**(9) Telephone Transfers.** A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of

"preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

**(10) Amendments and Termination.** We may change any term of this agreement. Rules governing changes in interest rates are provided separately in the Truth-in-Savings disclosure or in another document. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Items presented for payment after the account is closed may be dishonored. When you close your account, you are responsible for leaving enough money in the account to cover any outstanding items to be paid from the account. Reasonable notice depends on the circumstances, and in some cases such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the change or account closure becomes effective. For instance, if we suspect fraudulent activity with respect to your account, we might immediately freeze or close your account and then give you notice. If we have notified you of a change in any term of your account and you continue to have your account after the effective date of the change, you have agreed to the new term(s).

**(11) Notices.** Any written notice you give us is effective when we actually receive it, and it must be given to us according to the specific delivery instructions provided elsewhere, if any. We must receive it in time to have a reasonable opportunity to act on it. If the notice is regarding a check or other item, you must give us sufficient information to be able to identify the check or item, including the precise check or item number, amount, date and payee. Written notice we give you is effective when it is deposited in the United States Mail with proper postage and addressed to your mailing address we have on file. Notice to any of you is notice to all of you.

**(12) Statements.**

**Your Duty to Report Unauthorized Signatures, Alterations, and Forgeries.** You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.



You further agree that if you fail to report any unauthorized signatures, alterations or forgeries in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

**Your Duty to Report Other Errors.** In addition to your duty to review your statements for unauthorized signatures, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error - such as an encoding error. In addition, if you receive or we make available either your items or images of your items, you must examine them for any unauthorized or missing indorsements or any other problems. You agree that the time you have to examine your statement and items and report to us will depend on the circumstances. However, this time period shall not exceed 60 days. Failure to examine your statement and items and report any errors to us within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any errors on items identified in that statement and as between you and us the loss will be entirely yours.

**Errors Relating to Electronic Fund Transfers or Substitute Checks** (*For consumer accounts only*). For information on errors relating to electronic fund transfers (e.g., computer, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

**(13) Direct Deposits.** If we are required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into your account, you authorize us to deduct the amount of our liability to the federal government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**(14) Temporary Account Agreement.** If the account documentation indicates that this is a temporary account agreement, each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

**(15) Setoff.** We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt any of you owe us now or in the

future. If this account is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt a partnership owes us now or in the future, to the extent of your liability as a partner for the partnership debt. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated the due date.

This right of setoff does not apply to this account if prohibited by law. For example, the right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity, or (d) the debt is created by a home equity loan, or (e) setoff is prohibited by the Military Lending Act or its implementing regulations. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**(16) Check Processing.** We process items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the items. This means that we do not individually examine all of your items to determine if the item is properly completed, signed and indorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have exercised ordinary care if our automated processing is consistent with general banking practice, even though we do not inspect each item. Because we do not inspect each item, if you write a check to multiple payees, we can properly pay the check regardless of the number of indorsements unless you notify us in writing that the check requires multiple indorsements. We must receive the notice in time for us to have a reasonable opportunity to act on it, and you must tell us the precise date of the check, amount, check number and payee. We are not responsible for any unauthorized signature or alteration that would not be identified by a reasonable inspection of the item. Using an automated process helps us keep costs down for you and all account holders.

**(17) Check Cashing.** We may charge a fee for anyone that does not have an account with us who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash such a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

**(18) Truncation, Substitute Checks, and Other Check Images.** If you truncate an original check and create a substitute check, or other paper or electronic image of the

original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

**(19) Remotely Created Checks.** Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line.

You warrant and agree to the following for every remotely created check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to create the check in the amount and to the payee that appears on the check; (2) you will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and (3) if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

**(20) Unlawful Internet Gambling Notice.** Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

**(21) ACH and Wire Transfers.** This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a

financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. Credit entries may be made by ACH. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

**(22) Facsimile Signatures.** Unless you make advance arrangements with us, we have no obligation to honor facsimile signatures on your checks or other orders. If we do agree to honor items containing facsimile signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose. You must notify us at once if you suspect that your facsimile signature is being or has been misused.

**(23) Restrictive Legends or Indorsements.** The automated processing of the large volume of checks we receive prevents us from inspecting or looking for restrictive legends, restrictive indorsements or other special instructions on every check. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1,000.00." The payee's signature accompanied by the words "for deposit only" is an example of a restrictive indorsement. For this reason, we are not required to honor any restrictive legend or indorsement or other special instruction placed on checks you write unless we have agreed in writing to the restriction or instruction. Unless we have agreed in writing, we are not responsible for any losses, claims, damages, or expenses that result from your placement of these restrictions or instructions on your checks.

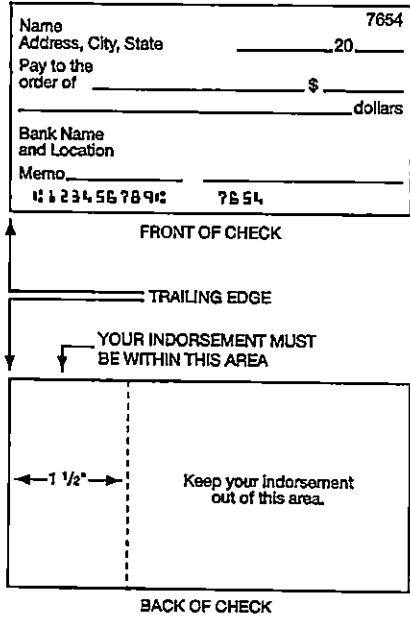
**(24) Account Transfer.** This account may not be transferred or assigned without our prior written consent.

**(25) Indorsements.** We may accept for deposit any item payable to you or your order, even if they are not indorsed by you. We may give cash back to any one of you. We may supply any missing indorsement(s) for any item we accept for deposit or collection, and you warrant that all indorsements are genuine.

To ensure that your check or share draft is processed without delay, you must indorse it (sign it on the back) in a specific area. Your entire indorsement (whether a signature

or a stamp) along with any other indorsement information (e.g., additional indorsements, ID information, driver's license number, etc.) must fall within 1 1/2" of the "trailing edge" of a check. Indorsements must be made in blue or black ink, so that they are readable by automated check processing equipment.

As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all indorsement information within 1 1/2" of that edge.



It is important that you confine the indorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed indorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your indorsement, another indorsement, or information you have printed on the back of the check obscures our indorsement. These indorsement guidelines apply to both personal and business checks.

**(26) Death or Incompetence.** You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or is adjudicated (determined by the appropriate official) incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or adjudication of incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or adjudication of incompetence for up to ten (10) days after your death or adjudication of incompetence unless ordered to stop payment by someone claiming an interest in the account.

**(27) Fiduciary Accounts.** Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone

who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.

**(28) Credit Verification.** You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

**(29) Legal Actions Affecting Your Account.** If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section), we will comply with that legal action. Or, in our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action. Any fees or expenses we incur in responding to any legal action (including, without limitation, attorneys' fees and our internal expenses) may be charged against your account. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that we may charge for certain legal actions.

**(30) Security.** It is your responsibility to protect the account numbers and electronic access devices (e.g., an ATM card) we provide you for your account(s). Do not discuss, compare, or share information about your account number(s) with anyone unless you are willing to give them full use of your money. An account number can be used by thieves to issue an electronic debit or to encode your number on a false demand draft which looks like and functions like an authorized check. If you furnish your access device and grant actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized. Your account number can also be used to electronically remove money from your account, and payment can be made from your account even though you did not contact us directly and order the payment. You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share

some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

Except for consumer electronic funds transfers subject to Regulation E, you agree that if we offer you services appropriate for your account to help identify and limit fraud or other unauthorized transactions against your account, such as positive pay or commercially reasonable security procedures, and you reject those services, you will be responsible for any fraudulent or unauthorized transactions which could have been prevented by the services we offered, unless we acted in bad faith or to the extent our negligence contributed to the loss. If we offered you a commercially reasonable security procedure which you reject, you agree that you are responsible for any payment order, whether authorized or not, that we accept in compliance with an alternative security procedure that you have selected.

**(31) Telephonic Instructions.** Unless required by law or we have agreed otherwise in writing, we are not required to act upon instructions you give us via facsimile transmission or leave by voice mail or on a telephone answering machine.

**(32) Monitoring and Recording Telephone Calls and Consent to Receive Communications.** Subject to federal and state law, we may monitor or record phone calls for security reasons, to maintain a record and to ensure that you receive courteous and efficient service. You consent in advance to any such recording.

To provide you with the best possible service in our ongoing business relationship for your account we may need to contact you about your account from time to time by telephone, text messaging or email. However, we must first obtain your consent to contact you about your account because we must comply with the consumer protection provisions in the federal Telephone Consumer Protection Act of 1991 (TCPA), CAN-SPAM Act and their related federal regulations and orders issued by the Federal Communications Commission (FCC).

- ◆ Your consent is limited to your account, and as authorized by applicable law and regulations.
- ◆ Your consent does not authorize us to contact you for telemarketing purposes (unless you otherwise agreed elsewhere).

With the above understandings, you authorize us to contact you regarding your account throughout its existence using any telephone numbers or email addresses that you have previously provided to us or that you may subsequently provide to us.

This consent is regardless of whether the number we use to contact you is assigned to a landline, a paging service, a cellular wireless service, a specialized mobile radio service, other radio common carrier service or any other service for which you may be charged for the call. You further

authorize us to contact you through the use of voice, voice mail and text messaging, including the use of pre-recorded or artificial voice messages and an automated dialing device.

If necessary, you may change or remove any of the telephone numbers or email addresses at any time using any reasonable means to notify us.

**(33) Claim of Loss.** If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

**(34) Early Withdrawal Penalties (and involuntary withdrawals).** We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your notice of penalty for early withdrawals for additional information.

**(35) Address or Name Changes.** You are responsible for notifying us of any change in your address or your name. Unless we agree otherwise, change of address or name must be made in writing by at least one of the account holders. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. If provided elsewhere, we may impose a service fee if we attempt to locate you.

**(36) Resolving Account Disputes.** We may place an administrative hold on the funds in your account (refuse payment or withdrawal of the funds) if it becomes subject to a claim adverse to (1) your own interest; (2) others claiming an interest as survivors or beneficiaries of your account; or (3) a claim arising by operation of law. The hold may be placed for such period of time as we believe reasonably

necessary to allow a legal proceeding to determine the merits of the claim or until we receive evidence satisfactory to us that the dispute has been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

**(37) Waiver of Notices.** To the extent permitted by law, you waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account. For example, if you deposit a check and it is returned unpaid or we receive a notice of nonpayment, we do not have to notify you unless required by federal Regulation CC or other law.

**(38) Additional Terms.**

## ADDENDUM TO TERMS AND CONDITIONS OF ACCOUNT

This Addendum to Terms and Conditions of Account (the "Addendum") is attached to and made a part of the Terms and Conditions of Account of Prosperity Bank (the "Terms and Conditions"), which together with any and all documents we provide you relating to your account at Prosperity constitute your account agreement for your deposit account(s) (the "Account(s)") at Prosperity Bank ("Prosperity" or "we" or "us") (all together, the "Account Agreement"), and supplements the Terms and Conditions. Unless otherwise noted, terms herein shall have the same meaning as in the Terms and Conditions. In the event of a conflict between the terms of this Addendum and the Terms and Conditions, the terms of this Addendum shall control.

In addition to and notwithstanding anything to the contrary in the Terms and Conditions, we and each of you agree on the following terms:

**Restrictive Legends** - We will not agree, in writing or otherwise, to honor any restrictive legend on checks you write.

**Your Duty to Examine Your Statement** - For all non-consumer accounts and consumer account issues not governed by specific regulatory requirements such as those of the Federal Reserve Board's Regulation E, your duty to examine your statement includes an examination for any unauthorized Automated Clearing House ("ACH") transactions or unauthorized wire transfer transactions, whether into or from your Account(s). You must report to us these and any other unauthorized transactions within the time frames described in the Terms and Conditions for reporting errors in your statements.

**Limitation of Liability** - Neither you nor we are liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either party's purpose.

The provisions of this Account Agreement will survive the closing of the Account(s).

**Subaccount Organization** - We have organized your account in a nontraditional way. Your account consists of two subaccounts. One of these accounts is a transaction subaccount (e.g., a checking subaccount). You will transact business on this subaccount. The other is a nontransaction subaccount (e.g., a savings account). You cannot directly access this nontransaction subaccount, but you agree that we may automatically, and without a specific request from you, initiate individual transfers of funds between subaccounts from time to time at no cost to you. This account organization will not change the amount of federal deposit insurance available to you, your available balance, the information on your periodic statements, or the interest calculation, if this is an interest-bearing account. You will not see any difference between the way your account operates and the way a traditionally organized account operates, but this organization makes us more efficient and helps to keep costs down.



**PROSPERITY BANK<sup>®</sup>**

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**NOTICE REGARDING PAYMENT OF ITEMS -**

To help you better utilize your Prosperity account it is important that you are aware of the order in which we pay items drawn against your checking (demand deposit) account. When processing items drawn on your account, our policy is to pay items in the order received.

The order in which items are paid is important if there is not enough money in your account to pay all of the items that are presented. The law permits us to pay items drawn on your account in any order. There is no policy that is favorable in every instance. Paying items in the order received is a neutral posting order.

If an item is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item for non-sufficient funds. Costs of the overdraft and return item fees have been disclosed to you previously. We encourage you to make careful records and practice good account management. This will help you avoid items being drawn against your account without sufficient funds and incurring the resulting fees.

**ELECTRONIC FUND TRANSFERS**  
YOUR RIGHTS AND RESPONSIBILITIES

The Electronic Fund Transfers we are capable of handling for consumers are indicated below, some of which may not apply to your account. Some of these may not be available at all terminals. Please read this disclosure carefully because it tells you your rights and obligations for these transactions. You should keep this notice for future reference.

**TYPES OF TRANSFERS, FREQUENCY AND DOLLAR LIMITATIONS**

- (a) **Prearranged Transfers.**
  - Preauthorized credits. You may make arrangements for certain direct deposits to be accepted into your
    - checking and/or  savings account(s).
  - Preauthorized payments. You may make arrangements to pay certain recurring bills from your
    - checking and/or  savings account(s).
  - \_\_\_\_\_

- (b) **Telephone Transfers.** You may access your account(s) by telephone at Fastline using a touch tone phone, your account numbers, and your personal identification number ("PIN") to:
  - Transfer funds from checking to savings
  - Transfer funds from savings to checking
  - Transfer funds from \_\_\_\_\_ to \_\_\_\_\_
  - Transfer funds from \_\_\_\_\_ to \_\_\_\_\_
  - Make payments from checking to loan accounts with us
  - Make payments from \_\_\_\_\_ to \_\_\_\_\_
  - Make payments from \_\_\_\_\_ to \_\_\_\_\_
  - Get checking account(s) information
  - Get savings account(s) information
  - \_\_\_\_\_
  - \_\_\_\_\_

- (c) **ATM Transfers.** You may access your account(s) by ATM using your ATM CARD or DEBIT CARD and personal identification number to:
  - Make deposits to checking accounts
  - Make deposits to savings accounts
  - Get cash withdrawals from checking accounts you may withdraw no more than \$600.00 per day
  - Get cash withdrawals from savings accounts you may withdraw no more than \$600.00 per day
  - Transfer funds from savings to checking
  - Transfer funds from checking to savings
  - Transfer funds from \_\_\_\_\_ to \_\_\_\_\_
  - Make payments from checking account to loans you have with us. Payments at ATMS are subject to verification.

- Make payments from \_\_\_\_\_ to \_\_\_\_\_
- Get checking account(s) information
- Get savings account(s) information
- Some of these services may not be available at all terminals.
- \_\_\_\_\_

- (d) **Point-Of-Sale Transactions.** Using your card:
  - You may access your  checking account  \_\_\_\_\_ account(s) to purchase goods ( in person,  by phone,  by computer), pay for services ( in person,  by phone,  by computer), get cash from a merchant, if the merchant permits, or from a participating financial institution, and do anything that a participating merchant will accept.
  - You may not exceed more than \$200.00 in transactions per day for accounts open less than one year
  - For accounts opened at least one year, Debit Cards may not exceed more than \$2,500.00 in transactions per day; ATM Cards may not exceed more than \$600 in transactions per day.

- (e) **Computer Transfers.** You may access your account(s) by computer by online banking access at prosperitybankusa.com and using your User ID and Password to:
  - Transfer funds from checking to savings
  - Transfer funds from savings to checking
  - Transfer funds from your account with us to your account at another institution
  - Transfer funds from \_\_\_\_\_ to \_\_\_\_\_
  - Make payments from checking to loan accounts with us
  - Make payments from your checking account to third parties for bill payment
  - Make payments from \_\_\_\_\_ to \_\_\_\_\_
  - Get checking account(s) information
  - Get savings account(s) information
  - Wire transfers and ACH origination transfers are available for Cash Management customers (not available on mobile application)
  - \_\_\_\_\_



(f) **Mobile Banking Transfers.** You may access your account(s) by web-enabled cell phone by mobile application or at www.prosperitybankusa.com and using your access ID and passcode to:

- Transfer funds from checking to savings
- Transfer funds from savings to checking
- Transfer funds from \_\_\_\_\_ to \_\_\_\_\_
- Transfer funds from \_\_\_\_\_ to \_\_\_\_\_
- Make payments from checking to loan accounts with us
- Make payments from checking accounts to third parties
- Make payments from \_\_\_\_\_ to \_\_\_\_\_
- Get checking account(s) information
- Get savings account(s) information
- Deposit funds via mobile application (limitations apply)
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

You may be charged access fees by your cell phone provider based on your individual plan. Web access is needed to use this service. Check with your cell phone provider for details on specific fees and charges.

(g) **Electronic Fund Transfers Initiated By Third Parties.** You may authorize a third party to initiate electronic fund transfers between your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check to an electronic fund transfer or to electronically pay a returned check charge can occur when a merchant provides you with notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, these third party transfers will require you to provide the third party with your account number and financial institution information. This information can be found on your check as well as on a deposit or withdrawal slip. Thus, you should only provide your financial institution and account information (whether over the phone, the Internet, or via

some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

- Electronic check conversion.** You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or pay bills. You may:
  - Not exceed more than \_\_\_\_\_ payments by electronic check per \_\_\_\_\_.
  - Make payments by electronic check from \_\_\_\_\_ . Payments are limited to \_\_\_\_\_ per \_\_\_\_\_ .
- Electronic returned check charge.** You may authorize a merchant or other payee to initiate an electronic fund transfer to collect a charge in the event a check is returned for insufficient funds. You may:
  - Make no more than \_\_\_\_\_ payments per \_\_\_\_\_ for electronic payment of charges for checks returned for insufficient funds.
  - Make electronic payment of charges for checks returned for insufficient funds from \_\_\_\_\_ . Payments are limited to \_\_\_\_\_ per \_\_\_\_\_ .
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**GENERAL LIMITATIONS**

In addition to those limitations on transfers elsewhere described, if any, the following limitations apply:

- Transfers or withdrawals from a money market/savings account to another account of yours or to a third party by means of a preauthorized or automatic transfer or telephone order or instruction, computer transfer, or by check, draft, debit card or similar order to a third party, are limited to six per statement cycle / calendar month . If you exceed the transfer limitations set forth above, your account shall be subject to closure.
- \_\_\_\_\_
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- \_\_\_\_\_

**FEES**

- We charge \$1.50 each month \_\_\_\_\_ to our customers whose accounts are set up to use an ATM Card or Debit Card \_\_\_\_\_.
- We charge \_\_\_\_\_ each \_\_\_\_\_ but only if the \_\_\_\_\_ balance in the \_\_\_\_\_ falls below \_\_\_\_\_ during the \_\_\_\_\_.
- \$3.00, each, ATM/Debit transactions off premises. \_\_\_\_\_
- \$10.00, each, Overdraft Transfer  
\$5.50, each, Telephone Transfer \_\_\_\_\_

Except as indicated above, we do not charge for Electronic Fund Transfers.

**ATM Operator/Network Fees:** When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

**DOCUMENTATION**

(a) **Terminal Transfers.** You can get a receipt at the time you make a transfer to or from your account using a(n)

- automated teller machine
- point-of-sale terminal.
- You may not get a receipt if the amount of the transfer is \$15 or less.

(b) **Preauthorized Credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at the telephone number listed below to find out whether or not the deposit has been made.

(c) **In addition,**

- You will get a monthly account statement from us, unless there are no transfers in a particular month. In any case you will get a statement at least quarterly.
- You will get a quarterly statement from us on your savings account if the only possible electronic transfer to or from the account is a preauthorized credit.
- If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.
- \_\_\_\_\_
- \_\_\_\_\_

**PREAUTHORIZED PAYMENTS**

(a) **Right to stop payment and procedure for doing so.** If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call or write us at the telephone number or address listed in this disclosure, in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.

We charge \$35.00 \_\_\_\_\_ for each stop payment.

(b) **Notice of varying amounts.** If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) **Liability for failure to stop payment of preauthorized transfer.** If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**FINANCIAL INSTITUTION'S LIABILITY**

(a) **Liability for failure to make transfers.** If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- ◆ If, through no fault of ours, you do not have enough money in your account to make the transfer.
- ◆ If the transfer would go over the credit limit on your overdraft line.
- ◆ If the automated teller machine where you are making the transfer does not have enough cash.
- ◆ If the terminal or system was not working properly and you knew about the breakdown when you started the transfer.
- ◆ If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- ◆ There may be other exceptions stated in our agreement with you.

**CONFIDENTIALITY**

We will disclose information to third parties about your account or the transfers you make:

- (1) where it is necessary for completing transfers; or
- (2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
- (3) in order to comply with government agency or court orders; or
- (4)  if you give us written permission.
  - as explained in the separate Privacy Disclosure.
  - \_\_\_\_\_

**UNAUTHORIZED TRANSFERS**

**(a) Consumer Liability.** Tell us at once if you believe your card and/or code has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card and/or code, you can lose no more than \$50 if someone used your card and/or code without your permission. Also, if you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code without your permission if you had told us, you could lose as much as \$500. Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time period.

**Visa® Debit Card.** Additional Limits on Liability for

Unless you have been negligent or have engaged in fraud, you will not be liable for any unauthorized transactions using your lost or stolen Visa card. This additional limit on liability does not apply to ATM transactions outside of the U.S., to ATM transactions not sent over Visa or Plus networks, or to transactions using your Personal Identification Number which are not processed by Visa. Visa is a registered trademark of Visa International Service Association.

**Mastercard® Debit Card.** Additional Limits on Liability for debit cards

You will not be liable for any unauthorized transactions using your Mastercard debit card if: (i) you can demonstrate that you have exercised reasonable care in safeguarding your card from the risk of loss or theft, and (ii) upon becoming aware of a loss or theft, you promptly report the loss or theft to us. Mastercard is a registered trademark, and the circles design is a trademark of Mastercard International Incorporated.

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

**(b) Contact in event of unauthorized transfer.** If you believe your card and/or code has been lost or stolen, call or write us at the telephone number or address listed at the end of this disclosure. You should also call the number or write to the address listed at the end of this disclosure if you believe a transfer has been made using the information from your check without your permission.

**ERROR RESOLUTION NOTICE**

In Case of Errors or Questions About Your Electronic Transfers, Call or Write us at the telephone number or address listed below, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (5 business days if involving a Visa® point-of-sale transaction processed by Visa or 20 business days if the transfer involved a new account) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days (90 days if the transfer involved a new account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days (5 business days if involving a Visa point-of-sale transaction processed by Visa or 20 business days if the transfer involved a new account) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. An account is considered a new account for 30 days after the first deposit is made, if you are a new customer.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

**ADDITIONAL INFORMATION:**

Currency Conversion and Cross-Border Transaction Fees. If you effect a transaction with your Mastercard - branded Debit Card in a currency other than US Dollars, Mastercard will convert the charge into a US Dollar amount. The Mastercard currency conversion procedure includes use of either a government-mandated exchange rate, or a wholesale exchange rate selected by Mastercard. The exchange rate Mastercard uses will be a rate in effect on the day the transaction is processed. This rate may differ from the rate in effect on the date of purchase or the date the transaction was posted to your account. Mastercard charges us a Currency Conversion Assessment of 20 basis points (.2% of the transaction) on all cross-border transactions regardless of whether there is a currency conversion. As a result, we charge you a Currency Conversion fee of .2% and a Cross-Border Transaction fee of .9%. The Cross-Border Transaction fee is charged on all cross-border transactions regardless of whether there is a currency conversion. A cross-border transaction is a transaction processed through the Global Clearing Management System or the Mastercard Debit Switch in which the country of the merchant is different than the country of the cardholder. Advisory Against Illegal Use. You agree not to use your card(s) for illegal gambling or other illegal purpose. Display of a payment card logo by, for example, an online merchant does not necessarily mean that transactions are lawful in all jurisdictions in which the cardholder may be located. Please see your cardholder agreement for additional information relating to the use of your Debit Card.

By signing below customer acknowledges receipt of pages 1, 2, 3, 4 and 5 of this notice:

Signed

Dated

INSTITUTION (name, address, telephone number, business days)

Prosperity Bank

1301 N Mechanic St  
El Campo, TX 77437-2633

DEFINITION OF BUSINESS DAY: Business days are Monday through Friday excluding federal holidays.

CALL US AT: (800) 531-1401

**IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT**  
**Substitute Checks and Your Rights**

**What is a substitute check?**

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

**What are my rights regarding substitute checks?**

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500.00 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

**How do I make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

Prosperity Bank  
1301 N Mechanic St  
El Campo, TX 77437-2633  
(800) 531-1401

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include —

- ◆ A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- ◆ An estimate of the amount of your loss;
- ◆ An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- ◆ A copy of the substitute check or the following information to help us identify the substitute check: For example, the check number, the name of the person to whom you wrote the check, and the amount of the check is required in addition to or instead of the substitute check.



# PROSPERITY — BANK<sup>®</sup> —

1301 North Mechanic  
El Campo, TX 77437  
979-578-8181

## FUNDS AVAILABILITY POLICY DISCLOSURE

### PURPOSE OF THIS DISCLOSURE

The information describes our policy for holding deposited items in a transaction account before funds are made available to you for withdrawal. This is what is called our Funds Availability Policy.

For purposes of this disclosure, the terms "you" and "your" refer to the customer and the terms "our" "we" and "us" refer to the Bank.

Generally, transaction accounts are accounts which would permit an unlimited number of payments by check to third persons, and also an unlimited number of telephonic and preauthorized transfers to third persons or other accounts you may have with us.

### DETERMINING THE AVAILABILITY OF YOUR DEPOSIT

The length of the delays varies depending on the type of deposit and is explained below. When we delay your ability to withdraw funds from a deposit, you may not withdraw the funds in cash, and we will not pay checks you have written on your account by using these funds. Even after we have made funds available to you and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

When we delay your ability to withdraw funds, the length of the delay is counted in Business Days from the day of your deposit. The terms "Business Day" means any day other than a Saturday, Sunday or federally declared legal holiday, and the term "Banking Day" means that part of any Business Day on which we are open to the public for carrying on substantially all of our banking functions.

If you make a deposit before 6:00 pm on a Business Day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 6:00 pm or on a day that we are not open, we will consider the deposit made on the next Business Day we are open.

### AVAILABILITY SCHEDULE

**Same Day Availability.** Funds from electronic direct deposit to your account will be available on the day we receive the deposit.

**Next Day Availability.** Funds from the following deposits are available on the first business day after the day of your deposit: (a) U.S. Treasury checks that are payable to you; (b) wire transfer, including preauthorized credits, such as social security benefits and payroll payments; and (c) checks drawn on us.

In addition, if you make the following deposit in person to one of our employees, these deposits will also be available on the first business day after the day of your deposit: (a) cash; (b) state and local government checks that are payable to you; (c) cashier's, certified and teller's checks that are payable to you; and (d) Federal Reserve Bank checks, Federal Home Loan Bank checks and postal money orders, if these items are payable to you. If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

**Local Checks.** The delay for check deposits other than those indicated above depends on if the check is a local check. To determine if a check is a local check, look at the routing number on the check. If the first four digits of the routing number are listed below, then the check is a local check:

0110, 0111, 0112, 0113, 0114, 0115, 0116, 0117, 0118, 0119, 0210, 0211, 0212, 0213, 0214, 0215, 0216, 0219, 0220, 0223, 0260, 0280, 0310, 0311, 0312, 0313, 0319, 0360, 0410, 0412, 0420, 0421, 0422, 0423, 0430, 0432, 0433, 0434, 0440, 0441, 0442, 0510, 0514, 0515, 0519, 0520, 0521, 0522, 0530, 0531, 0532, 0539, 0540, 0550, 0560, 0570, 0610, 0611, 0612, 0613, 0620, 0621, 0622, 0630, 0631, 0632, 0640, 0641, 0642, 0650, 0651, 0652, 0653, 0654, 0655, 0660, 0670, 0710, 0711, 0712, 0719, 0720, 0724, 0730, 0739, 0740, 0749, 0750, 0759, 0810, 0812, 0813, 0815, 0819, 0820, 0829, 0830, 0839, 0840, 0841, 0842, 0843, 0863, 0865, 0910, 0911, 0912, 0913, 0914, 0915, 0918, 0919, 0920, 0921, 0929, 0960, 1010, 1011, 1012, 1019, 1020, 1021, 1022, 1023, 1030, 1031, 1039, 1040, 1041, 1049, 1070, 1110, 1111, 1113, 1119, 1120, 1122, 1123, 1130, 1131, 1140, 1149, 1163, 1210, 1211, 1212, 1213, 1220, 1221, 1222, 1223, 1224, 1230, 1231, 1232, 1233, 1240, 1241, 1242, 1243, 1250, 1251, 1252, 2110, 2111, 2112, 2113, 2114,

2115, 2116, 2117, 2118, 2119, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2219, 2220, 2223, 2260, 2280, 2310, 2311, 2312, 2313, 2319, 2360, 2410, 2412, 2420, 2421, 2422, 2423, 2430, 2432, 2433, 2434, 2440, 2441, 2442, 2510, 2514, 2515, 2519, 2520, 2521, 2522, 2530, 2531, 2532, 2539, 2540, 2550, 2560, 2570, 2610, 2611, 2612, 2613, 2620, 2621, 2622, 2630, 2631, 2632, 2640, 2641, 2642, 2650, 2651, 2652, 2653, 2654, 2655, 2660, 2670, 2710, 2711, 2712, 2719, 2720, 2724, 2730, 2739, 2740, 2749, 2750, 2759, 2810, 2812, 2813, 2815, 2819, 2820, 2829, 2830, 2839, 2840, 2841, 2842, 2843, 2863, 2865, 2910, 2911, 2912, 2913, 2914, 2915, 2918, 2919, 2920, 2921, 2929, 2960, 3010, 3011, 3012, 3019, 3020, 3021, 3022, 3023, 3030, 3031, 3039, 3040, 3041, 3049, 3070, 3110, 3111, 3113, 3119, 3120, 3122, 3123, 3130, 3131, 3140, 3149, 3163, 3210, 3211, 3212, 3213, 3220, 3221, 3222, 3223, 3224, 3230, 3231, 3232, 3233, 3240, 3241, 3242, 3243, 3250, 3251, 3252

Some checks are marked "payable through" and have a four-or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number) not the routing number on the bottom of the check, to determine if these checks are local.

The first \$200.00 from a deposit of local checks will be available on the first business day after the banking day of deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of \$700.00 on a Monday, \$200.00 of the deposit is available on Tuesday. The remaining \$500.00 is available on Wednesday.

#### **HOLDS ON OTHER FUNDS FOR CHECK CASHING**

If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

#### **HOLDS ON OTHER FUNDS IN ANOTHER ACCOUNT**

If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

#### **LONGER DELAYS MAY APPLY**

If you will need the funds from a deposit right away, you should ask us when the funds will be available. Funds you deposit by check may be delayed for a longer period under the following circumstances: (a) if we believe a check you deposit will not be paid; (b) if you deposit checks totaling more than \$5,000 on any one day; (c) if you redeposit a check that has been returned unpaid; (d) if you have overdrawn your account repeatedly in the last six months; or (e) if an emergency condition arises that would not enable us to make the funds available to you, such as the failure of computer or communications equipment.

We will notify you if we delay your availability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

#### **SPECIAL RULES FOR NEW ACCOUNTS**

If you are a new customer, the following special rules will apply during the first 30 days your account is opened.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of deposit.

Funds from all other check deposits will be available on the seventh business day after the day of your deposit.

#### **DEPOSITS AT AUTOMATED TELLER MACHINES**

We only allow deposits to be made at ATMs that we own or operate. All ATMs that we own or operate are identified as our machines.

**COLLATERAL AGREEMENT**

**STATE OF TEXAS**

**COUNTY OF \_\_\_\_\_**

This agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ (“Depository Beneficiary”), Prosperity Bank, a state banking association, (“Depository Bank”), and the **Federal Home Loan Bank of Dallas**, (“Safekeeping Bank”).

WITNESSETH:

WHEREAS, \_\_\_\_\_ and Depository Bank have entered into a Depository Contract dated \_\_\_\_\_; and

WHEREAS, under the provisions of law and the Depository Contract the Depository Bank must secure the deposits by pledging investment securities; and

WHEREAS, the securities pledged by the Depository Bank under the Depository Contract must be transferred to and held by a bank selected for safekeeping; and

WHEREAS, the Depository Beneficiary and the Depository Bank have selected the Federal Home Loan Bank of Dallas as the Safekeeping Bank;

NOW THEREFORE, it is agreed by the parties hereto as follows:

1. Depository Bank hereby places with Safekeeping Bank certain investment securities owned by Depository Bank which are pledged to Depository Beneficiary as security for its deposits with Depository Bank,
2. The Depository Bank may from time to time substitute or place with Safekeeping Bank additional securities which are pledged to Depository Beneficiary. Whenever pledged securities are placed by Depository Bank with Safekeeping Bank, the Safekeeping Bank shall issue original safekeeping receipts within three (3) business days of such placement to the Depository Bank. No security placed with the Safekeeping Bank under this agreement shall be released by Safekeeping Bank except pursuant to the joint instructions of the Depository Beneficiary and the Depository Bank.
3. Securities placed with the Safekeeping Bank shall be under the joint control of the Depository Bank and the Depository Beneficiary. However, in the event the investment officer of the Depository Beneficiary certifies in writing to the Safekeeping Bank with a copy to the Depository Bank that the Depository Bank has failed to perform any of the duties or obligations imposed by the Depository Contract or the depository laws of the State of Texas and said failure has



continued for three business days, with no attempt on the part of the Depository Bank to rectify the failure *after proper notice*, then the Depository Bank shall have no further control over the pledged securities and the Safekeeping Bank shall deliver to the investment officer of the Depository Beneficiary all securities deposited hereunder without requiring further authorization, release or direction from the Depository Bank. Further, the Depository Bank does hereby release and discharge the Safekeeping Bank from any liability for the release of the pledged securities to the Depository Beneficiary in accordance with the provisions of this paragraph.

4. Safekeeping Bank agrees to perform all duties hereof and to indemnify the Depository Beneficiary for any reasonable loss, cost, or expense, including reasonable attorney's fees, resulting from its failure to perform the duties imposed upon it by this Collateral Agreement unless such loss can be demonstrated by Safekeeping Bank to have been due to a cause or causes beyond the reasonable control of Safekeeping Bank (such as acts of God, acts of the public enemy, insurrections, riots, explosions, or other cataclysmic events) or to have been caused in whole or in part by the error, dishonesty, omission, fraud, embezzlement, theft or negligence of the Depository Beneficiary, its employees, its officers, its agents, or its directors.
5. Depository Bank agrees to pay all costs or charges imposed on it by Safekeeping Bank for the performance of services provided under this Collateral Agreement.
6. Any suit arising out of or in any way connected with this Collateral Agreement shall be brought in a court of proper jurisdiction in \_\_\_\_\_ County, Texas.

EXECUTED in multiple originals this \_\_\_\_\_, day of \_\_\_\_\_.

**Depository Bank**  
Prosperity Bank

**Depository Beneficiary**

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Safekeeping Bank**  
Federal Home Loan Bank of Dallas

By: \_\_\_\_\_  
Its: \_\_\_\_\_



# **PROSPERITY BANK<sup>®</sup>**

## **TREASURY MANAGEMENT SERVICES**

### **MASTER AGREEMENT**

**THIS TREASURY MANAGEMENT SERVICES MASTER AGREEMENT** (the "**Master Agreement**"), together with any and all applicable Service Terms (defined below), governs the provision of certain Treasury Management Products and Services (the "**Services**") to the customer whose signature appears below (as more fully defined below, "**Customer**") by Prosperity Bank, a Texas banking association ("**Bank**" or "**Prosperity**"). The "**Agreement**" (more fully defined below) will consist of this Master Agreement together with the Service Terms for any and all Treasury Management Services chosen or accessed by Customer.

**REQUEST FOR SERVICES.** Customer is requesting the Services as indicated on Exhibit A, attached hereto and made a part hereof. Customer acknowledges that Customer has received, read and has agreed to the Service Terms and Conditions applicable to each requested Service. Customer may subsequently request additional Services by following Bank's procedures in effect at that time, including without limitation executing the Service Terms and any applicable request or informational forms for the Service(s) requested. Bank makes the Treasury Management Services available at Bank's sole discretion and only to individuals and entities that already maintain an Account with Bank, who request one or more Treasury Management Banking Services, who are approved by Bank, who consent to receive Treasury Management Service notices and communications electronically (except for Account statements and certain Account notices, unless Customer has provided a separate consent to receive electronic Account statements), who first execute or have already executed the Internet Banking Services Agreement, and who read and accept this Agreement. Customer will evidence that acceptance and agreement by having its Authorized Representative(s) execute this Agreement as provided below. Customer agrees that Customer is deemed to renew its acceptance of this Agreement each time Customer or its Authorized Representative accesses or uses a Service.

**BY EXECUTING THIS AGREEMENT OR ACCESSING THE SERVICES AS DESCRIBED HEREIN, CUSTOMER AGREES THAT CUSTOMER WILL USE ANY AND ALL TREASURY MANAGEMENT SERVICES FOR BUSINESS PURPOSES ONLY AND NOT FOR ANY PERSONAL, FAMILY, OR HOUSEHOLD PURPOSE.**

**THIS TREASURY MANAGEMENT SERVICES MASTER AGREEMENT** (the "**Master Agreement**"), together with each applicable Service Terms and Conditions ("**Service Terms**" or "**Service Agreement(s)**"), is between Prosperity Bank ("**Bank**" or "**Prosperity**") and ("**Customer**"), and governs the provision of selected Services to Customer by Bank, from time to time.

**1. DEFINITIONS.**

- (a) "**Account**" refers to Customer's deposit, time or loan account or accounts at Bank, which are subject to this Agreement and the Account Terms, and which Customer has designated to be used with the Service(s), whether one or more.
- (b) "**Account Terms**" means the i) deposit account agreement (which may be titled, "Your Deposit Account Terms and Conditions," "Terms and Conditions of Your Account," or similar title), along with any Account disclosure information provided in connection with the Account at any time, ii) any Resolution entered into in connection with the Account, and iii) any pricing information or pricing lists made available to Customer, all as amended from time to time, which (1) have been issued by the Bank and (2) relate to the Account(s). The terms of the Account Terms are incorporated herein by reference and made a part of this Agreement for all purposes.
- (c) "**Agreement**" means this Master Agreement, Service Terms and Service Authorization for each Service, the Account Terms, all information included on any application or other informational forms for any Service(s) requested by Customer (which information Customer represents and warrants is true, correct, and complete) and any and all applicable Service Addenda, schedules, set up forms, exhibits, fee schedules, and attachments, including all written amendments thereto ("**Documentation**"), between Customer and Bank or provided by Customer to Bank or Bank to Customer in connection with the Treasury Management Services (collectively, the "**Agreement**"). The collective Agreement comprises the entire agreement between Customer and Bank regarding each Service, from time to time. Unless otherwise required by applicable statute, regulation, opinion, or ordinance ("**Law(s)**"), Bank may change the terms of this Agreement at any time without notice to Customer; if Customer is an Internet Banking Services Customer, Bank will provide updates of this Agreement through the "Messages" feature of the Internet Banking Service, and Customer understand it is Customer's responsibility to check for such updates periodically; otherwise Bank will make them available to Customer in other ways Bank deems appropriate. Customer understands and agrees that by continuing to use the Service after the effective date of any change, Customer is deemed to have accepted that change.
- (d) "**Authorized Representative**" or "**User**" refers to the Customer's personnel, employee(s), agent(s) or other individual(s) designated by Customer, in writing, including without limitation by electronic means, as an authorized representative of the Customer or authorized by the Customer (by course of dealing or otherwise) to conduct Transactions through the Services or otherwise act on behalf of the Customer relating to the Services and / or the Account(s) or authorized by the System Administrator/Focus User to conduct Transactions or otherwise act on behalf of the Customer relating to the Services and/or the Account(s). "**Authorized Representative**" also includes each person that accesses any Service (or if an entity, whose representatives access the Service on its behalf) and each owner of the Account(s) accessed by the Service.

- (e) **"Available Funds"** means the total of collected funds in the Account as of the close of business on a Business Day, determined in the manner Bank generally provides credit for deposited items.
- (f) **"Business Day"** refers to any day during which the main office of Bank is open for substantially all of its banking functions, in accordance with specified cut-off times, and during which Bank is able to download Customer's information and process transactions. A Business Day does not include Saturday, Sunday, or federal or state holidays.
- (g) **"Central Time"** means Central Standard Time or central daylight savings time, as the case may be.
- (h) **"Collateral"** means all of Customer's rights, title and interest in and to the following described property, whether now owned or hereafter existing or acquired and wherever located: (a) all monies, instruments, savings, checking and other accounts of Customer (excluding IRA, Keogh, trust accounts and other accounts subject to tax penalties if so assigned) that are now or in the future in Bank's custody or control; (b) any other collateral described in any security instrument securing the obligations of Customer to Bank under this Agreement or any other obligation of Customer to Bank (except any collateral securing an obligation where a lien was taken pursuant to the authority of Texas Constitution Section 50(a)); and (c) all proceeds and products of the property as well as any replacements, accessions, substitutions, and additions to any of the above.
- (i) **"Customer"** means the individual(s) or person whose signature appear(s) on this document and each person that accesses any Service (or if an entity, whose representative(s) access any Service on its behalf) and each owner of the Account(s) accessed by any Service, including without limitation, any and all Systems Administrators and Authorized Representatives, and if Customer is an entity, any and all subsidiaries and affiliates of Customer.
- (j) **"Loan"** means any line of credit or other loan provided to Customer by Bank as part of a Service or an Account.
- (k) **"Obligation(s)"** means all obligations of payment or performance Customer has relating to Services offered by Bank, including but not limited to foreign exchange transactions, overdrafts and shortfalls of any kind, no matter how arising, as well as obligations to pay fees, to provide information, to make accurate representations and to provide security or Collateral.
- (l) **"Password"** means a string of words or characters for individual authentication and access to a Service that Customer or its Authorized Representative(s) create and maintain.
- (m) **"Periodic Bank Statement"** refers to (i) each periodic Account statement issued by Bank, (ii) any written, verbal or electronic advice to Customer from Bank or (iii) any electronic report produced through one of Bank's Viewing and Reporting Services to which Customer subscribes.
- (n) **"Service"** refers to each Treasury Management Service selected by Customer to be provided by Bank, from time to time, through the System or otherwise, pursuant to the Agreement.
- (o) **"Service Authorization"** refers to the Customer's order for Service, executed or transmitted by Customer, containing information specific to the Service, including without limitation, the Service options

and Authorized Representative and/ or System Administrator information designated by Customer, from time to time. Each Service Authorization is made part of the Service Terms to which it relates.

- (p) **“Service Provider(s)”** refers to any third party service provider that the Bank may engage to perform the functions and services included in any Service Customer may choose or access, including without limitation, any remote deposit capture services provider, any Treasury Management Software licensor or provider, any payment system service provider, any electronic funds network service provider, or any Bill Pay service provider.
- (q) **“Service Terms and Conditions”** (or **“Service Terms”** or **“Service(s) Agreement(s)”**) refers to the contractual terms specific to a Service requested by Customer.
- (r) **“System”** refers to the Bank’s Internet or other system(s) necessary for delivery of the Treasury Management Services, including the software and hardware necessary to implement and use the Systems.
- (s) **“System Administrator”** or **“Focus User”** or **“Administrator”** refers to Customer’s personnel, employee(s), agent(s) or other individual(s) authorized by Customer to (i) enter into Transactions (and instruct the Bank to enter into Transactions) and access data available through the System, and (ii) set up and manage User Accounts for the purposes described in the preceding clause, including without limitation managing administrator rights. Customer may designate System Administrators by properly completing and executing Exhibit A attached hereto or as Bank otherwise directs, if Customer is changing its previous designation. The System Administrator (Focus User) is responsible for a broad scope of changes and may or may not be an owner of the Customer Account(s), but the System Administrator/Focus User is an Authorized Representative of Customer.
- (t) **“Transaction(s)”** means the instruction, order, entry and any other communication sent by Customer or an Authorized Representative to Bank in connection with a Service.
- (u) **“User Account”** means an account on the System, set up by a System Administrator, which allows an Authorized Representative to access the System for purposes of entering into Service Transactions.
- (v) **“User ID”** means a user access or identification code for access to a Service that Customer or its Authorized Representative(s) create and maintain.
- (w) **“Viewing and Reporting Services”** means the portion of any Service that allows Customer to view information and, if enabled by Bank, communicate and/or perform Transactions relating to that Service by internet access.

Unless otherwise noted, capitalized terms shall have the meanings provided in this Master Agreement and those provided for each respective Service in each Service Term and any relevant Service Authorization.

## 2. SCOPE AND DELIVERY OF SERVICES.

With respect to any Service being provided by Bank to Customer at the time this Agreement is entered into, this Agreement shall prevail over any conflicting provision of any prior agreement relating to any Service. In the event of any conflict between the Master Agreement and any Service Terms, the Service Terms shall prevail with respect to the particular Service. Unless otherwise specifically agreed in writing between Bank

and Customer, Customer consents to receiving information, notices, and communications (except for Account statements and certain Account notices, unless Customer has provided a separate consent to receive electronic Account statements) concerning the Treasury Management Services:

- (i) electronically, including but not only by electronic mail ("Email") or,
- (ii) if the Service has been enabled by Bank for Customer to conduct Transactions by using a cellular telephone or similar wireless communications device ("Mobile Device"), and if Customer has requested such ability and complied with Bank's requirements for such ability, including without limitation executing any additional agreements ("Mobile Delivery"),

and Customer must provide its Email address and/or any other information for receiving such communications and notices when requested by Bank (being an "Electronic Address") and, if any Service is being provided by Mobile Delivery, information requested by Bank about Customer's Mobile Device(s). Customer is solely responsible for immediately updating its Electronic Address or Mobile Device Information if it changes. If Customer needs assistance, Customer will call (855) 888-2242. All communications and notices by Bank shall be deemed given and received by Customer immediately upon being sent to the Electronic Address or Mobile Device Information Customer has most recently updated. Many communications and notices may also or instead appear in one or more of my Bank Account statements. Unless specifically required by Law, or unless Customer has not provided its separate consent to receive electronic Account statements, or unless Bank has specifically agreed in writing with Customer otherwise, Bank is not obligated to provide any communication or notice to Customer by regular mail or by any means other than electronic transmission. *Customer also provides, for itself and on behalf of any and all Authorized Representatives, its express consent to receive messages from Bank providing information about new or existing features of Treasury Management Services or other products or services provided by Bank that may be included in the Services or on or with Customer's account statements or messages Bank may send to Customer's computer system.* **BANK SHALL NOT BE LIABLE FOR LOSSES OR DAMAGES ARISING FROM NONDELIVERY, DELAYED DELIVERY, OR WRONG DELIVERY OF AN EMAIL SERVICE, INACCURATE CONTENT IN ANY EMAIL, ANY ACTIONS RESULTING FROM THE INTENTIONAL OR UNINTENTIONAL DISCLOSURE OF ANY EMAIL OR ITS CONTENTS BY CUSTOMER TO ANY UNAUTHORIZED PERSON, OR CUSTOMER'S USE OR RELIANCE ON THE CONTENTS OF ANY EMAIL OR EMAIL SERVICE FOR ANY PURPOSE.**

**3. ACCOUNT(S).** To use any Service, Customer must establish and/or maintain one or more Account(s) at Bank, and Customer must first execute or have already executed the Internet Banking Services Agreement, which is hereby incorporated by reference and made a part hereof. Customer must also establish a user access or identification code ("User ID") accepted by the Bank, and a string of words or characters for Customer's further authentication and access approval that Customer creates and maintains ("Password"). Credits and debits associated with Customer's Transactions using any Service will be made to and from the Account(s). Customer will fund each Account, from time to time, with sufficient Available Funds to pay for all (i) Transactions; (ii) transfers from the Account; and (iii) fees and any other amounts due and owing to Bank by Customer, and any affiliate or subsidiary of Customer. All Services involving Customer's Accounts at Bank are subject to the Account Terms and availability schedules in effect from time to time, provided that in the event of any conflict between this Master Agreement, the Service Terms and Account Terms, this Master Agreement and the Service Terms for the relevant Service shall prevail. Customer acknowledges receipt of the Account Terms.

IN THE EVENT ANY WRITTEN INSTRUCTIONS FROM CUSTOMER TO BANK WITH RESPECT TO ITS ACCOUNT(S) REQUIRE TWO OR MORE SIGNATURES TO ACCESS AN ACCOUNT, CUSTOMER UNDERSTANDS AND AGREES THAT ANY ONE AUTHORIZED REPRESENTATIVE SHALL HAVE THAT SAME ACCESS AND RIGHTS THROUGH THE USE OF THE SERVICES.

#### **4. EQUIPMENT AND SOFTWARE; INTERNET ACCESS.**

**4.1 Equipment; Software.** If any Service requires equipment or software to be operated by Customer, the provision of the Service by Bank is conditional on the proper installation, configuration, use and maintenance of such equipment or software by Customer. Bank is not responsible for any damage to Customer's computer system(s) resulting from those activities, and Customer understands and agrees that it will be engaging in those activities at its own risk. Customer is solely responsible for the selection, purchase or lease and maintenance of its computer equipment and software, including completing mandatory maintenance procedures recommended by the manufacturer or provider or any directed by Bank, and its compatibility for use where required in connection with any Service. If Customer accesses any Service electronically, Customer is responsible for obtaining its own internet service provider, who may charge Customer for internet-related use. Bank is not a party to, and Bank has no duty, liability, or responsibility in connection with Customer's internet service provider agreement or any computer device, including but not only Customer's Computer, or service that Customer may purchase from others relating to Customer's use of the internet. Customer understands it is responsible and Bank is not responsible for meeting the terms and conditions of and paying the fees and charges required by any such agreements, and that Customer's internet service provider and the providers of its hardware and software products that enable Customer to access and use any Service are responsible for their products and services. Customer understand that it use those products and services at its own risk, and that Customer will resolve any problems it may have concerning those products and services directly with the providers of those products and services without involving Bank.

**4.2 System and Services Availability and Force Majeure.** Bank will use commercially reasonable efforts to make the Treasury Management Services available for Customer's use on a continuous basis. However, Bank and its third party Service Providers cannot guarantee functionality of any Service (or any Treasury Management Service software) or that Customer will have continuous access or continuous or error-free operation of any Service. A Service may be temporarily unavailable for regular or emergency system maintenance. Bank will endeavor to have scheduled maintenance occur during non-peak hours, but Bank may conduct maintenance at any time. In addition, Bank will not be responsible for failure of any Service to perform under this Agreement resulting from any act of God or public enemies, terrorism or terrorist act, civil war, insurrection or riot, fire, flood, hurricane or other windstorm, explosion, earthquake or serious accident, strike, labor trouble, computer system hackers, or any other cause beyond Bank's reasonable control. Even so, Bank will use commercially reasonable efforts to re-establish a Service in those instances. Bank shall not be liable or have any responsibility of any kind for any loss or damage incurred or suffered by Customer in the event of any failure or interruption of such Services or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within the control of Bank.

## 5. SECURITY PROCEDURES; CUSTOMER AUTHORIZATION AND OBLIGATIONS.

**5.1 Customer Acknowledgment and Authorizations.** Customer acknowledges: (i) the inherent risks and responsibilities associated with conducting business via the Internet; (ii) that it is responsible for maintaining all equipment necessary or appropriate for its access to and use of the Internet, System and Services; (iii) that it is authorizing the Bank and its affiliates to allow access to its Accounts via the Internet; and (iv) it is authorizing the Bank, and any Service Provider, to serve as agent in processing Transactions received from Customer through the System and to post such Transactions to the Accounts. If Customer is opening an Account concurrently with obtaining these Treasury Management Services, Customer affirms and agrees that it has received and understands all signature card rules and regulations, the Account Terms, and all other Account documentation Bank has provided in connection with the opening of the Account, and Customer acknowledges that this Agreement is in addition to any of those agreements and disclosures.

### 5.2 Account and Service Security.

(a) **Security Procedures.** Bank may require or recommend that certain procedures, including without limitation, assigning to Customer or requiring Customer to create confidential passwords, logon identifications, codes, encryption, user or personal or location identification numbers (any or all, "Password(s)"), repetitive codes, tokens, dual control, dedicated computer, virus and malware protection, and other security devices, systems and software (collectively, the "Security Procedures"), designed to verify the origination (but not errors in transmission or content) of Transactions must be used in connection with Services. Customer acknowledges that the Security Procedures offered by Bank provide Customer a commercially reasonable degree of protection against unauthorized access and Transactions. Bank reserves the right to require or recommend new Security Procedures and/or cancel or change any Security Procedures from time to time. Customer agrees to the Security Procedures used by Bank in connection with the Service. Such Security Procedures offered by Bank are described herein, in the Service Agreement for a particular Service, and in related instructions and communications applicable to the Service provided online or otherwise by the Bank.

(b) **Customer Obligations as to Security Procedures.** CUSTOMER UNDERSTANDS AND AGREES THAT IT WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER PASSWORDS AND ANY AND ALL SECURITY PROCEDURES PROVIDED BY BANK AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL IT WOULD USE FOR CASH, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL IN THE CIRCUMSTANCES. Customer agrees to follow any and all instructions provided by Bank for setting up or implementing Security Procedures and measures, whether initial Security Procedures and measures or any that Bank may request or recommend or require subsequent to initial setup for the Services. Customer assumes all risk of inadvertent disclosure or use of Security Procedures by any party whatsoever, whether such disclosure or use is, directly or indirectly, caused by Customer's negligence or deliberate acts or otherwise. Bank is not responsible for Customer's actions or negligence in setting up its security access to the Services or designating or allowing Authorized Representatives access to the Services or assigning Passwords to Authorized Representatives. The Customer will, and the Customer will ensure that each Authorized Representative will, keep each Password strictly confidential and not make any Passwords available to any other persons. Customer will change the Passwords of any Authorized Representative immediately if Customer suspects that the Authorized Representative's Password has been compromised. Customer will not, and Customer will ensure that no Authorized Representative will disclose any information



pertaining to the use or the components of the Services to any other persons. CUSTOMER UNDERSTANDS AND AGREES THAT IT IS RESPONSIBLE FOR ITS ACTIONS AND THE ACTIONS OF ANY AND ALL AUTHORIZED REPRESENTATIVES OF THE SERVICES, INCLUDING BUT NOT ONLY FOR ANY PAYMENTS, TRANSFERS, OR OTHER TRANSACTIONS CUSTOMER OR ANY AUTHORIZED REPRESENTATIVES AUTHORIZE USING THE SERVICE. CUSTOMER AGREES TO ENSURE THAT ALL AUTHORIZED REPRESENTATIVES UNDERSTAND AND COMPLY WITH ALL APPLICABLE TERMS AND CONDITIONS OF THIS AGREEMENT. CUSTOMER UNDERSTANDS IT IS RESPONSIBLE FOR ALL ACTIVITY OF ANY AUTHORIZED REPRESENTATIVE EVEN IF SUCH AUTHORIZED REPRESENTATIVE EXCEEDS CUSTOMER'S AUTHORIZATION.

- (i) **Authorized Representatives.** Customer shall not disclose Security Procedures except to Authorized Representatives. The Customer is solely responsible for the naming of any Authorized Representative, specifying those Accounts and Services to which each Authorized Representative shall have access, and monitoring their capabilities and their actions, including without limitation being responsible for any such actions taken by a System Administrator. The Bank shall have no responsibility for maintaining any records regarding the identity of the Authorized Representative or of the Services to which each Authorized Representative has access. The Bank shall have no knowledge of any Password or similar personal code established by each Authorized Representative after initial log in using the Bank's assigned starting password. Authorized Representatives will continue to be authorized until Customer revokes the authority in writing, Bank has received such writing, and has had a reasonable opportunity to act upon it.
- (ii) **System Administrator/Focus User.** When available in connection with a Service, Customer may appoint a System Administrator (Focus User). Authorized Representatives named as System Administrators have the ability to (i) add other Authorized Representatives (or additional System Administrators) to the System for the purpose of entering into, originating, approving, creating Transactions using the System, accessing Customer data and /or entering into any other Transaction which can be originated, transmitted, or accessed through or using the System; (ii) remove, eliminate or modify the access granted to any Authorized Representative, (iii) approve, limit or modify (1) the data an Authorized Representative may access, (2) the type of Transaction an Authorized Representative may originate, (3) the Account(s) that an Authorized Representative may access and (4) the dollar amount of Transactions an Authorized Representative is authorized to originate or approve, and (iv) override the Password of any of the Customer's other Authorized Representatives. Authorized Representative permissions are assigned individually by a System Administrator. Bank recommends that Customer designate additional System Administrator(s) to serve as back-up System Administrator only in the event that the primary System Administrator is unavailable or unable to perform their duties. If Customer designates a System Administrator, then the resetting of Authorized Representative Passwords must be done by the Customer's System Administrator, and the Bank shall have no liability resulting from its refusal to reset an Authorized Representative's Password or an Authorized Representative's inability to access the System. While Customer may have multiple System Administrators, the Bank will only send administrative emails to a single System Administrator. The System Administrator must create and maintain a separate Password in addition to its individual Password

(iii) **Password Maintenance:** Customer shall establish a unique identification code and password (Access ID and Password) for each Authorized Representative and / or System Administrator and develop adequate internal procedures to prevent the disclosure of the Password to other persons and to prevent unauthorized use. Bank shall have no knowledge of the Password established for each Authorized Representative/System Administrator and shall have no responsibility for ensuring compliance with Customer's procedures for protecting the confidentiality of the Password(s). The Customer is solely responsible for the risks associated with the disclosure of the Password and any unauthorized use of Services, and the Bank is fully protected in performing any Transactions entered using a valid Password, whether or not the person actually entering such Transaction is authorized by the Customer. Bank recommends that Customer and any of its Authorized Representative(s) refrain from disclosing or sharing Password information with others, including others employed by Customer and other Authorized Representatives of Customer. Any Transaction originating from a User Account on the System shall be deemed a Transaction by Customer, and Customer is fully responsible for such Transaction.

(c) **Customer Obligations as to Account Security; Fraud.** Customer understands and will train its Authorized Representatives so they understand that no Bank employee, nor any company affiliated with Bank or a third party Service Provider of Bank will contact Customer by Email or phone requesting Customer's or any Authorized Representative's Password, or any Security Procedures. If Customer is contacted by anyone requesting such information, CUSTOMER WILL NOT GIVE ANY OF ITS INFORMATION OUT, and Customer will contact Bank immediately to report the details of the incident. As applicable, please see Bank's Privacy Statement on its website for details regarding the safekeeping of Customer's personal information.

Customer also agrees to (i) keep all Security Procedures and/or information, including without limitation, Access IDs, Passwords, or other security codes strictly confidential, disclosing them only to trustworthy employees who have access to them in order to perform their employment duties; (ii) instruct those employees that they are not to disclose Access IDs, Passwords or other security codes to any other person or entity; and (iii) establish and maintain all procedures necessary to assure the Access IDs, Passwords and other security codes will be maintained in strictest confidence. Customer further agrees to notify the Bank immediately if its Access IDs, Passwords or other security codes become known to an unauthorized person or if Customer believes they have become known to an unauthorized person. Customer understands and agrees that the Security Procedures are to be used to verify the authenticity and validity of communications received by the Bank in Customer's name and are not intended to detect errors in such communications.

Customer is responsible for protecting its Accounts and the Services used by Customer, and for combating fraud and the unauthorized use of Accounts. Customer represents and warrants that Customer will maintain and enforce effective policies and procedures to monitor and control the secure use of its Accounts and the Services including, but not limited to: (i) ensuring that Access IDs, Passwords, Security Procedures, access devices and account numbers are disclosed only to Authorized Representatives; (ii) controlling the use of Internet access, software, scanning equipment and other systems and devices used in Transactions; (iii) training personnel on the proper use of the System and Services and fraud prevention measures, particularly in connection with mobile and internet access, and e-mail; and (iv) controlling check stock, mechanical signing devices and Account information, and (v) following the Security Procedures required, requested, or recommended by Bank, as they may change from time to time.

(d) **Customer Obligations as to Online Reporting.** Customer acknowledges that Bank offers products and Services which may reduce Account fraud and unauthorized use of Services, including Positive Pay Services and debit blocking tools. Bank also offers a variety of online viewing, transmission and reporting Services (“**Viewing and Reporting Services**”), which provide real time access to Account data. To the extent Customer chooses not to utilize the Viewing and Reporting Services and other such Services available, Customer assumes the risk of unauthorized Transactions which could have been prevented.

**5.3 Security Breach; Notice.** If Customer finds that its records and Bank’s disagree or believes an Authorized Representative’s Password and/or Security Procedures have been lost or stolen or that an unauthorized Transaction on any of the Accounts has occurred or may occur, Customer must contact Bank immediately by calling (855) 888-2242, followed by written confirmation to Prosperity Bank, Treasury Management Services, 3333 NW Expressway, Oklahoma City, Oklahoma, 73112 within twenty-four (24) hours, which may, at Bank’s option, include an affidavit executed by Customer or other form. Customer may be denied access to the System until the System is reactivated and new Passwords and Security Procedures are activated. Bank shall have no liability to Customer for such System access denial. Bank will have no liability to the Customer for any unauthorized Transaction made using a Security Procedure that occurs before the Customer has notified Bank of the possible unauthorized use and Bank has had a reasonable opportunity to act on that notice. In no event will Customer notify Bank more than thirty (30) days after any unauthorized Transaction, including without limitation any Wire Transfer, appears on Customer’s Account statement. If Customer fails to notify Bank within such thirty-day period or otherwise fails to exercise ordinary care, Bank will not be liable for any Loss Customer incurs from any such discrepancy, including without limitation any alleged unauthorized Wire Transfer or other Transaction. Customer agrees that Bank has a reasonable period of time to investigate the facts and circumstances surrounding any claimed Loss and that Bank has no obligation to credit Customer’s Account provisionally.

**5.4 Customer Assumes Full Responsibility for Unauthorized Use.** Customer assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the Services or disclosure of any confidential Information, Security Procedures, Transactions or instructions of Customer by Customer’s employees, agents, Authorized Representatives or other third parties. **NOTWITHSTANDING BANK’S EFFORTS TO ENSURE THAT THE TREASURY MANAGEMENT SERVICES ARE SECURE, CUSTOMER UNDERSTANDS AND AGREES THAT BANK CANNOT AND DOES NOT WARRANT THAT ALL DATA TRANSFERS VIA THE TREASURY MANAGEMENT SERVICES WILL BE FREE FROM MONITORING OR ACCESS BY OTHERS.** Should Customer elect to waive (waiver only being permitted in accordance with a separate written agreement between the parties and may not be available for all Security Procedures, at Bank’s sole option) or not utilize any Security Procedure or otherwise fails to comply with any of the security requirements of this Agreement, then in addition to any and all other indemnification provisions in this Agreement and not in limitation thereof, CUSTOMER AGREES TO INDEMNIFY, HOLD HARMLESS, DEFEND AND RELEASE BANK AND ITS SUCCESSORS, ASSIGNS, AFFILIATES, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS AND ATTORNEYS (COLLECTIVELY, THE “**RELEASEES**”) TO THE FULLEST EXTENT PERMITTED BY LAW FROM AND AGAINST (I) ANY AND ALL LOSSES, CLAIMS, DAMAGES, OBLIGATIONS, PENALTIES, JUDGMENTS, AWARDS, COSTS, DISBURSEMENTS AND LIABILITIES INCLUDING AMOUNTS PAID IN SETTLEMENT, (II) ANY EXPENSES (INCLUDING, WITHOUT LIMITATION, ALL FEES AND EXPENSES OF RELEASEES COUNSEL) AND (III) ALL OF THE RELEASEES’ REASONABLE TRAVEL AND OTHER OUT-OF-POCKET

EXPENSES INCURRED IN CONNECTION WITH THE INVESTIGATION OF ANY PENDING OR THREATENED CLAIMS, OR THE PREPARATION FOR, THE DEFENSE OF, OR THE FURNISHING OF EVIDENCE IN, ANY PENDING OR THREATENED LITIGATION, INVESTIGATION OR PROCEEDINGS (COLLECTIVELY, THE "LOSSES") BASED UPON, ARISING OUT OF OR IN ANY WAY RELATING TO UNAUTHORIZED TRANSACTIONS ARISING UNDER THE AGREEMENT AS A RESULT OF THE CUSTOMER'S FAILURE TO FOLLOW THE SECURITY PROCEDURE(S), EXCEPT THOSE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BANK. Any such expenses will be reimbursed or advanced when and as incurred promptly upon submission by the Releasees of statements to Customer.

**5.5 Use and Unauthorized Use of the Services; Legal Compliance.** Customer agrees that it has no right, title, or interest to the Treasury Management Services or any of them, or any part of them, or the System or copies of it. Customer will not make, or permit anyone else to make, copies of the System, nor will Customer modify, distribute, transmit, display, perform, reproduce, transfer, resell, lease, rent, distribute access to or republish any of the contents of the Treasury Management Services without the prior written consent of Prosperity, which may be withheld in its sole discretion. Customer agrees to notify Bank promptly and in writing of any circumstances of which Customer has knowledge relating to any possession, use, or use of any portion of the System and/or Services by an unauthorized person. Except as otherwise required by Law, Bank will not be liable to Customer or any Authorized Representative for any losses caused by the failure of Customer or any Authorized Representative to use the Service or Customer's computer system properly.

Customer agrees not to use the Service(s) in any way that would (a) infringe any third party's copyright, patent, trademark, trade secret or other proprietary right or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate this Agreement or any applicable Law, including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising, anti-money laundering, or bank secrecy; (d) be false, misleading or inaccurate; (e) create liability for Bank or any Bank affiliates or Service Providers, or cause Bank to lose (in whole or in part) the services of any of Bank's Service Providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing, (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt the computer network's connection to the Service; (i) damage, disable, overburden, or impair the Service or interfere with or disrupt the use of the Service by any other user; or (m) use the Service in such a manner as to gain unauthorized entry or access to the Bank's computer systems or the computer systems of others. Customer will not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided through the Service. Customer agrees that these and other warranties and representations Customer makes in this Agreement will remain in full force and effect even if this Agreement terminates for any reason.

Customer and Prosperity each agree to abide by all applicable international, federal, state, and local statutes, regulations, ordinances, opinions and rulings ("Laws") pertaining to the Services. Customer understands that software programs, materials, tools, and technical data may be subject to U.S. export controls or the trade laws of other countries, and Customer agrees to comply with all export control rules and regulations applicable to Customer. Customer represents and warrants that (a) Customer is not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and (b) that Customer is not listed on any U.S. Government list of prohibited or restricted parties, such as the U.S. Department of Treasury's Office of Foreign Asset Control's

Specially Designated Nationals List.

## 5.6 Third Party License Rights Generally

In connection with Customer's use of the Treasury Management Services and any software connected with it (the "Treasury Management Software"), including without limitation any software required by Bank to be downloaded by Customer in connection with the Security Procedures, Bank and/or its licensors (or other third parties who have directly or indirectly granted rights in those software systems and programs with respect to Treasury Management Services) may require Customer's agreement to certain license rights arrangements and/or end-user agreements ("Licenses"). By enrolling in portions of the Service(s) relating to those software systems and programs, and/or by downloading and/or installing Treasury Management Software, Customer will be evidencing its acceptance of the terms and conditions of those Licenses. Bank may also condition Customer's use of the Treasury Management Software upon Customer's affirming such Licenses by the use of "I Accept" dialogue box acknowledgments or by other affirmative or use-based acknowledgment and agreement features.

Bank and its Service Providers (including without limitation third party providers of Treasury Management Software) reserve all rights not granted to Customer in this Agreement and under the terms of such Licenses. If Customer obtains a different computer system, Customer may be required to download and/or install Treasury Management Software to that different computer system, under the same terms set forth in this Agreement. Customer agrees to delete all such software from its computer system promptly if the Licenses or this Agreement terminate for any reason. Bank reserves the right to change, add to, or terminate services with its third party Treasury Management Service or Treasury Management Software providers and to enter into or arrange for the provision of Treasury Management Software by other licensors and third parties at any time.

**5.7 Commercially Reasonable Security Procedures.** When Customer accepts this Agreement and/or uses the Service, Customer acknowledges and agrees that this Agreement includes Security Procedures and measures that are commercially reasonable and are appropriate for Customer's needs and will provide Customer with a commercially reasonable degree of security against unauthorized use. Customer agrees to be bound by Bank's Security Procedures, which may be periodically updated. Customer further agrees to review and implement all Security Procedures required or recommended by Bank in connection with the Treasury Management Service, including but not only procedures to protect the confidentiality of the Authorized Representatives' User IDs and Passwords.

## 6. TRANSACTIONS; REJECTION

**6.1 Security.** Bank is not obligated to act on a Transaction not transmitted according to Security Procedures and may refuse to act on a Transaction where Bank reasonably doubts its authorization, contents, origination or compliance with Security Procedures. If Bank complies with Security Procedures relating to a Transaction, Bank will be entitled to act on that Transaction and will not be obligated to verify the content of such Transaction, establish the identity of the person giving it, or await any confirmation thereof, and Bank shall not be liable for acting on, and Customer shall be bound by, any Transaction sent in the name of Customer, whether or not authorized.

**6.2 Content.** The Bank shall have the right, but not the obligation, to reject any Transaction if the request is incomplete or inaccurate in any respect. Bank shall have no duty to discover, and will not be liable for, errors or omissions in the Transaction submitted by Customer. The Customer shall be solely responsible for the timeliness, accuracy, and completeness of any instruction and information entered by it into the System.

**6.3 Insufficient Funds.** The Bank may, without notice, reject any Transaction if it involves a transfer of funds from an Account in which there are insufficient Available Funds. Should the Bank, at its sole option, elect to honor a Transaction against insufficient funds, Customer agrees to pay Bank immediately upon demand any overdraft amounts, together with any and all overdraft fees and charges that may be assessed against such Account in accordance with the Bank's then current published schedule of fees and charges.

**7. EXTENSIONS OF CREDIT.** Customer must maintain sufficient amounts of Available Funds in its Accounts in connection with particular Services to cover its payment Obligations. Bank is not obligated to extend credit to Customer unless it has specifically agreed to do so in a separate agreement. If Bank extends credit to Customer by permitting overdrafts or use of uncollected funds in Customer's Accounts or otherwise, the amount thereof shall be immediately due and payable, together with interest thereon at a per annum rate determined by Bank from time to time, but not to exceed the maximum rate permitted by law. If Bank performs, on behalf of Customer, any Services that create an overdraft or use of uncollected funds, such action shall not establish a course of dealing between the parties that would require Bank to perform any Services for Customer that would create an overdraft or use of uncollected funds. Customer agrees that Bank may debit any account owned by Customer at Bank or that Bank may set off against any amount it owes Customer, in order to obtain payment for Customer's overdrafts.

**8. UNDERWRITING.** Bank's approval for Customer's use of any Service may be subject to underwriting criteria established by Bank from time to time. If Bank requires application of underwriting criteria to Customer approval for use of any Service, Bank will communicate to Customer the nature and content of that criteria and the information Customer will be required to provide to Bank. Customer agrees to provide Bank such financial, business and operating information as Bank may reasonably request in connection with Bank's underwriting and approval process. Financial Institution may require the personal guarantee of a principal or an owner of company. Customer must maintain at least one demand deposit account at Bank to serve as an Account to be used in connection with the Service(s), as directed by Bank.

**9. FEES AND PAYMENT.** Customer will pay Bank such fees for the Services in accordance with a separate written Exhibit to the Service Terms for the particular Service. Customer will be provided with notice of any change according to Bank's normal business practices or as required by law. For those Services fees not governed by an Exhibit to the Service Terms, the price schedule in effect for each Service will be deemed accepted by Customer upon requesting a Transaction through a Service. Notwithstanding the foregoing, Bank may collect any amounts due by Customer by debiting any of Customer's Accounts with Bank, billing Customer, and/or setting off against any amounts Bank owes Customer, without any obligation to give prior notice to Customer. Customer will be responsible for any and all attorneys' fees and other costs and expenses Bank may incur in collecting any fees or other sums Customer owes Bank. Customer further agrees to reimburse all costs and charges incurred by Bank, including reasonable attorneys' fees, in responding to subpoenas and other third party requests for information relating to Customer's Account(s). In addition, Customer agrees to pay any and all fees and charges not specified in a price schedule for any special services requested or required by Customer. If applicable for the particular Service, intermediate or receiving banks may charge additional fees, for which Customer agrees to pay in accordance with the terms of this Agreement.

## **10. SECURITY INTEREST; RIGHT TO DEBIT AND SETOFF.**

**10.1 In General.** In addition to various other rights of setoff Bank may have under any other agreements between Customer and Bank, in order to secure full and timely payment when due and performance of any and all of Customer's Obligations under this Agreement, including without limitation any Service Agreement, except where prohibited by applicable Law, Customer pledges and grants to Bank a continuing security interest in, and a lien upon, the Collateral. This security interest shall apply to any Collateral (and proceeds thereof) now or at any time in the future held or maintained by Customer at Bank. Customer's failure to satisfy any of its Obligations to Bank shall constitute a default. Upon default, and at any time thereafter, Bank may (i) liquidate, use and apply, to Customer's Obligation, all or any portion of the Collateral to satisfy Customer's Obligation, in whatever priority Bank may choose in its sole discretion; (ii) exercise any and all other rights and remedies available to Bank under applicable law with respect to the Collateral; or (iii) exercise any other rights Bank may have by law, in equity or by Agreement.

**10.2 Line of Credit/Loan Account.** If a Loan Account is connected with this Agreement and the Services, this security interest is in addition to any other security interest granted by Customer in connection with the Loan Account, except where prohibited by applicable Law.

**10.3 Termination.** Any security interest in Collateral, or any other setoff rights against Customer's Account(s) will not terminate until Customer has fully and indefeasibly satisfied all of Customer's Obligations, whether arising before or after termination of this Agreement or any Service.

**11. ACCOUNT RECONCILIATION AND ERRORS.** Transactions will be reflected on Customer's Periodic Bank Statement, on daily reports and advices, and through the Viewing and Reporting Services. Customer will immediately notify Bank of any error in connection with any Service and any discrepancies between any records maintained by Customer and any notice and / or Periodic Bank Statement Customer receives from Bank, and will provide Bank with any information Bank may reasonably request. To provide such notice, Customer will call Internet Banking at 800-531-1401 or write to Prosperity Bank, Attention: Internet Banking Customer Support, 1401 Avenue Q, Lubbock, Texas, 79401 or send a message to the Bank through the "Messages" feature within the Internet Banking Service. Customer agrees to provide notice of, and at the Bank's request, an affidavit, regarding the problem within a reasonable time (not to exceed fourteen (14) calendar days) from the date of discovery or Customer's receipt of the first statement, report or notice reflecting the problem, whichever occurs first, unless any other agreements, Service Terms, or Laws provide otherwise. If Customer fails to notify Bank of any discrepancy within fourteen (14) days of receipt of a Periodic Bank Statement containing such information, Customer shall be precluded from asserting such discrepancy against Bank and Bank shall not be liable for any losses resulting from Customer's failure to give timely notice. Bank has the right to credit or debit any Accounts of Customer to correct any processing irregularity in connection with any Service.

**12. PROVISIONAL CREDITS.** All credits posted to any Account pursuant to the Services are provisional until Bank receives final settlement for the funds according to the rules and regulations of the payment system or third party Service Provider by which such funds have been transmitted into the Account. Customer acknowledges and agrees that if Bank does not receive such final settlement, then Bank is entitled to a refund of the amount provisionally credited to the respective Account.

### 13. CUSTOMER COMPLIANCE

**13.1 In General.** Customer shall comply with (i) all applicable Laws; (ii) the Agreement, Account Terms and Conditions, and Bank internal rules and procedural requirements of which Bank makes Customer aware; and (iii) all applicable rules, regulations, customs and usages of any exchange, market, clearinghouse, or self-regulatory organization, each as may be updated from time to time, in connection with Services. Customer may choose Services to which the rules of the National Automated Clearing House Association (NACHA) ("Rules") are applicable and Customer agrees to be bound by such Rules. Customer agrees that it may obtain a copy of such Rules by contacting NACHA directly. Customer agrees that no Transactions, which violate United States or other laws, may be initiated, including without limitation the Electronic Funds Transfer Act ("Regulation E"), Article 4A of the Uniform Commercial Code ("UCC") and sanctions enforced by The Office of Foreign Assets Control ("OFAC"). It is Customer's responsibility to obtain information regarding OFAC sanctions. This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC (800-540-6322), or as it may be changed from time to time. Customer is responsible for and will fully indemnify Bank for any and all fines and assessments imposed on Bank as a result of any violation.

**13.2 FINANCIAL INFORMATION AND AUDIT.** Bank may from time to time request information from Customer in order to evaluate a continuation of the Service to be provided by Bank hereunder and/or adjustment of any limits set by this Agreement. Customer agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank, to the extent permitted by law. Customer authorizes Bank to investigate or reinvestigate at any time any information provided by Customer in connection with this Agreement or the Service. Upon request by Bank, Customer hereby authorizes Bank to have the right, but shall not be obligated, to mandate specific internal controls at Customer's location(s), and Customer shall comply with any such mandate to the extent permitted by law. In addition, Customer hereby agrees to allow Bank to review available reports of independent audits performed at the Customer location related to information technology, the Service, and any associated operational processes. Customer agrees that if requested by Bank, Customer will complete a self-assessment of Customer's operations, management, systems, internal controls, training and risk management practices that pertain to Customer's use of the Services. If Customer refuses to provide the requested financial information, or if Bank concludes, in its sole discretion, that the risk of Customer is unacceptable, if Customer violates this Agreement or the Rules, or if Customer refuses to give Bank access to Customer's premises, Bank may terminate the Service and this Agreement according to the provisions hereof.

**13.3 Restricted Transactions.** The Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA") and its implementing Federal Reserve Regulation GG, prohibit restricted transactions from being processed through Customer's Account(s) or relationship with Bank. Restricted transactions include, but are not limited to, those in which credit, electronic fund transfers, checks or drafts are knowingly accepted by gambling businesses in connection with a third party's participation in unlawful internet gambling. Customer shall not submit any Transaction through the Services that is restricted. In addition, Customer certifies that it does not engage in an unlawful internet gambling business within the meaning of UIGEA and Regulation GG.

**14. REPRESENTATIONS AND WARRANTIES.** Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used, as follows: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute, deliver, and to perform its obligations under this Agreement and each applicable Service Terms; (c) this Agreement has been duly authorized and executed by it and constitutes its



legal, valid and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service has been obtained.

**15. EXCLUSION OF PERFORMANCE WARRANTIES.** CUSTOMER ACKNOWLEDGES THAT BANK AND ITS THIRD PARTY SERVICE PROVIDERS ARE PROVIDING THE SERVICES TO CUSTOMER ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. Bank and its Service Providers make no representation or warranty, express, implied or statutory and disclaims all warranties as to the merchantability, fitness for a particular purpose, accuracy, or suitability of any Service for Customer, or as to the compatibility of Bank's software, equipment or communication interfaces with those of Customer, to the maximum extent permitted by applicable law. FURTHER, BANK MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE SERVICES, INCLUDING THAT THE BANK'S WEBSITE WILL OPERATE UNINTERRUPTED OR ERROR FREE. CUSTOMER EXPRESSLY CONFIRMS THAT IT HAS NOT RELIED UPON ANY REPRESENTATION BY BANK AS A BASIS FOR ENTERING INTO THIS AGREEMENT. BECAUSE SOME STATES DO NOT ALLOW FOR THE EXCLUSION OF CERTAIN WARRANTIES, THE ABOVE EXCLUSIONS MAY NOT APPLY. THE PROVISIONS OF THIS SECTION 14, "Exclusion of Performance Warranties" SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**16. LIMITATION OF LIABILITY.**

A. IN THE PERFORMANCE OF THE SERVICES REQUIRED BY THIS AGREEMENT, BANK SHALL BE ENTITLED TO RELY SOLELY ON THE INFORMATION, REPRESENTATIONS, AND WARRANTIES PROVIDED BY CUSTOMER PURSUANT TO THIS AGREEMENT, AND SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS THEREOF. BANK SHALL BE RESPONSIBLE ONLY FOR PERFORMING THE SERVICES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, AND SHALL BE LIABLE ONLY FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING THOSE SERVICES. BANK SHALL NOT BE RESPONSIBLE FOR CUSTOMER'S ACTS OR OMISSIONS (INCLUDING, WITHOUT LIMITATION, THE AMOUNT, ACCURACY, TIMELINESS OF TRANSMITTAL OR AUTHORIZATION OF ANY ENTRY RECEIVED FROM CUSTOMER) OR THOSE OF ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY FEDERAL RESERVE BANK, ACH OPERATOR OR TRANSMISSION OR COMMUNICATIONS FACILITY, ANY RECEIVER OR RDFI (INCLUDING, WITHOUT LIMITATION, THE RETURN OF ANY ENTRY BY SUCH RECEIVER OR RDFI), AND NO SUCH PERSON SHALL BE DEEMED BANK'S AGENT. TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, CUSTOMER AGREES TO INDEMNIFY BANK AGAINST ANY LOSS, LIABILITY OR EXPENSE (INCLUDING ATTORNEYS' FEES AND COSTS) RESULTING FROM OR ARISING OUT OF ANY CLAIM OF ANY PERSON THAT THE BANK IS RESPONSIBLE FOR ANY ACT OR OMISSION OF CUSTOMER OR ANY OTHER PERSON DESCRIBED IN THIS SECTION 16.

B. IN THE EVENT BANK IS HELD LIABLE TO CUSTOMER UNDER THIS AGREEMENT, BANK SHALL BE LIABLE ONLY FOR CUSTOMER'S ACTUAL DAMAGES DUE TO CLAIMS ARISING SOLELY FROM BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; IN NO EVENT SHALL BANK BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH CUSTOMER MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT

THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE BANK AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY WHICH CUSTOMER MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM BANK'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

C. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS, BANK SHALL BE EXCUSED FROM FAILING TO ACT OR DELAY IN ACTING IF SUCH FAILURE OR DELAY IS CAUSED BY LEGAL CONSTRAINT, INTERRUPTION OF TRANSMISSION OR COMMUNICATION FACILITIES, EQUIPMENT FAILURE, WAR, EMERGENCY CONDITIONS OR OTHER CIRCUMSTANCES BEYOND BANK'S CONTROL. IN ADDITION, BANK SHALL BE EXCUSED FROM FAILING TO TRANSMIT OR DELAY IN TRANSMITTING AN ENTRY IF SUCH TRANSMITTAL WOULD RESULT IN BANK'S HAVING EXCEEDED ANY LIMITATION UPON ITS INTRA-DAY NET FUNDS POSITION ESTABLISHED PURSUANT TO PRESENT OR FUTURE FEDERAL RESERVE GUIDELINES OR IN BANK'S REASONABLE JUDGMENT OTHERWISE WOULD VIOLATE ANY PROVISION OF ANY PRESENT OR FUTURE RISK CONTROL PROGRAM OF THE FEDERAL RESERVE OR ANY RULE OR REGULATION OF ANY OTHER U.S. GOVERNMENTAL REGULATORY AUTHORITY.

D. SUBJECT TO THE FOREGOING LIMITATIONS, BANK'S LIABILITY FOR LOSS OF INTEREST RESULTING FROM ITS ERROR OR DELAY SHALL BE CALCULATED BY USING A RATE EQUAL TO THE AVERAGE FEDERAL FUNDS RATE AT THE FEDERAL RESERVE BANK OF NEW YORK FOR THE PERIOD INVOLVED. AT BANK'S OPTION, PAYMENT OF SUCH INTEREST MAY BE MADE BY CREDITING THE ACCOUNT.

## 17. INDEMNIFICATION.

**17.1 In General.** IN ADDITION TO ANY OTHER INDEMNIFICATION OBLIGATIONS OF CUSTOMER PURSUANT TO THIS AGREEMENT, BUT ONLY TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER, CUSTOMER AND EACH AND EVERY AUTHORIZED REPRESENTATIVE, JOINTLY AND SEVERALLY, WILL DEFEND, INDEMNIFY AND HOLD HARMLESS BANK, ITS OFFICERS, EMPLOYEES, AGENTS, AND SERVICE PROVIDERS (THE "BANK PARTIES") AGAINST AND IN RESPECT OF, AND WILL RELEASE THE BANK PARTIES FROM, ANY AND ALL LOSS, LIABILITY, EXPENSE AND DAMAGE, INCLUDING CONSEQUENTIAL, SPECIAL AND PUNITIVE DAMAGES, DIRECTLY OR INDIRECTLY RESULTING FROM: (I) THE PROCESSING OF ANY REQUEST RECEIVED BY BANK THROUGH ANY TREASURY MANAGEMENT SERVICE, (II) ANY BREACH OF THE PROVISIONS OF THIS AGREEMENT, (III) ANY DISPUTE BETWEEN CUSTOMER AND ANY THIRD PARTY OR BETWEEN CUSTOMER AND/OR ANY AUTHORIZED REPRESENTATIVE IN CONNECTION WITH THE USE OF ANY TREASURY MANAGEMENT SERVICE; AND (IV) ANY AND ALL ACTIONS, SUITS, PROCEEDING, CLAIMS, DEMANDS, JUDGMENTS, FINES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) INCIDENT TO THE FOREGOING. THE TERMS OF THIS SECTION 17, "INDEMNIFICATION," WILL SURVIVE TERMINATION OF THIS AGREEMENT.

**17.2 Indemnification Process.** If any claim, litigation, investigation or proceeding is commenced or any

loss, liability, expense, or damage is incurred as described above as to which Bank proposes to demand indemnification, Bank will notify Customer with reasonable promptness. Bank will have the right to retain counsel (and local counsel, if appropriate) of its own choice to represent it, and Customer will pay the reasonable fees, expenses and disbursements of such counsel. Customer retains the right to participate in the defense of such litigation, investigation or proceeding as to which Bank seeks indemnification through counsel of Customer's choice (the cost of which will be paid by Customer), and Bank will reasonably cooperate with such counsel and Customer. Customer will be liable for any settlement of any claim against Bank arising under the terms hereof. The reimbursement, indemnity and contribution obligations of Customer hereunder will be in addition to any liability which Customer may otherwise have.

**18. CONFIDENTIALITY.** Any and all user guides, manuals, data, software, instructions, processes, Security Procedures and other information provided to Customer in connection with any Service and all fee and pricing information with respect to the Services (the "Information") is the proprietary and confidential property of Bank. Customer shall not make any copies, in whole or in part, of any Information without Bank's prior written consent. Customer shall not disassemble, decompile or reverse-engineer any software or security devices. Customer agrees to notify Bank immediately if the confidentiality of any Information is compromised. Customer's Obligations under this Section 18, "Confidentiality," shall survive the termination of this Agreement. Customer agrees to use the Information only in the manner specified by Bank and in the ordinary course of Customer's business, to return it to Bank upon termination of the relevant Service, and to keep the Information confidential and limit access thereto only to its agents and employees who require access in the normal course of their duties, except to the extent the information is already in the public domain or Customer is required to disclose the Information by law. Customer will be responsible for the omissions and acts of its employees, agents and representatives with respect to the Information. The confidentiality provisions herein are subject to and limited by the laws, regulations and rules applicable to Customer, including but not limited to, the Texas Public Information Act and other public information and access laws.

**19. BANK THIRD PARTY PROVIDERS.** Bank may provide any Service using any payment system or third-party provider it reasonably selects. Bank's performance of Services is subject to the rules and regulations of any such system or organization. Bank shall have no obligation to disclose arrangements with third parties to Customer or obtain Customer's consent. Customer authorizes the transfer of information relating to Customer to agents of Bank or Customer in connection with Services or as required by law.

**20. CUSTOMER'S VENDORS / AGENTS.** Any third party servicer or vendor, including any value added networks ("Vendor") used by the Customer in connection with Services hereunder, will be the Customer's agent, and the Customer will be liable for (i) any Vendor's failure to comply with any Security Procedures or operating requirements relating to the Services, (ii) for all fees, costs and expenses owed to each Vendor for its services, and (iii) for any claims, damages, costs and expenses incurred as a result of any Vendor's failure to perform, or delay or error in performing, its services.

**21. RECORDINGS AND RECORDS.** Customer agrees to Bank's telephone or electronic and data transmission monitoring, recording and retention of records for security, evidence of the Transaction and quality of Service purposes. Customer waives any further notice other than that contained in this Agreement that communications may be recorded at any time. Bank shall not be obligated to make any such recordings, or perform any such monitoring or retention. All records maintained by Bank for Services contemplated by this Agreement shall be and remain Bank's property. Bank may, at its sole discretion, make available to Customer such records upon request. Any expense incurred by Bank in making such records available to

Customer shall be paid by Customer. Customer acknowledges that Bank may have certain legal record keeping and reporting requirements with respect to Services and consents to Bank's disclosure of Customer information and Services provided to Customer, which Bank believes to be appropriate or necessary to fulfill such legal requirements.

## 22. NOTICES.

**22.1 Notice to Bank.** Any notice or other written communication may be sent by Customer to Bank at Bank's postal or facsimile address, as follows:

**Prosperity Bank**  
**Attn – Treasury Management Services**  
**3333 NW Expressway**  
**Oklahoma City, Oklahoma 73112**  
**Phone: (855) 888-2242**  
**Fax: (405) 810-4929**

Or such other address, including email address, as Bank may give to Customer, in writing, from time to time (“**Bank's Address**”). Any notice or communication to the Bank will be effective only when the Bank has actually received, and has had a reasonable time to act on, such notice or communication.

**22.2 Notices to Customer.** Any notice or other written communication may be sent by Bank to Customer at Customer's postal, e-mail, facsimile or other address provided by Customer to Bank (“**Customer's Address**”) and Bank may assume that any notice or communication sent to Customer's Address has been received by Customer, until Customer notifies Bank in writing of another address. Any notice or communication to the Customer will be effective either on the date it is actually received or three (3) days after it is mailed by first class mail, whichever is earlier. The Customer further acknowledges and agrees that certain notices and communications may be provided to the Customer by telephone, facsimile or electronic transmission to Customer's Address as shown on the Bank's records. Any such notice or communication provided by facsimile or electronic transmission will be effective upon the Bank's transmission thereof, and any such notice given by telephone will be effective upon the Customer's receipt thereof.

**22.3 Transactions; Reliance on Notice.** If authorized by Customer in writing by separate agreement, Bank may accept Transactions from an Authorized Representative by telephone, facsimile, email or other writing, or any other method Customer agrees to use but understands that Bank is not required to accept Transactions given by any such media and outside of the System unless the Parties otherwise agree in writing. Unless the Parties otherwise agree in writing, Bank has no duty to authenticate and shall not be liable for acting on, and Customer shall be bound by any Transaction sent by such media, whether or not authorized by Customer. In its sole discretion, Bank may, but shall not be required to, accept instructions, directions or other communications given to the Bank by letter, facsimile, email or other electronic means, and except as provided in this Agreement, Bank shall not be required to act upon any notice or instruction received from the Customer or any other person, or to provide any notice or advice to the Customer or any other person with respect to any matter. Bank must have a reasonable opportunity to act upon any such notice or instruction. Without limiting the foregoing, Bank is entitled to rely on any notice or communication that it believes in good faith to be genuine or has been authorized or signed by Customer or the Customer's Authorized Representative in accordance with the Security Procedures. Bank may rely on all notices, instructions and

other communications sent to Bank via facsimile, email or other electronic transmission as though they were originals. IN ADDITION TO OTHER INDEMNIFICATION PROVISIONS IN THIS AGREEMENT AND NOT IN LIMITATION THEREOF, BUT ONLY TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS BANK AND ITS SERVICE PROVIDERS FOR ANY LIABILITY AND DAMAGES RESULTING FROM OR ACTING UPON ANY SUCH TRANSACTION, DIRECTION, INSTRUCTION, OR INFORMATION THAT IS SENT AS DESCRIBED ABOVE, REGARDLESS OF WHETHER SUCH TRANSACTION, DIRECTION, OR INSTRUCTION IS MADE BY AN AUTHORIZED USER.

### 23. TERM; TERMINATION.

**23.1 In General.** Either party, upon written notice to the other, may terminate any Service Agreement individually or this Agreement, in its entirety at any time by providing notice in writing to the other party; provided however, that any such termination by Customer will not be effective until Bank has had a reasonable opportunity to act upon the termination notice. Notwithstanding any termination, the terms of the Agreement and the Service Terms will continue to apply to (1) all Transactions which have been initiated prior to termination and (2) Customer's payment or other Obligations with respect to such Transactions. Customer's obligation with respect to any Entry shall survive termination of this Agreement until any applicable statute of limitation has elapsed.

**23.2 Immediate Termination.** Notwithstanding the foregoing, Bank may terminate this Agreement and/or any specific Service Term immediately, without written notice to Customer if, at any time, (i) Customer fails to comply with any of its material Obligations hereunder, (ii) Customer is in default under any other material Obligation with the Bank, (iii) a receiver, custodian, trustee, or similar official has been appointed, or been applied for by Customer for all or a substantial part of Customer's property, (iv) any general assignment has been made for the benefit of Customer's creditors, (v) a voluntary or involuntary case, petition or proceeding has been commenced under the United States Bankruptcy Code or any other statute or regulation relating to bankruptcy or relief of debtors, seeking liquidation, reorganization or other relief with respect to the Customer, or its debts, (vi) Customer or any other person on behalf of the Customer has taken any action under the laws of any jurisdiction applicable to the Customer which is similar to any of the foregoing, (vii) there has been a material adverse change in the financial circumstances of Customer, in Bank's sole opinion, or (viii) Bank deems immediate termination of this Agreement and/or any Service Term is necessary or appropriate, in Bank's sole judgment, in order to prevent a financial loss to Bank. The Master Agreement will remain in place as long as there is any Treasury Management Service or product used.

**23.3 Security Interest.** Any security interest in Collateral, or any other setoff rights against Customer's Account(s) or accounts will not terminate until Customer has fully and indefeasibly satisfied all of Customer's Obligations, whether arising before or after termination.

**24. AMENDMENT.** Bank may, at any time, amend any part of this Master Agreement, Service Term, Service Authorization, and/or any corresponding Addendum, Schedule or other related documentation and any such amendment shall be effective immediately upon written notice to Customer, unless otherwise required by applicable Law. Customer will be provided with notice of any such amendment in accordance with Bank's normal business practices and such notice may be sent to Customer electronically, unless otherwise required by applicable Law. Bank may, at any time, amend the applicable Account Terms in

accordance with the terms of the Account Terms. By continuing to use any Service after notice of such amendment, Customer will be deemed to have agreed to such amendment and shall be bound by the Agreement, as amended.

**25. LIMITED USE.** Customer may use the Services for its own internal business use only. Customer will not resell, allow the use of the Services in a computer service bureau business, timesharing business, or otherwise provide access to the Services for the benefit of any third party. Notwithstanding the foregoing, Customer may provide a third party access to the Services if and only if such party is performing function(s) on behalf of Customer or that assist Customer in receiving the Treasury Management Services as Customer's agent, and any such third party will be considered for purposes of this Agreement to be an Authorized Representative.

## **26. GENERAL**

- (a) **Binding Effect of Agreement.** This Agreement and Account Terms shall bind and benefit Bank and Customer and their legal representatives, successors and assigns. None of the terms of this Agreement may be waived except as Bank may consent in writing, and no agreement with or representation made by any employee of Bank that is in conflict with these General Terms or any Service Terms will be binding on Bank unless contained in a written modification of this Agreement, signed by an authorized officer of Bank. No delay on the part of Bank in exercising any right or power under this Agreement shall operate as a waiver. The rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies which Bank would otherwise have.
- (b) **Governing Law.** Except to the extent superseded by Federal law, the provision of Services and this Agreement shall be governed by the laws of the state of Texas, without giving effect to its choice of law or conflict of laws provisions. Customer submits to the jurisdiction of any federal or state court in Harris County, Texas for all legal proceedings arising out of this Agreement, unless otherwise specifically required by applicable Law. Customer waives all objections of inconvenient forum to the fullest extent allowed by applicable Law.
- (c) **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Customer may not assign this Agreement or any of the rights or duties hereunder, including without limitation, any Service Agreement, to any person without Bank's prior written consent. Bank may assign this Agreement or any portion thereof, including without limitation, any Service Agreement, or any of its rights hereunder to (a) an acquirer of all or substantially all of Bank's equity, business or assets; (b) a successor in interest, whether by merger, reorganization or otherwise; or (c) any entity controlling or under common control with Bank, without the consent of Customer, and provided further, that if Bank is merged into or otherwise combined with another institution or entity (whether as a result of a merger or a sale of all or substantially all of the assets of Bank), such merger or combination shall not constitute an assignment hereunder and the surviving or acquiring institution shall acquire and assume all rights, privileges, duties, obligations and liabilities of Bank under this Agreement. Moreover, in those instances where a party's consent is required, the party whose consent is sought shall not unreasonably withhold it.
- (d) **No Agency or Joint Venture Created.** This Agreement shall not be deemed to constitute the parties as partners or joint venturers nor will any party be deemed to constitute any other party as its agent.

- (e) **Provisions Severable.** If any provision of this Agreement shall be held to be void or unenforceable by any court of competent jurisdiction or any governmental regulatory agency, such provision shall be construed by each party to be severed from this Agreement. All remaining provisions of this Agreement will remain in full force and effect.
- (f) **Section Headings.** Section headings are for reference purposes only and do not in any way limit or otherwise define the rights and liabilities of the parties.
- (g) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement.

27. **WAIVER OF JURY TRIAL.** TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CUSTOMER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, OF WHATEVER TYPE OR NATURE, INCLUDING BUT NOT LIMITED TO ACTIONS IN CONTRACT OR TORT, ARISING OUT OF THIS AGREEMENT AND THE SERVICES PROVIDED UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT THIS JURY WAIVER IS A MATERIAL INDUCEMENT TO BANK TO ENTER INTO THIS AGREEMENT AND THAT NO BANK REPRESENTATIVE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK MAY NOT ENFORCE THIS JURY WAIVER IN CASE OF LITIGATION.

28. **SURVIVAL.** Expiration or termination of this Agreement shall not release either Party of its respective obligations of payment for Services actually performed prior to date of termination, or warranties or exclusion thereof, intellectual property rights, governing law, notices, force majeure, limitation of liability, or waiver of jury trial, or from the confidentiality or indemnity provisions hereof.

29. **PREVAILING PARTY.** The prevailing party in any action brought against the other to enforce the terms of this Agreement or any rights or obligations hereunder, shall be entitled to receive its reasonable costs and expenses of bringing such action, including reasonable attorneys' fees.

30. **NOTICE OF FINAL AGREEMENT**

THIS WRITTEN AGREEMENT, PLUS THE OTHER AGREEMENTS REFERENCED HEREIN, INCLUDING WITHOUT LIMITATION ANY SERVICE AGREEMENTS SUBSEQUENTLY EXECUTED, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

31. **FACSIMILE AND ELECTRONIC ACCEPTANCE**

The individual(s) signing below represent that they are duly authorized to do so by and on behalf of Customer ("Authorized Signer(s)"). A facsimile or electronic copy of this Agreement signed by an Authorized Signer shall constitute a valid and binding original for purposes of this Agreement.

**SIGNATURE PAGE**

This Agreement has been executed and delivered by Customer as of the latest date set forth below. Each person signing below represents and warrants that he/she has read this Agreement and understands it and has the full authority to execute this Agreement on behalf of the Customer and that this instrument is a legally valid and binding obligation of the Customer.

**Customer Name (Name of Business):**

**Authorized Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Customer Name (Name of Business):**

**Authorized Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

SAMPLE



EXHIBIT A

Initial Selection of Services

Please indicate Services requested with an "X" in the box next to the chosen Service:

<u>Service</u>	<u>Selected</u>
<b><u>Liquidity Management</u></b>	
Investment Sweeps	<input type="checkbox"/>
Loan Sweeps	<input type="checkbox"/>
Zero Balance Accounts ("ZBA")	<input type="checkbox"/>
Repurchase Agreements	<input type="checkbox"/>
<b><u>Online Payment Services</u></b>	
ACH Origination Services	<input type="checkbox"/>
ACH Same Day Origination	<input type="checkbox"/>
Business Bill Pay	<input type="checkbox"/>
Wire Transfer Services	<input type="checkbox"/>
<b><u>Receivable Solutions</u></b>	
Lockbox Services	<input type="checkbox"/>
Remote Deposit Capture	<input type="checkbox"/>
<b><u>Risk Management</u></b>	
ACH Positive Pay	<input type="checkbox"/>
ACH Block	<input type="checkbox"/>
ACH Filters	<input type="checkbox"/>
Check Positive Pay	<input type="checkbox"/>
Reverse Positive Pay	<input type="checkbox"/>
Account Reconciliation	<input type="checkbox"/>
<b>For Bank Use Only:</b>	
_____	
_____	

**Exhibit B**

**Initial Appointment of System Administrators**

Customer Name (Name of Business)

Any capitalized term not defined herein shall have the meaning ascribed to it in the Treasury Management Services Master Agreement or applicable Service Agreement(s) (the "Agreement").

**Appointment of System Administrator(s) — To be completed and signed by the Customer's Authorized Signer.**

By signing below, you authorize each person listed below to be a Systems Administrator with the authority to:

- A. Appoint and remove Users (and other System Administrators) to perform authorized Transactions under the Agreement for all Treasury Management Services requested or accessed by Customer; and
- B. To perform any Transactions pursuant to the Agreement for all Treasury Management Services requested or accessed by Customer.

Unless also an Authorized Signer of Customer, the System Administrator(s) listed below do not have the authority to execute the Agreement.

1. Name: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone \ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

2. Name: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone \ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

This appointment shall be binding and the authority shall remain in force until written notice of any revocation or modification is delivered to the Bank. By his/her signature below, Customer's Authorized Signer represents and warrants that he/she has the authority on behalf of Customer to appoint the System Administrator(s) listed above.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Customer's Authorized Signer

\_\_\_\_\_

Name (Print)

\_\_\_\_\_

Title

SAMPLE



# **PROSPERITY BANK®**

## **Treasury Management Resolution**

Customer Name (Name of Business)

Address

City, State Zip

Phone #

Fax #

Any capitalized term not defined herein shall have the meaning ascribed to it in the Treasury Management Services Master Agreement or applicable Service Agreement(s) between Customer and Prosperity Bank dated (the "Agreement").

**I. Authorization to Act for Customer—To be Completed by officer, owner, principal, member, manager, general partner or other authorized individual of the Customer (for purposes of this Agreement, the "Customer Representative")**

Each of the undersigned is an officer, owner, principal, member, manager, general partner or other authorized individual of the Customer and warrants that the Customer has taken all action required by its governing documents to authorize each of the undersigned to:

Execute the Agreement;

Accept on behalf of the Customer the terms and conditions governing the use of such Treasury Management Services requested or accessed by Customer, including acceptance of Security Procedures;

Perform any Transactions pursuant to the Agreement; and

Appoint and remove System Administrators and Users to perform authorized Transactions under the Agreement.

This authorization shall be binding and the authority shall remain in force until written notice of the revocation or modification authorization is delivered to the Bank. This authorization replaces any and all previous resolutions or authorizations.

Customer Representative(s):

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone \ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone \ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**II. Certification**—To be completed by, as applicable, the corporate secretary, general partner, member, trustee, government official, or sole proprietor.

The undersigned represents and warrants to the Bank on behalf of the Customer that the signatures appearing above are the true and authentic signatures of the Customer Representative(s) and further certifies that the Customer has taken all action required by their governing documents to appoint the Customer Representative(s) to act on behalf of the Customer and that the undersigned has full authority to execute this Agreement.

**Note:** For a corporation, this form must be signed by the secretary or assistant secretary. For a partnership, limited partnership, limited liability partnership, limited liability company or association, one of the general partners or members must sign. For trusts, the trustee, agent or account signer must sign. For a government institution, an authorized signer must sign. Sole proprietors are not required to complete this certification.

Date

Signature

Name:

Title:

Telephone:

SAMPLE



# PROSPERITY BANK®

## Treasury Management Services

### ACH ORIGINATION AGREEMENT

BY EXECUTING THIS ACH AGREEMENT OR ACCESSING THE SERVICES AS DESCRIBED HEREIN, CUSTOMER AGREES THAT CUSTOMER WILL USE ANY AND ALL ACH SERVICES FOR BUSINESS PURPOSES ONLY AND THAT ANY DEPOSITORY ACCOUNTS OF CUSTOMER WITH PROSPERITY BANK UTILIZED IN CONNECTION WITH THE ACH SERVICES ARE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR ANY PERSONAL, FAMILY, OR HOUSEHOLD PURPOSE.

This ACH Origination Agreement (the "ACH Agreement") is made between Prosperity Bank ("Bank") and (the "Customer"), each a "Party" and together, the "Parties," as of the last date of execution set forth below. It supplements and modifies and is made a part of that Treasury Management Services Master Agreement (the "Master Agreement") between the Parties, which, along with all other agreements between Customer and Bank incorporated into the Master Agreement, is incorporated herein by reference for all purposes (for purposes of this ACH Origination Agreement, the Master Agreement and this ACH Agreement together are referred to as the "Agreement"). Unless otherwise noted, capitalized terms herein will have the same meaning as in the Master Agreement.

Customer wishes to initiate credit and/or debit Entries through the Bank to accounts maintained at Bank and in other depository Banks by means of the Automated Clearing House Network ("ACH") pursuant to the terms of this Agreement, the National Automated Clearing House Association ("NACHA") Operating Rules and Guidelines (the "Rules"), any applicable local clearing house association rules, and Bank's operating rules and procedures for electronic entries, including any exhibits or appendices thereto now in effect, or as may be amended from time to time, and Bank is willing to act as an Originating Depository Bank ("ODFI") with respect to such Entries. This Agreement sets forth the terms and conditions pursuant to which Bank will provide to Customer the ACH Services outlined herein ("Services" or "ACH Services"). Customer hereby requests Bank to provide the Services described in this Agreement. By executing this Agreement and/or using the Services described in this Agreement, Customer accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which Bank will provide to Customer the Services outlined herein. Customer must execute the Internet Banking Services Agreement, which is hereby incorporated by reference and made a part hereof. In the event of inconsistency between a provision of this ACH Agreement, the Master Agreement, the Uniform Commercial Code ("UCC"), the Internet Banking Services Agreement, and/or the Terms and Conditions of Your Account (the "Account Terms") relating to any and all depository accounts with Bank utilized in connection with the Services (together with any

accounts listed on **Schedule E** attached hereto as Customer may change them from time to time in accordance with Bank's procedures, any and all of which changes are incorporated herein by reference (the "**Authorized Account(s)**"), the provisions of this ACH Agreement shall prevail. Terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the Rules. The term "**Entry**" shall have the meaning provided in the Rules and shall also mean the data received from Customer hereunder from which Bank initiates each Entry.

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank and Customer, intending to be legally bound, do hereby agree as follows:

## AGREEMENT

**I. COMPLIANCE WITH RULES AND LAWS.** Customer acknowledges it has a copy or has access to a copy of the Rules. The Rules may also be purchased online at [www.nacha.org](http://www.nacha.org) currently under the publications tab. Customer agrees to comply with and be subject to the Rules of NACHA in existence at the date of this Agreement and any amendments to these Rules made from time to time. It shall be the responsibility of the Customer that the origination of ACH Transactions complies with U.S. law, including but not limited to sanctions enforced by the Office of Foreign Assets Control ("**OFAC**"). It shall further be the responsibility of the Customer to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's home page site at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac).) Customer agrees that the performance of any action by Bank to debit or credit an account or transfer funds otherwise required by the Rules is excused from the performance of such action to the extent that the action is inconsistent with United States law, including the obligations of the Bank under OFAC or any program administered by the United States Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**"). Customer agrees generally and warrants to Bank that all actions by Customer contemplated by this Agreement, including the preparation, transmittal, and settlement of Entries and payment orders, shall comply in all material respects with United States laws, regulations, regulatory guidelines and guidance, and official commentaries, including without limitation all such regulations, guidelines, and commentaries issued by the Board of Governors of the Federal Reserve and the Federal Banks Examination Council ("**FFIEC**"). Bank will charge the Customer with any fines or penalties imposed by OFAC, NACHA or any organization which are incurred as a result of non-compliance by the Customer and the Customer agrees to fully reimburse and/or indemnify Bank for such charges or fines to the extent permitted by law. The specific duties of the Customer provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking. The duties of the Customer set forth in the following paragraphs of this Agreement in no way limit the requirement of complying with the Rules.

**II. DESIGNATION OF ADMINISTRATOR.** In order to originate ACH Entries, Customer must designate at least one Administrator (also called a "**System Administrator**" or "**Focus User**" in this Agreement) who is authorized to enter into Transactions for the ACH Services under this ACH Agreement. Customer may appoint such System Administrator(s) by properly completing and executing Exhibit A to the Master Agreement. Subsequent to execution of the Master Agreement, Customer may change such designation from time to time by properly completing and executing a Subsequent Appointment of System Administrators form and submitting it to Bank for Bank's approval. Bank must have a reasonable time to act upon any such change. Administrator(s) shall be responsible for designating "**Users**" (also called "**Authorized Representative(s)**" in this Agreement)



whom Customer authorizes to issue Entries on its behalf. For the purposes of this ACH Agreement, the term "User" shall also include the Administrator. The Bank shall be entitled to rely on the designations made by the Customer's Administrator(s) and shall not be responsible for matching the names of the company Users designated by the Administrator(s) to names or titles listed in Customer's banking resolutions. Customer agrees that any Entries shall comply with Bank's Security Procedures (defined below in Section V), which are subject to change without notice to Customer. Although Bank is only required to act upon the instructions of the User(s), the Bank may, in its sole discretion, execute debit or credit Entries initiated by any individuals authorized by Customer to sign checks on Customer accounts. The signature cards and Account Terms or other depository agreement(s) establishing the authorized signatories for Customer deposit accounts are hereby incorporated by reference and made a part hereof.

**III. TRANSMISSION OF ENTRIES BY CUSTOMER.** User(s) shall initiate the debit or credit Entries in **Schedule A** hereunder on behalf of and selected by Customer. Bank shall be entitled to deem any person having knowledge of any Security Procedure, defined below in Section VII. of this Agreement and required to initiate Entries under this Agreement, to be a User. User(s) shall transmit Entries to Bank in computer readable form in compliance with the formatting and other requirements set forth in the NACHA file specifications or as otherwise specified by Bank. Entries shall be transmitted to Bank no later than the time and the number of days prior to the Effective Entry Date specified in the Processing Schedule, the current version of which is attached hereto and made a part hereof as **Schedule B**. Bank may change such Processing Schedule or any part thereof immediately without notice to Customer or as may be required by Law or the Rules. Notwithstanding the definition of "Business Day" in the Master Agreement, for the purposes of this ACH Agreement, "Business Day" means Monday through Friday, excluding federal holidays, and the "Settlement Date" with respect to any Entry shall be the Business Day when such Entry is debited or credited in accordance with the Rules. At Customer's request, Bank will provide Customer with information regarding federal holidays. Entries received after the cut off time shall be deemed to have been received on the next Business Day. The total dollar amount of Entries transmitted by Customer to Bank on any one Business Day shall not exceed the lesser of the amount of collected funds in Customer's account or the ACH Processing Limit set forth in **Schedule D** to this Agreement or as Bank may otherwise direct. Bank may change any such ACH Processing Limit immediately and designate that such change will remain permanently or for a specified period of time. Customer may not reinitiate entries except as prescribed by the Rules.

A. "In-Process Entries" means the aggregate dollar amount of all credit or debit Entries initiated by Customer and in process on any date for which settlement has not occurred with respect to credit Entries. An Entry will be considered to be "in process" from the time it is scheduled and approved through the end of the effective date of the Entry.

B. "Overlimit Entry" means an Entry the amount of which would violate any Processing Limit set by the Bank.

Customer agrees that Bank will not process an Overlimit Entry. Bank will suspend any Overlimit Entry submitted by Customer and may, following its receipt of an Overlimit Entry; suspend all In-Process Entries. Customer acknowledges and agrees that any Overlimit Entry or other In-Process Entries suspended by Bank will not settle on their scheduled Settlement Date. If Customer wishes to initiate an Entry that would cause the amount of In-Process Entries to violate any Processing Limit set by the Bank, Customer may submit to Bank its request to initiate an Entry that otherwise would be an Overlimit Entry. Customer must submit its request at least 2 banking days prior to the

date on which Customer wishes to initiate the Entry that otherwise would be an Overlimit Entry. Bank may require from Customer financial or other information in connection with Bank's consideration of the request. Bank may grant or deny Customer's request at its sole discretion.

In addition to the foregoing, Bank 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 Bank'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 Customer's Accounts. If any of the foregoing actions are taken by Bank with respect to a particular preauthorized debit/credit Entry, Bank will notify Customer as promptly as practicable, but in no event later than 2 Business Days after its decision. Customer may not reinitiate entries except as prescribed by the Rules.

**IV. THIRD PARTY SERVICE PROVIDERS.** Customer may be using special equipment, services or software provided by a third party to assist it in processing Files hereunder ("Service Provider"). If Bank requests, Customer agrees not to use a Service Provider to transmit files to Bank without first entering into Bank's Third Party Service Provider Agreement. If Customer uses Service Provider to transmit Files to Bank and Customer and Service Provider have not entered into such a Third Party Service Provider Agreement, or if any such agreement does not so provide, Customer (a) agrees that Service Provider is acting as Customer's agent in the delivery of Files to Bank, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with the laws of the United States, the Rules and this Agreement. Bank will not be liable for any losses or additional costs incurred by Customer as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Customer is solely responsible for maintaining compliance with the requirements of Service Provider, including obtaining any software updates. Bank's sole responsibility shall be to transmit Bank approved Transactions to the ACH Operator, and Bank shall not have any responsibility for any File handled by Service Provider until that point in time when Bank accepts and approves a File from such Service Provider for processing. If Bank requires, the terms and conditions governing the relationship between Customer and the Service Provider shall be governed by a separate agreement between Customer and Service Provider ("Service Provider Agreement"). All of Customer's obligations and responsibilities under this Agreement will apply to the Service Provider, whether or not a written Service Provider Agreement exists, and any separate agreement of Customer's with the Service Provider must so provide. But if no such Service Provider Agreement exists, Customer will be responsible for ensuring that Service Provider performs all of Customer's obligations and responsibilities under this Agreement. At Bank's request, Customer will provide to Bank a true and exact copy of such agreement. Customer shall designate the Service Provider as a User and, if Bank requires, the Service Provider must also enter into a Service Provider Agreement before the Service Provider sends Files to Bank. Notwithstanding the foregoing, Customer hereby authorizes Bank to accept any File submitted by the Service Provider even if the Service Provider has not been designated as a User or if the Third Party Service Provider has not executed the Service Provider Agreement. **IN ADDITION TO ITS OTHER INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, BUT ONLY TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, CUSTOMER HEREBY INDEMNIFIES AND HOLDS BANK HARMLESS FOR ANY LOSSES, DAMAGES, FINES, ASSESSMENTS, COSTS AND EXPENSES INCURRED OR SUFFERED BY BANK OR ANY**

OTHER PERSON AS A RESULT OF OR ARISING FROM CUSTOMER'S USE OF SERVICE PROVIDER, INCLUDING FINES OR ASSESSMENTS INCURRED UNDER OR PURSUANT TO THE RULES AND ATTORNEYS' FEES.

## V. SECURITY PROCEDURES.

A. The Customer shall comply with the "Security Procedures" described in Schedule C attached hereto and made a part hereof, all of which are required by Prosperity. Customer acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification number, access identification code, user identification technology, token, certificate, or other element, means, or method of authentication or identification used in connection with a Security Procedure ("Security Devices") constitute commercially reasonable security procedures under applicable law for the initiation of ACH entries. Customer authorizes Bank to follow any and all instructions entered and Transactions initiated using the Security Procedures unless and until Customer has notified Bank, according to notification procedures prescribed by Bank, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) and until Bank has had a reasonable opportunity to act upon such notice. Customer agrees that the initiation of a Transaction using the Security Procedures constitutes sufficient authorization for Bank to execute such Transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Customer's deposit account maintained with Bank, and Customer agrees and intends that the submission of Transaction orders and instructions using the Security Procedures shall be considered the same as Customer's written signature in authorizing Bank to execute such Transaction. Customer acknowledges and agrees that Customer shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all Transactions and activity otherwise initiated by User(s), to the fullest extent allowed by law. Customer further acknowledges and agrees that the Security Procedures are not designed to detect error in the transmission or content of communications on Entries initiated by Customer and that Customer bears the sole responsibility for detecting and preventing such error.

B. Customer agrees to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to User(s). Customer agrees to instruct each User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. Bank shall distribute any Security Devices to the Administrator and Bank shall otherwise communicate with the Administrator regarding Security Procedures. Customer's Administrator shall have responsibility to distribute Security Devices to User(s) and to ensure the proper implementation and use of the Security Procedures by User(s). Where Customer has the ability to change or modify a Security Device from time to time (e.g., a password or access ID), Customer agrees to change Security Devices frequently in order to ensure the security of the Security Device. Customer agrees to notify Bank immediately, according to notification procedures prescribed by Bank, if Customer believes that any Security Procedures or Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) or if Customer believes that any ACH Transaction or activity is unauthorized or in error. In the event of any actual or threatened breach of security, Bank may issue Customer a new Security Device or establish new Security Procedures as soon as reasonably practicable, but Bank shall not be liable to Customer or any third party for any delay in taking such actions.

C. Customer agrees to notify Bank immediately, according to notification procedures prescribed by Bank, if the authority of any Administrator(s) shall change or be revoked. Customer

shall recover and return to Bank any Security Devices in the possession of any User(s) whose authority to have the Security Device has been revoked.

D. Bank reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in Bank's discretion. Bank will endeavor to give Customer reasonable notice of any change in Security Procedures; provided that Bank may make any change in Security Procedures without advance notice to Customer if Bank, in its sole judgment and discretion, believes such change to be necessary or desirable to protect the security of Bank's systems and assets. Customer's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Customer's agreement to the change and Customer's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

## VI. PHYSICAL AND ELECTRONIC SECURITY.

A. Customer is solely responsible for providing, for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Customer's possession or under Customer's control. Without limiting the generality of the foregoing, Customer specifically acknowledges and agrees that as part of the foregoing obligation Customer shall comply with the provisions of Section 1.6 of the Rules, entitled "Security Requirements," for the safeguarding of Protected Information, as that term is defined in the Rules. Bank is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at Customer's own discretion and risk, and Bank is not responsible for any damage to Customer's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise. Customer is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Customer's operating systems, and for protecting, securing, and backing up any data and information stored in or on Customer's operating systems. Bank is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Customer's operating systems or accessed through an Internet connection.

B. Customer acknowledges and agrees that it is Customer's responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). Customer agrees to educate User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. Customer acknowledges that Bank will never contact Customer by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event Customer receives an e-mail or other electronic communication that Customer believes, or has reason to believe, is fraudulent, Customer agrees that neither Customer nor its User(s), agents, or employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. Customer agrees that Bank is not responsible for any losses, injuries, or harm incurred by Customer as a result of any electronic, e-mail, or Internet fraud.

C. In the event of a breach of the Security Procedure, Customer agrees to assist Bank in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing Bank or Bank's agent access to Customer's hard drive, storage media and devices,

systems and any other equipment or device that was used in breach of the Security Procedure. Customer further agrees to provide to Bank any analysis of such equipment, device, or software or any report of such analysis performed by Customer, Customer's agents, law enforcement agencies, or any other third party. Failure of Customer to assist Bank shall be an admission by Customer that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of Customer or who obtained information facilitating the breach of the Security Procedure from Customer and not from a source controlled by Bank.

**VII. INTERNATIONAL ACH TRANSACTIONS ("IAT").** This service not offered at this time. Therefore, any IAT will be considered to be a restricted Entry.

**VIII. CREDIT AND DEBIT ENTRIES; RECORDS RETENTION:** Customer shall obtain an authorization ("Authorization Agreement") as required by the Rules from the person or entity whose account will be debited or credited as the result of a debit or credit Entry initiated by Customer, and Customer shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Upon request, Customer shall furnish the original or a copy of the authorization to any affected Participating Depository Bank, as defined in the Rules.

The following table shows the proper SEC Codes to use depending on how you obtained the authorization to debit/credit an individual or company's account:

<i>SEC Code</i>	<i>Debit / Credit</i>	<i>Authorization Method</i>
PPD	Debit or Credit	Document signed by individual or similarly authenticated
CCD, CTX	Debit or Credit	Document signed or similarly authenticated by Customer*
POP	Debit Only	Check converted to electronic Transaction at the Point-of-Purchase. Signature is required on authorization form
BOC	Debit Only	In-person presented check converted to electronic Transaction during back office processing. Notice provided at point of check being tendered and purchaser takes it.
ARC	Debit Only	Check received via mail/courier and converted to electronic Transaction. Notice on statement for each Transaction
RCK	Debit Only	Notice equals authorization

\* All Transactions from a business account must be CCD or CTX. Please see the CCD and CTX definition in Schedule A or refer to the NACHA Rules for a detailed explanation.

**IX. PROCESSING, TRANSMITTAL, AND SETTLEMENT BY BANK.** Except as otherwise provided for in this Agreement and if Bank elects to accept Entries, Bank shall:

A. 1. Use commercially reasonable efforts to comply with the instructions of Customer,  
2. Process Entries received from Customer to conform with the file specifications set forth in the Rules,  
3. Transmit such Entries as an ODFI to the "ACH" processor selected by Bank,  
4. Settle for such Entries as provided in the Rules, and  
5. In the case of a credit Entry received for credit to an account with Bank ("On-Us Entry"), Bank shall credit the Receiver's account in the amount of such credit Entry on the Effective Entry Date contained in such credit Entry provided such credit Entry is received by Bank at the time and in the form prescribed by Bank in Section V.

B. Transmit such Entries to the ACH processor by the deposit deadline of the ACH processor, provided:

1. Such Entries are completely received by Bank's cut-off time at the location specified by Bank to Customer from time to time;  
2. The Effective Entry Date satisfies the criteria provided by Bank to Customer;  
and  
3. The ACH processor is open for business on such Business Day.

Customer agrees that the ACH processor selected by Bank shall be considered to have been selected by and designated by Customer. The Customer will receive immediately available funds for any electronic debit entry initiated by it on the Settlement Date applicable thereto in accordance with the Rules.

**X. PAYMENT FOR CREDIT ENTRIES AND RETURNED DEBIT ENTRIES.**

Customer agrees to pay for all credit Entries issued by Customer, User(s), or credit Entries otherwise made effective against Customer. Customer shall make payment to Bank on the date as determined by Bank in its sole discretion ("Payment Date"). Customer shall pay Bank for the amount of each debit Entry returned by a Receiving Depository Bank ("RDFI") or debit Entry dishonored by Bank. Payment shall be made by Customer to Bank in any manner specified by Bank. Notwithstanding the foregoing, Bank is hereby authorized to charge the account(s) ("Authorized Account(s)") initially designated in Schedule E and which Customer may change from time to time in accordance with Bank's procedures, as payment for all payments due Bank under this Agreement. Customer shall maintain sufficient collected funds in the Authorized Account(s) to pay for all payments due Bank under this Agreement on the Payment Date. In the event the Authorized Account or any other Customer bank account does not have collected funds sufficient on the Payment Date to cover the total amount of all Entries to be paid on such Payment Date, Bank may take any of the following actions:

A. Refuse to process all Entries, in which event Bank shall return the data relating to such credit Entries to Customer, whereupon Bank shall have no liability to Customer or to any third party as a result thereof; or

B. Process that portion of the credit Entries as Customer has sufficient available funds in the Authorized Account to cover, in whatever order Bank in its sole discretion shall elect to process,

in which event Bank shall return the data relating to such credit Entries as are not processed to Customer, whereupon Bank shall have no liability to Customer or any third party as a result thereof; or

C. Process all credit Entries. In the event Bank elects to process credit Entries initiated by Customer and Customer has not maintained sufficient available funds in the Authorized Account with Bank to cover them, the total amount of the insufficiency advanced by Bank on behalf of Customer, if any, which Bank will determine in its sole discretion, unless prohibited by applicable law, shall be immediately due and payable by Customer to Bank without any further demand from Bank. If Bank elects to pay Customer's account in the overdraft on any one or more occasions, it shall not be considered a waiver of Bank's rights to refuse to do so at any other time nor shall it be an agreement by Bank to pay other items in the overdraft.

**XI. PRE-FUNDING.** Bank reserves the right to require Customer to pre-fund an Account maintained at Bank prior to the Settlement Date of the ACH file. Bank shall determine whether pre-funding is required based on criteria established from time to time by Bank. Bank will communicate directly to Customer if pre-funding is required and, if requested by Customer, will provide Customer with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, Customer will provide immediately available and collected funds sufficient to pay all Entries initiated by Customer (a) not later than 8:00 a.m. local time ~~Two (2) Business Days~~ before each Settlement Date, and (b) prior to initiating any Entries for which pre-funding is required.

**XII. ON-US ENTRIES.** Except as provided in Section XIV, "Rejection of Entries," in the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), the Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section IX.B.1, 2, and 3 are met. If any of those requirements are not met, the Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

**XIII. RESERVES.** From time to time, Bank may evaluate Customer's Transaction activity for the purpose of establishing averages for Transaction frequency, amount, returns and adjustments. These evaluations may occur at least annually and may occur more frequently at Bank's discretion. In connection with these evaluations, Bank reserves the right to require Customer to satisfy underwriting criteria, which may without limitation require Customer to pledge Collateral or provide a personal guarantee of a principal or owner, or to require reserves with Bank calculated by Bank to cover Customer's obligations to Bank arising from ACH activities under this ACH Agreement. Reserves may be expressed as a fixed dollar amount or as a "rolling reserve" calculated based on "rolling" averages determined by Bank's periodic evaluations. The amount of reserves required by Bank, if any, will be communicated directly to Customer from time to time. Customer agrees to establish reserves as required by Bank within a specified number of Business Days after receipt of a communication from Bank setting forth such number of days, the amount of required reserves, and the basis of calculation used to determine the amount of reserves. Bank may suspend ACH processing activity for Customer if Customer fails to establish the required amount of reserves within the time period specified by Bank in its communication to Customer.

**XIV. REJECTION OF ENTRIES.** Customer agrees that Bank has no obligation to accept Entries and therefore may reject any Entry issued by Customer. Bank has no obligation to notify Customer of the rejection of an Entry but Bank may do so at its option. Bank shall have no liability

to Customer for rejection of an Entry and shall not be liable to pay interest to Customer even if the amount of Customer's payment order is fully covered by a withdrawable credit balance in an Authorized Account of Customer or the Bank has otherwise received full payment from Customer.

**XV. CANCELLATION OR AMENDMENT BY CUSTOMER.** Customer shall have no right to cancel or amend any Entry after its receipt by Bank. However, Bank may, at its option, accept a cancellation or amendment by Customer. If Bank accepts a cancellation or amendment of an Entry, Customer must comply with the Security Procedures as provided in Section V. of this Agreement. Bank shall have no liability if the cancellation or amendment is not effected. If Bank accepts a cancellation or amendment of an Entry, in addition to Customer's other indemnification obligations herein, CUSTOMER HEREBY AGREES, BUT ONLY TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, TO INDEMNIFY, AND DEFEND ALL CLAIMS AND HOLD BANK HARMLESS FROM ANY LOSS, DAMAGES, OR EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, INCURRED BY BANK AS THE RESULT OF ITS ACCEPTANCE OF THE CANCELLATION OR AMENDMENT.

**XVI. REVERSALS OF ENTRIES.**

A. General Procedure. Upon proper and timely request by the Customer, the Bank will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; (ii) be made immediately, not to exceed ten (10) hours, upon discovery of the error; and (iii) as applicable, be accompanied by a Reversal/Cancellation Request form or the information required to be input electronically as directed by Bank, and comply with all of the Rules. In addition, if the Customer requests reversal of a Debit Entry or Debit File, its Authorized Account must contain collected and available funds in a sufficient amount to cover the reversal requested, and if not, it shall concurrently deposit into the Authorized Account an amount equal to that Entry or File. The Customer shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry.

B. No Liability: Reimbursement to the Bank. Under no circumstances shall the Bank be liable for interest or related losses if the requested reversal of an Entry is not effected. The Customer shall reimburse the Bank for any expenses, losses or damages it incurs in effecting or attempting to effect the Customer's request for reversal of an Entry.

**XVII. ERROR DETECTION.** Bank has no obligation to discover and shall not be liable to Customer for errors made by Customer, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Bank shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Customer. Notwithstanding the foregoing, if the Customer discovers that any Entry it has initiated was in error, it shall notify the Bank of such error. If such notice is received no later than four (4) hours prior to the ACH receiving deadline, the Bank will utilize reasonable efforts to initiate an adjusting Entry or stop payment of any On-Us credit Entry within the time limits provided by the Rules. In the event that Customer makes an error or issues a duplicate Entry, in addition to all other indemnification obligations of Customer herein, TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, CUSTOMER SHALL INDEMNIFY, DEFEND ALL CLAIMS, AND HOLD BANK HARMLESS FROM ANY



LOSS, DAMAGES, OR EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, INCURRED BY BANK AS RESULT OF THE ERROR OR ISSUANCE OF DUPLICATE ENTRIES.

**XVIII. PROHIBITED TRANSACTIONS.** Customer agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Customer is bound, (c) to engage in any internet or online gambling Transaction, whether or not gambling is legal in any applicable jurisdiction, or (d) to engage in any Transaction or activity that is not specifically authorized and permitted by this Agreement. Customer acknowledges and agrees that Bank has no obligation to monitor Customer's use of the Services for Transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that Bank reserves the right to decline to execute any Transaction or activity that Bank believes violates the terms of this Agreement.

**XIX. PRENOTIFICATION.** Customer, at its option, may send a prenotification that it intends to initiate an Entry or Entries to a particular account within the time limits prescribed for such notice in the Rules. Such notice shall be provided to the Bank in the format and on the medium provided in the media format section of such Rules. If Customer receives notice that such prenotification has been rejected by an RDFI within the prescribed period, or that an RDFI will not receive Entries without having first received a copy of the Authorization signed by its customer, Customer will not initiate any corresponding Entries to such accounts until the cause for rejection has been corrected or until providing the RDFI with such authorization within the time limits provided by the Rules.

**XX. NOTICE OF RETURNED ENTRIES AND NOTIFICATIONS OF CHANGE.** Bank shall notify Customer by e-mail, facsimile transmission, US mail, or other means of the receipt of a returned Entry from the ACH Operator. Except for an Entry retransmitted by Customer in accordance with the requirements of Section III., "Transmission of Entries by Customer," above, Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry. Customer shall notify the Receiver by phone or electronic transmission of receipt of each return Entry no later than one Business Day after the Business Day of receiving such notification from Bank. Bank shall provide Customer all information, as required by the Rules, with respect to each Notification of Change ("NOC") Entry or Corrected Notification of Change ("Corrected NOC") Entry received by Bank relating to Entries transmitted by Customer. Bank must provide such information to Customer within two (2) Business Days of the Settlement Date of each NOC or Corrected NOC Entry. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within three (3) Business Days of Customer's receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

**XXI. PROVISIONAL SETTLEMENT.** Customer shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and Customer acknowledges that it has received notice of that Rule and or the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited, and Customer shall not be deemed to have paid the Receiver the amount of the Entry.

**XXII. CUSTOMER REPRESENTATIONS AND WARRANTIES; INDEMNITY.** With respect to each and every Entry transmitted by Customer, Customer represents and warrants to Bank and agrees that:

A. Each person or entity shown as the Receiver on an Entry received by Bank from Customer has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry,

B. Such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein,

C. Entries transmitted to Bank by Customer are limited to those types of credit and debit Entries set forth in **Schedule A**,

D. Customer shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered FinCEN and any state laws, regulations, or orders applicable to the providers of ACH payment services,

E. Customer shall be bound by and comply with the provisions of the Rules (among other provisions of the Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and

F. Customer shall ensure that any and all non-public personal information provided by Customer to Bank shall be secure and will not be disclosed to any unauthorized person.

Customer specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Customer shall not be deemed to have paid the Receiver the amount of the Entry.

In addition to its other obligations of indemnification herein, BUT ONLY TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, THE CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BANK, AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL ACTIONS, COSTS, CLAIMS, LOSSES, DAMAGES, OR EXPENSES, INCLUDING ATTORNEY'S FEES AND EXPENSES, RESULTING FROM OR ARISING OUT OF (A) ANY BREACH OF ANY OF THE AGREEMENTS, REPRESENTATIONS OR WARRANTIES OF THE CUSTOMER CONTAINED IN THIS AGREEMENT; OR (B) ANY ACT OR OMISSION OF THE CUSTOMER OR ANY OTHER PERSON ACTING ON THE CUSTOMER'S BEHALF.

**XXIII. ADDITIONAL CUSTOMER WARRANTIES FOR SELECTED STANDARD ENTRY CLASSES.** NACHA, in its role of ensuring the safety, security, and viability of the ACH network, has determined that certain single-use or limited-use consumer authorizations have the potential to increase risk in the ACH system and compromise system effectiveness by increasing the incidence of returned Entries. Therefore, to qualify as an Originator of such Entries, Customer hereby warrants to Bank that for each such ACH Entry submitted for processing, Customer has obtained all authorizations from the Receiver as required by the Rules, by Regulation E or other applicable law, and this Agreement. Customer also makes the additional warranties to Bank that Bank makes to each RDFI and ACH Operator under the Rules for the respective SEC codes for Entries originated by Customer. Customer hereby indemnifies and holds Bank harmless from any liability arising out of Customer's breach of these warranties.

**XXIV. INCONSISTENCY OF NAME AND ACCOUNT NUMBER.** The Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by the Bank to the RDFI may be made by the RDFI (or by the Bank in the case of an On-Us Entry) on the basis of the account number supplied by the Customer, even if it identifies a person different from the named Receiver, and that the Customer's obligation to pay the amount of the Entry to the Bank is not excused in such circumstances. Customer is liable for and must settle with Bank for any Entry initiated by Customer that identifies the Receiver by account or identifying number or by name and account or identifying number.

**XXV. PAYMENT FOR SERVICES.** The Customer shall pay the Bank the charges for the services provided in connection with this Agreement, as initially set forth in Schedule F. All fees and services are subject to change upon thirty (30) days prior written notice from the Bank or as may be required by applicable law as amended. Such charges do not include, and the Customer shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Account Terms between the Bank and the Customer with respect to the Account.

**XXVI. AMENDMENTS.** Except as provided in Section XXV, the Bank may amend this agreement from time to time upon written notice to the Customer. In the event that performance of Services under this Agreement would result in a violation of any present or future statute, regulation or governmental policy to which the Bank is subject, then this Agreement shall be amended to the extent necessary to comply with such statute, regulation or policy. Alternatively, the Bank may terminate this Agreement if it deems such action necessary or appropriate under the circumstances. The Bank shall have no liability to the Customer as a result of any such violation, amendment or termination. Any practices or course of dealings between the Bank and the Customer, or any procedures or operational alterations used by them, shall not constitute a modification of this Agreement or the Rules, nor shall they be construed as an amendment to this Agreement or the Rules.

**XXVII. DATA RETENTION.** The Customer shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by the Bank as provided herein, and shall provide such Data to the Bank upon its request.

**XXVIII. DATA MEDIA AND RECORDS.** All data media, Entries, security procedures and related records used by the Bank for Transactions contemplated by this Agreement shall be and remain the Bank's property. The Bank may, at its sole discretion, make available such information upon the Customer's request. Any expenses incurred by the Bank in making such information available to the Customer shall be paid by the Customer.

**XXIX. COOPERATION IN LOSS RECOVERY EFFORTS.** In the event of any damages for which Bank or Customer may be liable to each other or to a third party pursuant to the Services provided under this Agreement, Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant Party may be obligated to defend or elects to pursue against a third party.

**XXX. ENTIRE AGREEMENT.** This ACH Agreement includes the Schedules attached hereto and made a part hereof (the "Schedule(s)"): Schedule A, "Customer Selected Standard Entry Class Code," Schedule B, "Processing Schedule," Schedule C, "Commercially Reasonable Security

Procedures,” Schedule D, “ACH Processing Limits,” Schedule E, “ACH Originating Customer Information,” Schedule F, “Service Fees.” This Agreement (including the Schedules attached and the Master Agreement) together with the Account Terms, is the complete and exclusive statement of the agreement between the Bank and the Customer with respect to the subject matter hereof and supersedes any prior agreement(s) between the Bank with respect to such subject matter. In the event of any inconsistency between the terms of this ACH Agreement and the Account Terms, the terms of this ACH Agreement shall govern. In the event performance of the Services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the Bank is subject, and which governs or affects the Transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and the Bank shall incur no liability to the Customer as a result of such violation or amendment. No course of dealing between the Bank and the Customer will constitute a modification of this Agreement, the Rules, or the Security Procedures, or constitute an agreement between the Bank and the Customer regardless of whatever practices and procedures the Bank and the Customer may use.

**XXXI. WAIVER.** The Bank may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the Bank’s rights with respect to any other Transaction or modify the terms of this Agreement.

**XXXII. BINDING AGREEMENT; BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Bank or the Customer hereunder.

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

**XXXIV. SEVERABILITY.** In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**XXXVI. RECITALS.** The Parties agree that the recitals on page one of this ACH Agreement in the introductory paragraphs are an integral part of their agreement and constitute contractual provisions binding them both.

**XXXVI. GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas, without reference to its conflict of laws provisions, and applicable federal law.

**XXXVII. NOTICE OF FINAL AGREEMENT**

THIS WRITTEN AGREEMENT, PLUS THE OTHER AGREEMENTS REFERENCED HEREIN, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**XXXVIII. FACSIMILE AND ELECTRONIC ACCEPTANCE**

The individual signing below represents that he/she is duly authorized to do so by and on behalf of Customer ("Authorized Signer(s)"). A facsimile or electronic copy of this Agreement signed by an Authorized Signer shall constitute a valid and binding original for purposes of this Agreement.

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

**Bank**

**Prosperity Bank**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Customer**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Schedule A

CUSTOMER SELECTED  
STANDARD ENTRY CLASS CODE

As used in the Agreement, the following\* are ACH Standard Entry Class Codes (SEC) approved for use by Customer (check all that apply), subject to any specific restrictions on the types of ACH Transactions that may be originated, which are identified by Bank below:

- ARC - Accounts Receivable Entry** - An ACH debit created from a check received in the U.S. Mail or a drop box location and converted to an ACH debit. (Refer to NACHA Rules regarding items eligible for check conversion).
- BOC - Back Office Conversion** - During back office processing, an ACH debit is created from a check received at the point of check being tendered or received at a "manned" bill payment location for in-person payments. (Refer to NACHA Rules regarding items eligible for check conversion).
- CCD - Corporate Credit or Debit** - Either a credit or debit where funds are either distributed or consolidated between corporate entities. May have one addenda record attached (CCD+)
- CTX - Corporate Trade Exchange** - The transfer of funds (debit or credit) within a trading partner relationship in which payments related information is placed in multiple addenda records. (up to 9,999 addenda records).
- POP - Point-of-Purchase** - ACH debit application used by Originators as a method of payment for the in-person purchase of goods or services by receivers (check conversion). (Refer to NACHA Rules regarding items eligible for check conversion).
- PPD - Prearranged Payment and Deposit**
  - Direct Deposit** - The transfer of funds into a consumer's account. Funds being deposited can represent a variety of products, such as payroll, interest, pension, dividends, etc.
  - Direct Payment** - Preauthorized payment is a debit application. This includes recurring bills that do not vary in amount - insurance premiums, mortgage payments, charitable contributions, and installment loan payments or standing authorizations where the amount does vary, such as utility payments.
- RCK - Re-presented Check** - An ACH debit application used by originators to re-present a consumer check that has been processed through the check collection system and returned because of insufficient or uncollected funds. (Refer to NACHA Rules regarding items eligible for check conversion).
- EFTPS - Tax Payments**
- NACHA Import Batch**

\*The above SEC Codes are the most commonly-used and not an all-inclusive list.

Bank has identified the following ACH Transaction restrictions:

**IAT - International ACH Transaction** - A debit or credit Entry 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. (Refer to NACHA Rules for further definitional details)

## Schedule B

### Processing Schedule

#### Delivery of ACH Files:

- Internet transmissions

The Customer may electronically transmit files to the Bank via Internet Banking System.

- Format and content of entries

All files not submitted electronically via Bank's Internet Banking System must be submitted in NACHA format. The Customer should refer to Appendix Two in the NACHA Rulebook for specific formatting details.

- Timing of delivery

Processing Deadline for:

**Credit Entries**

Transmission of a File – until 5:30 p.m. Central Time (Standard or Daylight) two (2) business days prior to Effective Entry Date<sup>1</sup>

**Debit Entries**

Transmission of a File – until 5:30 p.m. Central Time (Standard or Daylight) no less than one (1) business day prior to Effective Entry Date<sup>1</sup>

- Same Day ACH Credit Entries Only<sup>2</sup>

Transmission of a File - until 8:00 a.m. Central Time (Standard or Daylight) on or after the Effective Entry Date.

Transmission of a File - until 12:00 p.m. Central Time (Standard or Daylight) on or after the Effective Entry Date.

<sup>1</sup>"Effective Entry Date" must be a Business Day or the file will be processed on the first business day following the effective date.

<sup>2</sup>Credit or Debit Entries with an Effective Entry Date of the date of or a date prior to the date of the transmission of the File shall be considered to be a Same Day ACH Entry and shall be subject to the Same Day ACH fee. IAT and Entries above \$25,000 are not eligible for Same Day ACH processing.

**Schedule C**  
**Commercially Reasonable Security Procedures**

Customer is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized Transactions. Customer warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices, and related instructions provided by Financial Institution. If Customer believes or suspects that any such information has been accessed by an unauthorized individual, Customer will verbally notify Bank immediately, followed by written confirmation. The occurrence of such notification will not affect any transfers made in good faith by Bank prior to the notification and within a reasonable time period to prevent unauthorized transfers.

**Data Security:**

Limiting access and securely storing ACH data used in the routing and settlement of ACH Transactions is a critical data security precaution. Customer's ability to limit access to production data can be done through commercially available software products. Access can be limited to specific programs, access IDs, or read-only or read-and-edit-only access functionality. Files can also be transmitted between ACH participants using the following data protection methods: encryption and authentication.

The following 3 commercially reasonable security procedures are required by Prosperity Bank ("Security Procedures"):

1. **Access IDs and Passwords—CANNOT BE WAIVED.** Customer will require each Authorized Representative to maintain an Access ID and a Password, which must be used each time the Authorized Representative accesses the ACH Origination Services through Internet Banking.
2. **Trusteer Rapport—CANNOT BE WAIVED.** As stated in Section II.B. of the body of this Agreement, Customer must download and use Trusteer Rapport software as provided by Bank. Trusteer Rapport is security software that works in conjunction with existing firewall and antivirus solutions to provide added protection to each Internet Banking session. The objective of Trusteer Rapport is to enhance security by creating a tunnel between Users and Prosperity to reduce the risk of financial information being captured by cyber criminals.
3. **Security Tokens—CANNOT BE WAIVED.** Customer must use any and all Security Tokens provided by Bank.



**Schedule D**

**ACH Processing Limits**

***Total Aggregate Exposure Limits***

Total Aggregate ACH Debit Limit \$ \_\_\_\_\_  
(The maximum amount of ACH files that can be originated over a processing period.)

Total Aggregate ACH Credit Limit \$ \_\_\_\_\_  
(The maximum amount of ACH files that can be originated over a processing period.)

***Total Same Day Limits***

Total Same Day ACH Credit Limit \$ \_\_\_\_\_  
(The maximum amount of ACH files that can be originated over a processing period.)

**Schedule E**

**ACH  
Originating Customer Information**

Customer: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Tax ID #: \_\_\_\_\_

Customer Phone Number: \_\_\_\_\_

Customer Fax Number: \_\_\_\_\_

Primary Contact: \_\_\_\_\_

Secondary Contact: \_\_\_\_\_

Authorized Account: \_\_\_\_\_

Authorized Account: \_\_\_\_\_

Authorized Account: \_\_\_\_\_

Authorized Account: \_\_\_\_\_

**Schedule F  
SERVICE FEES**

Fee Schedule: Customer authorizes Bank to debit any of the following fees from Customer's Account from time to time as appropriate:

Same Day ACH\*                    \$20.00 per Batch  
  \$ .25 per Same Day ACH item

\* Same Day ACH pricing is effective only for those customers that have elected Same Day ACH.

Initial ACH Setup Fee            \$ \_\_\_\_\_

ACH Service Fee                 \$ \_\_\_\_\_ per month

Batch Fee                         \$ \_\_\_\_\_ per batch

Transaction Item                 \$ \_\_\_\_\_ per item (Excluding Same Day ACH item)

ACH Returns                     \$ \_\_\_\_\_ per item

NOC                                 \$ \_\_\_\_\_ per item

Deletions or Reversals         \$ \_\_\_\_\_ per occurrence or per file or per item

Special Handling Fee             \$ \_\_\_\_\_/hr. minimum 1 hour

Other: \*\*\* PRICING SET ON APPROVED BID \*\*\*



# **PROSPERITY BANK**<sup>®</sup>

## **Treasury Management Services**

### **WIRE TRANSFER SERVICES AGREEMENT**

BY EXECUTING THIS WIRE TRANSFER AGREEMENT OR ACCESSING THE SERVICES AS DESCRIBED HEREIN, CUSTOMER AGREES THAT IT WILL USE ANY AND ALL WIRE TRANSFER SERVICES FOR BUSINESS PURPOSES ONLY AND THAT ANY DEPOSITORY ACCOUNTS OF CUSTOMER WITH PROSPERITY BANK UTILIZED IN CONNECTION WITH THE WIRE TRANSFER SERVICES ARE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR ANY PERSONAL, FAMILY, OR HOUSEHOLD PURPOSE.

This Wire Transfer Services Agreement (the "**Wire Transfer Agreement**") is made between Prosperity Bank ("**Prosperity**," "**Bank**," "**we**," "**us**," or "**our**") and ("**Customer**" or "**you**"), each a "**Party**." It supplements and modifies and is made a part of that Treasury Management Services Master Agreement (the "**Master Agreement**") between the Parties, which, along with all other agreements between Customer and Bank incorporated into the Master Agreement, is incorporated herein by reference for all purposes (for purposes of this Wire Transfer Services Agreement, the Master Agreement and this Wire Transfer Services Agreement together are referred to as the "**Agreement**"). Unless otherwise noted, capitalized terms herein will have the same meaning as in the Master Agreement.

This Wire Transfer Agreement authorizes and requests Prosperity to make electronic transfers of funds as described herein through its wire transfer facilities when Customer requests a wire transfer through Bank's Internet Banking Services ("**Wire Transfers**" or "**Wires**" or "**Transfers**") and sets forth the terms and conditions pursuant to which Bank will provide Customer the Wire Transfer services outlined herein ("**Services**" or "**Wire Transfer Services**"). Such Wire Transfers shall include, but are not limited to, transfers of funds either from Customer's Account(s) at Prosperity to other institutions or transfers to Customer's Account(s) at Prosperity from other institutions. Customer must have a deposit Account at Prosperity to be able to utilize the Wire Transfer Services, and Customer must execute the Internet Banking Services Agreement, which is hereby incorporated by reference and made a part hereof.

#### **I. Prosperity's Fulfillment of Your Wire Transfer Requests (Wire Transfer Requests)**

A. **Authorized Representatives.** Requests to wire transfer funds ("**Wire Transfer Request(s)**" or "**Request(s)**") may be made by one or more of the individuals Customer has listed as System Administrators (and not excepted from performing Wire Transfers) on Exhibit B to the

Master Agreement, or a Subsequent Designation of System Administrators Form, or as otherwise directed by Bank, and/or by any Authorized Representatives as described in the Master Agreement. Customer understands and agrees that any such individual has the authority to conduct the transactions described in this Wire Transfer Agreement (“Transaction(s)”) and that Prosperity shall be entitled to rely on any Request that it reasonably believes to have been originated by any such individual, and any such Request shall for purposes of this Wire Transfer Agreement be deemed to have been authorized by Customer. Customer must execute a Subsequent Designation of System Administrators Form or notify Bank as otherwise directed by Bank to eliminate any System Administrator name from or add any System Administrator name to Exhibit B, and any such elimination or addition will not be effective until actual written notice of such change is received by Prosperity’s Wire Transfer Department and Prosperity has had a reasonable opportunity to act upon it.

B. The Wire Transfer Process. Prosperity may make the requested Wire Transfers by any reasonable means for the transmission of funds, including without limitation the Federal Reserve’s Federal Reserve Wire Network (“FedWire”) system or by utilizing a correspondent bank. Wire Transfers of funds to Customer’s Account from third parties shall be received and/or credited on Business Days, subject to time deadlines established by Prosperity.

1. Requests Made Through Internet Banking. If Customer submits Wire Transfer Requests through Prosperity’s Internet Banking Service, Customer will create a Wire Transfer Request as provided by the Internet Banking system and add to the Wire Transfers Pending file in the Internet Banking system, or as Bank otherwise directs. Outgoing Wire Request instructions transmitted electronically via Prosperity’s Internet Banking system must be sent to Bank no later than 4:00 P.M Central Time during Bank Business Days, as such deadline may be changed by Bank from time to time at its option, or as Bank otherwise directs. Only Authorized Representatives may perform Wire Transfer functions, and the Authorized Representative performing a Wire Transfer function must have authority to perform that particular function. An Authorized Representative with authority to approve Wire Transfers must approve all Wire Transfers in the Wire Transfers Pending File before the file is transmitted. Unapproved Wire Requests will remain in the Wire Transfers Pending File and will not be processed.

2. Other Requests. Wire Transfer Requests submitted other than through Prosperity’s Internet Banking Service are not covered by this Agreement.

3. All Wire Transfers and other Transactions are subject to Prosperity’s procedures and practices, including without limitation any timing deadlines. Transfers having international destinations may require additional time due to the involvement of intermediary financial institutions. Contact your local Prosperity Banking Center or Treasury Management at 855-888-2242 for details.

C. Provisional Credit and Availability of Credits. If Bank credits Customer’s Account for any Transaction, such payment is provisional until Bank receives final settlement for the Transaction. If Bank does not receive final settlement, Bank is entitled to a refund, and Bank may charge Customer’s Account for the amount credited. If Bank believes that there may not be sufficient collected funds in Customer’s Account to cover a chargeback or return of a Transaction, Bank may delay the availability of any amount Bank credits for the Transaction.

D. Notice of Reliance on Identifying Numbers. A beneficiary's bank (including us when we are the beneficiary's bank) may make payment to a beneficiary based solely on the account or other identifying number, even if it identifies a person different from the named beneficiary. An intermediary bank (including us if we are the intermediary bank) may send a Wire Transfer Request to an intermediary bank or beneficiary's bank based solely on the bank identifying number or as otherwise required by applicable law. Bank and other banks acting in such capacities may follow these procedures even though the Wire Transfer Request includes names inconsistent with the account or other identifying number, as long as Bank or the other banks do not know of the inconsistency. Bank or other banks acting in such capacities do not have any obligation to determine whether any Wire Transfer Request contains any such inconsistency.

E. Cancellation of Requested Transfer. Customer may not cancel a Wire Transfer Request after Bank receives it. In addition, Bank has no obligation to amend any Wire Transfer instruction after Bank has received it. If Customer sends Bank an instruction to amend a Wire Transfer in a form satisfactory to Bank and in such time and manner to allow Bank a reasonable opportunity to act, and Bank is able to verify the authenticity of the instruction using Customer's Chosen Security Procedure (defined below), as applicable, Bank will make a reasonable effort to act on Customer's instruction to amend the Wire Transfer. Bank will not be liable to Customer if such instruction to amend the Wire Transfer is not effected. IN ADDITION TO CUSTOMER'S OTHER INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, CUSTOMER AGREES TO INDEMNIFY BANK IN CONNECTION WITH ANY SUCH INSTRUCTION TO AMEND A WIRE TRANSFER AS PROVIDED BY THE TEXAS BUSINESS AND COMMERCE CODE CHAPTER §4A AND/OR OTHER APPLICABLE LAW.

F. Confirming Notifications. Bank will make reasonable efforts to transmit a notification to Customer by fax or email of a Wire Transfer after it is made, if Customer requests such notification in writing within a reasonable time prior to the requested Wire Transfer. Customer must promptly examine any such notification, and if Customer detects any discrepancy, Customer must notify Prosperity immediately after Customer receives the notice.

G. Right to Decline Requests. In its sole discretion, Prosperity may choose not to make any Wire Transfer Customer requests if the amount exceeds the collected and immediately available funds on deposit in Customer's Account, or if the Request is not in accordance with the terms of this Agreement, or if Prosperity, in its sole reasonable judgment, suspects fraud or excessive risk to Prosperity.

## II. Security Procedures.

A. Risks Involved in Wire Transfers. Customer understands that risks are inherent in Wire Transfers, including without limitation, the risk of fraud. Customer has considered such risks but nevertheless has determined that Customer wishes to proceed to use the Wire Transfer Services described in this Agreement.

B. Commercially Reasonable Security Procedures. Schedule A, attached hereto and made a part hereof, lists one or more commercially reasonable security procedures that Prosperity is offering Customer (the "Security Procedures"). The purpose of any Security Procedure is to verify the authenticity of Wire Transfer Requests Bank receives in Customer's name—but not to detect errors in the transmission or content of such Requests. Customer agrees to conduct the Transactions in accordance with Security Procedures labelled on Schedule A, all of which are required by Prosperity.

Customer must use all the Security Procedures for each Transaction. If Customer should reject any Security Procedures or fail to use the Security Procedures properly, Customer agrees to assume fully all risk associated with rejecting or failing to use the Security Procedures properly and CUSTOMER AGREES PROSPERITY WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES, COSTS, EXPENSES, OR LOSSES ("Loss(es)") ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, FROM CUSTOMER'S DECISION NOT TO ACCEPT OR FAILURE TO USE THE SECURITY PROCEDURES PROPERLY.

FURTHER, IN ADDITION TO CUSTOMER'S OTHER INDEMNIFICATION AND REIMBURSEMENT OBLIGATIONS HEREIN, BUT ONLY TO THE EXTENT PERMITTED BY LAW, AND WITHOUT WAIVING ANY IMMUNITY OR OTHER LEGAL DEFENSE POSSESSED BY CUSTOMER UNDER LAW, CUSTOMER FULLY AGREES TO ASSUME ALL RISK AND AGREES THAT PROSPERITY IS NOT RESPONSIBLE FOR ANY LOSS, CLAIM, LIABILITY, DAMAGE, OR OTHER AMOUNTS ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, FROM ANY MALWARE, INCLUDING BUT NOT LIMITED TO, VIRUSES, WORMS, SPYWARE, SHAREWARE, ROOT KITS, KEY LOGGERS, SNIFFERS, OR PASSWORD CRACKERS WITH BOTH "ON-ACCESS" AND "ON-DEMAND" SCANNING THAT MAY BE ENCOUNTERED BY CUSTOMER WHILE INITIATING WIRE TRANSFERS, OR OTHERWISE.

C. Your Level of Security. Customer has sole responsibility for determining the level of security it requires and assessing the suitability for it of any Security Procedure for conducting any Wire Transfer and/or issuing instructions pertaining to same. Except for acting in accordance with a Security Procedure:

1. We have no duty to investigate the authenticity of any application, instruction, or other communication Customer provides us.

2. Also, we have no liability to Customer for acting upon any instruction, application, amendment or other communication purportedly transmitted by or on behalf of Customer, even if such application, amendment or message:

- Contains inaccurate or erroneous information.
- Constitutes unauthorized or fraudulent instructions or communications.
- Includes instructions to pay money or otherwise debit or credit any account.
- Relates to the disposition of any money, securities, or documents.
- Purports to bind Customer to any agreement or other arrangement with Bank or with other persons or to commit Customer to any other type of transaction or arrangement.

3. Bank is authorized, but not obliged, to rely upon and act in accordance with any application, instruction, consent, or other communication by fax, phone, email or other electronic transmission received by Bank purporting to be a communication on Customer's behalf without inquiry on Bank's part as to the source of the transmission or the identity of the person purporting to send such communication. Bank is also authorized, but not obliged, to rely upon and act in accordance with any application, instruction, consent or other communication by telephone purporting to be a

communication on Customer's behalf by an Authorized Representative. As mentioned above, we may reject any Request that does not comply with this Agreement.

4. Notwithstanding Customer's use of the Security Procedures, Customer authorizes Prosperity, at Prosperity's sole option, to confirm any Request by, without limitation, placing a telephone call to any Authorized Representative, or through other commercially reasonable methods. If unable to do so, Prosperity may, in its sole discretion, decline to process the Request. Prosperity shall not be obligated to make any such confirmation.

### III. Customer's Additional Responsibilities

A. Customer's obligations under this Agreement are in addition to its obligations under any other agreement between Customer and Prosperity.

B. Customer Representation and Warranty. Each time Customer conducts a Wire Transfer, Customer represents and warrants that, in light of its circumstances and requirements, the Security Procedures are a satisfactory method of verifying the authenticity of instructions and/or cancellation instructions associated with the Transfer.

VI. Legal Notices. Any notice required or permitted under this Agreement (other than communications in the ordinary course of business sent through the "Messages" feature within the Internet Banking Service) shall be in writing and may be given by personal delivery or by depositing in the United States mail postage prepaid, Certified Mail, Return Receipt Requested, or by nationwide overnight delivery service, to the address of the parties as follows (or as changed through written notice to the other party):

**If to PROSPERITY:**

Prosperity Bank  
Attn: Wire Department  
80 Sugar Creek Center Blvd.  
Sugar Land, TX 77478

**If to Customer:**

Customer's last known address in accordance with Bank's Account records.

VII. Foreign Currency Transactions. If Customer originates a Wire Transfer to a foreign country in United States Dollars, Bank will execute such Wire Transfer by transferring payment in United States Dollars to the beneficiary bank in the foreign country. Transferring payment to a foreign country in a foreign currency is currently not offered.

If for any reason the Wire Transfer is returned, Customer agrees to accept the refund in United States Dollars in the amount of the foreign money credit, based on Prosperity's current buying rate of exchange, converting the currency to United States Dollars on the date of refund, less any charges and expenses incurred by Prosperity. Foreign Wires may be subject to delays, charges imposed by other banks, and changes in foreign currency exchange rates. Prosperity will quote a currency buy/exchange rate and execute the Wire Transfer per Customer's written direction.

VIII. Facsimile and Electronic Acceptance. A facsimile or electronic copy of this Agreement signed by an Authorized Signer shall constitute a valid and binding original for purposes of this Agreement.

By execution of this instrument, each individual signing below represents and warrants that he/she is duly authorized to do so by and on behalf of the party for whom he/she is signing (an "Authorized Signer") and that this instrument is a legally valid and binding obligation of such party.

Name of Business ("CUSTOMER"): \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

SAMPLE





# **PROSPERITY BANK®**

## **TREASURY MANAGEMENT SERVICES**

### **SCHEDULE A TO WIRE TRANSFER AGREEMENT** **COMMERCIALY REASONABLE SECURITY PROCEDURES**

The following 3 commercially reasonable Security Procedures are required by Prosperity Bank:

1. **Access IDs and Passwords**—**CANNOT BE WAIVED**. Customer will require each Authorized Representative to maintain an Access ID and a Password, which must be used each time the Authorized Representative accesses the Wire Transfer Services through Internet Banking.
2. **Trusteer Rapport**—**CANNOT BE WAIVED**. As stated in Section II.B. of the body of this Agreement, Customer must download and use Trusteer Rapport software as provided by Bank. Trusteer Rapport is security software that works in conjunction with existing firewall and antivirus solutions to provide added protection to each Internet Banking session. The objective of Trusteer Rapport is to enhance security by creating a tunnel between Users and Prosperity to reduce the risk of financial information being captured by cyber criminals.
3. **Security Tokens**—**CANNOT BE WAIVED**. Customer must use any and all Security Tokens provided by Bank.



# **PROSPERITY BANK<sup>SM</sup>**

## **Positive Pay Service Agreement**

This Positive Pay Service Agreement is entered into by and between \_\_\_\_\_ (“Customer”) and Prosperity Bank (the “Bank”) to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WHEREAS, Customer has requested that the Bank provide Positive Pay Services to Customer, and Bank has agreed to provide Positive Pay Services, subject to the terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

1. **Positive Pay Service Agreement; Deposit Agreement.** The provisions of Bank’s Deposit Agreement or other applicable agreement for account services for any applicable account at Bank (hereinafter the “Deposit Agreement”) are incorporated into this Agreement by reference as if set forth verbatim. Capitalized terms used herein and not otherwise defined shall have the meanings specified in the Deposit Agreement. This Agreement is and shall be considered as an addendum to the Deposit Agreement. In the event of any inconsistency between a provision of this Agreement and any applicable law or regulation that permits waiver or modification by agreement, the provisions of this Agreement shall prevail.

2. **Definitions.**

- (a) “Account” means any specified demand deposit account of Customer at Bank.
- (b) “Check” means a Check drawn on the applicable Account.
- (c) “Customer Check Data” means the number of the Account on which a Check is drawn, the Check number, and the dollar amount of the Check. For purposes of clarity, the parties agree that Customer Check Data does not include the payee name.
- (d) “Customer Issue File” means a communication from the Customer received by Bank in a format and medium and by the deadline specified by Bank, containing at a minimum the Customer Check Data and Issue Date for each Check, as such may be modified or supplemented from time to time by Customer through a communication received by Bank in a format and medium and by the deadline specified by Bank. If for any reason a Customer Issue File should fail to comply with Bank specifications and/or deadlines, said Customer Issue File shall be deemed to have not been received by Bank.
- (e) “Deposit Agreement” shall have the meaning assigned to such term in Section 1 above
- (f) “Exception Check” means a Check presented for payment which Check: (1) does not have a Check number on its MICR line; (2) has a Check number on its MICR line that does not appear in the Customer Issue File; (3) has a Check number on its MICR line that appears in the Customer Issue File but a discrepancy exists between the dollar amount appearing on the MICR line of the Check and the dollar amount associated with the Check number appearing in the Customer Issue File; (4) has a Check number on its MICR line that is in the Customer Issue File

but appears to be a duplicate; or (5) does not electronically match the Customer Issue File for any reason not stated above and Bank determines in its discretion to include it as an Exception Check.

(g) "Exception Check Instruction" means a communication from the Customer instructing Bank to either pay or return an Exception Check.

(h) "Indemnified Person" has the meaning assigned to such term in Section 16(c) below.

(i) "Issue Date" means the date of issuance of a Check as indicated in the applicable Customer Issue File, and if not specified in such Customer Issue File shall be the date of the first Customer Issue File listing such Check.

(j) "Notification Day" means the banking day immediately following the banking day on which an Exception Check is presented for payment.

(k) "Positive Pay Exceptions Report" has the meaning assigned to such term in Section 8(a).

(l) "Services" shall mean the Positive Pay Services to be provided by Bank under the terms of this Agreement.

(m) "Stale Check" means any check that is not presented for payment before:

[SELECT ONE OPTION and INITIAL]

\_\_\_ Six months after the Issue Date

OR

\_\_\_ [FILL IN TIME PERIOD] after the Issue Date.

3. Accounts. The accounts to be granted positive pay access are as follows:

Account Number	Account Name
___	___
___	___
___	___

4. Conformity and Sampling. All items drawn on the Account shall at all times conform to check specifications as may be provided to Customer by Bank from time to time. Notwithstanding any provision of this Agreement to the contrary, before becoming eligible to use the Services, Customer shall provide Bank with a sample grouping of items, in an amount specified by Bank, for Bank's inspection and testing to ensure, in Bank's sole determination, that Bank's quality control and processing specifications with respect to MICR quality, paper stock and other criteria are satisfied by the sampling. In the event that Bank determines that Customer's items do not meet Bank's specification requirements, whether from the initial sampling or at any time during the term of this Agreement, Bank will advise Customer of the failure to meet Bank's specification requirements and Customer will not be eligible to use the Services until such time as Bank determines Customer's items meet Bank check specifications.

5. **Delivery of Customer Issue File.** No later than the day on which the Customer issues Checks, Customer will deliver to Bank a Customer Issue File listing each Check issued by Customer on that day by 9:00 a.m. Central Time and Bank will use its best efforts to process as soon as possible and regularly updates files every three hours. If Bank does not receive the Customer Issue File by 9:00 a.m. Central Time on any given day, Bank will utilize the last timely received Customer Issue File for the purposes hereof. Bank will not be liable, or responsible in any way, for the dishonor and/or return of any Check presented to Bank that is not listed on the applicable Customer Issue File.

6. **Payment of Checks.** Except as provided in Sections 8 or 11, with regard to each Check set forth in a Customer Issue File, Customer authorizes Bank to accept and make final payment on each Check presented for payment and to charge such Check to the Account.

7. **Comparison with Corresponding MICR Line.** After a Check is presented for payment, Bank will compare the Customer Check Data from the MICR line of each Check against the Customer Issue File. Bank will use all reasonable efforts to investigate and repair Checks pursuant to the then current Bank policies and procedures. Any Check repaired pursuant to this Section 7 will not be considered an Exception Check.

8. **Exception Checks.**

(a) On or prior to each Notification Day for any particular Exception Check, Customer will be informed of the Check number and amount of each such Exception Check (the "Positive Pay Exceptions Report"), through Item View or any other online product now or hereafter offered by Bank for Customer review of Exception Checks. On the same Notification Day, Customer will deliver to Bank an Exception Check Instruction regarding each Exception Check in such Positive Pay Exceptions Report no later than 12:00 p.m. (noon) Central Time. As to any particular Exception Check, when Bank takes action to pay or return such Exception Check, Bank will act upon the latest Exception Check Instruction received by that time (if any) as to such Exception Check. Unless otherwise agreed by Bank and Customer in writing, if no Exception Check Instruction is issued regarding an Exception Check or if an Exception Check Instruction is not timely issued:

[SELECT ONE OPTION and INITIAL]

All Exception Checks on the Positive Pay Exceptions Report will be rejected as not properly payable.

OR

All Exception Checks on the Positive Pay Exceptions Report will be paid from the applicable Account.

Bank shall not be obligated to comply with any Exception Check Instruction received in a format or medium, after a deadline, or at a place not permitted under this Agreement, but instead may treat such an Exception Check Instruction as though it had not been received. The communications and instructions deemed to have been provided (or not provided) under this Section 8(a) will control with regard to an Exception Check notwithstanding any other communication Bank may have received from Customer regarding the Exception Check. Representatives of Customer who are authorized to communicate Exception Check Instructions are listed in Attachment 1, which may be modified by Customer in writing from time to time, to be effective upon receipt and written confirmation by Bank.

(b) All Stale Checks will be rejected as not properly payable unless otherwise agreed in writing between Bank and Customer.

9. **Reliance on Customer Issue Files and Exception Check Instructions.** Customer is responsible for, and Bank may rely upon, the contents of each Customer Issue File and Exception Check Instruction. Bank may: (a) assume that each Customer Issue File and Exception Check Instruction was issued by a person authorized to act on behalf of the Customer, regardless by whom they were issued, and the Customer is bound thereby; and (b) issue any notification referred to in Section 8 to any person Bank reasonably believes is authorized to receive it on behalf of Customer.

10. **General Provisions Regarding Communications.** Bank is not responsible for detecting any Customer error contained in any Customer Issue File, Exception Check Instruction or any other communication to Bank. Customer acknowledges that it is solely responsible for guarding the integrity of its transmissions and communications to Bank and the means utilized to make such transmissions and communications.

11. **Over-the-Counter Presentment.**

(a) Bank will follow its usual and customary over-the-counter encashment procedures (as may be in effect from time to time) for any Check, and such procedures shall at least include comparison of the Customer Check Data of any Check presented to a teller against the Customer Issue File. Bank may charge a person who cashes a Check drawn on an Account a fee if that person is not a deposit or loan (excluding credit cards) customer of Bank. The fee may be collected from such person or Customer, as agreed by Customer and Bank.

(b) To the extent permitted by law, Customer agrees to unconditionally release, indemnify, defend and hold Bank harmless against any and all liability, loss, damage or expense of any kind which Bank may suffer or incur in connection with providing the over-the-counter encashment services; including without limitation, any refusal to cash any Check. The foregoing indemnification shall not apply to any loss incurred by Bank by reason of its failure to comply with its over-the-counter encashment procedures.

(c) Customer hereby acknowledges that Bank has the unrestricted right to refuse to cash any Check drawn or purported to be drawn by Customer. Notwithstanding anything to the contrary herein, in no event shall Bank be liable for (i) any Check paid over-the-counter, if at the time the teller reviewed the Customer Issue File, the Check did not appear to be an Exception Check, (ii) any Check presented over-the-counter that was not paid because when the teller reviewed the Customer Issue File, the Check appeared to be an Exception Check, (iii) any Check presented over-the-counter that was not paid because the Customer did not deliver to Bank a Customer Issue File listing such Check, or (iv) any Checks presented over-the-counter on any day for which the Customer has requested Bank to remove this over-the-counter encashment service or any Check for which Bank and Customer have mutually agreed Bank to pay. Further, Bank makes no warranty that the individual cashing the Check is the intended named payee of the Customer.

12. **Stop Payment Checks.** If Customer wants to stop payment on a Check, Customer shall place a stop payment order in compliance with the Deposit Agreement.

13. **Check Copies.** Customer acknowledges that it is responsible for making decisions regarding payment of Exception Checks based on the available electronic information. If Customer requests a copy or other image of a Check from Bank other than in the form of available electronic information, Bank

will not be liable if it fails to produce a copy or other image of such Check prior to the time Customer is required to deliver an Exception Check Instruction.

14. **Communications.** All notices and communications will be delivered using a communications device or systems mutually agreeable to Customer and Bank.

15. **Available Defenses.** All defenses available under applicable law and under the terms of any and all agreements with Bank shall be available to Bank. Bank retains the right to assert Customer's failure to exercise reasonable care and the defense that Customer has sustained no actual damages because Bank's honor of an Exception Check discharged for value an indebtedness of Customer.

16. **Limitation of Liability and Indemnification.**

(a) Each Check that Bank returns in accordance herewith will be deemed not to be properly payable.

(b) Each matching or other Check Customer has authorized or is deemed to have authorized Bank to pay (pursuant to Section 7 or otherwise) will be paid without Bank performing its customary (or any other) Check verification procedures. In any such case, Bank will have no liability whatsoever for paying a Check if: (i) its Check number or amount is altered, (ii) it is counterfeit, (iii) it bears a forged or unauthorized signature and/or endorsement and/or no or incomplete endorsement, (iv) the payee has been altered, or (v) it was otherwise not validly issued or is not properly payable.

(c) To the extent permitted by law, Customer (i) agrees to indemnify and hold harmless Bank and its parent, subsidiaries, affiliates, and successors, and their respective officers, directors, employees, and agents (collectively the "Indemnified Persons") of and from any losses, liabilities or expenses any of the Indemnified Persons may suffer or incur as a result of (A) Bank's processing of Checks in accordance with this Agreement or Customer's instructions, including without limitation return of a matching or other Check at Customer's instruction, (B) Customer's actions or omissions, including without limitation Customer's negligence, willful misconduct or breach of any warranty or failure to comply with this Agreement, (C) any misuse of the Services by Customer, (D) Customer's failure to comply with any state or federal laws or regulations, or (E) actions by third parties, and (ii) releases and forever discharges the Indemnified Persons from any and all manner of action or actions, suits, claims, damages, judgments, levies, executions, expenses, costs, interest, attorney's fees and legal expenses, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct or indirect, that Customer has, or ever can, may or shall have or claim to have against any of the Indemnified Persons regarding or relating to any of the matters described in subsection (c)(i) (A) through (E) above, including without limitation the payment or return of any Check pursuant to the terms of this Agreement and/or Customer's instructions. **WITHOUT LIMITATION, THE INDEMNITIES IN THIS SECTION 16(c) SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF, OR ARE CLAIMED TO BE CAUSED BY OR ARISE OUT OF, THE NEGLIGENCE (WHETHER SOLE, COMPARATIVE OR CONTRIBUTORY) OR STRICT LIABILITY OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PERSON. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO A PARTICULAR INDEMNIFIED PERSON TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT INDEMNIFIED PERSON.**

(d) Customer agrees that Bank exercises ordinary care whenever it pays or returns a Check consistent with this Agreement.

(e) Except as stated otherwise in this Agreement, Bank will be liable to Customer only for damages arising directly from Bank's gross negligence or willful misconduct in the performance of the Services. Bank will not be responsible for any loss, delay, cost or liability that arises, directly or indirectly, in the whole or in part, from: (A) Customer's actions or omissions, or those of third parties who are not within Bank's immediate and reasonable control; (B) Customer's negligence or breach of any agreement with Bank; (C) any ambiguity, inaccuracy or omission in any information or instructions provided to Bank; (D) any error, failure or delay in the transmission or delivery of data or records due to a breakdown in equipment, computer or communications facilities; (E) accidents, strikes, labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God; (F) causes beyond Bank's reasonable control; (G) Bank's inability to confirm to Bank's satisfaction the authority of any person to act on Customer's behalf; or (H) Customer's failure to provide Bank with complete and correct data in accordance with this Agreement and Bank's instructions.

(f) Except for losses caused solely by Bank's gross negligence or willful misconduct, Bank's aggregate liability to Customer for claims relating to this Agreement or the Services, whether for breach of contract, negligence, infringement, tort or otherwise, shall be limited to an amount equal to the total fees paid by Customer for the Services during the prior six (6) month period. Bank will not be responsible under any circumstances for special, indirect, incidental, punitive, exemplary or consequential damages that Customer may incur, including without limitation any loss of use or loss of business, revenue, profits, opportunity or good will, even if Bank is aware of the possibility of such damages.

(g) Customer agrees to cooperate with Bank in any loss recovery efforts Bank undertakes to reduce any loss or liability that arises in connection with the Services.

(h) Customer acknowledges that the fees to be paid for the Services have been established in part in contemplation of the above indemnifications and limitations on the Bank's liability and Customer's agreement to assist the Bank in any loss recovery efforts.

17. **Applicable Law.** Except to the extent superseded by Federal law, the provision of Services and this Agreement shall be governed by the laws of the state of Texas, without giving effect to its choice of law or conflict of laws or provisions. Customer submits to the jurisdiction of any federal or state court in Harris County, Texas for all legal proceedings arising out of this Agreement. Customer waives all objections of inconvenient forum.

18. **Termination.** The Positive Pay Service will automatically terminate if the Account is closed for any reason. Termination of the Positive Pay Service will not terminate Customer's or Bank's rights or obligations with respect to events or actions that occurred before such termination. Additionally, either party may terminate this Agreement by notice to the other sent a least twenty (20) calendar days prior to the termination date specified in such notice. Notwithstanding any termination, this Agreement shall remain in full force and effect as to any Checks that have been presented to Bank prior to the date of termination.

19. **Survival.** Sections 1, 2, 11, 15, 16, 17, 18, 19, 20, 21, 23 and 24 will survive termination of this Agreement.

20. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, CUSTOMER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, OF WHATEVER TYPE OR NATURE, INCLUDING BUT NOT LIMITED TO ACTIONS IN CONTRACT OR TORT, ARISING OUT OF THIS AGREEMENT AND THE SERVICES PROVIDED UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT THIS JURY WAIVER IS A MATERIAL INDUCEMENT TO BANK TO ENTER INTO THIS AGREEMENT AND THAT NO BANK REPRESENTATIVE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK MAY NOT ENFORCE THIS JURY WAIVER IN CASE OF LITIGATION.

21. **Third-Party Providers.** Bank may provide Services using any third-party provider it reasonably selects. Bank's performance of Services is subject to the rules and regulations of any such system or organization. Bank shall have no obligation to disclose arrangements with third parties to Customer or obtain Customer's consent. Customer authorizes the transfer of information relating to Customer to agents of Bank or Customer in connection with Services or as required by law. Bank will provide Customer with all necessary instructions for contact with such third-party or agent, if necessary. In no event shall Bank be liable for any defect in, failure of, or unavailability of any electronic communication necessary for the Services, any internet site or other web-based application necessary for utilization of the Services, any associated software or any technical or editorial errors contained in any user manual or guide pertaining thereto.

22. **Amendment.** Bank may, at any time, amend this Agreement and any such amendment shall be effective immediately upon written notice to Customer. Customer will be provided with notice of any such amendment in accordance with Bank's normal business practices and such notice may be sent to Customer electronically. Bank may, at any time, amend the applicable Deposit Agreement in accordance with the terms of the Deposit Agreement. By continuing to use the Services after notice of such amendment, Customer will be deemed to have agreed to such amendment and shall be bound by the Agreement, as amended.

23. **Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

24. **NO ORAL AGREEMENTS.** THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[REMINDER: CHECK APPROPRIATE BOX IN SECTION 8 and in the definition of "State Check?"]

[Signature Page Follows]



**Bank**

**Prosperity Bank**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Customer**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

SAMPLE

ATTACHMENT 1

**Centrix Positive Pay User's Agreement**  
**Representatives authorized to access Centrix Positive Pay**

**User 1**

_____ Name	_____ Primary Phone	_____ Secondary Phone
_____ Online Banking ID	_____ Email	
Authorized Access Level: <small>(Choose One)</small>	<input type="checkbox"/> Review Only	<input type="checkbox"/> Import Only <input checked="" type="checkbox"/> Full Access

**User 2**

_____ Name	_____ Primary Phone	_____ Secondary Phone
_____ Online Banking ID	_____ Email	
Authorized Access Level: <small>(Choose One)</small>	<input type="checkbox"/> Review Only	<input type="checkbox"/> Import Only <input type="checkbox"/> Full Access

**User 3**

_____ Name	_____ Primary Phone	_____ Secondary Phone
_____ Online Banking ID	_____ Email	
Authorized Access Level: <small>(Choose One)</small>	<input type="checkbox"/> Review Only	<input type="checkbox"/> Import Only <input type="checkbox"/> Full Access

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Review Only** - The following representatives are authorized by Customer to confirm any item identified as an Exception on behalf of Company.

**Import Only** - The following representatives are authorized by Customer to import and/or modify checks to Positive Pay on behalf of Company.

**Full Access** - The following representatives are authorized by Customer to review all items and import/modify checks to Positive Pay on behalf of Company.

SAMPLE



**PROSPERITY BANK®**

Prosperity Bank  
Remote Deposit-Capture Agreement  
*Terms & Conditions*

SAMPLE

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## Overview

Customer: \_\_\_\_\_

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

Address: \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Tax Identification #(s) \_\_\_\_\_

Account Number(s) \_\_\_\_\_

This Agreement establishes the terms and conditions under which Prosperity Bank will provide the Service to you. When we use the term "you" or "Customer" we are referring to the customer executing this Agreement on the signature page. The "Service" means the remote deposit capture software and related processing through which you will transmit checks to us for deposit to an Account.

The capitalized terms used in this Agreement are defined in the *Glossary* in this Agreement. The words "we," "our," "us" and the "Bank" refer to Prosperity Bank and affiliated companies.

When you use the Service covered by this Agreement, you agree to be bound by the terms, conditions and procedures in it. We may change these terms, conditions and procedures by giving you 30 days prior written notice. You will accept these changes by using the Services after the effective date in the notice. To the extent we provide other services to you, those are controlled by other agreements.

The Service allows you to prepare deposits for electronic transmission to us. To use the Service, you will transport checks received by you to your processing site. You will process deposits in conformance with the terms of this Agreement and any other requirements that Prosperity may impose from time to time.

Upon receipt of the transmission from you, we will verify receipt of the transmission and exchange images in the transmission with selected banks, or create Substitute Checks for clearing for non-exchange banks. We will then deposit funds to your Account. You agree to take all steps necessary to keep and protect all of the items processed by you from being re-deposited at the Bank or any other financial institution, either electronically or as paper checks.

## GENERAL TERMS AND CONDITIONS

**1. Authorization to Act.** By subscribing to the Service, you authorize us to take any and all actions necessary to provide the Service, including making transfers to and from Accounts as described in this Agreement.

**2 Balancing and Controls.** On a daily basis, you will review all input and output, controls, reports, email messages, and documentation, to ensure the integrity of data we process. On a daily basis you will also check exception reports to verify that all file maintenance entries and non-dollar transactions were correctly entered. You are responsible for initiating timely remedial action to correct any improperly processed data which these reviews would or do disclose.

**3 Hardware, Fees and Taxes.** You agree to be responsible for ordering, obtaining and maintaining all Equipment. You may use only Bank-approved Equipment in connection with the Service. Customer further agrees to follow the scanner manufacturer's suggested maintenance and service guidelines and to take all other reasonable efforts to maintain the equipment in good working condition. Customer will implement all recommended changes or maintenance procedures in a timely manner.

Customer shall compensate Prosperity Bank for the performance of the Service in accordance with the pricing established by Prosperity Bank. Amounts payable by Customer to Prosperity Bank shall be collected on a monthly basis by Prosperity Bank. Prosperity Bank may collect any of the foregoing amounts and any other amounts due by Customer to Prosperity Bank hereunder or in connection with the provision of the Service to Customer by debiting any of Customer's accounts with Prosperity Bank, billing Customer, and/or setting off against any amounts Prosperity Bank owes Customer, without any obligation to give prior notice thereof to Customer. Prosperity Bank may change pricing from time to time by providing Customer with thirty (30) days written notice of a pricing change. If Customer does not accept the pricing change, then Customer must notify Prosperity Bank within fifteen (15) days of the effective date of the pricing change. Customer shall also pay any sales, use, or similar tax applicable to the Service. If Prosperity Bank is required to pay any such taxes, Customer shall reimburse Prosperity Bank upon demand. Customer shall also pay all attorneys' fees and other costs and expenses Prosperity Bank may incur in collecting any fees or other sums Customer may owe to Prosperity Bank in connection with the Service. Prosperity Bank shall also have the right to credit or debit any accounts of Customer with Prosperity Bank to correct any processing irregularity in connection with the Service.

You agree to pay us fees for the Service based on our fee schedule in effect and provided to you from time to time. As the owner of the hardware used to connect to the Service and where applicable, you are responsible for reporting the value of the scanner and any associated equipment on your personal property tax return

**4 Force Majeure.** We will not be liable to you if our delivery or performance of any Service is delayed or prevented by revolution or other civil disorders; wars; acts of enemies including terrorists; strikes; electrical equipment or availability failure; labor disputes; fires; floods; acts of God; federal, state, or municipal action; statute; ordinance or regulation; or, without limiting the foregoing, any other causes not within our reasonable control, and which by the exercise of reasonable diligence we are unable to prevent, whether of the class of causes listed here or not.

**5 Funds Availability.** Remotely deposited Checks are "non-local" items as defined in Federal Reserve Board Regulation CC. Despite this fact, the Bank will grant provisional credit to the Account for Electronic Items in accordance with prudent business timeframes. You authorize us to place a hold on funds in the Account if, after performing risk management activities on remotely deposited Checks in a File, we have concerns about or doubt the validity or collectability of one or more Checks.

**6 Governing Law and Rules.** Applicable federal law and the laws of the state of Texas will govern the Service (except to the extent this Agreement can and does vary such laws). The Service is also subject to rules established by Federal Agencies, the NCHA Rules, the Clearinghouse Rules and the ECCHO Rules.

**7. Limitation of Liabilities.** We will not be liable for any files or transmissions not received by us, nor for any intrusion into or any theft of data contained in such files or transmission that are not caused by our gross negligence or willful misconduct. You expressly waive all claims for additional, incidental, consequential, compensatory, or punitive damages and agree that the remedies contained in this Agreement and the laws and rules applicable to the Service will be your sole and exclusive remedies. You acknowledge that in addition to any other damages we may be entitled to collect from you under this Agreement or the laws and rules applicable to the Service, we will be entitled to consequential damages for your breach of your obligations set out in the *Performance* section of this Agreement, including your obligation to securely safe keep and subsequently destroy the checks which you deposit through the Service.

**8. Ownership of Data.** You are the owner of data supplied to us for processing in connection with this Service. You acknowledge that the software, systems documentation, guidelines, procedures, and similar related materials or any modifications of them, referred to in this Agreement as the "Program Materials," are copyrighted property and constitute trade secrets and proprietary data. You further acknowledge that you have no title to or ownership of such Program Materials and that you waive any and all rights and claims which you now or hereafter may have against us with respect to the Program Materials.

You may make one (1) copy of the Program Materials to be used exclusively for back-up purposes. Except for this back-up copy, you may not make any other copies of the Program Materials, nor may you transfer or disclose any of the Program Materials to any other person, firm or corporation, except for your employees requiring such knowledge in the ordinary course and scope of their employment with you. You shall not reverse assemble or reverse compile any of the Program Materials, in whole or in part, or permit any other person, firm or corporation to do so. The provisions of this section shall survive termination or expiration of this Agreement.

**9. Passwords and Access Codes; Unauthorized Access.** To use the Service, you will be provided Codes. You and the Administrator are responsible for creating and maintaining subsequent user accounts for you, including assigning and revoking access privileges for those users and providing new and subsequent Codes to those users. You understand that the Administrator has the capability of providing administrative privileges identical to that of the Administrator to any user, including the ability to create and maintain subsequent user accounts and assigning and revoking access privileges. If the Administrator grants these privileges to a user, that user will also be considered an Administrator. You are required to use the Codes every time you access the Service. It is your responsibility to maintain the confidentiality of the Codes. You agree to accept full responsibility over the control of the Codes. It is your responsibility to maintain and delete Codes for each individual user, and we are not liable for any losses caused by improper or negligent maintenance. You agree that we are not responsible for any actions of a third party as a result of unauthorized use of the Codes. YOU UNDERSTAND THAT STATE AND FEDERAL STATUTES MAKE IT A CRIME TO GAIN UNAUTHORIZED ACCESS INTO OUR COMPUTER NETWORK AND THAT VIOLATORS WILL BE PROSECUTED.



**10. Performance.** We will perform the Service in a commercially reasonable manner, which is similar to the services provided to our other customers, and no other or higher degree of care. We make no warranties with respect to the image quality or validity of any items deposited through the Service. With the exception of errors caused by our gross negligence, you are expressly assuming all other risks of error. **WE WILL IN NO EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED BY YOU INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR BUSINESS OPERATION LOSS, REGARDLESS OF WHETHER WE WERE ADVISED OF THE POSSIBLE OCCURRENCE OF SUCH DAMAGES.**

We will process items, transactions and data and perform the Service on the basis of information furnished by you. We reserve the right, at our discretion, to reject any transmission we receive from you through the Service. We will notify you by the end of the next business day if we reject any transmission and inform you of the reasons for such rejection. If any error results from incorrect input supplied by you, you will use commercially reasonable efforts to discover and report such error to us. We will use commercially reasonable efforts to reprocess any transactions based upon data supplied by you, which is necessary to correct such error. To the extent permitted by law, you will indemnify and hold us harmless from any claim, loss, liability, action, cause of action, cost, expense, including but not limited to reasonable attorneys' fees and payments pursuant to settlements, arising out of, resulting from, or relating to (i) the alteration of any item deposited through the Service, (ii) such data, information or instructions, or any inaccuracy or inadequacy in the data (iii) any material breach of this Agreement by you or failure to comply with its material terms, and (iv) any act or omission to act by you or any of your employees or agents that results, directly or indirectly, in the payment or distribution of funds to any person, real or fictitious, not entitled to all, or any part of such funds or that result in an inaccurate, incorrect, untimely, improper or failed automatic clearinghouse fund transfer in connection with such funds or the redeposit of any item processed for deposit through the Service.

You agree to securely safe keep the checks which you deposit through the Service in a securely locked location with access restricted to only those employees with a specific need for such access, and then permanently destroy them by shredding or other comparable means to ensure that they are not separately deposited to us or any other financial institution. You agree to train your employees on the proper and secure use of the merchant capture equipment and the care and retention of the physical data supplied and the output created by the use of this product.

If you are aware of a defect in a Service, you agree to notify us promptly after your discovery of the defect. We will assist you, at our expense, in making such corrections through the most cost-effective means, whether manual, by system reruns, or program modifications. We will make every effort to correct any known material defect as soon as commercially reasonable at our expense.

**11. Regulatory Assurances.** You specifically acknowledge that you, while using any Service, will not originate any transaction that does not comply with the laws of the United States and the State of Texas. This prohibition includes, but is not limited to, the OFAC laws and regulations.

**12 Resolution of Disputes Through Arbitration.** Any Claim will be resolved, upon the election of you or us, by binding arbitration under this arbitration provision and the Arbitration Rules. A party who has asserted a claim in a lawsuit in court may elect arbitration with respect to any claim(s) subsequently asserted in that lawsuit by any other party or parties. Any participatory arbitration hearing (other than telephonic hearings) will be held in Houston, Texas, unless both parties agree otherwise. If you would like to obtain a copy of the Arbitration Rules and filing forms, you may contact the AAA by calling 1-800-778-7879. The Arbitration Rules and filing forms also can be obtained from the AAA website at [www.adr.org](http://www.adr.org). All Claims shall be filed at an AAA office. If the applicable Arbitration Rules are modified, superseded, or replaced, an equivalent set of rules of the AAA will govern the arbitration. If for any reason AAA is unable or unwilling or ceases to serve as arbitration administrator, we will substitute an equivalent national arbitration organization utilizing a similar code or procedure.

There shall be no authority for any Claims to be arbitrated on a class action basis. Further, arbitration can only decide our or your Claim and may not consolidate or join the claims of other persons who may have similar claims.

The arbitrator will decide whether you or we will ultimately be responsible for paying any fees in connection with the arbitration. Unless inconsistent with applicable law, each party shall bear the expense of their respective attorneys', experts' and witness fees, regardless of which party prevails in the arbitration.

Both parties fully understand and agree that they will not have a right to litigate any Claim in any court if either party chooses to have the Claim resolved by binding arbitration. Further, in agreeing to arbitrate all Claims, you are waiving your right to a jury trial.

This arbitration provision and the exercise of any of the rights you and we have under it do not prohibit you or us from exercising any lawful rights either of us has to use other remedies available to preserve, foreclose or obtain possession of real or personal property, exercise self-help remedies, including any setoff rights which we may have.

This arbitration provision also relates to a transaction involving interstate commerce, and is governed by the FAA. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims or privileges recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. This arbitration provision will survive termination of your use of the Service. Either of us may bring an action to compel arbitration of any Claim and/or stay the litigation in any court having jurisdiction; such motion may be brought at any time in a lawsuit in court, until the entry of a final judgment. If any portion of this arbitration provision is deemed invalid or unenforceable, it should not invalidate the remaining portions of this arbitration provision.

**13 Return Items.** You understand that we may convert items you deposit through the Service into Replacement Checks or ARCs. As a result, in the event that any such item is return unpaid, you will only be entitled to receive back a copy of the Substitute Check or, in the case of an ARC, the Automated Clearinghouse information. In addition, in the event that you wish to redeposit an item which we have converted into a Substitute Check that is returned unpaid, you may only redeposit the Substitute Check through the Service and not the original item, regardless of whether such original item has not yet been destroyed by you.

**14 Risks of Using the Internet.** You understand that, while we and our service providers have established certain security procedures, such as firewalls, Codes and data encryption designed to prevent unauthorized access to your accounts or transactions, there can be no assurance that inquiries or transaction activity will be completely secure. You also understand that access to the Service will not be free from delays, malfunctions, or other inconveniences generally associated with this electronic medium. You agree that we are not responsible for any such unauthorized access, delays or malfunctions, and we are not responsible for the acts of third parties.

**15 Security Procedures, Audit and Communications.** Customer agrees that any personal computer, servers and any other hardware related to the operations, transmission, or storage of data during this process will meet requirements that are deemed commercially reasonable security standards or as directed by us. Prosperity Bank reserves the right to audit or request a self-assessment of the commercially reasonable procedures in place.

Certain Security Procedures designed to verify the origination (but not errors in transmission or content) of instructions, orders, and other communications sent by Prosperity Bank and Customer might be used in connection with the Service. Prosperity Bank shall not be obligated to act on a communication not transmitted in accordance with the Security Procedures and may refuse to act on any communication where Prosperity Bank reasonably doubts its authorization, contents, origination, or compliance with the Security Procedures. Prosperity Bank shall have no duty to discover, and shall not be liable for, errors or omissions by Customer. If Prosperity Bank complies with the Security Procedures in respect of a communication, Prosperity Bank shall be entitled to act on that communication and shall not be obligated to verify the content of such communication, establish the identity of the person giving it, or await any confirmation thereof, and Prosperity Bank shall not be liable for acting on, and Customer shall be bound by, any communication sent in the name of Customer, whether or not authorized. Prosperity Bank reserves the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time. Whenever the Security Procedures include the assigning to Customer of any confidential password, logon identification, identification code, personal or location identification number, repetitive code, or similar security device, Customer shall not disclose such security device except to employees or agents authorized to act for Customer in connection with the Service. Customer shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify Prosperity Bank if the confidentiality or integrity of any such security device is breached or threatened. Customer shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Customer's negligence or deliberate acts or otherwise. Prosperity Bank shall not be liable for any loss or damage resulting from fraudulent, unauthorized, or otherwise improper use of any security devices.

**16 Termination.** You may end the Service at any time upon 30 days written notice to Prosperity Bank. The Bank reserves the right to terminate service at any time.

**17. Usage.** In addition to all other requirements set forth in this Agreement relating to your use of the Service, you agree to comply with the following conditions of and limitations on the usage of the Service:

- a. Only items you receive from your customers in the ordinary course of business may be deposited through the Service. In no case may you use the Service to deposit items drawn on your other depository accounts, whether or not such accounts are maintained at the Bank.
- b. All items deposited through the Service shall include the following specific handwritten or stamped endorsement: "For Deposit Only at Prosperity Bank, Account Number [NUMBER]."
- c. Only items payable directly to you may be deposited through the Service.
- d. Only items drawn on Qualified United States Financial Institutions may be deposited through the Service.
- e. All items presented must contain the proper MICR line information for processing.
- f. You must retain all original items for a period of time to support possible image quality returns which can occur up to 180 days from the date of the original deposit.
- g. To supply the Bank with information needed to facilitate an investigation related to transaction issues resulting from or connected with the use of this product.
- h. To maintain at least one (1) transactional account at Prosperity Bank for the purpose and usage of this product.

**18. Warranties.** We represent and warrant that:

We have the right to provide the Service, using the computer software we provide to you or to which we give you access for the purpose of using the Service. We make no warranty as to the performance or operation of any computer hardware, equipment or software which we have not provided to you.

EXCEPT AS DESCRIBED IN THIS AGREEMENT, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Executed and agreed to as of \_\_\_\_\_, 20 \_\_\_\_.

Account Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Use this section for two signatures required

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

SAMPLE

\_\_\_\_\_

## GLOSSARY

*AAA* means the American Arbitration Association.

*Account* means one or more deposit accounts maintained by you with us and used in connection with the Service.

*Administrator* means the user of your Codes.

*Arbitration Rules* means the "Commercial Arbitration Rules," administered by the AAA, and any amendment of them, in the form in effect at the time the Claim is filed.

*ARC* means accounts receivable conversion of an original check into an electronic deposit.

*Claim* means any claim, dispute or controversy arising from or relating to your use of the Service; the terms and conditions set out in this Agreement or the validity, enforceability or scope of the arbitration provision set out in this Agreement.

*Clearinghouse Rules* means the rules for check clearing promulgated by any clearinghouse association, check clearing consortium or any other arrangements we may participate in to collect checks, including the Clearing House Payment Company.

*Codes* means password, user ID, personal identification numbers and other security devices used by you to access the Service.

*ECCHO Rules* means the rules for check electronic promulgated by the Electronic Check Clearing House Organization.

*FAA* means the Federal Arbitration Act.

*NCHA Rules* means the rules for check clearing promulgated by the National Clearing House Association.

*OFAC* means the U.S. Treasury Department's Office of Foreign Asset Control and its regulations relating to economic sanctions or embargo programs or other similar restrictions.

*Qualified United States Financial Institution* means an institution that: (1) is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state; (2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks; and (3) is a member of the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

*Substitute Check* means a paper reproduction of an original check that contains an image of the front and back of the original check, is suitable for automated processing in the same manner as the original check and meets other technical requirements set out in the Check Clearing for the 21<sup>st</sup> Century Act, 12 USC §§ 5001-5018 and the regulations relating to the Act.



# PROSPERITY BANK®

## Lockbox Agreement

This Lockbox Agreement ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ by and between Prosperity Bank, a Texas state banking association with its principal place of business located at 1301 North Mechanic, El Campo, Wharton County, Texas ("Bank") and \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ (County) \_\_\_\_\_ ("Customer") to evidence their agreement as follows is consideration of the mutual covenants and agreements contained herein:

1. Customer shall maintain a demand deposit account and shall execute all instruments required by Bank in connection with maintenance of such Account ("Depository Agreement"), with the terms of such agreement to be superseded by this Agreement solely to the extent of any material conflict with the terms hereof. Customer shall pay all fees required by Bank in connection with the Account as and when due pursuant to the Depository Agreements and account terms and conditions.

2. Customer hereby instructs Bank to cause a post office box in Bank's name to be opened on Customer's behalf ("Box"). Customer shall be responsible for all fees related to the Box, and hereby authorizes Bank to cause such fees to be paid when due by debit against the Account as and when deemed necessary by Bank.

3. Customer shall instruct third parties to make remittance of amounts owed by such third parties to Customer in connection with Customer's business by forwarding of instruments of remittance (including checks, drafts, money orders or other orders for the payment of money) (herein, "Instruments") to Customer at the Box. Customer shall instruct that remittances **not be made by cash** but only check, money order, or cashier's check. Customer shall provide to such third parties for such remittance "business reply" envelopes imprinted with Customer's name and the address of the Box as addressee, and shall direct that such envelopes be used for the making of payments to Customer. Customer agrees to obtain approval of Bank as to the form of business reply envelopes, and that Bank shall have the right to return to sender any non-approved envelopes received in the Box.

4. As agent for Customer with respect to the Box, Bank shall have a key to the Box, and shall have unrestricted and exclusive access to all mail received in the Box.

5. Each day when the Bank is open for regular, full service operation ("Business Day"), at or before the "Access Time" shown on the Instructions, Bank shall cause a Bank agent or employee to collect the Mail then in the Box and deliver the Mail to Bank. Bank shall open each envelope for Mail, remove the contents thereof ("Contents") and process same as provided herein. Bank shall inspect the Contents, and identify which of the Instruments are acceptable for deposit into the Account. Bank is authorized to deposit all Instruments received into the Account regardless

of the designated payee (i.e., even if payee is designated as someone other than Customer of Bank), but Bank shall never be required to accept an Instrument if the payee is not properly designated. An Instrument shall be "acceptable for deposit" for purposes hereof if Bank determines, in its sole discretion, that it does not bear any of the unacceptable criteria listed in Exhibit "A" Section V. and meets standard industry requirements for an acceptable deposit. However, Bank shall have the right to elect not to deposit the Instrument on that Business Day and refer the issue to Customer's personnel for review and instructions regarding disposition.

6. All Instruments deemed by Bank to be acceptable for deposit ("Acceptable Instruments") received by the Bank pursuant hereto shall be endorsed "FOR DEPOSIT ONLY- To the account of the within named Payee all rights reserved without prejudice subject to final determination Prosperity Bank – Lockbox", and forwarded to the Bank's Check Processing Department for deposit into the Account, subject to and in accordance with the Depository Agreements, applicable law and this Agreement. Bank shall report such deposits to Customer in the manner selected by Customer as set forth in the Instructions. All documents and correspondence which were enclosed in the envelope with an Acceptable Instrument shall be forwarded to Customer at the address set forth in the Instructions. Bank shall have no liability for cash received by mail or for any delay or other consequence arising due to such forwarding of documents and correspondence.

7. All Instruments which are not deemed by Bank to be Acceptable Instruments and all money in currency other than United States of America legal tender ("Unacceptable Instruments") shall not be deposited into the Account, but shall be forwarded by Bank to Customer at the address shown in the Instructions, together with all correspondence and documents which were enclosed with such Unacceptable Instruments, in the manner which is customary for Bank, unless otherwise instructed in advance in writing by Customer. Customer shall pay (or promptly reimburse Bank for) all charges, fees, and costs associated therewith. Bank shall not be liable for any delays that may arise in connection with forwarding as provided herein.

8. Customer shall pay Bank, in good funds, for any the fees associated with these services hereunder in accordance with the fees currently in effect and (b) such other amounts required to be paid or reimbursed by Customer in this Agreement. Customer agrees that, upon Bank's request, Customer shall pay directly all costs and expenses in connection with the services provided under this Agreement incurred by Bank to any third-party provider, and also agrees that Bank may pay same for Customer, in which event Customer shall, promptly upon Bank's request, reimburse Bank for same. Except as otherwise expressly provided herein, in the event any amounts owed by Customer to Bank under this Agreement remain unpaid thirty (30) days after the date of Bank's billing, Bank shall thereupon have the right to reimburse and/or pay itself such amounts by debit of the Account or of any other account of Customer with Bank.

9. In the event an Instrument deposited into the Account is returned unpaid due to "Insufficient Funds" or "Uncollected Funds" or any other reason, Bank will attempt to clear such Instrument only one additional time. It is provided, however that if such redeposit is not practicable, including by reason that the first return was for reason of "Account Closed" or "Payment Stopped", or the like, such Instrument shall not be required to be presented for payment again ("represented" or "representation"). As to any Instrument which is not represented as aforesaid, or which is returned unpaid after the first representation thereof, Bank shall charge the Account for the amount



of such Instrument, and the Bank's regular charge for such returned Instrument. The Bank's sole duty to Customer shall be to forward the Instrument, together with the debit advice, to Customer in the manner customary for Bank.

10. From time to time, upon not less than thirty (30) days' prior written notice to Customer, Bank may change any procedure or fees established in connection with this Agreement. Notwithstanding the foregoing, Bank may change any procedure without prior notice to Customer where an immediate change in terms or conditions is necessary to maintain or restore the security of the Account, or to comply with applicable law.

11. In the event of any disagreement hereunder, or if conflicting demands or notices are made upon Bank relating to this Agreement or any item or amount received by Bank hereunder, Bank may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder with regard to the subject matter of the dispute, so long as such dispute continues in the reasonable opinion of Bank; and in any such event, Bank shall not be or become liable to any person for its failure or refusal act, and Bank shall be entitled to continue so to refrain from acting until (a) the rights of all parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (b) all differences shall have been adjusted and all doubt resolved by written agreement signed by all of the interested persons satisfactory to Bank. The rights of Bank under this paragraph are cumulative of all other rights which it may have under this Agreement, by law, or otherwise.

12. CUSTOMER AGREES, TO INDEMNIFY AND HOLD HARMLESS BANK, ITS EMPLOYEES, AGENTS AND AFFILIATES FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, LOSSES AND DAMAGES OF ANY AND EVERY KIND (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OR RESULTING, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, FROM (A) THE ACTS OR OMISSIONS OF CUSTOMER, ITS EMPLOYEES, ITS AGENTS OR THIRD PARTIES, IN CONNECTION WITH THIS AGREEMENT OR THE DEPOSITS AND OTHER PROCESSING CONTEMPLATED HEREIN, OR (B) ANY NEGLIGENT ACT OR OMISSION OR BREACH BY BANK OF ITS OBLIGATIONS HEREUNDER EVEN IF THE CLAIMS, DAMAGES, COSTS OR EXPENSES ARE ATTRIBUTABLE TO THE SOLE NEGLIGENCE OF BANK, ITS EMPLOYEES, AGENTS OR AFFILIATES. IT IS THE INTENTION OF THE PARTIES THAT THIS INDEMNIFICATION SHALL BE UNLIMITED, AND THAT IT SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY AND ALL DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL AND PUNITIVE DAMAGES.

13. (a) Customer releases Bank, its employees and agents from all liabilities, claims, costs, expenses, losses and damages of any and every kind arising out of or resulting, directly or indirectly, from any act, omission, error or delay in the performance or nonperformance of Bank's services, agreements or duties under this Agreement, including but not limited to any negligence by Bank, its employees, agents, or affiliates. Notwithstanding the foregoing, to the extent, if any, that Bank shall be deemed to have liability under this Agreement, Customer's exclusive remedy and Bank's entire liability for any and all causes, whether for negligence, breach of contract, warranty

or otherwise, shall in the aggregate not exceed six months' average billing to Customer taken over the six months preceding the month in which the damage or injury is alleged to have occurred; but if this Agreement has not been in effect for six months preceding such date, then over such fewer number of preceding months that this Agreement has been in effect. Customer may not assert any claim against Bank arising in connection with this Agreement more than one year after the occurrence of the event which gives rise to such claim.

(b) THE OBLIGATIONS, RESPONSIBILITIES AND LIABILITIES OF THE BANK AS ABOVE DESCRIBED IN SUBPARAGRAPH 13(a) ARE EXCLUSIVE AND IN LIEU OF ANY OTHER GUARANTEES, OBLIGATIONS, RESPONSIBILITIES AND LIABILITIES HEREUNDER, WHETHER DIRECT OR INDIRECT, EXPRESSED OR IMPLIED, UNDER LAW OR EQUITY; AND THE BANK DISCLAIMS AND CUSTOMER HEREBY WAIVES AND RELINQUISHES ANY FURTHER OR OTHER SUCH GUARANTEES, OBLIGATIONS, RESPONSIBILITIES, AND LIABILITIES ON THE BANK'S PART, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, AND CUSTOMER WAIVES ALL CLAIMS FOR CONSEQUENTIAL DAMAGES AND ALL CLAIMS REGARDING LOSS OF REVENUE, INCOME, PROFIT, AND USE OR DAMAGES WHETHER SAME BE DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL. THE EXTENT OF LIABILITY THAT MAY BE IMPOSED ON BANK IS LIMITED STRICTLY AND SOLELY TO THE CIRCUMSTANCES AND AMOUNTS AS SET FORTH ABOVE IN SUBPARAGRAPH 13(a).

14. The Bank shall have no responsibility or liability to Customer or any other party for processing delays or for failures to perform under this Agreement caused by any natural disaster, fire, flood, storm, strike, labor unrest, war, riot, act of God, power failure, equipment failure, software failure, or any other cause beyond Bank's reasonable control. In the performance of the services under this Agreement, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Customer, and Bank shall not be responsible for the accuracy thereof.

15. This Agreement shall be effective for a term of one (1) year from the effective date hereof. The Agreement shall automatically renew for like terms upon the expiration of the then current term. Either party may terminate this Agreement upon fifteen (15) days' prior written notice given to the other party. Notwithstanding the foregoing, Bank may terminate this Agreement, with such termination to be effective immediately upon notice to Customer, (i) if Customer fails to comply with the terms of this Agreement, (ii) if Customer fails to pay when due any of the fees provided for in this Agreement, (iii) if any charge against the Account made hereunder creates an overdraft in such Account, including, without limitation, a daylight overdraft, or (iv) if the Account is closed for any reason or is made subject to levy, garnishment, attachment or similar process. For purposes of this Agreement, "daylight overdraft" shall mean a negative position in the Account at any time during the business day. No termination hereunder or expiration of this Agreement shall affect the rights or obligations of either party which may have arisen or accrued prior to such termination or expiration. Any Instruments or correspondence addressed to Customer received in the Box after termination of this Agreement shall be sent by Bank to Customer at the last address of Customer in effect hereunder, or, at Bank's option, returned to sender. The provisions of the

immediately preceding sentence and of Paragraphs 12 and 13 shall survive the termination or expiration of this Agreement.

16. All notices required in connection with this Agreement shall be deemed to have been given when mailed Certified Mail, return receipt requested, postage prepaid, or delivered by messenger to Customer at the address contained in the Instructions; and to Bank at the address provided below or to such other address as either party may specify in writing to the other party.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue for any litigation or controversy arising under or attributable to this Agreement will be in and for the State District Courts of Harris County, Texas.

18. No waiver of any provision hereunder shall be binding unless such waiver shall be in writing and signed by the party alleged to have waived such provision. Any waiver by either party of any default hereunder shall not operate as a waiver of any other or succeeding defaults.

19. Any specifications, records, systems, and programs that are utilized or developed by Bank in connection with this Agreement (except for Customer's account records or other account information) are and will remain the sole property of Bank.

20. If one or more of the provisions of the Agreement, including the Exhibits hereto, should be or declared to be illegal or unenforceable in any respect under present or future laws or regulations effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions of this entire Agreement shall not be affected or impaired thereby; PROVIDED, HOWEVER, that should this entire Agreement be or be declared to be illegal, invalid, or unenforceable, or should any regulatory agency direct Bank to discontinue providing the services hereunder, the parties agree that payments or credits due up to that time shall be remitted or made, and this Agreement shall thereafter be immediately terminated without liability to either party.

21. Mediation. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. The parties shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Banking Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Houston, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties do not resolve a

dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be the Arbitration pursuant to Section 22 of this Agreement.

22. Arbitration. Any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation, shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Banking Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. The parties grant to any person or entity made a party to an arbitration conducted under this Section, whether by joinder or consolidation, the same rights of joinder and consolidation as the parties under this Agreement.

23. Waiver of Jury Trial. The Parties hereby knowingly and voluntarily waive any right that either or both of them shall have to receive a trial by jury with respect to any claims, controversies, or disputes that shall arise out of or related to this Agreement or the subject matter hereof. The prevailing Party in any action brought is entitled to recover from the other Party its reasonable costs and expenses associated with bringing the action, including reasonable attorneys' fees.

24. This Agreement constitutes the entire understanding of the parties in respect of the subject matter hereof and, all prior negotiations, agreements and representations are merged herein. This Agreement may not be modified except in writing signed by an authorized representative of each party. Customer cannot assign this Agreement without the Bank's written consent. This Agreement may be assigned by Bank without Customer's consent.

This Agreement is executed by the duly authorized representative of the parties hereto and shall be effective as of the date of execution by Bank.

**PROSPERITY BANK**

**"CUSTOMER"**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

Address: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

SAMPLE

## Electronic Disclosure Consent Statement

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This statement asks for your consent so that we can provide communications and information to you in an electronic format rather than in paper format. Before you decide whether or not you wish to provide your consent to receiving electronic disclosures ("eDisclosures"), you should read and consider the following information. Then, if you decide to consent, you can click the "I Agree" button at the bottom of this statement. For your consent to be effective, your computer and browser will need to meet the hardware and software requirements discussed below.

This statement contains important information that we are required by law to provide to you. You should keep a copy for your records. If you have any questions about eDisclosures that are not answered, feel free to communicate with us by contacting your local banking center.

Our Internet Banking Service (the "Service") was designed and built to provide records to you in electronic form. You cannot enroll in the Service online without agreeing to receive the Internet Banking Agreement and Disclosure in electronic form.

If you consent, we may also provide other disclosures in an electronic format. These disclosures may include but are not limited to the following:

- Updates or Amendments to our Internet Banking and Bill Payment Agreement;
- Monthly account statements;
- Notice of change in account terms;
- Notice of fee changes;
- Responses to any questions you may have about electronic funds transfers;
- Privacy and security notices.
- Other information related to your accounts with us. Accounts may include, but are not limited to, Deposit Accounts (such as Consumer and Business checking, money market and savings accounts), Safe Deposit Box Accounts and Loan Accounts

If you wish to receive electronic "only" account statements, notices and disclosures we will ask you to complete a separate consent process.

### 1. How to Obtain Electronic Disclosures (eDisclosures)

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We will always post our most current Internet Banking and Bill Pay Agreement on our website. If any amendment(s) to the Internet Banking and Bill Pay Agreement results in an adverse affect upon our customers, we will provide at least 30 days prior notice through a secure online message and/or external email alert.

We may also send you an external email notice and/or secure message through our Internet Banking Service to inform you where other important disclosures or account statements can be viewed on our website or within our Internet Banking Service.

You may download or print all electronic notices and disclosures from your computer if you have the hardware and software described below. You can also save copies of electronic notices and disclosures to your hard drive or other media for viewing and printing at a later time.

If you have trouble printing or if you need a paper copy for a special situation, you may request a paper copy from us by calling Customer Service at 1-800-531-1401. If you need a paper copy of any eDisclosure, we will provide the first copy for free. Charges may apply for additional paper copies.

### 2. System and Equipment Requirements

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Prior to accepting eDisclosures, you should verify that you have the required hardware and software necessary to access the system and retrieve documents and disclosures in an electronic format. You will need:

- Internet Access.
- A computer and Internet browser that can support 128-bit encryption.
- For security purposes, we support the most current version of popular browsers, such as Microsoft Internet Explorer, Mozilla/Firefox, Google Chrome or Safari. The most current browser versions are typically more secure and will support 128 bit encryption. Browser upgrades are accessible on the Internet Banking login page.

- A printer for printing eDisclosures and/or you sufficient hard-drive space or other media (e.g. CD, DVD) if you plan to save disclosures in an electronic format.
- A valid email address. This is necessary so that we can send you notices when eDisclosures are available on our website or within the Internet Banking service.

We may revise hardware and software requirements from time-to-time. If there is a material chance that the required changes may impact your ability to access the system or eDisclosures, we will notify you of these changes at least thirty (30) days in advance. At that time, you will be given an opportunity to change the format of your disclosures (e.g. change from an electronic format to paper format) without the imposition of any fees.

### 3. Cancellation of eDisclosures

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If you consent to receive eDisclosures and later change your mind, you may withdraw your consent and change to paper delivery format.

You can notify us of your intent to cancel eDisclosures by sending us a secure message through the Internet Banking Service or by calling Customer Service at 1-800-531-1401.

If you send us a secure message or write us a letter, please be sure to identify yourself and the applicable accounts.

If you have agreed to receive electronic-only account statements, notices and disclosures, you can "opt-out" on the "eDelivery" tab within the Internet Banking Service. After your opt-out request is processed, you will begin receiving paper copies of account statements, notices and disclosures. Additional charges may apply.

### 4. Address Changes

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In order to provide eDisclosures, we must maintain current customer email address at all times. It is your sole responsibility to provide us with your correct contact information, including a current valid email address.

You should notify Prosperity Bank of any changes to your personal contact information by contacting your local banking center. If you wish to notify us electronically, please update your personal information through the User Services menu within our Internet Banking Service.

### 5. Proceed with Acceptance of eDisclosures

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With your acceptance below, you agree to accept disclosures related to the Internet Banking and Bill Payment Service in an electronic format. You also agree that you have the necessary equipment for accessing and viewing the disclosures and you agree to notify us if you change your email address or if you no longer want to receive disclosures electronically.

If you enroll for Internet Banking Services in one of our banking centers, we may send you an email and ask you to confirm your email address, and your ability to access eDisclosures.

If you do not want eDisclosures, select the "cancel" button below. If you do not accept eDisclosures, you will not be able to proceed with online enrollment for our Internet Banking and Bill Pay Service.

## INTERNET BANKING SERVICES AGREEMENT

### **Print & Retain for Customer's Records**

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. THEY GOVERN CUSTOMER'S ACCESS AND USE OF THE PROSPERITY BANK INTERNET BANKING SERVICES. BY ACCESSING OR USING THE PROSPERITY INTERNET BANKING SERVICE, CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS AND ACCEPT THEM IN FULL, AS THEY MAY BE MODIFIED BY PROSPERITY BANK FROM TIME TO TIME AS DESCRIBED BELOW.

This Internet Banking Services Agreement (the "**Agreement**") is between the Prosperity Bank customer entering into this Agreement or obtaining the services described herein (referred to herein as "**I**", "**me**", and "**my**") and Prosperity Bank ("**Bank**" or "**Prosperity**" or "**you**" or "**your**") for the delivery, access and usage of Internet Banking (also described as "**Internet Banking Service(s)**" or "**Service(s)**" or "**Internet Banking**" or "**Online Banking**") as described below, including, without limitation, the Bill Pay and Delivery or Popmoney<sup>SM</sup> Personal Payment Services. In this Agreement, "**I**," "**me**," or "**my**" also refers to each person that accesses the Service (or if an entity, whose representatives access the Service on its behalf) and each owner of the Account(s) accessed by the Service. In this Agreement, "**you**" or "**your**" also refers to any agent, independent contractor, Service Provider, subcontractor, licensor, designee, or assignee that Bank may involve in the provision of the Service. My use of the Service will be further evidence of my agreement to these terms and the other related agreements that Bank provides to me.

### **I. DEFINITIONS**

**Account(s):** Any Consumer Account, Consumer Loan, or other Business Account or Business Loan included on the Internet Banking Services Application and approved by the Bank in writing, whether on paper or by electronic or other means ("enrolled"):

(1) For purposes of this Agreement, "**Consumer Account**" or "**Consumer Loan**" means a deposit or loan account, as applicable, owned by one or more individuals and used primarily for personal, family, or household purposes.

(2) Any and all other deposit accounts and loans I have with Prosperity Bank, including but not limited to business, association, and sole proprietorship accounts, are considered "**Business Accounts**" or "**Business Loans**", as applicable. (For the avoidance of doubt, "**Account(s)**" does not include any accounts held by Bank that reflect the customer's ownership interest in various securities or portions thereof pursuant to any repurchase or sweep agreements between the parties, which are not deposit accounts (and may be called "**Repurchase Accounts**" or "**Repo Accounts**"); such securities are governed by separate agreements).

**Available Balance:** The Current Balance of the Account minus any and all Holds, and Memo Posted Debits plus Memo Posted Credits. If I have a line of credit related to my Account, I understand the Available Balance figure may also include any unused, available credit on my line of credit if I have requested and Bank has approved and implemented such functionality.

**Bill Pay or Bill Payment Service:** The Bank's online bill payment service that can be used to send payments to payees such as companies, bill collectors, and individuals, more fully described at Section X. below.

**Bill Payment or Payment:** The payment to be made by the Bill Payment Service in accordance with and as described in Section X. of this Agreement.



**Bill Payment Service Provider:** The contractor, sub-contractor, or provider of Bank's Bill Payment and Delivery services, currently CheckFree Services Corporation.

**Bill:** The person or entity to which I wish a Bill Payment to be directed, or the person or entity from which I receive electronic bills, as the case may be.

**Billing Account:** The checking account(s), whether one or more, from which all Service fees will be automatically debited, as I have designated in accordance with Bank's instructions, which designation I may change from time to time in accordance with Bank's procedures.

**Business Customer:** Anyone other than a Consumer who owns an Account with respect to which the Service is requested primarily for business purposes.

**Business Day:** The day during which the main office of Bank is open for business, in accordance with specified cut-off times, and during which Bank is able to download my information and process transactions. A Business Day does not include Saturday, Sunday, or federal or state holidays.

**Collected Balance:** The Current Balance of the Account, less Float.

**Consumer or Consumer Customer:** A natural person who owns an Account and who uses the Service primarily for personal, family, or household purposes.

**Current Balance:** The Account balance that is the result of the total debit and credit activity as of a specific date and time for all Accounts.

**Due Date:** The date reflected on the Biller statement for which the Bill Payment is due. It is not the late date or grace period.

**Float:** Dollar amount of deposited items that are in the process of collections from the drawee banks. Also known as uncollected funds.

**Hold:** A restriction on payment of all or any part of the balance in an Account.

**Laser Draft Payment:** A payment method similar to a check written by me on my Payment Account. Billers should receive Laser Draft Payments no later than the Scheduled Payment Date. Funds remitted to the Biller are deducted from my Payment Account when the Laser Draft is presented to Bank for payment. As a result, neither Bank nor its Service Provider(s) can control when my Payment Account will be debited for a laser Draft Payment.

**Memo Posted Credits:** Any pending credits posted to the Account for a given Business Day. For example, ACH credit transactions and wire transfers.

**Memo Posted Debits:** Any pending debits posted to the Account for a given Business Day. For example ACH debit transactions, wire transfers, and teller cashed checks.

**Payment Account:** The checking account from which Bill Payments will be debited. I must be a legal owner of any Payment Account registered for the Service.

**Payment Instructions:** The information provided by me to the Service for a Bill Payment to be made to the Biller (such as, but not limited to, Biller name, Biller account number, and Scheduled Payment Date).

**Scheduled Payment:** The Bill Payment scheduled in accordance with and as described in Section X. of this Agreement.

**Scheduled Payment Date:** The day I want my Biller to receive my Bill Payment, and also the day my Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day, in which case it will be considered to be the previous Business Day.

**Service Guarantee:** The amount for which Bank's Service Providers will bear responsibility in accordance with the terms and conditions of this Agreement should a Bill Payment post after its Due Date.

**Service Provider(s):** Any third party service provider that the Bank may engage to perform the functions and services offered by Bill Pay or any other Service.

**User:** Any individual or entity that I have authorized or otherwise allowed to access and use the Services or any part of the Services, whether one or more.

## II. ACCEPTING THIS AGREEMENT

**A. Generally.** I understand and agree that Bank makes the Internet Banking Service available at Bank's sole discretion and only to individuals and businesses that already maintain an Account with Bank, who apply for the Internet Banking Service, who are approved by Bank, who consent to receive notices and communications electronically (except for account statements, unless I have provided a separate consent to receive electronic Account statements), and who read and accept this Agreement. I will evidence that acceptance and agreement by selecting the button on my Computer screen declaring my acceptance as part of my enrollment in the Internet Banking Service. I understand that all information on my Internet Banking Services application, including without limitation any information I insert onto, or instructions, procedures, conditions or other terms provided within, the enrollment or other website pages for the Internet Banking Service (the "**Application**"), which I represent as true and complete in all respects, the Terms and Conditions of my Account(s), the Prosperity Bank Privacy Notice, the Prosperity Bank Internet Privacy Policy, and any other depository or loan agreements or disclosures applicable to my Account(s) (the "**Account Documents**") also apply to the Internet Banking Services, and all such documents and agreements are incorporated herein by reference. I further understand that I must have an Account with the Bank, a user access or identification code ("**Access ID**") accepted by the Bank, and a string of words or characters for my further authentication and access approval that I create and maintain (my "**Password**") in order to access and utilize the Internet Banking Service. I agree that I am deemed to renew my acceptance of this Agreement each time I or my User logs in to the Internet Banking Service to conduct any transaction. Unless otherwise required by applicable statute, regulation, opinion, or ordinance ("**Law(s)**"), Bank may change the terms of this Agreement at any time without notice to me; Bank will provide updates of this Agreement through the "Messages" feature of the Internet Banking Service or make them available to me in other ways Bank deems appropriate, and I understand it is my responsibility to check for such updates periodically. I understand that by continuing to use the Service after the effective date of any change, I am deemed to have accepted that change. *I also provide, for myself and on behalf of any and all Users, my express consent to receive messages from Bank providing information about new or existing features of Internet Banking or other products or services provided by Bank that may be included in the Service or on or with my account statements or messages Bank may send to my Computer, unless I have specifically requested otherwise. I agree to receive such communications even if I or my Computer is registered on any federal or state "do not Email" registry.*

### **B. Electronic Communications**

I understand that each Email message Bank sends me may not be encrypted, but specific Account information may be masked. **I understand and agree that transmission of the masked information does not constitute transmission of personal or private information, and I hereby authorize Bank to send such information via Email to my Electronic Address. BANK SHALL NOT BE LIABLE FOR LOSSES OR DAMAGES ARISING FROM NONDELIVERY, DELAYED DELIVERY, OR WRONG DELIVERY OF AN EMAIL SERVICE, INACCURATE CONTENT IN ANY EMAIL, ANY ACTIONS RESULTING FROM THE INTENTIONAL OR UNINTENTIONAL DISCLOSURE OF ANY EMAIL OR ITS CONTENTS BY ME TO ANY UNAUTHORIZED PERSON, OR MY USE OR RELIANCE ON THE CONTENTS OR ANY EMAIL OR EMAIL SERVICE FOR ANY PURPOSE.**

### C. Basic Internet Banking Services May Include

My User or I may request any of the following basic Internet Banking Services:

1. **Downloading a transaction history file** to save or print for future reference.
2. **Performing Account inquiries** on Account data and transaction history on the Accounts.
3. **Initiate stop payment requests.** The purpose of this stop payment feature is to stop payments only on checks that I have written or for stopping pre-authorized electronic drafts that are deducted from my Account. I understand that the provisions of the Account Documents applicable to stop payment requests also apply to any electronically transmitted stop-payment order initiated through Internet Banking, and I understand and agree that the "Stop Payment" screen in the "User Services" section of the Internet Banking Service applies to these stop payment requests and is incorporated herein by reference. Because processing this type of stop payment request may require up to three (3) Business Days, if my request is urgent, I understand that I must contact your Customer Support number at (800) 531-1401. I UNDERSTAND THAT THIS STOP PAYMENT FEATURE SHOULD NOT BE USED TO CANCEL ACCOUNT TRANSFERS AND BILL PAYMENTS (SEE SECTION X.F. AND X.G. BELOW FOR CANCELING BILL PAYMENTS). I UNDERSTAND I CANNOT CANCEL AN ACCOUNT TRANSFER AFTER IT HAS BEEN ENTERED INTO THE SYSTEM AND THE INFORMATION HAS BEEN PROCESSED AND/OR TRANSMITTED TO BANK THROUGH THE SERVICE, BUT I CAN EDIT OR CHANGE A TRANSFER THAT IS STILL "PENDING." I WILL CALL YOUR CUSTOMER SUPPORT NUMBER AT (800) 531-1401 FOR FURTHER DETAILS.
4. **Send and receive Electronic Mail ("Email") messages (to and from the Bank) through the "Messages" feature of the Internet Banking Service ("Message(s)").** Bank is not responsible for any delay in Messages being Emailed. Bank will make reasonable efforts to retrieve such Messages, but I understand delays can occur. I will verify any urgent Messages I send Bank by a telephone call to Bank. User and I are responsible to check periodically for Messages sent by the Bank. I agree not to send critical data (such as but not only driver's license numbers, Social Security numbers, or other sensitive data) via Email Messages or other Emails sent to Bank.
5. **Initiate transfers between any Accounts set up within Internet Banking Services, with the exception of time Accounts.** Refer to Section III., "Internet Banking System Setup/Account Transfers and Limits," below for other transfer limits and additional provisions regarding transfers. Transfers involving Money Market Deposit Accounts and Savings Accounts made via Internet Banking Services are subject to the limitations described in my Terms and Conditions, and I agree to consult my Terms and Conditions or call Customer Support at (800) 531-1401 for details. I am not permitted to transfer more than the available balance from the Account.
6. **ACH and Wire Transfers.** While available through the Internet Banking Service, these transfers are governed by a separate ACH Origination Agreement and Wire Transfer Services Agreement, as applicable, which are incorporated herein by reference if executed by me. I will refer to my ACH Origination Agreement or my Wire Transfer Services Agreement for Internet Banking for details.

Other services may be available or may become available. From time to time Bank may add, and may modify or delete, particular Internet Banking functions or geographic areas served by the Internet Banking Service. Except as may otherwise be required by applicable Law, Bank may make such changes with or without prior notice. Bank reserves the right to refuse to make any transaction that I may request through the Internet Banking Service.

### D. Internet Banking Service Availability

Prosperity will use commercially reasonable efforts to make the Internet Banking Service available for my use on a continuous basis. However, Bank and its third party Service Providers cannot guarantee functionality of the Service (or any Internet Banking Service software) or that I will have continuous access or continuous or error-free operation of the Service. The Service may be temporarily unavailable for regular or emergency system maintenance. Bank will endeavor to have scheduled maintenance occur during non-peak hours, but Bank may conduct maintenance at any time. In addition, Bank will not be responsible for failure of the Service to perform under this Agreement resulting from any Event Beyond Bank's Control (defined below at Section IX.A.). Even so, Bank will use commercially reasonable efforts to re-establish the Service in those instances.

### **III. INTERNET BANKING SYSTEM SETUP/ACCOUNT TRANSFERS AND LIMITS**

Bank will set up my Account information on Internet Banking Services as described in the Internet Banking Services Application that I have submitted, and I authorize Bank to do so. Bank assumes no liability for changes or modifications to the Account setup information after initial installation of the Internet Banking Services of which I do not notify Bank in accordance with Bank's procedures. I must notify Bank in writing or as otherwise directed by Bank if I wish Bank to set up additional Accounts. I realize that additional Accounts set up on Internet Banking may increase any monthly maintenance fee that may apply.

I understand that my request(s) to move funds between enrolled Accounts ("Account Transfers") received after Bank's Account Transfer cutoff time, which may change from time to time, may not be processed until the following Business Day. I will call Bank's Customer Support at (800)531-1401 for the correct Account Transfer cutoff time for my Account(s). I understand that Account Transfers to a loan Account will be considered a scheduled payment on the loan and will affect the payment schedule of the loan Account unless I designate the appropriate type of payment with the transfer. I can make unscheduled principal or interest payments by designating the appropriate type of payment with the transfer, as allowed by my loan documents. A confirmation number will be given at the time I process an Account Transfer using the Internet Banking Services. It is my responsibility to record this number, along with scheduled date and transaction amount in my checkbook register (or other permanent record), because doing so will help in resolving any problems that may occur.

### **IV. ACKNOWLEDGEMENTS, RESPONSIBILITIES, AND LIABILITIES OF ME AND MY USER**

#### **A. Hardware/Software Requirements**

My User and I are responsible for obtaining, maintaining, and updating the necessary hardware and related equipment needed to utilize the Services. As of the date of this Agreement, the necessary equipment includes: personal computer with internet access and web browser software that supports the 128-bit encryption standard (my "Computer"). I will call your Customer Support at (800) 531-1401 to confirm current requirements. To ensure my ability to view various features of Bank's Internet Banking Service, I understand it is my responsibility to update my web browser periodically so that the Bank's entire web site may be viewed.

I understand all Internet Banking Service users may be required to download, install and use certain software systems and programs developed by Bank, its licensors, or other third party providers. Bank is not responsible for any damage to my Computer resulting from those activities, and I will be engaging in those activities at my own risk. I am responsible for obtaining my own internet service provider, and my provider may charge me for internet-related use. I will look to my provider for further details about its charges. Bank is not a party to, and Bank has no duty, liability, or responsibility in connection with my internet service provider agreement or any computer device, including but not only my Computer, or service that I may purchase from others relating to my use of the internet. I understand I am responsible and Bank is not responsible for meeting the terms and conditions of and paying the fees

and charges required by any such agreements, and that my internet service provider and the providers of my hardware and software products that enable me to access and use the Internet Banking Service are responsible for their products and services. I understand that I use those products and services at my own risk, and that I will resolve any problems I may have concerning those products and services directly with the providers of those products and services without involving Bank.

**I UNDERSTAND THAT AND AGREE THAT YOU ARE NOT RESPONSIBLE FOR, AND I AGREE TO HOLD YOU, AND EACH OF YOU, HARMLESS FROM ANY DAMAGES, LOSSES, COSTS, ERRORS, DELETIONS, FAILURES OR DISCLOSURES OF PERSONAL OR BUSINESS ACCOUNT INFORMATION THAT OCCUR AS A RESULT OF OR IN CONNECTION WITH ANY MALFUNCTION OF MY COMPUTER OR COMPUTER SYSTEM OR SOFTWARE OR MOBILE DEVICE, OR MY FAILURE TO OBTAIN ADEQUATE ONLINE SECURITY HARDWARE AND SOFTWARE OR TO MAINTAIN AND SECURE MY COMPUTER AND SOFTWARE PROPERLY, NOR WILL YOU BE RESPONSIBLE FOR ANY COMPUTER VIRUSES THAT AFFECT MY COMPUTER OR SOFTWARE WHILE USING THE INTERNET BANKING SERVICE. IN ADDITION, YOU WILL NOT BE RESPONSIBLE FOR ANY THIRD PARTY ACCESS OR ATTEMPTED ACCESS TO MY COMPUTER OR SOFTWARE WHILE USING THE INTERNET BANKING SERVICE OR YOUR WEBSITE.**

#### **B. Set-Up and Security Procedures**

I agree to follow any and all instructions provided by Bank for setting up or implementing security measures and procedures, which Bank may provide separately, whether initial security measures and procedures or any that Bank may request or require subsequent to initial setup, for my Internet Banking Services, such as, but not limited to, my Access ID and Password ("**Security Procedures**"), all of which are incorporated herein by reference. I agree that the Security Procedures are commercially reasonable and appropriate for my needs and I agree to be bound by the Bank's Security Procedures, which may be periodically updated. Bank is not responsible for my actions or negligence in setting up my security access to Internet Banking Services or designating or allowing Users access to the Service or assigning Access IDs to Users. Each User and I will keep each Password and Access ID strictly confidential and not make any Passwords or Access IDs available to any other persons. I will change my Password immediately if I suspect that my Password has been compromised, which I understand can be done at any time from the "User Services" menu after I log onto the Internet Banking Service or as otherwise directed by Bank. User and I will not disclose any information pertaining to the use or the components of the Internet Banking Services to any other persons. **I UNDERSTAND AND AGREE THAT I AM RESPONSIBLE FOR MY ACTIONS AND THE ACTIONS OF ANY AND ALL USERS OF THE INTERNET BANKING SERVICES, INCLUDING BUT NOT ONLY ANY PAYMENTS, TRANSFERS, OR OTHER TRANSACTIONS I OR ANY USERS AUTHORIZE USING THE SERVICE. I AGREE TO ENSURE THAT ALL MY USERS UNDERSTAND AND COMPLY WITH ALL APPLICABLE TERMS AND CONDITIONS OF THIS AGREEMENT. I UNDERSTAND I AM RESPONSIBLE FOR ALL ACTIVITY OF ANY USER EVEN IF MY USER EXCEEDS MY AUTHORIZATION.** I understand that I should not leave my Computer unattended while using the Service and that I should log out after completing an Internet Banking Service transaction.

I agree to the Security Procedures required or recommended by Bank in connection with the Service. Such Security Procedures offered by Bank are described herein and in related instructions and communications applicable to the Service provided online or otherwise by the Bank. As part of those Security Procedures, Bank may employ various authentication technologies, including, but not limited to, use of Access IDs, Passwords, and other "**Additional Authentication Information**" ("**AAI**") that Bank may require me to provide at Bank's sole discretion. Bank employs various security and authentication technologies to ensure that I am communicating directly with Bank and also to ensure that my Computer is communicating with a legitimate Bank computer—but I understand that the purpose of the Security Procedures is not to detect errors in any transmission or content. I understand and agree that I am

responsible for establishing and maintaining internal procedures reasonably adapted to insure the confidentiality and security of the Security Procedures. **I UNDERSTAND AND AGREE THAT I WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER MY ACCESS ID AND PASSWORD AND ANY AAI PROVIDED BY BANK AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL I WOULD USE FOR CASH, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL IN THE CIRCUMSTANCES.**

I understand that no Bank employee, nor any company affiliated with Bank or a third party Service Provider of Bank will contact me by Email or phone requesting my Access ID, Password, or any AAI. If I am contacted by anyone requesting such information, I WILL NOT GIVE ANY OF MY INFORMATION OUT, and I will contact Bank immediately to report the details of the incident. Please see Bank's Privacy Statement on its website for details regarding the safekeeping of my personal information.

If my Account is a Business Account, or if I use my Account for business purposes, I also agree to (i) keep all access and Access IDs, Passwords, or other security codes strictly confidential, disclosing them only to trustworthy employees who have access to them in order to perform their employment duties; (ii) instruct those employees that they are not to disclose access and Access IDs, Passwords or other security codes to any other person or entity; and (iii) establish and maintain all procedures necessary to assure the access and Access IDs, Passwords and other security codes will be maintained in strictest confidence. I further agree to notify the Bank immediately if my access or Access IDs, Passwords or other security codes become known to an unauthorized person or if I believe they have become known to an unauthorized person. I understand and agree that the security procedures used by me and the Bank in connection with the Services are to be used to verify the authenticity and validity of communications, including requests for funds transfers, received by the Bank in the entity's or my name, and are not intended to detect errors in such communications.

### **C. Other Responsibilities of Me and My User**

If I am opening an Account concurrently with obtaining these Internet Banking Services, I affirm that I have received and understand all signature card rules and regulations and all other Account Documents and acknowledge that this Agreement is in addition to any of those agreements and disclosures.

Unless I have opted to receive my statements electronically, I will continue to receive regular Account statements, and both types of statements describe all transactions for the Account(s), including the transactions that I have initiated through the Internet Banking Services. I am responsible for promptly reviewing all statements and notices from the Bank and reporting in writing any irregularities to the Bank at once. For all electronic transactions governed by the Consumer Financial Protection Bureau's Regulation E at 12 CFR Part 1005, errors or questions about my electronic transaction must be reported to the Bank as described in the "Error Resolution" section below.

For any Account Transfer, ACH, wire transfer request, or other payment instruction I have initiated or authorized through the Service, I agree that Bank may debit the associated Account without requiring my signature on the item and without any notice to me, except as may be legally required.

### **D. On-Line Help**

I understand I can access on-line help by accessing the "Help" feature on the Internet Banking Services screen, and I agree to do so or to call Customer Support at (800) 531-1401 if I have a question regarding or problem using the Internet Banking Services. I understand that Email to Bank could be delayed, so if I want Bank to receive time-sensitive information relating to my Account or Service (for example, stop payments or reporting unauthorized use of my Service or Account), I must call the

Customer Support telephone number above or contact Bank in person and give Bank a reasonable time to act upon my request.

#### **E. Use and Unauthorized Use of the Services; Legal Compliance**

I agree that I have no right, title, or interest to the Internet Banking Service or system (the "System") or copies of it. I will not make, or permit anyone else to make, copies of the System, nor will I modify, distribute, transmit, display, perform, reproduce, transfer, resell, lease, rent, distribute access to or republish any of the contents of the Internet Banking Services without the prior written consent of Prosperity, which may be withheld in its sole discretion. I agree to notify Bank promptly and in writing of any circumstances of which I have knowledge relating to any possession, use, or use of any portion of the System and/or Services by an unauthorized person. Except as otherwise required by Law, Bank will not be liable to me or any User for any losses caused by the failure of me or any User to use the Service or the Computer properly.

I agree not to use the Service in any way that would (a) infringe any third party's copyright, patent, trademark, trade secret or other proprietary right or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate this Agreement or any applicable Law, including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising, anti-money laundering, or bank secrecy; (d) be false, misleading or inaccurate; (e) create liability for you or your affiliates or Service Providers, or cause you to lose (in whole or in part) the services of any of your Service Providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing, (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt the computer network's connection to the Service; (i) damage, disable, overburden, or impair the Service or interfere with or disrupt the use of the Service by any other user; or (m) use the Service in such a manner as to gain unauthorized entry or access to the Bank's computer systems or the computer systems of others. I will not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided through the Service. I agree that these and other warranties and representations I make in this Agreement will remain in full force and effect even if this Agreement terminates for any reason.

I and Prosperity each agree to abide by all applicable international, federal, state, and local Laws pertaining to the Services. I understand that software programs, materials, tools, and technical data may be subject to U.S. export controls or the trade laws of other countries, and I agree to comply with all export control rules and regulations applicable to me. I represent and warrant that (a) I am not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and (b) that I am not listed on any U.S. Government list of prohibited or restricted parties, such as the U.S. Department of Treasury's Office of Foreign Asset Control's Specially Designated Nationals List.

#### **F. Internet Banking Service License Rights Generally**

In connection with my use of the Internet Banking Service and any software connected with it (the "Internet Banking Software"), Bank and its licensors (or other third parties who have directly or indirectly granted rights in those software systems and programs with respect to Internet Banking) will require my agreement to certain license rights arrangements and/or end-user agreements ("Licenses"). By enrolling in portions of the Service relating to those software systems and programs, and by downloading and/or installing Internet Banking Software, I will be evidencing my acceptance of the terms and conditions of those Licenses. Bank may also condition my use of the Internet Banking Software upon my affirming such Licenses by the use of "I Accept" dialogue box acknowledgments or by other affirmative or use-based acknowledgment and agreement features.

Bank and its Service Providers (including without limitation third party providers of Internet Banking Software) reserve all rights not granted to me in this Agreement and under the terms of such Licenses. If I obtain a different Computer, I may be required to download and/or install Internet Banking Software to that different Computer, under the same terms set forth in this Agreement. I agree to delete all such software from my Computer promptly if the Licenses or this Agreement terminate for any reason. I agree Bank reserves the right to change, add to, or terminate services with Bank's third party Internet Banking Service or Internet Banking Software providers and to enter into or arrange for the provision of Internet Banking Software by other licensors and third parties.

## **G. Error Resolution**

### **1. Consumer Accounts**

In case of errors or questions about my electronic transfers, I will:

- a. call Customer Support at (800) 531-1401, or
- b. write to:

Prosperity Bank  
ATTN: Internet Banking Customer Support  
1401 Avenue Q  
Lubbock, Texas 79401, or

c. Send a message to the Bank through the "Messages" feature within the Internet Banking Service,

as soon as I can, if I think my statement or receipt is wrong or if I need more information about a transfer listed on the statement or receipt. Bank must hear from me no later than sixty (60) days after Bank released the FIRST statement on which the problem or error appeared. I must:

- (1) tell Bank my name and Account number,
- (2) describe the error or the transfer I am unsure about, and explain as clearly as I can why I believe it is an error or why I need more information and
- (3) tell Bank the dollar amount of the suspected error.

If I tell Bank orally, Bank may require that I send Bank my complaint or question in writing within ten (10) business days. Bank will determine whether an error occurred within ten (10) business days (twenty (20) business days if the transfer involved a new Account) after Bank hears from me and will correct any error promptly. If Bank needs more time, however, Bank may take up to forty-five (45) days (ninety (90) days if the transfer involved a new Account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate my complaint or question. If Bank decides to do this, Bank will credit my Account within ten (10) business days (twenty (20) business days if the transfer involved a new Account) for the amount I think is in error, so that I will have the use of the money during the time it takes Bank to complete its investigation. If Bank asks me to put my complaint or question in writing and Bank does not receive it within ten (10) business days, Bank may not credit my Account. An Account is considered a new Account for thirty (30) days after the first deposit is made; if I am a new customer. Bank will tell me the results within three (3) business days after completing its investigation. If Bank decides that there was no error, Bank will send me a written explanation. I may ask for copies of the documents that Bank used in its investigation.

### **2. Business Accounts**



The Error Resolution provisions above, which are applicable to consumers and Consumer Accounts, do not apply to Business and other non-Consumer Accounts. If my Account is a Business Account, I agree to notify the Bank immediately if I discover any unauthorized transactions or error, or believe such transactions or errors have been made. To provide such notice, I will:

- a. Call Customer Support at (800) 531-1401, or
- b. Write to Prosperity Bank, ATTN: Internet Banking Customer Support, 1401 Avenue Q, Lubbock Texas, 79401 or
- c. Send a message to the Bank through the "Messages" feature within the Internet Banking Service.

I agree to provide notice of, and at the Bank's request, an affidavit, regarding the problem within a reasonable time (not to exceed fourteen (14) calendar days) from the date of discovery or my receipt of the first statement, report or notice reflecting the problem, whichever occurs first.

I must notify Bank of errors, discrepancies, or possible unauthorized transactions as soon as possible upon learning of the discrepancy. If I fail to notify Bank within sixty (60) days after I have received notice of an unauthorized or erroneous transaction, Bank will not owe me any interest on the amount in question, even if Bank is otherwise liable to me in connection with the transaction. If I fail to notify Bank of any discrepancy within one (1) year, regardless of the care or lack of care of you or me, I will be precluded from asserting any such discrepancy against Bank or its Service Provider(s).

Bank and its Service Providers shall have no liability to me for any unauthorized transactions made using my Password that occurs before I have notified Bank of any possible unauthorized use and Bank has had a reasonable opportunity to act upon that notice.

## H. Liability & Unauthorized Use

### 1. Consumer Accounts

I will tell Bank AT ONCE if I believe an unauthorized person knows my Access ID or Password, of if either is lost or stolen. Telephoning is the best way of minimizing my possible losses. I could lose all the money in my Account (plus my maximum overdraft line of credit, if applicable).

If I tell Bank within two (2) business days after I discover my Password, Access ID, or other means to access my account has been lost or stolen, my liability is no more than \$50.00 should someone access my account without my permission. If I do NOT tell Bank within two (2) business days after I learn of the loss or theft, and Bank can prove Bank could have prevented the unauthorized use of my Access ID or Password or other means to access my account if I had told Bank, I could be liable for as much as \$500.

If my monthly Account statement contains transfers that I did not authorize, I will tell Bank at once. If I do not tell Bank within sixty (60) days after the statement was made available to me, I may lose any amount transferred without my authorization after the sixty (60) days if Bank can prove that Bank could have stopped someone from taking the money if I had told Bank in time. If a good reason (such as a long trip or a hospital stay) prevented me from telling Bank, Bank may extend the period.

If I believe my Access ID or Password have become lost or stolen or that someone has transferred or may transfer money from my Account without my permission, I will call Bank Customer Support at (800) 531-1401, or write to Prosperity Bank, ATTN: Internet Bank Customer Support, P.O. Drawer G, El Campo, TX 77437.

2. **Business Accounts.** The Liability and Unauthorized Use provisions above, which are applicable to Consumer Accounts, do not apply to Business Accounts. *If I am a business customer, I understand and agree that the following provisions apply to me.*

Business Customer(s) and not Bank will be solely responsible for designating Users and assigning privileges within the Internet Banking Service. I REPRESENT AND WARRANT THAT THE INDIVIDUAL INDICATING AGREEMENT TO THIS AGREEMENT HAS THE AUTHORITY TO DO SO ON MY BEHALF AND THAT MY USERS HAVE THE APPROPRIATE AUTHORITY TO INITIATE TRANSACTIONS THROUGH THE INTERNET BANKING SERVICE. I AGREE TO PROVIDE BANK WRITTEN DOCUMENTATION OF SUCH AUTHORITY AT BANK'S REQUEST. I ALSO REPRESENT AND WARRANT THAT I MAINTAIN OR REQUIRE CURRENT AND UPDATED ANTI-VIRUS AND OTHER SECURITY RELATED SOFTWARE IN ALL COMPUTERS USED TO ACCESS THE INTERNET BANKING SERVICE BY ME OR ON MY BEHALF.

I authorize Bank and its Service Providers to act upon, and I agree to be bound by, any transaction, whether or not authorized, that is initiated with a Access ID and Password of any User(s). Furthermore, any instructions, directions, or other information provided by me, or any of my Users will be deemed to have been authorized by me. Bank and its Service Providers will not be responsible for verifying the identity or authenticity of any person claiming to be my authorized User. I ASSUME ANY AND ALL LIABILITY ARISING FROM THE USE OR MISUSE OF THE INTERNET BANKING SERVICE OR ENROLLED ACCOUNTS BY MY USER OR AS A RESULT OF A COMPROMISED COMPUTER DUE TO A BREACH OR ANY OF THE FOREGOING WARRANTIES. IN ADDITION TO MY OTHER INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, I AGREE TO INDEMNIFY AND HOLD HARMLESS BANK AND ITS SERVICE PROVIDERS FOR ANY LIABILITY AND DAMAGES RESULTING FROM OR ACTING UPON ANY TRANSACTION, DIRECTION, INSTRUCTION, OR INFORMATION THAT IS INITIATED WITH A ACCESS ID AND PASSWORD OF MY USER REGARDLESS WHETHER SUCH TRANSACTION, DIRECTION, OR INSTRUCTION IS MADE BY AN AUTHORIZED USER.

I agree that Bank may send notices and other communications, including Emails, to the current address shown in Bank's records for me, whether or not that address includes a designation for delivery to the attention of any particular individual. I FURTHER AGREE THAT BANK AND/OR ITS SERVICE PROVIDERS WILL NOT BE RESPONSIBLE OR LIABLE TO ME IN ANY WAY IF INFORMATION IS INTERCEPTED BY AN UNAUTHORIZED PERSON, EITHER IN TRANSIT OR AT MY PLACE OF BUSINESS. In addition, I agree to:

- Require all Users to keep Passwords secure and strictly confidential;
- Immediately notify Bank and select a new Password if I or my User(s) believe my Passwords or any of them may have become known to an unauthorized person.

Bank may disable Passwords of Users even without receiving such notice from me, if Bank or its Service Provider(s) suspect Passwords are being used in an unauthorized or fraudulent manner.

I SHALL BE SOLELY RESPONSIBLE FOR THE IMPLEMENTATION OF ALL COMMERCIALY REASONABLE SECURITY PROCEDURES TO PROTECT MY COMPUTER SYSTEMS USED TO ACCESS THE INTERNET BANKING SERVICE. BANK AND ITS SERVICE PROVIDERS SHALL HAVE NO OBLIGATION, LIABILITY OR CONTROL, EITHER DIRECTLY OR INDIRECTLY, CONCERNING MY SELECTION OF SECURITY SYSTEMS OR DEVICES USED TO PROTECT MY COMPUTER SYSTEM(S). FURTHERMORE, NEITHER BANK NOR ITS SERVICE PROVIDERS SHALL HAVE CONTROL OVER

**MY DEVELOPMENT OR IMPLEMENTATION OF SAID SECURITY PROCEDURES OR MY FAILURE TO MAINTAIN SAID PROCEDURES.**

Business customers shall be solely responsible for any and all losses and damages arising from any authorized or unauthorized access to the Internet Banking Service using a valid Access ID and password.

**I. Fees & Discontinuance of Service**

I understand and agree that I will pay the fees for the Internet Banking Services monthly as disclosed on the Bank's Schedule of Service Charges and Fees or as the Bank has otherwise informed me, as they may be changed by the Bank from time to time. I understand and agree that I can obtain current information about applicable fees by calling Bank's Customer Support number at (800) 531-1401 during customer service hours. These fees are in addition to any fees and service charges that I currently pay for other products or services I am receiving from Bank. Any pricing or policy changes related to the Internet Banking Services adopted by Bank in the future will constitute modifications or addendums to this Agreement but will not nullify it. I acknowledge that I may be asked to designate a payment account for selected services such as Bill Pay and authorize Bank to charge my Account or any other account for the fees.

If I am a consumer, some features of Prosperity Internet Banking may be currently free although Prosperity reserves the right to impose fee(s) for any such Internet Banking Services at any time in the future. For all Accounts, additional fees may apply for Bill Pay, Wire Transfer Services, ACH Origination, Lockbox, and Positive Pay services. See Prosperity Bank's Schedule of Service Charges and Fees for additional services and fees or call Customer Support at (800) 531-1401.

**V. TERMINATION**

This Agreement shall continue until Bank receives written notification of my revocation; the Bank also reserves the right to terminate my Internet Banking Services, in whole or in part, at any time for any reason. Termination by either party does not relieve me of my liability for transactions or responsibilities for payment of all fees incurred prior to termination. I may terminate the Service(s) by writing to Prosperity Bank, ATTN: Internet Bank Customer Support, 1401 Avenue Q, Lubbock, Texas, 79401.

**VI. LIMITS ON BANK'S RESPONSIBILITIES**

In the event of a failed Account Transfer, Bank will not be liable for any failure of the funds to transfer in accordance with my instructions, for instance, if: (1) through no fault of Bank, my Account does not contain sufficient funds to make the Account Transfer, (2) the payment or Account Transfer would go over the credit limit on my overdraft line of credit, (3) the equipment, phone lines, or computer systems were not working properly or were temporarily unavailable, (4) Event(s) Beyond Bank's Control prevented or interfered with the payment or Account Transfer, (5) a court order or legal process prevents Bank from making an Account Transfer or payment, (6) I have previously reported, or Bank has a reasonable basis for believing that unauthorized use of Access ID and Password, or designated account have occurred or may be occurring, (7) if I default under any agreement with Bank, or (8) if Bank or I terminate this Agreement.

If I am receiving Bill Payment Services, I understand and agree that Bank will use commercially reasonable efforts to make all my transfers and Bill Payments properly. However, Bank will incur no liability, and any Bill Payment Service Guarantee shall be void, if Bank is unable to complete any transactions initiated by me because of the existence of any one or more of the following circumstances:

- a. If, through no fault of Bank's, my Account(s) and/or Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of my overdraft account (if applicable);
- b. The Service and/or the payment processing center is not working properly and I know or have been advised by Bank and/or its Service Provider(s) about the malfunction before I execute the transaction;
- c. I have not provided the Service with the correct Payment Account information, or the correct name, address, phone number, or account information for the Biller or I do not allow adequate time between the Payment Date and the Due Date in accordance with Bank's instructions;
- d. My Account(s), including either my Payment Account or Billing Account, is closed;
- e. If my Computer, software, or telecommunication lines were not working properly and this problem was reasonably apparent to me when I attempted the transfer or Bill Payment;
- f. It can be shown that the Biller received the Bill Payment within the normal delivery timeframe and failed to process the payment through no fault of Bank or Bank's Service Provider;
- g. The payment or transaction request involves funds subject to hold, dispute, restriction, or legal process that Bank, in its sole discretion, believes prevents their withdrawal;
- h. Bank and/or its Service Provider(s) has/have reason to believe that a payment or other transaction request may not be authorized by me or any third party whose authorization they or any one of them believes is necessary;
- i. Events Beyond Bank's Control.

If Bank and/or its Service Providers fail or delay in making a payment or Account Transfer pursuant to my instruction, or if Bank and/or its Service Providers make a payment or Account Transfer in an erroneous amount which is less than the amount per my instruction, unless otherwise required by law your liability shall be limited to interest on the amount which you failed to timely pay, calculated from the date on which the payment or Account Transfer was to be made until the date it was actually made or I canceled the instruction. You may pay such interest either to me or the intended recipient of the payment or Account Transfer, but in no event will you be liable to both parties, and your payment to either party will fully discharge any obligation to the other. If you make a payment in an erroneous amount which exceeds the amount per my Payment Instruction, or if you permit an unauthorized payment after you have had a reasonable time to act on a notice from me of possible unauthorized use as described above, unless otherwise required by law, your liability will be limited to a refund of the amount erroneously paid, plus interest thereon from the date of the payment to the date of the refund, but in no event to exceed sixty (60) days' interest.

**IF I AM A BUSINESS CUSTOMER, I AGREE THAT BANK AND ITS SERVICE PROVIDERS WILL BE DEEMED TO HAVE EXERCISED ALL DUE CARE AND TO HAVE ACTED REASONABLY IF THEY ACT IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND WILL BE LIABLE FOR LOSS SUSTAINED BY ME ONLY TO THE EXTENT SUCH LOSS IS CAUSED BY THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BANK AND ITS SERVICE PROVIDERS WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE RELATED TO THE DISHONESTY OF MY EMPLOYEES, OFFICERS, AGENTS, OR AUTHORIZED USERS OR:**

- **RESULTING FROM ANY RECEIVING FINANCIAL INSTITUTION'S FAILURE TO ACCEPT ANY PAYMENT OR FUNDS TRANSFER REQUEST;**

- **RESULTING FROM ANY DELAY IN THE PERFORMANCE OF THIS AGREEMENT THAT IS CAUSED BY AN EVENT BEYOND BANK'S CONTROL.**

If my Account is a Business Account, I agree that the amount of any claim I bring against the Bank in connection with the Service is subject to reduction and offset on the basis of my negligence or failure to use reasonable care on my part, or negligence or such failure on the part of any other owner or signer on the Account or that of any User, or any of my agents or any of my employees which contributed to the loss which is the basis of my claim; and, to the extent to which damages could not be avoided by the Bank's use of ordinary care.

## **VII. EXCLUSIONS OF WARRANTIES AND LIMITATION OF DAMAGES**

I UNDERSTAND AND AGREE THAT, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE INTERNET BANKING SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS," "AS AVAILABLE," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AND BANK AND ITS THIRD PARTY SERVICE PROVIDERS DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES RELATED TO THE SERVICE OR ANY RELATED ADVERTISEMENTS OR WEBSITES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SECURITY, AVAILABILITY, CONTENT, FUNCTION, ACCESSIBILITY, NON-INTERRUPTION, ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, OR ANY OTHER WARRANTY AS TO PERFORMANCE, ACCURACY, OR COMPLETENESS. MY USE OF ANY INTERNET BANKING SOFTWARE OR INTERNET BANKING SERVICE, AND ANY MATERIAL OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED VIA INTERNET BANKING IS AT MY OWN DISCRETION AND RISK, AND I AM SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE. NOTWITHSTANDING YOUR EFFORTS TO ENSURE THAT THE INTERNET BANKING SERVICE IS SECURE, I UNDERSTAND AND AGREE THAT YOU CANNOT AND DO NOT WARRANT THAT ALL DATA TRANSFERS VIA THE INTERNET BANKING SERVICE WILL BE FREE FROM MONITORING OR ACCESS BY OTHERS. I ALSO UNDERSTAND AND AGREE THAT YOU DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED, OR SECURE ACCESS TO ANY PART OF THE INTERNET BANKING SERVICES, AND OPERATION OF YOUR SITE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF YOUR CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO ME. THIS PARAGRAPH GIVES ME SPECIFIC LEGAL RIGHTS, AND I MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

EXCEPT FOR ACTS OF GROSS NEGLIGENCE OR WILLFUL BREACH OF DUTIES BY BANK, BANK WILL NOT BE LIABLE TO ME FOR ANY MATTERS RELATED TO THIS AGREEMENT. I UNDERSTAND THAT MY SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NON-PERFORMANCE OF THE SERVICE WILL BE FOR BANK TO USE COMMERCIALY REASONABLE EFFORTS TO PERFORM AND ADJUST OR REPAIR THE SERVICE. BECAUSE SOME STATES DO NOT ALLOW FOR THE EXCLUSION OF CERTAIN WARRANTIES, THE ABOVE EXCLUSIONS MAY NOT APPLY TO ME.

If Bank should become liable to me for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district including Houston, Texas for each day interest is due, computed on the basis of a three hundred sixty (360) day year. In addition to any other provisions in this Agreement limiting Bank's liability, Bank is not responsible or liable for any of my losses or damages if I default under this

Agreement, the Account Documents, or any other agreement I have with Bank or if Bank or I terminate this Agreement in accordance with the terms hereof.

THE FOREGOING SHALL CONSTITUTE BANK'S AND ITS SERVICE PROVIDER'S ENTIRE LIABILITY AND MY EXCLUSIVE REMEDY. IN NO EVENT SHALL BANK OR ITS SERVICE PROVIDERS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS OR ATTORNEYS FEES (EVEN IF ADVISED OF THE POSSIBILITY THEREOF), INACCURACY, OR DELAYS IN TRANSMISSION OF INFORMATION ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, AND/OR MY USE OF THE INTERNET BANKING SERVICE.

NO THIRD PARTY WILL HAVE RIGHTS OR CLAIMS AGAINST BANK AND ITS SERVICE PROVIDERS UNDER THIS AGREEMENT. THE TERMS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

#### **VIII. INDEMNIFICATION**

IN ADDITION TO MY OTHER INDEMNIFICATION OBLIGATIONS HEREIN, I AND MY AUTHORIZED USERS WILL DEFEND, INDEMNIFY AND HOLD HARMLESS BANK AND ITS SERVICE PROVIDERS AGAINST AND IN RESPECT TO ANY AND ALL LOSS, LIABILITY, EXPENSE AND DAMAGE, INCLUDING CONSEQUENTIAL, SPECIAL AND PUNITIVE DAMAGES, DIRECTLY OR INDIRECTLY RESULTING FROM: (I) THE PROCESSING OF ANY REQUEST RECEIVED BY BANK THROUGH THE INTERNET BANKING SERVICE, (II) ANY BREACH OF THE PROVISIONS OF THIS AGREEMENT (III) ANY REQUEST FOR STOP PAYMENT; (IV) ANY DISPUTE BETWEEN ME AND ANY THIRD PARTY OR BETWEEN ME AND/OR ANY USER IN CONNECTION WITH THE USE OF THE INTERNET BANKING SERVICE; AND (V) ANY AND ALL ACTIONS, SUITS, PROCEEDING, CLAIMS, DEMANDS, JUDGMENTS, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES) INCIDENT TO THE FOREGOING. THE TERMS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

#### **IX. GENERAL PROVISIONS**

**A. Events Beyond Bank's Control (Force Majeure).** Neither Bank nor any of its Service Providers will be responsible for failure to perform in a timely manner under this Agreement when its failure results from any of the following causes: Acts of God or public enemies, terrorism or terrorists' acts, civil war, insurrection or riot, fire, flood, hurricane or other windstorm, explosion, earthquake or serious accident, strike, labor trouble, computer system hackers, or any cause beyond its reasonable control ("Event(s) Beyond Bank's Control"). Notwithstanding the foregoing, Bank shall take all reasonable steps to avoid or remove such cause of non-performance and resume performance hereunder as soon as reasonably possible.

**B. Governing Law.** This Agreement is governed by and will be interpreted under applicable federal law and the laws of the State of Texas without regard to its conflicts of laws provisions; provided, however, that any dispute solely between me and your Bill Payment Service Provider will be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflicts of laws provisions.

**C. Severability; Waiver; Captions.** The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Neither Bank nor any of its Service Providers will be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by an

authorized representative of Bank or Service Provider, as applicable. No delay or omission on the part of Bank in exercising any rights or remedies will operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion will not be construed as a waiver of any rights or remedies on future occasions. The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

**D. Assignment.** I may not assign this Agreement to any other party. Bank may assign this Agreement or any of its rights and responsibilities under this Agreement in its sole discretion.

**E. Entire Agreement.** In the event of a dispute regarding the Service, I agree to resolve it by looking to this Agreement. I agree that this Agreement is the complete and exclusive statement of the agreement between me and you regarding the Internet Banking Services, which supersedes any proposal or prior agreement, oral or written, and any other communications between me and you relating to the subject matter of this Agreement. If there is a conflict between what the employees of Bank and/or its Service Providers say and the terms of this Agreement, the terms of this Agreement will prevail.

**F. Waiver of Trial by Jury.** The parties hereby knowingly, voluntarily and intentionally waive any right they may have to a trial by jury with respect to any litigation brought based upon this Agreement, or arising out of, under, or in connection with this Agreement and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements or actions of the parties. This provision is a material inducement for the parties entering this Agreement.

**G. Ownership of Material.** Copyright in the pages and in the screens displaying the pages, and in the information and material therein and in their arrangement, is owned by Bank and/or its Service Providers unless otherwise indicated. All registered and unregistered trademarks used in the Service are the sole property of their respective owners. Unauthorized reproduction in whole or part is prohibited.

**IF I ENROLL IN THE BILL PAY AND POPMONEY SERVICE, THE FOLLOWING SECTION X, AND XI. WILL APPLY TO MY USE OF THOSE SERVICES. I UNDERSTAND I CAN ENROLL BY LOGGING ONTO THE ONLINE BANKING SERVICES AND CHOOSING BILL PAY, INCLUDING POPMONEY, CURRENTLY ON THE "MANAGE ACCOUNT" PAGE IN THE "USER SERVICES" SECTION.**

#### **X. BILL PAY - TERMS AND CONDITIONS**

In addition to the provisions above, the following provisions apply to the Bill Pay Service, if I have requested and agreed to this Section X. by clicking "I Agree" in the box at the end of this Section X., and Bank has approved it. In the event of a conflict between the provisions of this Section X. and the provisions elsewhere in this Agreement, the provisions of this Section X. will control.

##### **A. Bill Payment Scheduling**

The earliest possible Scheduled Payment Date for each Biller (typically four (4) or fewer Business Days from the current date) will be designated within the Service when I am scheduling the Bill Payment. Therefore, I understand the Service will not permit me to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Biller. When scheduling Bill Payments, I must select a Scheduled Payment Date that is no later than the actual Due Date reflected on my Biller statement, unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, I must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period. I understand I

am responsible for any late charge, finance charge, penalty, default, or other consequence that may result from my selection of a Payment Date later than the Due Date for that payment.

#### **B. The Bill Pay Service Guarantee**

Due to circumstances beyond the control of the Service or the Bank, particularly delays in handling and posting payments by Billers or financial institutions, some transactions may take longer to be credited to or debited from my Account. Except as expressly stated otherwise within this Agreement, including but not limited to Section X.K. (Exception payments), Bank and/or its Service Providers will bear the responsibility for any late payment related charges up to \$50.00 should a Bill Payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described above in Section X.A. under "Bill Payment Scheduling" in this Agreement and the payment otherwise complies with the Terms and Conditions herein, including but not limited to Sections X.J.-M.

#### **C. Payment Authorization and Payment Remittance**

By providing the Service with the names and account information of Billers to whom I wish to direct payments, I authorize Bank to follow the Payment Instructions received through the Service. In order to process Payments more efficiently and effectively, the Bank's Service Provider may edit or alter Payment data or data formats in accordance with Biller directives. The Bank is not liable for any of my losses or damages for any Bill Payment I authorize that contains an error with regard to the identifying information for that Biller.

When the Service receives a Payment Instruction, I authorize Bank's Service Provider to debit my Payment Account and remit funds on my behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by me. I also authorize Bank's Service Provider to credit my Payment Account for payments returned to the Service by the United States Postal Service or Biller, or payments remitted to me on behalf of another User.

#### **D. Payment Methods**

Bank's Bill Payment Service Provider reserves the right to select the method in which to remit funds on my behalf to my Biller. These payment methods may include, but may not be limited to, an electronic payment, an electronic to check payment, or a Laser Draft Payment.

#### **E. Expedited Payments**

Same Day Bill Pay: The ability to schedule a payment to be delivered the same day is available. An additional fee will be assessed in the amount specified in the Schedule of Service Charges and Fees when requesting same day payment.

Overnight Bill Pay: The ability to schedule a payment to be delivered overnight via UPS is available. An additional fee will be assessed in the amount specified in the Schedule of Service Charges and Fees when requesting an overnight payment. Overnight payments will not be allowed to any P.O. Box, International or Military addresses nor to Hawaii or Alaska. The cut-off time for submitting overnight payments is 1:00 p.m. Central Time.

Person to Person: The ability to schedule a payment to be delivered Person to Person is available. An additional fee will be assessed in the amount specified in the Schedule of Service Charges and Fees when requesting a Person to Person payment. For additional information regarding Person to Person payments, please see the entire disclosure for Popmoney<sup>SM</sup> located in Section XI of this Agreement.

#### **F. Payment Cancellation Requests**

I may cancel or edit any Scheduled Payment (if processing has not begun) by following the directions within the Service. There is no charge for canceling or editing a Payment. However, once the



Service has begun processing a Scheduled Payment, it cannot be cancelled or edited, therefore a stop payment request must be submitted as described within this Agreement.

**G. Bill Pay Stop Payment Requests. (Please see Section II.C.3. above for stop payment requests other than for Bill Pay Payments.)**

I may cancel or edit a Scheduled Payment up until the time that payment processing begins. There is no charge for canceling or editing a Scheduled Payment. However, once the Service has begun processing a payment, it cannot be cancelled or edited, and a stop payment request must be submitted.

Bank must have a reasonable opportunity to act upon any stop payment request made after payment processing has begun. The ability of Bank and its Service Provider to process a stop payment on a Bill Payment request that is already in process will depend on the payment method and whether or not the payment has cleared.

If I need to place a stop payment request on any Bill Payment that has already been processed, I must contact my local Banking Center or Bank's Customer Support number at (800) 531-1401 immediately.

Bank will make every effort to accommodate my request, but Bank will have no liability for failing to do so unless the request is subject to the provisions contained in my depository account agreement or applicable law as it pertains to pre-authorized electronic fund transfers.

Bank may also require me to present my stop payment request in writing within fourteen (14) days from the date the request is made. The charge for each stop payment request will be the current charge for such service as set forth in the Bank's applicable Schedule of Service Charges and Fees.

If Bank completes a stop payment request on my behalf, Bill Payment privileges may be suspended pending recovery of funds by the Bank or its Service Provider(s).

**H. Returned Payments**

In using the Service, I understand that Billers and/or the United States Postal Service may return Bill Payments to Bank or its Service Provider for various reasons such as, but not limited to, Biller's forwarding address expired; Biller account number is not valid; Biller is unable to locate account; or Biller account is paid in full. Bank's Service Provider will use its best efforts to research and correct the returned payment and return it to my Biller, or void the payment and credit my Payment Account, but neither Bank nor its Service Provider will be liable for any returned payment. I may receive notification from the Service of returned payments.

**I. Bill Pay Information Authorization**

Requests for Bill Payment privileges may not be fulfilled if Bank and/or its Service Provider(s) cannot verify my identity and withdrawal authority over the specified accounts. Through my enrollment in Bill Payment Service, I agree that Bank and its Service Providers reserve the right to request a review of my credit rating at Bank's own expense through an authorized bureau. In addition, I agree that Bank and its Service Providers reserve the right to obtain financial information regarding my Account from a Biller or any other financial institution with which I maintain a banking relationship (for example, to resolve payment posting problems or for verification).

**J. Prohibited Payments**

Payments to Billers outside of the United States or its territories are prohibited through the Service. Payments to Internet gambling sites are also prohibited through the Service.

**K. Exception Payments**

Tax payments and court ordered payments may be scheduled through the Service; however, such payments are discouraged and are scheduled at my own risk. In no event shall Bank or its Service Provider(s) be liable for any claims or damages resulting from my scheduling of these types of payments. The Bill Pay Service Guarantee as it applies to any late payment related charges is void when these types of payments are scheduled and/or processed by the Service. Research of exception payments shall be limited to proof of payment and/or unauthorized payments only. All other research and resolution for any misapplied, mis-posted or misdirected exception payments will be my sole responsibility.

**L. Biller Limitation**

Bank reserves the right to refuse to pay any Biller to whom I may direct a payment. The Service will notify me promptly if it decides to refuse to pay a Biller designated by me. This notification is not required if I attempt to make a prohibited payment under Section X.J. or an exception payment under Section X.K. of this Agreement.

**M. Failed Transactions**

In using the Service, I am requesting Bank to make payments for me from my Payment Account. If Bank is unable to complete the transaction for any reason associated with my Payment Account (for example, there are insufficient funds in my Payment Account to cover the transaction), the transaction will not be completed. In some instances, I will receive a return notice from the Service. In such case, I agree that:

- (1) I will reimburse Bank and/or Bank's Service Provider immediately upon demand the transaction amount that has been returned;
- (2) For any amount not reimbursed to the Bank and/or its Service Provider within fifteen (15) days of the initial notification, a late charge may be assessed each month against unpaid amounts equal to 1.5% or the legal maximum, whichever rate is lower;
- (3) I will reimburse Bank and/or Bank's Service Provider for any fees it may incur in attempting to collect the amount of the return from me; and
- (4) Bank and/or Bank's Service Provider is authorized to report the facts concerning the return to any credit reporting agency.

If my Account does not have sufficient funds to cover the bill Payment, Bank may reject the Payment without liability.

**N. Bill Delivery and Presentment**

This feature is for the presentment of electronic bills only, and it is my sole responsibility to contact my Billers directly if I do not receive my statements. In addition, if I elect to activate one of Bill Payment Service's electronic bill options, I also agree to the following:

**(1) Information Provided to the Payee**

I understand that Bank and/or its Service Provider are unable to update or change my personal or business information such as, but not limited to, name, address, phone numbers and Email addresses, with any electronic Biller. Any changes will need to be made by me by contacting the payee directly. Additionally, it is my responsibility to maintain all usernames and passwords for all electronic Biller sites. I also agree not to use someone else's information to gain unauthorized access to another person's or company's bill.

Bank or Bank's Service Provider may, at the request of the Biller, provide to the Biller my Email address, Service address, or other data specifically requested by the Biller at the time of activating

the electronic bill for that Biller, for purposes of the Biller informing me about Service and/or bill information.

### (2) Activation

Upon activation of the electronic bill feature, Bank's Service Provider may notify the Biller of my request to receive electronic billing information. The presentment of my first electronic bill may vary from Biller to Biller and may take up to sixty (60) days, depending on the billing cycle of each Biller. Additionally, the ability to receive a paper copy of my statement(s) is at the sole discretion of the Biller. While my electronic bill feature is being activated it is my responsibility to keep my accounts current. I understand and agree that each electronic Biller reserves the right to accept or deny my request to receive electronic bills.

### (3) Notification

Bank's Bill Payment Service Provider will use its best efforts to present all of my electronic bills promptly. In addition to notification within the Service, Bank's Service Provider may send an Email notification to the Email address listed for my Account. It is my sole responsibility to ensure that this information is accurate. In the event I do not receive notification, it is my responsibility to log on to Bill Pay periodically and check on the delivery of new electronic bills. The time for notification may vary from Biller to Biller. I am responsible for ensuring timely payment of all bills.

### (4) Cancellation of Electronic Bill Notification

I understand and agree that the electronic Biller reserves the right to cancel the presentment of electronic bills at any time. I may also cancel electronic bill presentment at any time. The timeframe for cancellation of my electronic bill presentment may vary from Biller to Biller. It may take up to sixty (60) days, depending on the billing cycle of each Biller. The Bank's Bill Payment Service Provider will notify my electronic Biller(s) as to the change in status of my account, and it is my sole responsibility to make arrangements for an alternative form of bill delivery. Bank and/or its Service Provider will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

### (5) Non-Delivery of Electronic Bill(s)

I agree to hold harmless Bank and its Service Providers should the Biller fail to deliver my statement(s). I am responsible for ensuring timely payment of all bills. I understand and agree that copies of previously delivered bills must be requested from the Biller directly.

### (6) Accuracy and Dispute of Electronic Bill

Neither Bank, nor any of its Service Providers, are responsible for the accuracy of my electronic bill(s). Bank and its Service Providers are only responsible for presenting the information received from the Biller. Any discrepancies or disputes regarding the accuracy of my electronic bill summary or detail must be addressed with the Biller directly.

This Agreement does not alter my liability or obligations that currently exist between me and my Billers.

## **XI. POPMONEY<sup>SM</sup> PERSONAL PAYMENT SERVICE TERMS OF USE**

I understand and agree that if I have requested the Popmoney<sup>SM</sup> Personal Payment Service, the following terms will also apply to my use of it, in addition to the other terms and conditions of this Agreement. The Popmoney<sup>SM</sup> Personal payment Service is part of the Service(s).

Popmoney<sup>SM</sup>

Personal Payment Service Terms of Use

The following terms of use apply to my use of the Popmoney Personal Payment Service. This feature is for scheduling at my option personal payments to individuals from my bill payment service using the Popmoney Personal Payments Service (the "Popmoney Service"). These terms and conditions apply to my use of the Popmoney Service and the portion of the site through which the Popmoney Service is offered.

#### A. Definitions Applicable to Popmoney Personal Payment Service

Capitalized terms in these Terms and Conditions shall have the same meaning as set forth in **Internet Banking Services Agreement** unless defined otherwise as set forth in this section.

**Payment Instruction** – is the information provided by the Popmoney Service for a payment to be made (such as, but not limited to, name, telephone number, and Email address).

**Receiver** – is a person or entity that is sent a payment through the Popmoney Service.

**Sender** – is a person or entity that sends a payment through the Popmoney Service.

**Site** – means the Bank's website through which the Popmoney Service is offered to me within Bill Payment.

**Transaction Account** – means the transaction account from which my payment as a Sender will be debited, your Popmoney Service service fees will be automatically debited, or to which payment and credits to me will be credited through the Popmoney Service.

#### B. Receipts and Transaction History

I may view at least six months of my transaction history by logging into my account and looking at my account transaction history. I agree to review my transactions by this method instead of receiving receipts or periodic statements by mail.

#### C. Prohibited Payments

The following types of payments are prohibited through the Popmoney Service, and you have the right but not the obligation to monitor for, block and/or reverse such payments:

1. Payments to or from persons or entities located outside of the United States and its territories; and
2. Payments that violate any law, statute, ordinance or regulation; and
3. Payments that violate the Acceptable Use terms in Section XI.D. below; and
4. Payments related to: tobacco products, prescription drugs and devices, narcotics, steroids, controlled substances or other products that present a risk to consumer safety, drug paraphernalia, ammunition, firearms, or firearm parts or related accessories, weapons or knives regulated under applicable law, goods or services that encourage, promote, facilitate or instruct others to engage in illegal activity, goods or services that are sexually oriented, goods or services that promote hate, violence, racial intolerance, or the financial exploitation of a crime, goods or services that defame, abuse, harass or threaten others, goods or services that include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent, or discourteous, goods or services that advertise, sell or solicit others, goods or services that use the Site for commercial purposes of any kind other than to facilitate a

transaction on the Popmoney Service, goods or services that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; and

5. Payments related to gambling, gaming and/or any other activity with an entry fee and a prize, including, but not limited to casino games, sports betting, horse or greyhound racing, lottery tickets, other ventures that facilitate gambling, games of skill (whether or not it is legally defined as a lottery) and sweepstakes; and

6. Payments relating to transactions that support pyramid or ponzi schemes, matrix programs, other "get rich quick" schemes or multi-level marketing programs, are associated with purchases of real property, annuities, or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card, are for the sale of items before the seller has control or possession of the item, constitute money-laundering or terrorist financing, are associated with the following "money service business" activities: the sale of traveler's checks or money orders, currency dealers or exchanges or check cashing, or provide credit repair; and

7. Tax payments and court ordered payments.

8. In addition to the above referenced prohibited payments, you may also block and/or reverse payments that involve donations or payments to an unauthorized charity or non-profit organization.

In no event shall you or your Popmoney Service Providers be liable for any claims or damages resulting from your scheduling of prohibited payments. You have no obligation to research or resolve any claim resulting from a prohibited payment. All research and resolution for any misapplied, mis-posted or misdirected prohibited payments will be the sole responsibility of the Sender and not yours. I will provide notice to you by the methods described in section IV.G.1. of the **Internet Banking Services Agreement** above of any violations of this section or the Terms of Use generally.

#### **D. Acceptable Use**

I agree that I am independently responsible for complying with all applicable laws in all of my activities related to my use of the Popmoney Service, regardless of the purpose of the use, and for all communications I send through the Popmoney Service. You and your Popmoney Service providers have the right but not the obligation to monitor and remove communications content that you find in your sole discretion to be objectionable in any way. In addition, I am prohibited from using the Popmoney Service for communications or activities that: violate any law, statute, ordinance or regulation; promote hate, violence, racial intolerance, or the financial exploitation of a crime; defame, abuse, harass or threaten others; include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent or discourteous; infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; impose an unreasonable or disproportionately large load on your infrastructure; facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; constitute use of any robot, spider, other automatic device, or manual process to monitor or copy the Popmoney Service or the portion of the Site through which the Popmoney Service is offered without any prior written permission; constitute use of any device, software or routine to bypass technology protecting the Site or Popmoney Service, or interfere or attempt to interfere, with the Site or the Popmoney Service; or may cause you or your Popmoney Service Providers to lose any of the services from your internet service providers, payment processors, or other vendors. I will provide notice to you by the methods described in section IV.G.1. above of any violations of this section or the Terms of Use generally.

**E. Payment Authorization and Payment Remittance**

1. By providing you names and/or telephone numbers and/or Email addresses and/or bank account information of Receivers to whom I wish to direct payments, I authorize you to follow the Payment Instructions that you receive through the Popmoney Service.

2. When you receive a Payment Instruction from me, I authorize you to debit my sending Transaction Account and remit funds on my behalf. I also authorize you to credit my receiving Transaction Account for the receipt of payments, including but not limited to those payments returned to you from Receivers to whom I sent payments(s) or cancelled and returned to me because the processing of the payment transaction could not be completed. I acknowledge and agree that if my Payment Instructions identify an account by name and account number, the relevant financial institution may execute those Payment Instructions by reference to the account number only, even if such account number does not correspond to the account name. I further acknowledge and agree that financial institutions holding the account may choose to not investigate discrepancies between account names and account numbers.

3. Once registered, I as a Receiver authorize you to credit my Transaction Account for payments remitted to me on behalf of a Sender without further approval from me. I agree that you will not be liable in any way for any payments that I may receive, regardless of whether I authorized the Sender to send them to me. If I do not register, then funds will not be transferred to me from the Sender's Transaction Account, and the payment transaction will be cancelled.

4. You will use reasonable efforts to make all my payments properly. However, you shall incur no liability if you are unable to complete any payments initiated by me because of the existence of any one or more of the following circumstances:

a. If, through no fault of yours, the Transaction Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of my overdraft account;

b. The Popmoney Service is not working properly and I know or have been advised by you about the malfunction before I execute the transaction;

c. The payment is refused as described in section XI.G. or XI.K. below.

d. I have not provided you with correct information, including but not limited to the correct Payment Instructions or Transaction Account information, or the correct name and Email address or phone number of the Receiver to whom I am sending a payment; and/or

e. Circumstances beyond your control (such as, but not limited to, fire, flood, network or system down time, issues with the financial institution, or interference from an outside force) prevent the proper execution of the transaction and you have taken reasonable precautions to avoid those circumstances.

5. It is the responsibility of the Sender and the Receiver to ensure the accuracy of any information that they enter into the Popmoney Service (including but not limited to the Payment Instructions and name, telephone number and/or Email address that the Sender enters for the Receiver to whom I am sending the payment transaction), and for informing you as soon as possible if they become aware of that this information is inaccurate. Neither the Sender nor Receiver may use a P. O. Box as a postal address. You will make a reasonable effort to stop or recover a payment made to the wrong person or entity once informed, but you do not guarantee such stoppage or recovery and will bear no

responsibility or liability for damages resulting from incorrect information entered by the Sender or Receiver.

#### **F. Payment Methods and Amounts**

You may, at your sole discretion, impose limits on the amount of money I can send or receive through your Popmoney Service. You also reserve the right to select the method with which to remit funds on my behalf, and the method to return funds to me in the event that my Transaction Account is closed or otherwise unavailable to you. These payment methods may include, but may not be limited to, an electronic payment or an electronic check payment.

#### **G. Payment Cancellation Requests, Stop Payments and Refused Payments**

Sender may cancel the initiation of a payment transaction or stop a payment transaction at any time until the processing of the transaction into the Receiver's account has begun. Your ability to stop a payment transaction or recover funds associated with an unauthorized payment transaction will depend on the manner in which the payment transaction was initiated and whether the transaction to the Receiver's account has begun processing. You will make a reasonable effort to accommodate a stop payment request and to recover funds associated with an unauthorized transaction; you will have no liability for failing to do so. You may also require me to present my stop payment request or request to recover funds in writing within 14 (fourteen) days after contacting customer care. Payments not claimed by a Receiver will be automatically cancelled ten (10) days after the processing of the payment begins. When I initiate a transaction, the Receiver is not required to accept the transaction. I agree that I as the Sender will not hold you liable for any damages resulting from a Receiver's decision to accept or not accept a transaction initiated or attempted through the Popmoney Service. You will, to the extent permitted by law, make reasonable attempts to return any unclaimed, refused, refunded, prohibited or denied payment transaction to my eligible Transaction account or use other reasonable efforts to return such payment to me as permitted by law.

#### **H. If applicable: Mobile Phone Users [Note: Currently, Mobile Banking is governed by a separate agreement.]**

My phone service provider is not the provider of the Popmoney Service. Users of the Popmoney Service may receive text messages, including text messages sent using auto-dialing equipment, relating to their payment and other notices. I will receive text messages related to my payment transactions from time to time, and by executing this Agreement, I expressly consent to receiving such text messages. Data and messaging charges from my telecommunications provider may apply, and I am responsible for such charges. In the event my enrolled mobile/cellular device is lost or stolen, I obtain a new mobile/cellular phone number, or I stop using the mobile/cellular phone number I have provided in connection with the Popmoney Service, I agree to update my information, including my mobile/cellular phone number, and make the appropriate changes to disable the use of such devices. I understand that there are risks associated with using a mobile device, and that in the event of theft or loss, my confidential information could be compromised. If I have questions about mobile Popmoney Service, I may send a text message with the word "HELP" to this number: 767666. To stop receiving text messages on my mobile phone, I agree to text "STOP" to this number: 767666.

#### **I. Taxes**

It is my responsibility to determine what, if any, taxes apply to the payments I make or receive, and it is my responsibility to collect, report and remit the correct tax to the appropriate tax authority. You

are not responsible for determining whether taxes apply to my transaction, or for collecting, reporting, remitting, any taxes arising from any transaction.

#### **J. Popmoney Service Fees and Additional Charges**

Applicable fees will be disclosed in the user interface or elsewhere within the Popmoney Service. Any applicable fees will be charged regardless of whether the Popmoney Service was used, except for fees that are specifically use-based. There may be a charge for additional transactions and other optional Popmoney Services. I agree to pay such charges and authorize you to deduct the calculated amount from my designated Transaction Account for these amounts and any additional charges that may be incurred by me. Any financial fee associated with my standard deposit accounts will continue to apply. I am responsible for any and all telephone access fees and/or Internet Popmoney Service fees that may be assessed by my telephone and/or Internet Popmoney Service provider.

#### **K. Refused Payments**

I understand that you reserve the right to refuse to pay any Receiver. You will notify the Sender promptly if you decide to refuse to pay a Receiver designated by the Sender. This notification is not required if I attempt to make a prohibited payment under this Agreement.

#### **L. Intellectual Property**

“Popmoney” is a trademark of CashEdge Inc or its affiliates. All other marks and logos related to the Popmoney Service are either trademarks or registered trademarks of you or your licensors. In addition, all Popmoney page headers, custom graphics, button icons, and scripts are your Popmoney Service provider’s Popmoney Service marks, trademarks, and/or trade dress or those of your licensors. I may not copy, imitate, or use any of the above without our prior written consent, which you may withhold in your sole discretion, and I may not use them in a manner that is disparaging to you or the Popmoney Service or display them in any manner that implies your sponsorship or endorsement. All right, title and interest in and to the Popmoney Service, the portion of the Site through which the Popmoney Service is offered, the technology related to the Site and Popmoney Service, and any and all technology and any content created or derived from any of the foregoing, is your exclusive property or that of your licensors. Moreover, any suggestions, ideas, notes, drawings, concepts, or other information I may send to you through or regarding the Site or Popmoney Service shall be considered an uncompensated contribution of intellectual property, and shall not be subject to any obligation of confidentiality on your part. By submitting any such materials to you, I automatically grant (or warrant that the owner of such materials has expressly granted) to you a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed, and I warrant that all so-called “moral rights” in those materials have been waived, and I warrant that I have the right to make these warranties and transfers of rights.

#### **M. Links and Frames**

Links to other sites may be provided on the portion of the Site through which the Popmoney Service is offered for my convenience. By providing these links, you are not endorsing, sponsoring or recommending such sites or the materials disseminated by or services provided by them, and are not responsible for the materials, services or other situations at or related to or from any other site, and make no representations concerning the content of sites listed in any of the Popmoney Service web pages. Consequently, you cannot be held responsible for the accuracy, relevancy, copyright compliance, legality



or decency of material contained in sites listed in any search results or otherwise linked to the Site. For example, if I "click" on a banner advertisement or a search result, my "click" may take me off the Site. This may include links from advertisers, sponsors, and content partners that may use your logo(s) as part of a co-branding agreement. These other sites may send their own cookies to users, collect data, solicit personal information, or contain information that I may find inappropriate or offensive. In addition, advertisers on the Site may send cookies to users that you do not control. I may link to the home page of your Site. However, I may not link to other pages of your Site without your express written permission. I also may not "frame" material on your Site without your express written permission. I understand you reserve the right to disable links from any third party sites to the Site.

#### **N. Remedies for Breach**

If you have reason to believe that I have engaged in any of the prohibited activities described in this Agreement or have otherwise breached my obligations under this Agreement, you may terminate, suspend or limit my access to or use of the Site or the Popmoney Service; notify law enforcement, regulatory authorities, impacted third parties, and others as you deem appropriate; refuse to provide your Popmoney Services to me in the future; and/or take legal action against me. In addition, you, in your sole discretion, reserve the right to terminate this Agreement, access to the Site, and/or use of the Popmoney Service for any reason and at any time.

#### **O. Disputes**

In the event of a dispute regarding the Popmoney Service, I and you agree to resolve the dispute by looking to this Agreement. I agree that this Agreement is the complete and exclusive statement of the agreement between you and me, which supersedes any proposal or prior agreement, oral or written, and any other communications between you and me relating to the subject matter of this Agreement. If there is a conflict between the terms of this Agreement and something stated by an employee or contractor of yours (including but not limited to its customer care personnel), the terms of this Agreement will prevail.

#### **P. Arbitration**

For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000.00 USD, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, that party will initiate such arbitration through Judicial Arbitration and Mediation Services ("JAMS"), the American Arbitration Association ("AAA"), or an established alternative dispute resolution (ADR) administrator mutually agreed upon by the parties. The parties agree that the following rules shall apply: (a) the arbitration may be conducted telephonically, online and/or be solely based on written submissions, at the election of the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; (c) discovery shall not be permitted; (d) the matter shall be submitted for decision within ninety (90) days of initiation of arbitration, unless otherwise agreed by the parties, and the arbitrator must render a decision within thirty (30) days of submission; and (e) any award in such arbitration shall be final and binding upon the parties and the judgment there may be entered in any court of competent jurisdiction. The parties acknowledge that remedies available under federal, state and local laws remain available through arbitration.

#### **Q. Law and Forum of Disputes**

This Popmoney<sup>SM</sup> Personal Payment Service Terms of Use shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflicts of laws provisions. To the extent that the terms of this Agreement conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by law. Unless expressly stated otherwise, all other terms of this Agreement shall remain in full force and effect. I agree that any claim or dispute I may have against you (other than those which are arbitrated under section XI.P. above) must be resolved by a court located in Gwinnett County, Georgia. I agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such claims or disputes. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim between the parties or any of their respective Affiliates arising under this Agreement.

#### **R. Release**

If I have a dispute with one or more other users of the Site or the Popmoney Service, I release you and your Affiliates and Service Providers and the employees and contractors of each of these, from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. In addition, I waive California Civil Code §1542, which states that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor.

#### **S. Exclusion of Warranties**

THE SITE AND POPMONEY SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, YOU DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF YOUR POPMONEY SERVICE, AND OPERATION OF YOUR SITE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF YOUR CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO ME. THIS PARAGRAPH GIVES ME SPECIFIC LEGAL RIGHTS, AND I MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

#### **T. Limitation of Liability**

THE FOREGOING SHALL CONSTITUTE MY EXCLUSIVE REMEDIES AND THE ENTIRE LIABILITY OF YOU AND YOUR AFFILIATES AND SERVICE PROVIDERS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, FOR THE POPMONEY SERVICE AND THE PORTION OF THE SITE THROUGH WHICH THE POPMONEY SERVICE IS OFFERED. I ACKNOWLEDGE AND AGREE THAT FROM TIME TO TIME, THE POPMONEY SERVICE MAY BE DELAYED, INTERRUPTED OR DISRUPTED PERIODICALLY FOR AN INDETERMINATE AMOUNT OF TIME DUE TO CIRCUMSTANCES BEYOND YOUR REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ANY INTERRUPTION, DISRUPTION OR FAILURE IN THE PROVISION OF THE POPMONEY SERVICE, WHETHER CAUSED BY STRIKES, POWER FAILURES, EQUIPMENT MALFUNCTIONS OR OTHER REASONS. IN NO EVENT SHALL YOU OR YOUR AFFILIATES OR POPMONEY SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY CLAIM ARISING FROM OR

RELATED TO THE POPMONEY SERVICE CAUSED BY OR ARISING OUT OF ANY SUCH DELAY, INTERRUPTION, DISRUPTION OR SIMILAR FAILURE. IN NO EVENT SHALL YOU OR YOUR AFFILIATES OR POPMONEY SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOSS OF GOODWILL OR LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE POPMONEY SERVICE OR THE PORTION OF THE SITE THROUGH WHICH THE POPMONEY SERVICE IS OFFERED, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND NOTICE WAS GIVEN REGARDING THEM. IN NO EVENT SHALL YOU OR YOUR AFFILIATES OR POPMONEY SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE POPMONEY SERVICE OR THE PORTION OF THE SITE THROUGH WHICH THE POPMONEY SERVICE IS OFFERED THAT I DO NOT STATE IN WRITING IN A COMPLAINT FILED IN A COURT OR ARBITRATION PROCEEDING AS DESCRIBED IN SECTION XLP. ABOVE WITHIN TWO (2) YEARS OF THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THESE LIMITATIONS WILL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. YOUR AGGREGATE LIABILITY AND THE AGGREGATE LIABILITY OF YOUR AFFILIATES AND POPMONEY SERVICE PROVIDERS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, TO YOU AND ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT OUT OF POCKET DAMAGES UP TO A MAXIMUM OF \$500 (FIVE HUNDRED DOLLARS). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO ME.

**Proceed with Enrollment for the Internet Banking Service.**

By clicking the "I agree" button below I represent that I am the owner of an Eligible Account enrolled or to be enrolled in the Internet Banking Services and/or have been authorized by the owner to enroll for the Internet Banking Services. Clicking on the "I Agree" button also indicates my acceptance of the terms and conditions of this Agreement in this electronic format. I have read and understand this Agreement and have had opportunity to review this Agreement with an advisor of my choice if so desired. By clicking on the button below that is labeled "I Agree" or similar wording, I am agreeing to this Agreement just as if I had signed it.

If I do not agree with the terms for the Popmoney Service, I will choose cancel below.

If I click "cancel" I can still enroll at a later time by completing an application in one of your offices or by another method provided by Bank. I will still be asked to accept the terms and conditions of this Agreement.

Each party represents and warrants to the other that it is authorized to enter into this Agreement

FILED  
TERRI ROSS  
COUNTY CLERK

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DEPUTY

PBSHUB COUNTY, TX.