



Amendment No. ~~1~~ 4
to
Contract No. MA 7400 NA210000173
for
The performance of depository services for City fund
between
JPMorgan Chase Bank, dba Chase
and the
City of Austin, Texas

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
Vendor Name	JPMorgan Chase Bank dba, Chase	JPMorgan Chase Bank, N. A.
Vendor Code	CHA7140050	CHA7140050
FEIN	██████████	██████████

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the Contract.

City of Austin Representative/Title

(Print Name): _____
Signature/Date: _____
Matthew Duree
Digitally signed by Matthew Duree
Date: 2022.11.16 08:14:05 -06'00'



Amendment No. 3
to
Contract No. MA 7400 NA210000173
for
Depository Services
between
JPMORGAN CHASE BANK
and the
City of Austin, Texas

- 1.0 The City hereby corrects Exhibit F-Contractor's Application, dated June 29, 2021, Section 4.2.K.2 as follows:

Remove "J.P. Morgan charges for the use of end of day (EOD) uncollected funds by applying a daily variable overdraft (OD) rate to individual DDAs. Overdraft fees can be offset by an earnings credit allowance and may be assessed on a per occurrence basis." and

Replace with "J.P. Morgan charges for the use of end of day (EOD) uncollected funds by applying a monthly average variable overdraft (OD) rate to individual DDAs. Overdraft fees can be offset by an earnings credit allowance and may be assessed on a per occurrence basis."

- 2.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

A handwritten signature in blue ink, appearing to read "B. Pollard".

10/18/2022

Printed Name: Brenda Pollard

Authorized Representative

JPMORGAN CHASE BANK

221 W 6th St, Floor 02

Austin, TX 78701

brenda.a.pollard@jpmorgan.com

Signature & Date:

Adrianna Broniszewski

Digitally signed by Adrianna
Broniszewski
Date: 2022.10.18 16:08:35 -05'00'

10/18/22

Didi Broniszewski, Procurement Specialist III
City of Austin

Cyrenthia Ellis

Digitally signed by Cyrenthia Ellis
Date: 2022.10.20 14:00:35 -05'00'

Cyrenthia Ellis, Procurement Manger
City of Austin



Amendment No. 2
to
Contract No. MA 7400 NA210000173
for
Depository Services
between
JPMorgan Chase Bank, N.A.
and the
City of Austin, Texas

- 1.0 The City hereby amends the above referenced contract to add attached Addendum to J.P. Morgan Treasury Services Electronic Channels Service Terms for Key Administration (Initial Setup) document to Exhibit E- JP Morgan Chase Bank Consolidated Service Terms dated 08/30/2021, Section K-Electronic Channels.
- 2.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

A handwritten signature in blue ink, appearing to read "B. Pollard".

4/1/2022

Printed Name: Brenda Pollard

Authorized Representative

JPMorgan Chase Bank, N.A.
221 W 6th St, Floor 02
Austin, TX 78701
brenda.a.pollard@jpmorgan.com

Signature & Date:

Adrianna
Broniszewski

Digitally signed by Adrianna
Broniszewski
Date: 2022.04.01 16:00:02 -05'00'

Didi Broniszewski, Procurement Specialist III
City of Austin

Cyrenthia Ellis

Digitally signed by Cyrenthia Ellis
Date: 2022.04.18 09:00:40 -05'00'

Cyrenthia Ellis, Procurement Manager
City of Austin

Document Checklist | **JPMORGAN CHASE BANK, N.A.**

09 March 2022
CITY OF AUSTIN
919 CONGRESS AVE STE 1250
AUSTIN, TX 787012114
USA

Thank you for choosing JPMorgan Chase for your banking needs. Below is a list of documents contained in this package that pertain to the products and/or services you have requested, with instructions for each document.

In striving to deliver best-in-class service, we encourage you to complete and return any of the attached documentation requiring signature within **5 business days** from the day you receive this package. Please let us know if there is any way we can assist you. We understand that on occasion this timeline cannot be met due to other priorities, the complexity of requirements, and/or the availability of authorized signatories. In such cases we kindly ask that you advise us when we can anticipate receipt of the documentation or if there is any additional support we can provide. Timely receipt of the documents enables us to better complete your request in the desired timeframe.

For your protection, where documents in this package are being sent as e-mail attachments and have been pre-filled, the account and/or SSN/TIN number has been truncated to the last 4 digits, or the documents have been encrypted and may require a password to open.

We at JPMorgan Chase are fully committed to meeting your banking needs. We are happy to answer any questions you may have regarding the attached documents. If you need assistance, please do not hesitate to call.

Kind regards,

Carla Kinney
713-216-2929
Carla.M.Kinney@jpmorgan.com
712 Main Street, Floor 09
Houston, TX 77002-3201

	Document Name	ID	Instructions
<input checked="" type="checkbox"/>	Addendum To J.P. Morgan Treasury Services Electronic Channels Service Terms For Key Administration Initial Setup	1	Complete, Sign, Return



ADDENDUM TO J.P. MORGAN TREASURY SERVICES ELECTRONIC CHANNELS SERVICE TERMS FOR KEY ADMINISTRATION (INITIAL SETUP) V1.0_07_22_20

J.P. Morgan Access® (“Access”) Profile to Be Used for Key Administration (the “Access Profile”):	
Access Profile ID: <u>CITYOFAUST</u>	
Profile owner name: <u>City of Austin</u>	
Profile owner ECID: <u>0199931569</u>	
J.P. Morgan Host-to-Host (“H2H”) Profile(s) to Be Added for Key Administration (collectively and individually, as applicable, the “H2H Profile”):	
H2H Profile 1 (mandatory)	H2H Profile 3 (if applicable)
H2H Profile Partner ID: <u>CYOAUSTIN</u>	H2H Profile Partner ID: _____
H2H Profile owner name: <u>City of Austin</u>	H2H Profile owner name: _____
H2H Profile owner ECID: <u>0199931569</u>	H2H Profile owner ECID: _____
H2H Profile 2 (if applicable)	H2H Profile 4 (if applicable)
H2H Profile Partner ID: _____	H2H Profile Partner ID: _____
H2H Profile owner name: _____	H2H Profile owner name: _____
H2H Profile owner ECID: _____	H2H Profile owner ECID: _____
<input type="checkbox"/> Check this box and complete Schedule A if more than four Host-to-Host Profile IDs are being added to Key Administration.	

This Addendum (this “**Addendum**”) supplements and amends the J.P. Morgan Treasury Services Electronic Channels Service Terms and/or such other service terms, terms of use, or other agreement between JPMorgan Chase Bank, N.A. and/or one or more of its affiliates, branches or service providers (individual and collectively, as applicable, the “**Bank**”), on the one hand, and one or more Customers signatory hereto (such Customer or Customers, individually and collectively, as applicable, the “**Customer**”), on the other hand, applicable from time to time to the Customer’s use of the Access Profile and/or the H2H Profile (individually and collectively, as applicable, the “**Service Terms**”). Subject to the Service Terms and the terms and conditions of this Addendum, the Bank will provide a service (“**Key Administration**”) for renewal of Certificates associated with the H2H Profile via an online tool available through the Access Profile. Capitalized terms not defined in this Addendum have the meanings set forth in the Service Terms.

Notwithstanding any contrary term in the Service Terms or otherwise, by executing this Addendum and/or using Key Administration, the Customer agrees as follows:

1. Key Administration.

1.1. Key Administrators.

- 1.1.1. **Designation.** The Customer authorizes the Security Administrators (whether currently designated as such or designated in the future) of the Access Profile (collectively, the “**Access SAs**” and each, individually, an “**Access SA**”) to manage Key Administration by designating individuals as users of Key Administration (collectively, the “**Key Administrators**” and each, individually, a “**Key Administrator**”). The Bank is entitled to rely on any such designation of a Key Administrator that the Bank believes in good faith to have been submitted by a Security Administrator notwithstanding that such Security Administrator may be a third party acting on behalf of the Customer. A Security Administrator shall provide to the Bank, upon the Bank’s request, a list identifying each Key Administrator.
- 1.1.2. **Authentication.** To access Key Administration, a Key Administrator shall be required to login via Access using username, passcode and token code (generated by a virtual or physical Security Device). The Customer agrees that this constitutes a commercially reasonable manner of authenticating each Key Administrator and that the Customer has not requested any additional security measures related to the authentication of Key Administrators. The Bank may change its authentication procedures upon notice to the Customer. The Customer’s continued use of Key Administration following any such change shall constitute an agreement by the Customer that such manner of authentication is commercially reasonable and that the Customer has not requested any additional security measures related to the authentication of Key Administrators.
- 1.1.3. **Security.** The Customer shall safeguard the passcodes, Security Devices or other authentication credentials and shall ensure that such credentials are available to and used only by the applicable Key Administrator. The Customer shall notify the Bank immediately in the event of any data breach or other event resulting in the potential loss, theft or unauthorized use of a Key Administrator’s passcode, Security Device or other authentication credentials. The Bank may dishonor or disable any credentials and Security Device used to authenticate a Key Administrator at any time without prior notice but will inform the Customer if it takes such action. Customer



represents and agrees that, based on its independent assessment, it has implemented and shall maintain its own physical and logical security, including adequate controls to protect its hardware, software and other systems used in the Key Administration process from unauthorized access and use.

- 1.2. **Certificate Renewal.** The Customer authorizes the Key Administrators to renew Certificates associated with the H2H Profile. Such renewal of a Certificate by a Key Administrator shall have the same force and effect as the renewal of such Certificate by the Security Administrators of the H2H Profile (collectively, the "H2H SAs" and each, individually, an "H2H SA"). The Customer agrees that the Bank may rely on the validity of any Certificate renewed through Key Administration to the same extent as if such Certificate had been renewed by the H2H SAs. The Bank is entitled to rely on any Certificate renewal that the Bank believes in good faith to have been submitted by a Key Administrator notwithstanding that such Key Administrator may be a third party acting on behalf of the Customer.

2. Availability of Service; Alternate Means of Renewal; Termination.

- 2.1. **Effect of Addendum; Service Terms.** Upon execution of this Addendum, the Service Terms as in effect immediately prior to such date shall be modified by the terms of this Addendum and shall otherwise remain in full force and effect in all respects. Except to the extent a term in the Service Terms conflicts with a term in this Addendum, the Service Terms shall apply to Key Administration, which shall be treated as a component of (and subject to the Service Terms applicable to) each of J.P. Morgan Access and J.P. Morgan Host-to-Host.
- 2.2. **Other Certificate Renewal Methods.** The Customer understands and acknowledges that execution of this Addendum and use of Key Management is optional. The ability to renew Certificates via Key Administration is provided by the Bank as an addition to, and not as a replacement of, the Customer's existing means of renewing its Certificates. The Customer acknowledges that it has such other means of Certificate renewal and that such other means are sufficient. The Customer agrees that it is not relying on the availability of Key Administration to use or continue using H2H, Access (other than Key Administration) or any other service or product provided by the Bank.
- 2.3. **Availability of Services.** The Bank, in its sole discretion, may suspend or discontinue Key Administration at any time or may revoke or disable, in whole or in part, the Customer's use of Key Administration at any time.
- 2.4. **Termination; Effect of Termination.** If the Bank suspends or discontinues Key Administration or otherwise terminates the Customer's ability to use Key Administration, the Bank shall notify the Customer. The Customer may terminate this Addendum upon written notice to the Bank, which shall have a reasonable period of time to implement such request. Notwithstanding the termination of this Addendum, the Bank may continue to rely upon any Certificates renewed via Key Administration prior to such termination and any such renewal shall be deemed to have been made in accordance with the Service Terms.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum by their respective duly authorized representative as of the date set forth below.

OWNER(S) OF J.P. MORGAN HOST-TO-HOST PROFILE(S)

[INSERT H2H PROFILE 1 OWNER NAME] CITY OF AUSTIN

By: Belinda Weaver

Name: Belinda Weaver

Title: Treasurer

Date: 3/17/2022

Second signatory (if required)

By: _____

Name: _____

Title: _____

Date: _____

OWNER OF J.P. MORGAN ACCESS PROFILE

[INSERT ACCESS PROFILE OWNER NAME] CITY OF AUSTIN

By: _____

Name: _____

Title: _____

Date: _____

Second signatory (if required)

By: _____

Name: _____

Title: _____

Date: _____



[INSERT H2H PROFILE 2 OWNER NAME] _____

By: _____

Name: _____

Title: _____

Date: _____

Second signatory (if required)

By: _____

Name: _____

Title: _____

Date: _____

[ADD ADDITIONAL SIGNATURE BLOCKS AS APPLICABLE]



SCHEDULE A
ADDITIONAL HOST-TO-HOST PROFILES (IF APPLICABLE)

Only complete this Schedule if the checkbox on page 1 is checked.

H2H Profile 5

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 6

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 7

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 8

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 9

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 10

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 11

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 12

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____



H2H Profile 13

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 14

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____

H2H Profile 15

H2H Profile Partner ID: _____

H2H Profile owner name: _____

H2H Profile owner ECID: _____



Amendment No. 1
to
Contract No. MA 7400 NA210000173
for
Depository Services
between
JPMORGAN CHASE BANK
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to:

- 1.1 Remove Exhibit 2 Reserved for JPMorgan Early Warning Real-Time Payment Check with Account Owner Verification Integrated Model Service Terms.
- 1.2 Replace with Exhibit 2 JPMorgan Early Warning Real-Time Payment Check with Account Owner Verification Integrated Model Service Terms.

2.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:


3/01/2022

Printed Name: Brenda Pollard
Authorized Representative

JPMORGAN CHASE BANK
221 W 6th St, Floor 02
Austin, TX 78701
brenda.a.pollard@jpmorgan.com


Signature & Date:

Adrianna Broniszewski

Digitally signed by Adrianna Broniszewski
Date: 2022.03.01 12:06:58 -06'00'

Didi Broniszewski, Procurement Specialist III
City of Austin

Cyrenthia Ellis


Digitally signed by Cyrenthia Ellis
Date: 2022.03.01 17:02:29 -06'00'

Cyrenthia Ellis, Procurement Manager
City of Austin

JPMORGAN EARLY WARNING REAL-TIME PAYMENT CHECK WITH ACCOUNT OWNER VERIFICATION INTEGRATED MODEL SERVICE TERMS

V1.0_07_28_20

JPMorgan Chase Bank, N.A. (the "Bank") will provide the undersigned customer (the "Customer") with the EWS Service, as hereafter defined, and such other services as are described in these Service Terms. The provisions of the Bank's account documentation, including terms and conditions governing the operation of business accounts and services, as well as the Electronic Channels Service Terms ("Channels Terms"), ACH Origination Service Terms and other applicable service terms (collectively, "Account Documentation"), are incorporated into these Service Terms by reference and form a part thereof. Capitalized terms used and not otherwise defined in the body of these Service Terms are defined in Section 15 hereof.

1. Service.

1.1. General. On the terms and conditions set forth herein, Bank shall provide Customer with the Early Warning Real-time Payment Chek® service with Account Owner Authentication capability, and such other services provided by Early Warning Services LLC ("EWS") that may be offered by the Bank from time to time (the "EWS Service"), subject to the terms set forth in these Service Terms. For the avoidance of doubt, the EWS Service is a "Service" under the Account Documentation.

1.2 Accessing the EWS Service through Integrator Connectivity. Customer will access the EWS Service through a direct connection with the Bank pursuant to these Service Terms, and the Channels Terms ("Integrator Connectivity") using one of the connectivity methods and associated security procedures set forth in the Channels Terms; Bank will advise Customer which connectivity method(s) is/are available for access to the EWS Service. Bank will also advise Customer of formatting and content requirements, including those requirements set forth in the Documentation, in order to receive the EWS Service. The Bank may reject or delay processing of Inquiries or Response Data if the Customer's instructions or information are not complete or otherwise do not meet the standards the Bank or EWS specify for acceptance; the Bank will notify the Customer of any Inquiries or Response Data that are not processed for this reason.

1.3 Customer hereby represents and warrants (a) that it is a business entity that has operated as a business entity for a period of not less than one (1) year prior to the commencement of the EWS Service or is a Government Agency, (b) if Customer has selected accessing AOA, that Customer's annual revenue is in an amount equal to \$10 million or greater for the immediately preceding fiscal year, as reported in Customer's public filings or demonstrated by such other evidence that is provided by Customer, and (c) that it is not a Financial Services Organization (unless approved by EWS).

1.4 In addition, Customer hereby certifies that Customer shall be the end user of the EWS Service and the Response Data and other information obtained through the use of the EWS Service, and Customer shall use the EWS Service, Response Data, Processed Data and other information obtained through the EWS Service in accordance with Sections 2 and 3 of Exhibit A annexed hereto (**Authorized Use of the EWS Service**), and neither Processed Data, Response Data nor such other information shall be used for any other purpose at any time. Customer shall ensure that the foregoing certifications remain true with respect to Customer at all times during the term of these Service Terms. Upon Bank's request from time to time, Customer shall provide Bank and EWS a written attestation that the foregoing certifications are true and correct with respect to the Customer.

2. Documentation. The Bank shall distribute the Documentation for the EWS Service to Customer as reasonably required by, or agreed upon with, EWS. The Bank shall also provide any amendments to or revised versions of the Documentation to Customer as the same are made available by EWS where such amendments and revisions are material in nature and made for technical purposes. The Bank may direct Customer to EWS for response if Customer has questions or concerns regarding such amendments or revisions. Customer acknowledges that the standard Documentation may be periodically updated by EWS or Bank from time to time based upon changes required by Bank's or EWS' product teams, legal teams, senior management and/or governing bodies.

3. Inquiries and Bank Provision of Response Data or Processed Data in Accordance with Customer's Pre-Selected Criteria.

3.1 Customer Data; Compliance with Exhibit A. Customer shall comply with all applicable requirements of Exhibit A (**Authorized Use of the EWS Service**), including, without limitation, requirements relating to authorized uses of Response Data and Processed Data. Customer shall transmit all Inquiries for the EWS Service to Bank pursuant to the Documentation and Exhibit A, and Bank shall thereafter transmit such Inquiries to EWS. For each Inquiry properly transmitted to the National Shared Database by Customer through Bank, EWS will transmit Response Data to Bank on behalf of Customer. Bank, acting as Customer's processor, will then either provide the Response Data directly to Customer unchanged from the form transmitted to Bank by EWS or process such Response Data on behalf of Customer, and at Customer's request, map such Response Data into responses based on criteria that have been pre-set by Customer (such responses hereafter called "**Processed Data**") that Bank will then provide to Customer. Mapping will be done in accordance with instructions provided by EWS. The Processed Data may be provided in the form of the Customer's decision based on its pre-set criteria, such as "accept" or "decline." Customer acknowledges and agrees that Processed Data is time-sensitive and only intended to be used by Customer in connection with the specific Inquiry for which it was furnished. If agreed upon by Customer and Bank, Bank shall, upon completion of the processing and mapping of EWS Response Data into Processed Data, either execute or reject the instruction initiated by Customer pursuant to Customer's decision.

3.2 If Bank transmits Response Data to Customer unchanged (not mapped into Processed Data) or in the form of Processed Data, Customer agrees that if Customer uses such Response Data or Processed Data to take adverse action against the consumer about whom the Response Data/Processed Data relates, such consumer will be referred to EWS for handling disputes concerning the completeness or accuracy of any item of information contained within the Response Data or Processed Data.

3.3 Bank will assign Customer a unique identification number ("Client ID"). Additionally, if Inquiries are transmitted for multiple divisions or affiliates of Customer, Bank will assign each such division and/or affiliate of Customer a unique Client ID that will be include in all Inquiries transmitted to EWS for Customer. Customer agrees that EWS may define how the various Client ID fields within the Inquiry file are required to be populated during the implementation phase for Customer.

3.4 Customer agrees that EWS may limit or prohibit the markets and/or types of businesses that are eligible to receive Processed Data or any other response that is comprised of or derived from, in whole or in part, Response Data. Bank will provide Customer with information relating to such limitations or prohibitions. EWS or Bank may require Customer to provide information and/or documentation to EWS to allow EWS to verify that Processed Data or other responses that are comprised of or derived from, in whole or in part, Response Data, are being provided only to those markets and/or types of business that are eligible to receive such responses, and Customer agrees to comply with all such requirements. It is understood and agreed that EWS may require that Bank cease providing Processed Data or Response Data to Customer if EWS determines that Customer is conducting business of the type and/or within a market that is ineligible to use the EWS Service as described above.

3.5 As part of the EWS Service, Bank may furnish a decline notice to the intended recipient of a transaction if Customer's pre-set criteria for Processed Responses instructs Bank to reject such transaction on Customer's behalf. It is understood and agreed that such decline notices are not adverse action notices or any other notification sent pursuant to the FCRA, and that Customer is solely responsible for sending any required adverse action notices pursuant to Section 4.1.6 and Exhibit B and otherwise complying with FCRA as an end user of consumer reports under FCRA.

4. Additional Customer Rights and Responsibilities.

4.1 Restrictions on Use of the Response Data.

(i) Customer agrees not to sell, resell, sublicense or otherwise transfer any part of the Response Data to any other person or entity, except for a transfer to an affiliate of such Customer with a need-to-know for internal use of Customer, and subject to all Applicable Laws, or (ii) as may be required by Applicable Laws.

4.1.1 Without limitation of the foregoing, Customer shall not transmit Response Data to any customer of Customer or any other third party, or allow any third party to access the Response Data, or sell, resell, sublicense, or otherwise transfer any part of the Response Data to any other person or entity. Customer agrees that the Response Data is time-sensitive and only intended to be used in connection with the specific inquiry for which it was requested.

4.1.2 Customer shall not merge, aggregate or compile Response Data into any other database for use in connection with future Inquiries. If Customer uses Response Data to take adverse action against the consumer about whom the Response Data relates, Customer agrees to refer such consumer to EWS for handling disputes concerning the completeness or accuracy of any item of information contained within the Response Data. Customer shall provide Bank with concurrent notice of any such dispute referred to EWS.

4.1.3 Customer shall prohibit any customer of Customer that receives a response that is comprised of or derived from, in whole or in part, Response Data, from selling, reselling, sublicensing, or otherwise transferring any part of such response to any other person or entity, unless approved in writing by EWS. EWS may limit or prohibit the markets and/or types of business that are eligible to receive a response that is comprised of or derived from, in whole or in part, Response Data.

4.1.4 Customer acknowledges receipt of the notices attached hereto as Exhibit B, which describe certain obligations of (a) furnishers of information to consumer reporting agencies and (b) users of consumer reports. Customer shall at all times comply with Exhibit B regarding permissible purposes for use of Response Data, consumer reports, required certifications and notifications to consumers of adverse action. EWS shall have the right to suspend the provision of the EWS Service for a Customer's non-compliance with Response Data obligations hereunder (including without limitation, Exhibit B) at any time.

4.1.5 Customer agrees that all notifications to consumers of adverse action will be in substantially the following form:

ADVERSE ACTION NOTICE

This notice is provided by: City of Austin.

We're sorry, but we are unable to proceed with your payment transaction. Our decision was based in whole or in part on information obtained in a report from Early Warning Services, Inc., a consumer reporting agency. Early Warning provides authentication and risk management services to businesses nationwide.

You have a right under the Fair Credit Reporting Act (FCRA) to know the information contained in your credit file at Early Warning, the consumer reporting agency. Early Warning played no part in our decision and is unable to supply you with specific reasons for the denial decision made by us.

Under the Fair Credit Reporting Act, you have the right to obtain a free copy of your report from Early Warning, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with Early Warning.

You may reach Early Warning toll free at 1-800-745-4210, or write to them at:

Early Warning
16552 N. 90th Street
Scottsdale, AZ 85260

4.1.6 In addition to Customer's notification obligations under subsection 4.1.3, Customer shall promptly notify Bank of any complaint or dispute by or between Customer and any of its customers or other persons or entities relating to (a) Inquiries or Customer data or other data Contributed by Customer to EWS, (b) Response Data received from EWS, or (c) any action taken by Customer in reliance upon or as a result of Response Data received from EWS.

4.2 Customer Audit Rights/Information. Upon request by Customer, EWS shall provide to Customer a copy of its most recent Annual Risk Report (ARR), as well as any updated ARR's upon request from Customer. If, in addition to the information provided by EWS, Customer requires to conduct an on-site audit of EWS' information security program outside of EWS' regularly scheduled consolidated on-site audit periods (which are free to Customer), then a daily fee shall be assessed to Customer for the on-site audit, as agreed upon between EWS and Customer. Any on-site audits (i.e. outside of the regularly scheduled consolidated on-site audit periods) shall not begin until the daily fee for each, if applicable, has been agreed upon between EWS and Customer. Fees related to these on-site audits will be billed to Customer separately from fees for the EWS Service. However, any on-site audit that is triggered by a regulatory requirement or a court order will not result in a daily fee as set forth herein. If, in addition to the information provided by EWS, Customer requires that EWS complete a questionnaire regarding EWS' information security program, then a fee shall be assessed to Customer for the questionnaire, as agreed upon between EWS and Customer. Any completion of a questionnaire in this instance shall not begin until the fee for each, if applicable, has been agreed upon between EWS and Customer. Fees related to the completion of questionnaires by EWS will be billed to Customer separately from fees for EWS Service.

4.3 Written Information Security Program. Customer shall maintain a written information security program that contains administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Response Data, (ii) protect against any anticipated threats or hazards to the security or integrity of Response Data, (iii) protect against unauthorized access to or use of such Response Data that could result in substantial harm or inconvenience to any customer of Customer, (iv) limit access, use and disclosure of Response Data as expressly permitted by these Service Terms, (v) ensure the proper disposal of Response Data, and (vi) comply with Applicable Law. Customer's information security program must be designed to: (i) meet the objectives of the Interagency Guidelines Establishing Information Security Standards promulgated by the federal banking agencies as amended from time to time, and (ii) include control objectives that meet applicable industry standards such as ISO 27002, FFIEC, OCC, PCI or NIST. Customer shall promptly notify EWS of any modification to Customer's information security program.

4.4 Breach of Security. In the event of a breach in security resulting in actual or suspected loss of or unauthorized access to Response Data, Customer shall (i) immediately notify EWS by calling (877) 275-7774, Option 4; (ii) conduct a forensics examination to determine to what extent Response Data was compromised; (iii) provide to EWS, in writing, details concerning the breach, including: (A) nature and impact of the breach, (B) assessment of immediate risk due to the breach, (C) corrective actions already taken, and (D) corrective actions to be taken; (iv) cooperate with EWS and any affected inquiries, Contributors, regulators or law enforcement to assist in regaining possession of the Response Data and in preventing its further unauthorized use and to notify affected consumers if required by Applicable Law; and (v) take measures to restore and enhance its security policies and procedures to avoid further breaches.

4.5 Access to EWS Service. Customer shall not knowingly permit any of its directors, officers, employees, contractors, subcontractors, attorneys, auditors and accountants, to access the EWS Service, if the person has been convicted of a crime in connection with: (i) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a); or (ii) a felony.

4.6 Test ID. If Customer receives a test identification number ("Test ID") from EWS, all Inquiries made by Customer in connection with a system test shall be made with the Test ID, separate from any customer identification number issued to that Customer. There is no fee associated with Inquiries made for the purposes of the system test. Customer agrees that any test must be approved in advance by EWS, will be performed in EWS' Client Acceptance Test (CAT) environment, and subject to more specific guidelines provided by EWS applicable to the type of test to be conducted.

4.7 Technical Integrator. In the event Customer wants to use a Technical Integrator (as defined in Exhibit C (*Technical Integrator*)) for the transmitting of Customer Data to EWS, transmitting Inquiry/Inquiry Data and receiving Response Data in response to an Inquiry, Customer shall comply with the terms of Exhibit C (*Technical Integrator*).

4.8 Compliance with Exhibits A and B and Applicable Laws. Customer hereby agrees to comply with the Fair Credit Reporting Act of 1970, 15 U.S.C. Section 1681 et. seq. and all other Applicable Laws. Without limitation of the foregoing, Customer agrees to comply with and be bound by Exhibits A and B hereto to the extent applicable to Customer.

4.9 Consents. Customer represents and warrants that Customer has obtained authorization and consent from each of its customers and/or intended payees or payors to provide Inquiries and, if applicable, Contributions to EWS.

5. EWS' and Bank's Rights and Responsibilities.

EWS' and Bank's Audit Rights/Information. EWS and Bank shall have the right to audit Customer, during normal business hours, upon reasonable advance notice, and not more than once per calendar year for the following annual audits: (i) compliance with these Service Terms, Customer's use of Response Data as set forth in Section 3 above and, (iii) to conduct an onsite audit of Customer's information security program and related policies, controls, processes and procedures. Customer shall provide Bank with the name and contact information of Customer representative that EWS and/or Bank should contact to facilitate the audit. In addition to any other audit rights of EWS described in these Service Terms, upon request of EWS, Customer shall complete a Shared Assessment Significant Information Gathering (SIG) Questionnaire or provide to EWS a copy of its most recent third party data processing audit or review (e.g., SOC2-Type II, ISAE 3402, SSAE 16 or equivalent based upon American Institute of Certified Public Accountants (AICPA) standards, Acceptable Use Procedures (AUP), as conducted by Customer's external auditors. Customer agrees that EWS and Bank may disclose to each other any information obtained during such audit/review.

5.1 Review of Customer's Use of the Response Data.

5.1.1 No more than once per calendar year and upon reasonable prior notice, except as provided below in the case of suspended non-compliance or unusual transaction activity, Customer agrees to cooperate with EWS and/or Bank in conducting an annual review of Customer's use of the Response Data to verify that Customer is using the Response Data in compliance with these Service Terms. Such review may include, but is not limited to: Customer's written certification that it is in compliance with these Service Terms; requests for documentation verifying such compliance; interviews with personnel knowledgeable about Customer's use of these Service Terms; and/or on-site inspections during Customer's regular business hours of records, operations and procedures related to its use of the EWS Service. Customer agrees that EWS and Bank may disclose to each other any information obtained during such review. If the compliance review reveals that Customer is not in compliance with these Service Terms, or compliance cannot be verified, EWS and/or Bank may, upon written notice, suspend Customer's participation in the EWS Service, and the parties may promptly meet to discuss the matter and develop a proposed resolution plan. The resolution plan, including resolution period, must be approved by EWS and Bank. On or before the approved resolution date, Customer shall provide written certification to EWS and Bank that the resolution plan has been fully implemented and that Customer is in compliance with these Service Terms. If the resolution plan is not fully implemented on or before the approved resolution date, EWS may suspend or terminate the provision of Response Data, or require that Bank terminate these Service Terms with respect to Customer, upon written notice to Customer. Nothing in these Service Terms shall be construed to limit any of EWS' or Bank's other rights or remedies under these Service Terms.

5.1.2 In addition to the annual reviews provided above, if (a) at any time EWS or Bank has a reasonable basis to believe that Customer is not in compliance with the terms of these Service Terms; (b) EWS or Bank identifies transaction activity that is not consistent with Customer's normal transaction activity based on past activity or compared to similar types of clients, including but not limited to dollar amounts, hit rate, and volume; or (c) EWS or Bank requires that Customer demonstrates its compliance with Customer's resolution plan created to address a document audit finding, EWS and/or Bank will notify Customer. Customer shall within two (2) business days of EWS' or Bank's notification, provide EWS and/or Bank, as applicable, with such documentation and information as may be reasonably requested by EWS and/or Bank to verify Customer's compliance with these Service Terms or to address any potential vulnerabilities identified by EWS and/or Bank in Customer's system or operations, as applicable to Customer's use of the EWS Service. Alternatively, at EWS's or Bank's election, upon reasonable notice, EWS and/or Bank may inspect Customer's records, operations and procedures related to these Service Terms on Customer's premises, during normal working hours, and in a manner as to minimize interference with Customer's normal business activities. If the compliance review reveals that Customer is not in compliance with these Service Terms, or compliance cannot be verified, EWS and/or Bank may, upon written notice, suspend Customer's participation in the EWS Service and the parties may promptly meet to discuss the matter and develop a proposed resolution plan in accordance with the specifications and procedure described above, with respect to annual compliance reviews. Nothing in these Service Terms shall be construed to limit any of EWS' or Bank's other rights or remedies under these Service Terms.

6. Confidentiality.

6.1 Confidentiality. Each party (the "disclosing party") has made and will continue to make available to the other party (the "receiving party") Confidential Information. To the extent permitted by the Texas Public Information Act, Chapter 552, Texas Government Code, the receiving party will maintain Confidential Information in confidence, and except as otherwise expressly permitted under these Service Terms or with the express prior written consent of the disclosing party, the receiving party will not disclose, transmit or otherwise disseminate in any manner whatsoever any Confidential Information of the disclosing party to any third party. The receiving party will use the same care and discretion to avoid disclosure, publication or dissemination or unauthorized access to any Confidential Information received from the disclosing party as the receiving party uses with its own similar information that it does not wish to disclose, publish or disseminate, or be accessed (but in no event less than a reasonable degree of care). Subject to this section, Bank may (i) use Customer's Confidential Information to provide services hereunder, (ii) disclose Customer's Confidential Information to EWS, and EWS' and its affiliates, contractors, consultants, auditors, agents and other third parties (where such other third parties have a need to know), and (iii) as otherwise permitted under the Account Documentation. The receiving party will be liable for any unauthorized disclosure or use of Confidential Information by any of its employees, consultants, agents, subcontractors or advisors. Notwithstanding the foregoing, Customer will exempt from public disclosure and keep in confidence, to the extent permitted by Texas law, any record deemed by EWS or Bank to constitute or contain trade secrets or proprietary information. Customer agrees to notify Bank of receipt of a public records request and Bank may choose to seek appropriate legal action, including injunctive relief, to prevent disclosure of the requested information.

6.2 Non-Disclosure of Consumer Data. To the extent that any information obtained by Customer is "nonpublic personal information" about "consumers" or "customers" as such terms are defined in Title V of the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. § 6802, and in regulations issued thereunder (collectively, "Consumer Data"), Customer agrees that it will not disclose or use such Consumer Data provided to it by the disclosing party under these Service Terms other than to carry out the purposes of these Service Terms or in any manner prohibited by the GLBA or the regulations issued thereunder. Customer further covenants and agrees to maintain appropriate measures designed to meet the objectives of the applicable guidelines establishing information security standards as adopted by any federal regulatory agencies having jurisdiction over Customer's affairs ("Guidelines"). Without limiting the foregoing, Customer hereby represents and warrants that its information security program described in Section 4.3 is designed to: (i) ensure the security and confidentiality of Consumer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of such data; and (iii) protect against unauthorized access to or use of such data that could result in substantial harm or inconvenience to any consumer. Furthermore, Customer shall not knowingly permit any of its Representatives to access the EWS Service if the person has been convicted of a crime in connection with: (a) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a); or (b) a felony.

7. Disclosures. Customer acknowledges that Bank may disclose to a consumer reporting agency (i) the identity of the end user of the information obtained via EWS Service and (ii) each permissible purposes for which the report or information is furnished to the end user.

8. Inquiries about the EWS Service. Except as otherwise expressly provided herein, Customer shall contact Bank with all inquiries regarding the EWS Service.

9. Liability. To the extent permitted by applicable law, Customer shall be responsible for and will reimburse the Bank for any and all Losses, and threatened Losses arising out of or relating to (a) Customer's actual or alleged breach of any representation, warranty, covenant or certification in these Service Terms, (b) Customer's actual or alleged breach of any of the confidentiality provisions in these Service Terms, or (c) Customer's failure to comply with the provisions hereof related to Contribution, Inquiries and use of Response Data.

10. Suspension; Termination.

10.1 Suspension of Customer's Access by EWS. EWS may suspend Customer's access to the EWS Service upon written notice to Bank and Customer, if Customer does not comply with the requirements of these Service Terms and such suspension shall remain in effect until such noncompliance is remedied. EWS may provide such notice via email to the appropriate contacts at Bank and Customer and such notice shall include a description of the noncompliance issue. In the event that Customer has not remedied or not made substantial progress in remedying the noncompliance within thirty (30) days of such notice, EWS may terminate Customer's access to the EWS Service.

10.2 Termination. In addition to each party's termination rights under the Account Documentation, Bank may terminate the provision of the EWS Service to Customer upon ten (10) days written notice to Customer, if any Response Data provided to Customer is used or disposed by Customer as follows: (a) contrary to these Service Terms, provided such breach is material in nature and within the five (5) day notice period, Customer fails to cure such improper use or disclosure or in the event it is not possible to cure such breach, Customer fails to establish preventative measures designed to prevent a future breach; (b) in violation of any Applicable Law pertaining to the use of the EWS Service or Response Data and within the five (5) day notice period, Customer fails to cure such violation or in the event that such violation cannot be cured, Customer fails to establish preventative measures designed to prevent a future violation of a similar nature; or (c) Customer experiences any incident that jeopardizes the security of any Response Data in its possession. Bank may terminate the provision of the EWS Service immediately upon notice to Customer in the event that (i) Bank determines, in its sole discretion, that automated clearing house (ACH) return item volumes are not acceptable or that there have been excessive complaints from Customer's customers or consumers arising out of Customer's use of Response Data, or (ii) the Customer is the subject of any regulatory action. Termination of these Service Terms shall not release either party from obligations arising prior to such termination. The parties' respective rights and obligations under this Section 10 shall survive termination of these Service Terms.

11. Limitation of Bank's and EWS' Liability.

11.1 Limitation of Bank's Liability. Bank assumes no responsibility or liability arising from the transmission, treatment or storage of any data by EWS, including, without limitation, any Inquiry Data, Customer Data and Response Data. Without limitation of the foregoing, Bank shall have no responsibility or liability whatsoever for (a) the content of any Contribution of Customer Data or Inquiry Data transmitted by Customer to EWS and whether Customer properly or timely transmits such data; (b) the content of any Response Data transmitted by EWS to Customer and whether EWS properly or timely transmits such data; (c) any inaccuracy or omission in the Response Data or other data provided by EWS, regardless of the cause thereof, (d) any action taken by the Customer in reliance on Response Data, (e) any storage, use or misuse of Customer Data or Inquiry Data by EWS, and (f) Customer's failure to comply with the Documentation, including, without limitation, applicable technical specifications therein. Further, Bank shall have no responsibility or liability for any failure by Customer or customer of Customer to comply with the applicable requirements hereunder, including requirements in Exhibits A and B, regarding Customer Data, Contributions, Inquiries, use of Response Data and compliance with Applicable Laws.

11.2 No Liability of EWS. EWS shall have no liability to Customer under these Service Terms, including without limitation, any duties or obligations (contractual, at law or otherwise) owed by Bank to Customer or by Customer to Bank under these Service Terms. Customer acknowledges that EWS may notify Bank in the event of Customer's non-compliance with (a) the Contribution of data requirements as set forth in the Documentation and Exhibit A, or (b) the requirements for Inquiries, and in the event that EWS does so, Bank agrees to notify Customer thereof and to provide any details that EWS has provided to Bank. EWS shall have the right to suspend the provision of the EWS Service in the event of Customer's non-compliance with the Contribution and Inquiry requirements of Exhibit A and the Documentation.

11.3. No Warranties. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES AND REPRESENTATIONS, EXPRESS, STATUTORY OR IMPLIED, WITH REGARD TO THE EWS SERVICE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND COURSE OF DEALING OR USAGE OF TRADE OR WARRANTIES AS TO ANY RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. THE BANK DOES NOT WARRANT THE SECURITY, SEQUENCE, TIMELINESS, ACCURACY OR COMPLETENESS OF THE RESPONSE DATA OR OTHER DATA OR THAT ANY PART OF THE EWS SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED.

12. Notice to Users of Consumer Reports; FCRA. Customer acknowledges receipt of the notices attached hereto as Exhibit B (**Notices to Users**), which describe certain obligations of (a) furnishers of information to consumer reporting agencies, and (b) users of consumer reports. Customer acknowledges that these notices were provided to Bank by EWS and EWS is requiring that Bank provide these notices to Customer. Accordingly, Bank shall have no responsibility or liability for the content, accuracy or completeness of such notices. Customer shall be responsible for complying with all Applicable Laws in connection with Customer's provision of data, including Contribution data and Inquiry Data and Customer's use of Response Data, including without limitation, any obligations that Customer may have as a user of consumer reports under the FCRA.

13. EWS Service Selection. Customer acknowledges that Bank is a partial owner of EWS. Customer represents that Customer has made its independent determination for selection of the EWS Service and has not relied on any representation made by Bank in connection therewith. Customer acknowledges and agrees that EWS may receive revenue sharing or other fees from Bank in connection with the provision of the EWS Service to Customer.

14. Bank Obligation to Report to EWS. Under EWS' agreement with Bank, Bank is required to notify EWS if Bank receives notice, from any source, that (a) Customer; (b) any individual or entity that holds a controlling interest in Customer; (c) any member of Customer's board of directors or equivalent governing body; (d) any officer or manager of Customer; or (e) any other employee that has access to Response Data or has

decision-making authority on how the EWS Service is used or marketed (each of the foregoing, a "Regulated Party"), is the subject of an investigation or other action by any Federal, state or local governmental, administrative or regulatory body that would raise legitimate concerns regarding Customer's business practices or Customer's compliance with the use of the EWS Service. Accordingly, Customer will promptly notify Bank in the event of the occurrence of any of the foregoing, and Customer hereby consents to the Bank's provision of such notification to EWS. EWS, in its sole discretion, may cease providing responses comprised in whole or in part of Response Data to Customer where Early Warning believes in good-faith that such legitimate concerns are well-founded.

15. Defined Terms. Capitalized terms used in these Service Terms, unless otherwise defined in the Account Terms shall have the meanings set forth below. Terms defined in the singular shall include the plural and vice versa, as the context requires.

"Account" means an account as defined by the board of Governors of the Federal Reserve System in Regulation CC, 12 C.F.R. Section 229.2(a), and may also include: a savings account, a money market account, a credit account or a brokerage account held by a consumer or company at the Financial Services Organization or other business relationship currently existing or pending between a Financial Services Organization and a consumer or a company.

"Account Owner Authentication" or **"AOA"** means identity-to-account matching performed using the Account Owner Authentication capability with the *Real-time Payment Chek®* service, and confirms an account owner or authorized user by inquiring against account owner data contributed to the National Shared Database resource.

"Account Owner Elements Data" or **"AOE Data"** means information about an Account and the related account owner(s) consisting of one or more of the types of information set forth in Exhibit A-1, as may be modified by EWS and/or Bank.

"Account Status Data" means information relating to the status of an Account with a Contributor in the form of a code.

"Authorized Uses" means the authorized uses of Response Data by Customer as defined in Exhibit A. Exhibit A may be modified from time to time by Early Warning upon written notice to Customer to provide additional Authorized Uses.

"Applicable Laws" means all federal, state and local laws, and the regulations and guidelines promulgated thereunder, applicable to the marketing, promotion, offering for sale, sale provision, creation, delivery, transmission and use of the applicable EWS Service, including without limitation any applicable provisions of the Fair Credit Reporting Act of 1970, 15 U.S.C. Section 1681 et. seq. (the "FCRA"), the Fair and Accurate Credit Transaction Act of 2003, Pub. L. 108-159, 111 Stat. 1952 and the Gramm-Leach-Bliley Act (including similar state laws and regulations to each of the foregoing) in each case as amended from time to time.

"Confidential Information" means information not generally known to the public and at the time of disclosure is identified as, or would reasonably be understood by the receiving party to be, proprietary or visual, electronic or other form. Confidential Information of the disclosing party include such party's (a) business plans, strategies, forecasts, projects and analyses; (b) financial information and fee structures; (c) business processes, methods and models; (d) employee, customer and supplier information; (e) hardware and system designs, architectures, structure and protocols; (f) product and service specifications; and (g) manufacturing, operations, facilities, assets, purchasing, logistics, sales and marketing information.

"Contribute" or "Contribution" means the transmittal of Customer Data by Customer, if Customer is a Financial Services Organization, to the National Shared Database pursuant to Exhibit A (**Authorized Use of the EWS Service**).

"Contributor" means an entity that is a Financial Services Organization and transmits certain specific data elements to the National Shared Database.

"Customer Data" means the prescribed data (as described in Exhibit A (**Authorized Use of the EWS Service**)) contributed to the National Shared Databases directly by Customer for use in the EWS Service.

"Documentation" means any written user guides, specifications, technical requirements, descriptions or instructions created by Early Warning or the Bank describing the installation, set-up, function, features, operation and use of the EWS Service, and that will be or are provided to Customer.

"EWS" has the meaning set forth in Section 1 hereof.

"EWS Service" has the meaning set forth in Section 1 hereof.

"Financial Services Organization" means an entity that provides banking and/or investment products and services and is regulated by one or more of the following entities: Office of the Comptroller of the Currency (OCC), Consumer Financial Protection Bureau (CFPB) (excluding non-depository covered persons), National Credit Union Association (NCUA), Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), The Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico (COSSEC) or a state banking department.

"Government Agency" means a local, state or federal government agency and its contractors.

"Inquiry" means each request for Response Data from the National Shared Databases by Customer.

"Inquiry Data" means the information contained within an Inquiry as described in Exhibit A (**Authorized Use of the EWS Service**).

"Integrator Connectivity" means the Customer is accessing the EWS Service through a direct connection with the Bank pursuant to these Service Terms.

"Item" means either: (a) a physical check; (b) an image replacement document (IRD); (c) MICR line information; (d) an automated clearinghouse entry; or (e) an item as defined by the Uniform commercial code.

"Item Level Data" means information about an Account with a Contributor relating to Return Item Data and/or Stop Pay Data.

"Losses" means all losses, liabilities, damages (including taxes), and all related costs and expenses, including reasonable legal fees

and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

"National Shared Database" means the collection of data maintained by Early Warning in one or more databases.

"Non-Participant Data" means information about a Contributor's experience with an Account, other than an Account with the Contributor, consisting of Transit Data and Return Item Data, as specified in technical specifications Documentation.

"Participant" means the Customer and as required by the context, may also include other customers using the EWS Service.

"Processed Response" shall have its meaning set forth in Section 4.2.

"Representatives" means a party's directors, officers, employees, contractors, subcontractors, attorneys, auditors and accountants.

"Response Data" means information from the National Shared Databases transmitted by Early Warning in response to an inquiry by Customer. The information contained within Response Data is described in the applicable Documentation.

"Return Item Data" means information, in the form of a code, relating to an outgoing or incoming Item that is returned or as to which notice of nonpayment is provided, as specified in those particular documents within the Documentation.

"Scored Account Data" means information relating to an Account, based upon Non-Participant Data, in the form of a code, as specified in those particular documents within the Documentation.

"Stop Pay Data" means information about an Account with a Contributor relating to stop pay instructions on an Item or range of Items associated with the Account, as specified in those particular documents within the Documentation.

"Transit Data" means information identifying an Item by routing and Account number relating to an Account that is maintained by a depository Financial Services Organization, as specified in technical specifications Documentation.

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IN WITNESS WHEREOF, the parties hereto have caused these Service Terms to be executed by their respective officers, thereunto duly authorized,
on _____ of _____, 2022 .

City of Austin

By: Gail Ray

Name: GAIL RAY

Title: Financial Manager - FSD/Treasury

By: E Veselka

Name: Elaine Veselka

Title: Vice President, Customer Account Management, Austin Energy

JPMORGAN CHASE BANK, N.A.

By: B. Pollard

Name: Brenda A Pollard

Title: Authorized Officer

EXHIBIT A

INQUIRIES / CONTRIBUTION / AUTHORIZED USES OF DATA / OTHER REQUIREMENTS

1. **Data Inquiries: Contribution.** Upon full execution of the Service Agreement, Participant may initiate Inquiries for Account Status Data, Item Level Data, Scored Account Data, and/or Account Owner Elements Data. The data required to transmit an Inquiry is set forth in the technical specifications in the Documentation.
 - 1.1 For each Inquiry based upon Account Status Data, Item Level Data, or Scored Account Data, Early Warning will deliver Response Data based upon the data available in the National Shared Database. Each such Inquiry may be transmitted alone or in conjunction with an Inquiry described in Section 1.2 below.
 - 1.2 For each Inquiry based on Account Owner Elements (AOE) Data, Participant will transmit to Early Warning the required AOE Data Elements as set forth in Exhibit A-1 (1) and (2) and Returns Data as set forth in Exhibit A-1 (3), and Early Warning will deliver Response Data to the extent such Inquiry Data matches Data available in the National Shared Database (a "Match"). Each Inquiry based upon Account Owner Elements Data must be transmitted in connection with an Inquiry described in Section 1.1 above.
 - 1.3 Participants that are Financial Services Organizations are subject to the Contribution Requirements set forth in Exhibit A-1.
2. **Authorized Uses of Response Data.**

Participant shall use the EWS Service and Response Data subject to the terms and conditions of the Service Terms, and solely for the purposes described below.

- 2.1 For Inquiries based upon Account Status Data, Item Level Data, or Scored Account Data:
 - (a) To validate the existence of an Account and the associated Account Status Data, Item Level Data or Scored Account Data in determining whether to accept or decline an Item as payment for goods or services;
 - (b) As a factor in verifying, authorizing or guaranteeing a payment;
 - (c) To cash an Item or provide cash back from a deposit or payment;
 - (d) To decide whether to forward an Item for collection or represent it electronically; or
 - (e) To determine whether to allow the Account or application to be enrolled for use in connection with future transactions by validating that the Account exists and/or is in good standing.
- 2.2 For Inquiries based upon Account Owner Elements Data:
 - (a) To determine whether to accept or decline an Item as payment for goods or services by validating that the consumer presenting such Item is an authorized accountholder, user, or signatory of the Account on which the Item is drawn;
 - (b) To determine whether to accept or decline an Item as payment for goods or services by validating that the company name associated with such Item is the company name of the Account on which such Item is drawn;
 - (c) To determine whether to accept or decline an Item as funding for an Account by validating that the consumer is an authorized accountholder, user, or signatory of the Account used or to be used in connection with the funding;
 - (d) To determine whether to transfer funds by validating that the consumer is an authorized accountholder, user, or signatory of the Account used or to be used in connection with the transfer of funds;
 - (e) To determine whether to allow the Account to be enrolled for use in the connection with future transactions by validating that:
 - (a) the consumer is an authorized accountholder, user, or signatory of the Account; or
 - (b) the company name is associated with the Account.
- 2.3 For Participants that are Financial Service Organizations, the following are additional Authorized Uses of Response Data:
 - (A) **For Inquiries based upon Account Status Data, Item Level Data or Scored Account Data:**
 - (i) To determine whether to accept or decline an Item for payment of a credit card, line of credit or loan (including personal and small business loans and lines of credit, auto loans, home mortgages, home equity loans and lines of credit and student loans);
 - (ii) To delay or restrict the open to buy decision;
 - (iii) To validate the existence of a recipient Account of an outbound payment transaction and the associated Account Status Data, Item Level Data or Scored Account Data in determining whether to transfer funds to such recipient Account;
 - (iv) To determine, as part of a fraud investigation resulting from a consumer filing an unauthorized transaction claim, whether the Account exists and/or is in good standing; and
 - (v) If the Participant determines that further investigation is necessary to mitigate risk based upon any of the following Response Data: Closed for Cause, Closed for Cause/Purged; Closed; Closed/Purged; Pending Closed; Post No Checks; Post No Debits; Enhances OD X/Y; Return Account; or Stop Payment, Participant may also use Response Data for the following purposes:
 - (A) As a factor in determining whether to close an existing Account for a consumer or company;
 - (B) As a factor in determining whether to monitor an existing Account for a consumer or company; and

- (C) As a factor in determining whether to restrict or change existing Account privileges for a consumer or company (including, but not limited to: (a) reducing the credit line for the Account; (b) restricting Account access; and/or (c) modifying Account debit/withdrawal limits).

(B) For Inquiries based upon Account Owner Elements Data:

(i) To determine, as part of a fraud investigation resulting from a consumer filing an unauthorized transaction claim, whether the consumer is an authorized accountholder, user, or signatory of an Account used in connection with the transfer of funds; and

(ii) To determine whether to process a check order by validating that: (a) the consumer is an authorized accountholder, user or signatory of the Account; or (b) the company name is associated with the Account; and (c) the address is associated with the Account.

- 2.4** For Participants that are Government Agencies, Response Data may be used only as follows; provided, however, such Participant may not refuse or decline a consumer or a company transaction or request based solely on such Response Data:

(A) For Inquiries based upon Account Status Data, Item Level Data, or Scored Account Data:

- (i) To determine if information provided by an individual or a company meets the National Institute of Standards and Technology (NIST) Level 2 and/or Level 3 identification and authentication requirements;
- (ii) To validate the existence of an Account and the associated Account Status Data, Item Level Data, or Scored Account Data in determining whether to accept or decline an Item as payment for goods or services; and
- (iii) To determine whether to allow the Account or application to be enrolled for use in connection with future transactions by validating that the Account exists and/or is in good standing.

(B) For Inquiries based upon Account Owner Elements Data:

- (i) To direct requests for Account verifications to Financial Services Organizations;
- (ii) To determine if information provided by an individual or a company meets the NIST Level 2 and/or Level 3 identification and authentication requirements;
- (iii) To determine whether to transfer funds by validating that the consumer is an authorized accountholder, user, or signatory of the Account used or to be used in connection with the transfer of funds; and
- (iv) To determine whether to allow the Account to be enrolled for use in connection with future transactions by validating that: (a) the consumer is an authorized accountholder, user or signatory of the Account; or (b) the company name is associated with the Account.

- 2.5** **Restrictions on Use of Account Status Data.** Participant shall not refuse or decline an Item based solely on the following Response Data: No Information; No Known Information; Not Located; Non-DDA; Broker Check; Credit Card Check; Home Equity Check; or Line of Credit Check.

- 2.6** **Authorized Use of Data by Early Warning.** The Participant hereby authorizes Early Warning to use Inquiry Data and Participant Data as contributed pursuant to this Exhibit A, for the purpose of: (a) providing the EWS Service; (b) providing Response Data to Resellers; (c) providing Response Data to others participants for the purpose of conducting value testing; (d) preparing statistical reports and conducting data analytics, parsing routines, data modeling, and other analyses to test and evaluate Early Warning's services; (e) developing and providing new services or enhancements to existing Early Warning services; and (f) developing and providing services to third parties engaged in the business of offering identity theft protection services to consumers, provided that no personally identifiable information shall be returned to any such third parties. The reports and results of the analyses described in clause (a) may be provided to other Inquirers and Contributors, provided that such reports and analyses do not identify specific Inquiry Data or Response Data with respect to any Inquirer or Contributor.

3. Inquiry and Participant Data Accuracy of Participant.

- 3.1** Participant shall use commercially reasonable efforts to ensure that all Inquiry and other Participant data, including without limitation any data required to be Contributed (the "Inquiry and Participant Data") transmitted to the National Shared Database is accurate and complete at the time of transmittal.
- 3.2** If Participant determines or otherwise becomes aware that Inquiry and Participant Data transmitted to the National Shared Database by such Participant is inaccurate or incomplete, Participant shall: (a) immediately notify Early Warning that such Inquiry and Participant Data is inaccurate and/or incomplete; (b) provide Early Warning with any corrections to such Inquiry and/or Participant Data, or with additional information necessary to make such Inquiry and Participant Data accurate and complete; or (c) delete such information from the National Shared Database (collectively the "Action Plan"). Participant shall further ensure that the inaccurate, incomplete, or unverifiable information is not transmitted to the National Shared Database in any future transmission of Inquiry and Participant Data.
- 3.3** Inquiry and Participant Data may only be contributed if it applies to an event that occurred less than seven (7) years from the date of contribution.
- 3.4** RESERVED.

- 3.4.1 Notwithstanding Section 3.4 above, Early Warning may request, more than once annually, verification and certification of Participant's Data if it has reason to suspect such Inquiry and Participant Data may be inaccurate or incomplete.
- 3.5 Upon request by Early Warning, and not more than once annually per contributed dataset, Participant shall attest that Inquiry and Participant Data contributed by Participant is in compliance with the terms of this Exhibit A.
- 3.6 Notwithstanding Participant's obligations to meet said requirements of the Action Plan in Section 3.2 or the Written Resolution Plan in Section 3.4, Early Warning may still charge to Participant a Data Quality Non-Compliance Fee (as set forth below) upon notice to Customer at the contact information/address on the Bank's books and records. However, at Early Warning's sole discretion, it may waive the Data Quality Non-Compliance Fee if Participant completes the requirements of the Action Plan or the Resolution Plan.
- 3.7 Participant agrees that Early Warning has the right to charge Participant a fee each time a Participant has transmitted inaccurate or incomplete Inquiry or Participant Data (a "Violation") as set forth in the Table in Section 3.7.1 below (the "Data Quality Non-Compliance Fee").

3.7.1

Data Quality	Violation	Data Quality Non-Compliance Fee
	First violation.	20% of the total monthly bill charged for the EWS Service to such Participant by JPMC in the month immediately following the notification or cure period, if any.
	Uncorrected violation (Month 2 following notice of the first violation) or second violation of the same rule within 12 months of the first violation.	25% of the total monthly bill charged for the EWS Service to such Participant by JPMC.
	Uncorrected violation (Month 3 following notice of the first violation and subsequent months until corrected) or third violation of the same type within a 12 month period after notification of the first violation.	50% of the total monthly bill charged for the EWS Service to such Participant by JPMC.

4. Implementation of Required Releases.

- 4.1 "Release" means an enhancement, update, modification, or fix to the EWS Service in the form of software, file changes, or other methods provided by Early Warning.
- 4.2 "Required Release" means a Release that: (a) materially affects the performance of the National Shared Database as determined by Early Warning or is the result of a change in Applicable Law.
- 4.3 Early Warning shall provide a ninety (90) days' prior written notice to Participant of all Required Releases. Participant shall install Required Releases within ninety (90) calendar days of the date of such Required Release.
- 4.4 Participant agrees that Early Warning has the right to charge Participant a fee each time a Participant has failed to install a Required Release (a "Violation") as set forth in the Table 4.4.1 below (the "Required Release Non-Compliance Fee").

4.4.1

Required Releases	Violation	Required Release Noncompliance Fee
	First violation.	15% of the total monthly bill charged for the EWS Service to such Participant by JPMC in the month immediately following the notification or cure period, if any.
	Uncorrected violation (Month 2 following notice of the first violation) or second violation of the same rule within 12 months of the first violation.	25% of the total monthly bill charged for the EWS Service to such Participant by JPMC.

	Uncorrected violation (Month 3 following notice of the first violation and subsequent months until corrected) or third violation of the same type within a 12 month period after notification of the first violation.	40% of the total monthly bill charged for the EWS Service to such Participant by JPMC.
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4.5 Early Warning may, from time to time, implement Releases. Early Warning shall support Releases for a minimum of thirty-six (36) months from the date the Release is first available to Participants in a production environment. Upon implementing a Release, Early Warning may, in its discretion, require Participants to upgrade to the most current Release and discontinue supporting the prior Release. In this event, Participant shall upgrade to the most current Release upon no less than twenty-four (24) months' prior written notice.

4.5.1 If Participant does not upgrade to the most current Release within the twenty-four (24) month notice period prescribed in Section 4.5, Participant shall be subject to ongoing Release support fees for any prior Release as described below in Section 4.5.2.

4.5.2 Participant agrees to pay a prior Release support fee to be imposed for each month following the expiration of the twenty-four (24) months' prior notice, if Participant fails to implement the current Release. For each month of the first three (3) months during which Participant has not implemented the current Release, the support fee shall be calculated to equal ten percent (10%) of Participant's monthly invoice. Subsequently, the support fee shall increase by an additional ten percent (10%) of each month's invoice for each quarter that Participant has not implemented the current Release. For the avoidance of doubt, the second quarter support fee for non-implementation of the current Release shall equal twenty percent (20%) of Participant's monthly invoice.

4.6 Data Quality and Required Release Non-Compliance Violation Notice and Cure Period (if applicable).

4.6.1 Early Warning will deliver written notice of noncompliance to the Participant, and JPMC, which notice shall specify each violation(s) (a "**Noncompliance Notice**"). The Noncompliance Notice will include a description of the actions or inactions of the Participant giving rise to the violation, the actual or approximate dates of such violations, and if quantifiable at the time, the amount of any Noncompliance Fee. Early Warning may, in its sole discretion, and in writing, provide a limited time period for the Participant to cure such violation before imposing the Noncompliance Fee.

4.6.2 Either of the two Noncompliance Fees above are payable by the Participant thirty (30) Days after the later of the delivery of the notification or the expiration of any cure period specified in the notification, if applicable. The Participant will not be responsible for any Noncompliance Fees during the cure period, if applicable.

4.7 Additional Data Elements to be Contributed.

4.7.1 Participant acknowledges that Early Warning may require additional data elements to be contributed as deemed by Early Warning as necessary for the EWS Service. Early Warning will provide written notice to JPMC and/or to Participant about the additional data elements to be contributed and Participant shall begin to contribute said data elements no later than twenty- four (24) months after said written notice.

4.8 Suspension of EWS Service to Participant.

4.8.1 Notwithstanding the ability to assess, or the assessment of, the two Non-Compliance Fees above, Participant agrees that Early Warning may immediately suspend the provision of the EWS Services for any material breach or repetitive breaches, material or otherwise, by Participant of the terms of this Exhibit A and Early Warning may continue the suspension until the material breach or repetitive breaches have been completely remedied by Participant. In the event that Customer has not remedied or not made substantial progress in remedying the noncompliance within thirty (30) days of such notice, Early Warning may terminate Customer's access to the EWS Services.

EXHIBIT A-1
RESERVED

EXHIBIT B

All users of consumer reports must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO USERS OF CONSUMER REPORTS:

OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681–1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Consumer Financial Protection Bureau's (CFPB) website at www.consumerfinance.gov/learnmore. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the CFPB's website. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. [Section 604\(a\)\(1\)](#)
- As instructed by the consumer in writing. [Section 604\(a\)\(2\)](#)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. [Section 604\(a\)\(3\)\(A\)](#)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. [Sections 604\(a\)\(3\)\(B\) and 604\(b\)](#)
- For the underwriting of insurance as a result of an application from a consumer. [Section 604\(a\)\(3\)\(C\)](#)
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. [Section 604\(a\)\(3\)\(F\)\(i\)](#)
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. [Section 604\(a\)\(3\)\(F\)\(ii\)](#)
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. [Section 604\(a\)\(3\)\(D\)](#)
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. [Section 604\(a\)\(3\)\(E\)](#)
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. [Sections 604\(a\)\(4\) and 604\(a\)\(5\)](#)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. [Section 604\(c\)](#). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA—such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.

- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts Are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of the reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the address in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed. Federal regulations are available at <http://www.consumerfinance.gov/learnmore>.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. Federal regulations have been issued that cover disposal.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations prescribed by the CFPB.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with federal, state or local laws and regulations or the rules of a self regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes - or in connection with a credit transaction (except as provided in federal regulations) - the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(l), 604(c), 604(e), and 615(d). This practice is known as "prescreening" and typically involves obtaining from a CRA a list of consumers who meet certain pre-established criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, the CFPB has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The relevant regulation is 12 CFR 1022.54.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
 - (1)) the identity of all end-users;
 - (2)) certifications from all users of each purpose for which reports will be used; and
 - (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part, and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The CFPB's website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681
Section 603	15 U.S.C. 1681a
Section 604	15 U.S.C. 1681b
Section 605	15 U.S.C. 1681c
Section 605A	15 U.S.C. 1681cA
Section 605B	15 U.S.C. 1681cB
Section 606	15 U.S.C. 1681d
Section 607	15 U.S.C. 1681e
Section 608	15 U.S.C. 1681f
Section 609	15 U.S.C. 1681g
Section 610	15 U.S.C. 1681h
Section 611	15 U.S.C. 1681i
Section 612	15 U.S.C. 1681j
Section 613	15 U.S.C. 1681k
Section 614	15 U.S.C. 1681l
Section 615	15 U.S.C. 1681m
Section 616	15 U.S.C. 1681n
Section 617	15 U.S.C. 1681o
Section 618	15 U.S.C. 1681p
Section 619	15 U.S.C. 1681q
Section 620	15 U.S.C. 1681r
Section 621	15 U.S.C. 1681s
Section 622	15 U.S.C. 1681s-1
Section 623	15 U.S.C. 1681s-2
Section 624	15 U.S.C. 1681t
Section 625	15 U.S.C. 1681u
Section 626	15 U.S.C. 1681v
Section 627	15 U.S.C. 1681w
Section 628	15 U.S.C. 1681x
Section 629	15 U.S.C. 1681y

**NOTICE TO USERS OF CONSUMER REPORTS UNDER
CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT
CIVIL CODE SECTION 1785.20-1785.22**

The California Consumer Credit Reporting Agencies Act (Civil Code Sections 1785.1 – 1785.36) requires that this notice be provided to inform users of consumer reports of their responsibilities under Sections 1785.20-1785.22 of the California Civil Code.

Sections 1785.20-1785.22 impose the following duties upon users of consumer reports:

(a) If any person takes any adverse action with respect to any consumer, and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, that person shall do all of the following:

- (1) Provide written notice of the adverse action to the consumer.
- (2) Provide the consumer with the name, address, and telephone number of the consumer credit reporting agency which furnished the report to the person.
- (3) Provide a statement that the credit grantor's decision to take adverse action was based in whole or in part upon information contained in a consumer credit report.
- (4) Provide the consumer with a written notice of the following rights of the consumer:

(A) The right of the consumer to obtain within 60 days a free copy of the consumer's consumer credit report from the consumer credit reporting agency identified pursuant to paragraph (2) and from any other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis.

(B) The right of the consumer under Section 1785.16 to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.

(b) Whenever credit or insurance for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or in part because of information obtained from a person other than a consumer credit reporting agency bearing upon consumer's credit worthiness or credit standing, the user of that information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for that adverse action received within 60 days after learning of the adverse action, disclose the nature and substance of the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer his or her right to make such a written request at the time the adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if he or she shows by a preponderance of the evidence that at the time of the alleged violation he or she maintained reasonable procedures to assure compliance with this section.

(d) Nothing in this chapter shall excuse compliance with the requirements of Section 1787.2.

(a) Except as provided in subdivision (b), any person who uses a consumer credit report in connection with any credit transaction not initiated by the consumer and which consists of a firm offer of credit shall provide with any solicitation made to the consumer a clear and conspicuous statement as to all of the following:

- (1) Information contained in the consumer's prequalifying report was used in connection with the transaction.
- (2) The consumer received the offer of credit, because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer.
- (3) Where applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer.

(4) The consumer has a right to prohibit use of information contained in the consumer's file with any consumer credit reporting agency in connection with any credit transaction that is not initiated by the consumer. The consumer may exercise this right by notifying the notification system or joint notification system established under subdivision (d) or (e) of Section 1785.11.

(b) Subdivision (a) does not apply to any person using a prequalifying report if all of the following conditions are met:

- (1) The person using the prequalifying report is affiliated by common ownership or common corporate control with the person who procured the report.
- (2) The person who procures the prequalifying report from the consumer credit reporting agency clearly and conspicuously discloses to the consumer to whom the report relates, before the prequalifying report is provided to the person who uses the report, that the prequalifying report might be provided to, and used by, persons affiliated in the manner specified in paragraph (1) with the person that procured the report.
- (3) The consumer consents in writing to this provision and use of the prequalifying report.

(c) No person shall be denied credit on the basis of the consumer's refusal to provide consent pursuant to paragraph (3) of subdivision (b), unless that consent is necessary for the extension of credit, related to that transaction, by an affiliate.

Any person who makes or arranges loans and who uses a consumer credit score as defined in Section 1785.15.1 in connection with an application initiated or sought by a consumer for a closed end loan or establishment of an open end loan for a consumer purpose that is secured by one to four units of residential real property shall provide the following to the consumer as soon as reasonably practicable:

(a) A copy of the information identified in subdivision (a) of Section 1785.15.1 that was obtained from a credit reporting agency or was developed and used by the user of the information. In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subdivision (d).

(b) If a person who is subject to this section uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer credit reporting agency. However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, it shall be disclosed to the consumer consistent with subdivision (c). For purposes of this subdivision, the term "enterprise" shall have the meaning provided in paragraph (6) of Section 4502 of Title 12 of the United States Code.

(c) A person subject to the provisions of this section who uses a credit score other than a credit score provided by a consumer reporting agency may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer credit reporting agency.

(d) A copy of the following notice, which shall include the name, address, and telephone number of each credit bureau providing a credit score that was used:

NOTICE TO THE HOME LOAN APPLICANT

In connection with your application for a home loan, the lender must disclose to you the score that a credit bureau distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information a credit bureau or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the credit bureau at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The credit bureau plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

(e) This section shall not require any person to do the following:

- (1) Explain the information provided pursuant to Section 1785.15.1.
- (2) Disclose any information other than a credit score or key factor, as defined in Section 1785.15.1.
- (3) Disclose any credit score or related information obtained by the user after a loan has closed.
- (4) Provide more than one disclosure per loan transaction.
- (5) Provide the disclosure required by this section when another person has made the disclosure to the consumer for that loan transaction.

(f) Any person's obligation pursuant to this section shall be limited solely to providing a copy of the information that was received from the consumer credit reporting agency. No person has liability under this section for the content of that information or for the omission of any information within the report provided by the consumer credit reporting agency.

(g) As used in this section, the term "person" does not include an "enterprise" as defined in paragraph (6) of Section 4502 of Title 12 of the United States Code.

(a) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, and who discovers that the consumer's first and last name, address, or social security number, on the credit application does not match, within a reasonable degree of certainty, the consumer's first and last name, address or addresses, or social security number listed, if any, on the consumer credit report, shall take reasonable steps to verify the accuracy of the consumer's first and last name, address, or social security number provided on the application to confirm that the extension of credit is not the result of identity theft, as defined in Section 1798.92.

(b) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, and who has received notification pursuant to subdivision (k) of Section 1785.16 that the applicant has been a victim of identity theft, as defined in Section 1798.92, may not lend money or extend credit without taking reasonable steps to verify the consumer's identity and confirm that the application for an extension of credit is not the result of identity theft.

(c) Any consumer who suffers damages as a result of a violation of this section by any person may bring an action in a court of appropriate jurisdiction against that person to recover actual damages, court costs, attorney's fees, and punitive damages of not more than thirty thousand dollars (\$30,000) for each violation, as the court deems proper.

(d) As used in this section, "identity theft" has the meaning given in subdivision (b) of Section 1798.92.

(e) For the purposes of this section, "extension of credit" does not include an increase in an existing open-end credit plan, as defined in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2), or any change to or review of an existing credit account.

(f) If a consumer provides initial written notice to a creditor that he or she is a victim of identity theft, as defined in subdivision (d) of Section 1798.92, the creditor shall provide written notice to the consumer of his or her rights under subdivision (k) of Section 1785.16.

(g) The provisions of subdivisions (k) and (l) of Section 1785.16 do not apply to a consumer credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer credit reporting agency or the databases of multiple consumer credit reporting agencies, and does not maintain a permanent database of credit information from which new credit reports are produced.

(h)) This section does not apply if one of the addresses at issue is a United States Army or Air Force post office address or a United States Fleet post office address.

1785.20.5. (a) Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used, and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the person of the source of the report, and shall contain a box that the person may check off to receive a copy of the credit report. If the consumer indicates that he or she wishes to receive a copy of the report, the user shall request that a copy be provided to the person when the user requests its copy from the credit reporting agency. The report to the user and to the subject person shall be provided contemporaneously and at no charge to the subject person.

(b) Whenever employment involving a consumer is denied either wholly or partly because of information contained in a consumer credit report from a consumer credit reporting agency, the user of the consumer credit report shall so advise the consumer against whom the adverse action has been taken and supply the name and address or addresses of the consumer credit reporting agency making the report. No person shall be held liable for any violation of this section if he or she shows by a preponderance of the evidence that, at the time of the alleged violation, he or she maintained reasonable procedures to assure compliance with this section.

(a) A user in its discretion may notify the consumer that upon request the user may contact the consumer reporting agency and request that the consumer reporting agency investigate the current status of an item or items of information contained in the consumer report if the consumer disputes the completeness or accuracy of an item or items of information as provided to the user.

(b)) The consumer credit reporting agency may require identification from the user to insure the validity of the request and, in that regard, may require that the request be put in writing with proper identification.

(c) In the event that any such request is made and identification given in the form or manner demanded by the consumer credit reporting agency, such agency shall review the file of the consumer and report the current status of the disputed information to the user and the consumer by the most expeditious means possible.

(d) No user who furnishes information pursuant to this section shall be liable to any person for furnishing such information.

(a) A person may not procure a consumer credit report for the purpose of reselling the report or any information therein unless the person discloses to the consumer credit reporting agency which issues the report the identity of the ultimate end user and each permissible purpose for which the report is furnished to the end user of the consumer credit report or information therein.

(b) A person that procures a consumer credit report for the purpose of reselling the report or any information therein shall do all of the following:

(1) Establish and comply with reasonable procedures designed to ensure that the consumer credit report or information is resold by the person only for a purpose for which the report may be furnished under this title. These procedures shall include all of the following:

(A) Identification of each prospective user of the resold consumer credit report or information.

(B) Certification of each purpose for which the consumer credit report or information will be used.

(C) Certification that the consumer credit report or information will be used for no other purpose.

(2) Before reselling the consumer credit report or information, the person shall make reasonable efforts to verify the identities and certifications made under paragraph (1).

All furnishers subject to the Federal Trade Commission's jurisdiction must comply with all applicable regulations, including regulations promulgated after this notice was prescribed in 2004. Information about applicable regulations currently in effect can be found at the Commission's Web site, www.ftc.gov/credit. Furnishers who are not subject to the Commission's jurisdiction should consult with their regulators to find any relevant regulations.

NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C. 1681s-2. State law may impose additional requirements on furnishers. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is set forth in full at the Web site of the Federal Trade Commission (FTC): www.ftc.gov/credit. A list of the sections of the FCRA cross referenced to the U.S. Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

ACCURACY GUIDELINES

The banking and credit union regulators and the FTC will promulgate guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. The regulations and guidelines issued by the FTC will be available at www.ftc.gov/credit when they are issued. Section 623(e).

GENERAL PROHIBITION ON REPORTING INACCURATE INFORMATION

The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

DUTY TO CORRECT AND UPDATE INFORMATION

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

DUTIES AFTER NOTICE OF DISPUTE FROM CONSUMER

If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

The federal banking and credit union regulators and the FTC will issue regulations that will identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Once these regulations are issued, furnishers must comply with them and complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a "credit repair organization." The FTC regulations will be available at www.ftc.gov/credit. Section 623(a)(8).

DUTIES AFTER NOTICE OF DISPUTE FROM CONSUMER REPORTING AGENCY

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

1. Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).
2. Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
3. Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).
4. Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

DUTY TO REPORT VOLUNTARY CLOSING OF CREDIT ACCOUNTS

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnishes information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).

DUTY TO REPORT DATES OF DELINQUENCIES

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

DUTIES OF FINANCIAL INSTITUTIONS WHEN REPORTING NEGATIVE INFORMATION

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The Federal Reserve Board has prescribed model disclosures, 12 CFR Part 222, App. B.

DUTIES WHEN FURNISHING MEDICAL INFORMATION

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

DUTIES WHEN ID THEFT OCCURS

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623(a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each consumer reporting agency of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher may not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The FTC's Web site, www.ftc.gov/credit, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

EXHIBIT C

TECHNICAL INTEGRATOR

1. "Technical Integrator" means any third party designated by Customer that has physical, logical or network access to Inquiry Data, Response Data, and any other Early Warning data transmitted between any of these parties or the systems that house any such data. For the avoidance of doubt, a third party shall be considered a Technical Integrator if it receives and transmits a response comprised in whole, or in part, of Response Data.
2. "TI Customer" means, as applicable, and for purposes of the requirements of this Exhibit, a Customer, that wants to use, and designate for use, a Technical Integrator for the transmitting of Customer Data, the transmitting of Inquiry/Inquiry Data and the receiving of Response Data in response to an Inquiry.
3. TI Customer shall enter into a written agreement with their Technical Integrator that satisfies the requirements of this Exhibit.
4. TI Customer shall perform annually, due diligence and review of Technical Integrator's information security related documentation, conduct a risk assessment of its information security related controls, identify findings and weaknesses in such controls, and document a remediation plan, as necessary.
5. Upon a reasonable suspicion of Technical Integrator's non-compliance with the requirements of the Exhibit or applicable law, Early Warning will have the right to audit Technical Integrator, which may be performed jointly with that TI Customer.
6. At Early Warning's request, TI Customer will provide its agreement with Technical Integrator (redacted as necessary) to Early Warning for Early Warning's review to ensure compliance with the requirements of the Exhibit.
7. TI Customer shall be responsible for the Technical Integrator's acts and omissions in connection with the requirements of 13 (a), (b) and (c) below.
8. TI Customer acknowledges and agrees that Early Warning shall not be liable for any errors committed by the Technical Integrator in the transmission of Inquiry and Response Data and/or the failure to transmit such Data.
9. If a TI Customer has an existing agreement with its Technical Integrator that does not satisfy the requirements of this Exhibit, then TI Customer shall amend its agreement, as appropriate, with the Technical Integrator prior to the use of that Technical Integrator for the transmission of Inquiry or Response Data.
10. TI Customer will notify Early Warning in writing of any termination, replacement or other change to its designated Technical Integrator as soon as reasonably practicable.
11. TI Customer acknowledges and agrees that Early Warning currently requires its own agreement with that Technical Integrator designated by the TI Customer. Furthermore, TI Customer acknowledges and agrees that the Technical Integrator will be subject to Early Warning's vetting and risk assessment. TI Customer acknowledges that if in the future Early Warning does not require its own agreement with that Technical Integrator, Early Warning still hereby reserves the right, in its absolute discretion, to later require an agreement between Early Warning and the Technical Integrator, and TI Customer shall cooperate with Early Warning to facilitate such an agreement.
12. TI Customer acknowledges that the requirements set forth in Section 13 below may be modified from time to time by Early Warning to address regulatory guidance and/or information security requirements.
13. TI Customer shall ensure that all of the provisions set forth below are placed within the agreement with its Technical Integrator:
Technical Integrator shall (a) maintain an information security program that meets the requirements of the Service Agreement; (b) impose upon the Technical Integrator confidentiality provisions no less restrictive than the confidentiality provisions of the Service Agreement; (c) require that the Technical Integrator (i) not transmit Response Data received in response to an Inquiry to any party other than in response to an Inquiry initiated by that specific TI Customer (ii) not merge, aggregate or compile Response Data into any other database for use in connection with future Inquiries.

COA Exception		COMMENTS
JPMORGAN EARLY WARNING REAL-TIME PAYMENT ... Service Terms		12/22/21 [Dennis C-JPMC]: Please note Bank is authorized by EWS to market and provide EWS Services to its customers. As part of this arrangement, Bank is required to ensure certain provisions are flowed down within the service agreement with its customers. As such, the Bank is unable to revise many provisions of these Service Terms.
1st paragraph	Paragraph references "Electronic Channels Service Terms ("Channels Terms"). [Gail R]: Has the COA received these terms?	10/27/21 [Teresa Rojo]: AE needs to review. 11/16/21: [Gail R] City has already agreed to these terms - need to send copy to AE
1. Service 1.1 General	Sections references a "Connectivity Agreement". [Gail R]: Has the COA received this agreement?	10/27/21 [Teresa Rojo-AE]: AE needs to review. 11/16/21: [Gail R] per JPMC - will be deleted - does not apply [Gail R]: Per JPMC – Connectivity doesn't apply. Need the reference to be deleted from this document
1. Service 1.4	missing numbers "i" and "ii"	1/6/22 Mtg JPMC: [Dennis C-JPMC] will correct
4. Additional Customer Rights and Responsibilities. 4.1.1	"Without limitation of the foregoing, Customer shall not transmit Response Data to any customer of Customer or any other third party, or allow any third party to access the Response Data, ..." [Gail R]: Should the reference to technical integrator (i.e. Oracle) be incorporated into this paragraph?	10/19/21 [Dolores Castillo-AE]: May need to get approval in writing that AE has existing partnerships (Oracle)? 11/16/21 Mtg [Teresa R]: Gails note can be removed - reference to technical integrator is not necessary and we do not need ot get approval in writing.
4. Additional Customer Rights and Responsibilities. 4.1.2	"Customer shall not merge, aggregate or compile Response Data into any other database for use in connection with future Inquiries. ..." [Gail R]: Does this mean AE cannot save the response data in CC&B? They may need to do this to prevent sending another inquiry on the same banking info in the future.	10/27/21 [Teresa Rojo-AE]: AE is okay with this.
	"... Customer agrees to refer such consumer to EWS for handling disputes concerning the completeness or accuracy of any item of information contained within the Response Data. ..." [Gail R]: AE will need to program their systems to provide applicable communication back to customer.	10/27/21 [Teresa Rojo-AE]: Oracle will have to do the development. This will be done through enhancements. 11/16/21 Mg [John W]: not a concern
	"... Customer shall provide Bank with concurrent notice of any such dispute referred to EWS." [Gail R]: AE will need to program their system to provide applicable communication back to JPM.	11/16/21 Mtg [Gail R] still wating on response from JPMC 12/20/21 [Dennis C-JPMC]: As a user of consumer reports, if adverse action is taken, Customer is required under the FCRA to refer consumers to EWS (the consumer reporting agency) for handling of certain disputes. Concurrent notice is to be provide to Bank as service provider. 1/4/22: [John W-AE][Gail R]: The City accepts asis.
ADVERSE ACTION NOTICE		11/16/21 Mg [John W]: Does not apply to us 12/10/21 [Gail R]: This notice is not applicable because the City will not be providing this type of service therefore no adverse action notice will be necessary. Please remove this entire section. 12/20/21 [Dennis C-JPMC]: This is an FCRA requirement. The model adverse action notice below is provided for the Customer's convenience (satisfies FCRA disclosure requirements). The FCRA requires notice be provided if adverse action is taken based on information in a consumer report. It is the Customer's responsibility as the user of the consumer report to determine whether its action constituted adverse action as defined by the FCRA. Bank recommends Customer consult with its counsel regarding its obligations as a user of consumer reports. Note that declining payment in and of itself may not constitute adverse action as defined by the FCRA. 1/4/22: [John W-AE][Gail R]: Okay with language in asis.
4. Additional Customer Rights and Responsibilities. 4.2 Customer Audit Rights/Information.	"... If, in addition to the information provided by EWS, Customer requires to conduct an on-site audit of EWS' information security program outside of EWS' regularly scheduled consolidated on-site audit periods (which are free to Customer), then a daily fee shall be assessed to Customer for the on-site audit, as agreed upon between EWS and Customer. ..." [R Pigott] ISO may not like this. [Gail R] Both ISO and OCA, as well as AE Auditor, will need to review this language.	10/27/21 [Teresa Rojo-AE]: Has there been a response back from the City's Auditor's? What are the fees? 11/16/21 Mtg: Concern from AE are the fees. Need to inquire from JPMC regarding how much the fees are. 11/29/21 [Jason Hadavi - City Dpty Auditor]: I have no concerns about any of the areas flagged for our office. [Stuart Reilly]: I'd like to know how often and how long the free-of-charge consolidated on-site audit periods are and whether that aligns with the business needs of Austin Energy in this case. Perhaps that's acceptable, but I don't know. In addition, I'd like to see more about the cost for the audits conducted outside that consolidated audit period. Perhaps we cap it at their actual, reasonable costs incurred due to our inspection, if any. To leave this up to something that is agreed later that is not tied to the cost of having such an ad hoc audit would allow them to effectively block it by making it cost prohibitive.

COA Exception		COMMENTS
		12/15/21 [Dennis C-JPMC]: Please note the ARR is comprehensive and should address Customer questions regarding EWS' information security program. Free on-site audits generally occur quarterly, but dates may differ. Fees for audits outside of scheduled audits would be dependent on the time and scope of the audit. 1/4/21 Mtg: [Teresa R]: concerned about fees. However per Gail - okay to leave as is.
4. Additional Customer Rights and Responsibilities. 4.3 Written Information Security Program.	Entire Section: "Customer shall maintain a written information security program that contains administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Response Data, (ii) protect against any anticipated threats or hazards to the security or integrity of Response Data, (iii) protect against unauthorized access to or use of such Response Data that could result in substantial harm or inconvenience to any customer of Customer, (iv) limit access, use and disclosure of Response Data as expressly permitted by these Service Terms, (v) ensure the proper disposal of Response Data, and (vi) comply with Applicable Law. Customer's information security program must be designed to: (i) meet the objectives of the Interagency Guidelines Establishing Information Security Standards promulgated by the federal banking agencies as amended from time to time, and (ii) include control objectives that meet applicable industry standards such as ISO 27002, FFIEC, OCC, PCI or NIST. Customer shall promptly notify EWS of any modification to Customer's information security program." [Gail R] We need corporate ISO and AE ISO to review and ensure we meet these requirements.	10/27/21 [Teresa Rojo-AE]: AE has issues with this section and will need a discussion with Chase. AE doesn't agree to the last sentence. 11/16/21 Mtg: [John W] AE requests this subsection be removed. 12/15/21 [Dennis C-JPMC]: Bank's arrangement with EWS requires this provision be included. If Customer does not maintain an appropriate information security program, it may not receive Response Data/consumer reports. 1/4/21 Mtg: [Teresa R]: will need to consult with AE IT (Steve) 1/20/22 [Michael O'Connell-AE IT email]: I feel both AE and Oracle can meet these requirements. I had to research the Interagency Guidelines and it appears both AE and Oracle would meet the objectives referred to in 4.3.1 and 4.3.2. I'll need clarification on how they want us to meet 4.3.3. 1/31/22 [Gail R email]: The Austin Energy team notified me over the weekend that their questions have been resolved and we are ready to move forward with signing the EWS service terms agreement. ... Please proceed with accepting all changes on the attached document (dated 1.10.22).
4. Additional Customer Rights and Responsibilities. 4.4 Breach of Security	Entire Section: "In the event of a breach in security resulting in actual or suspected loss of or unauthorized access to Response Data, Customer shall (i) immediately notify EWS by calling (877) 275-7774, Option 4; (ii) conduct a forensics examination to determine to what extent Response Data was compromised; (iii) provide to EWS, in writing, details concerning the breach, including: (A) nature and impact of the breach, (B) assessment of immediate risk due to the breach, (C) corrective actions already taken, and (D) corrective actions to be taken; (iv) cooperate with EWS and any affected inquiries, Contributors, regulators or law enforcement to assist in regaining possession of the Response Data and in preventing its further unauthorized use and to notify affected consumers if required by Applicable Law; and (v) take measures to restore and enhance its security policies and procedures to avoid further breaches." [Gail R] We need corporate ISO and AE ISO to review.	10/27/21 [Teresa Rojo-AE]: AE cannot agree to this. 11/16/21 Mtg: [John W] AE requests this subsection be removed. 12/15/21 [Dennis C-JPMC]: Bank's arrangement with EWS requires this provision be included. If Customer does not maintain an appropriate information security program, it may not receive Response Data/consumer reports. 1/4/21 Mtg: [Teresa R]: will need to consult with AE IT (Steve) 1/20/22 [Michael O'Connell-AE IT email]: We'll start working on amending our Corporate CSIRP to meet the requirements in 4.4.
4. Additional Customer Rights and Responsibilities. 4.5 Access to EWS Service.	Entire Section: "Customer shall not knowingly permit any of its directors, officers, employees, contractors, subcontractors, attorneys, auditors and accountants, to access the EWS Service, if the person has been convicted of a crime in connection with: (i) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a); or (ii) a felony." [Gail R] Does all AE staff with access to this info obtain a CBI? If so, how frequently is a re-check CBI performed? What about Oracle's staff completing CBI's?	10/27/21 [Teresa Rojo-AE]: AE Security question do our CBI's comply. Language is too generic. Is initial CBI ok? 11/16/21 Mtg [Dolores C] AE and Oracle will maintain CBI every 2 years. 12/15/21 [Dennis C-JPMC]: Bank's arrangement with EWS requires this provision be included. 1/4/21 Mtg: [Teresa Rojo] AE and Oracle will maintain CBI every 2 years – will this suffice? 1/6/22 Mtg JPMC [Dennis C]: Yes, AE and Oracle maintaining CBI every 2 years will suffice.
4. Additional Customer Rights and Responsibilities. 4.7 Technical Integrator	Section references Exhibit D (Technical Integrator) [Gail R] JPMC: The end of this document references Exhibit C Technical Integrator. Should this be updated to reference Exhibit C, instead of Exhibit D?	11/16/21 Mtg [Gail R] JPMC will correct to Exhibit D 12/15/21 [Dennis C-JPMC]: Corrected 1/4/21: Last sentence also needs to be corrected to Exhibit C. 1/6/22 Mtg JPMC: they will correct
5. EWS' and Bank's Rights and Responsibilities.	[Gail R] OCA & AE Auditor will need to review and be comfortable with this section.	10/19/21 [Dolores Castillo-AE]: Because the CCB system is hosted by Oracle, would Oracle's SOC 2 type 2 report suffice? 12/15/21 [Dennis C-JPMC]: If necessary, EWS as the consumer reporting agency would perform the audit and involve Bank if needed. 1/4/22 Mtg: missing label "ii". JPMC response did not clearly answer AE question. 1/6/22 Mtg JPMC [Dennis C-JPMC]: Oracle's Soc 2 type 2 does not suffice. These types of audits haven't been exercised unless there is cause to - likelihood of an audit is very low. 1/13/22 [Gail R email]: please confirm this is now accepted based on the JPM's legal (Dennis) comments that the likelihood of audit is very low 1/14/22 [John W]: I also noticed in section 5 the first line referencing the audit now includes "upon reasonable prior notice", which addresses the request of receiving notice. I would be good with this.

COA Exception		COMMENTS
	section references SOC2-Type II [Gail R] EWS is requiring this of the City. AE ISO will need to confirm this can be met.	11/16/21 Mtg [Dolores C]: This is currently in Oracle contract as a requirement. AE currently reviews SOC 2.
5. EWS' and Bank's Rights and Responsibilities. 5.1 Review of Customer's Use of the Response Data. 5.1.1		
	No more than once per calendar year, ... [Gail R] AE Auditor will need to review this section	11/16/21 Mtg [Teresa R]: This shouldn't be an issue
	... Customer agrees to cooperate with EWS and/or Bank in conducting an annual review of Customer's use of the Response Data to verify that Customer is using the Response Data in compliance with these Service Terms. ... [Gail R] AE will need to assign this compliance reporting to internal staff.	10/27/21 [Teresa Rojo-AE]: Will send to AE auditor. 11/16/21 Mtg : wait for AE auditor to review before we meet with JPMC 11/29/21 [Jason Hadavi - City Dpty Auditor]: I have no concerns about any of the areas flagged for our office. [Stuart Reilly]: This seems reasonable to me, assuming our business processes are in alignment and we feel good about our compliance ability. Compliance monitoring should be assigned within the applicable business unit, not to Internal Audit. 1/4/22 mtg: [Teresa Rojo]: AE requests written notice before the review. 1/6/22 Mtg JPMC [Dennis C-JPMC]: will add language referencing notice.
5. EWS' and Bank's Rights and Responsibilities. 5.1 Review of Customer's Use of the Response Data. 5.1.2		
	"... Customer shall within two (2) business days of EWS' or Bank's notification, ..." [Gail R] Can the 2 business days be expanded? Possibly 10 business days?	11/16/21 Mtg : AE prefers the 5 days as Gail noted [Stuart Reilly]: I agree with the comment that it might be worth seeking longer than 2 business days. 5 business days still seems very fast for us and would be a good compromise as I would typically seek 10 business days in most situations. Also, the agreement states "at EWS's or Bank's election, upon reasonable notice, EWS and/or Bank may inspect Customer's records, operations and procedures related to these Service Terms on Customer's premises, during normal working hours, and in a manner as to minimize interference with Customer's normal business activities. " This is a very standard provision and I'm good with it, I just want to point out how different it is from our ability to inspect their information security program. This bolsters our position that section 4.2 should be more permissible in our ability to inspect at times that are not disruptive and not incurring a great deal of cost in order to do so. 12/15/21 [Dennis C-JPMC]: Bank's arrangement with EWS requires this provision be included. EWS and Bank must be able to act quickly if there are material adverse conditions/events. 1/4/22 mtg [John W-AE]: 2 days is okay
	"... Alternatively, at EWS's or Bank's election, upon reasonable notice, EWS and/or Bank may inspect Customer's records, operations and procedures related to these Service Terms on Customer's premises, during normal working hours, and in a manner as to minimize interference with Customer's normal business activities. ..." [Gail R] AE Auditor will need to review this.	11/16/21 Mtg : wait for AE auditor to review before we meet with JPMC 11/29/21 [Jason Hadavi - City Dpty Auditor]: I have no concerns about any of the areas flagged for our office.
6. Confidentiality. 6.1 Confidentiality.		
	Request to add verbiage in BROWN [Ron P]: "Each party (the "disclosing party") has made and will continue to make available to the other party (the "receiving party") Confidential Information . <u>To the extent permitted by the Texas Public Information Act, Chapter 552, Texas Government Code</u> , the receiving party will maintain Confidential Information in confidence, and except as otherwise expressly permitted under these Service Terms or with the express prior written consent of the disclosing party, the receiving party will not disclose, transmit or otherwise disseminate in any manner whatsoever any Confidential Information of the disclosing party to any third party. ..."	11/16/21 Mtg : AE agrees with Ron's verbiage 12/10/21 {Ron P} This verbiage is required as per state law. 12/15/21 [Dennis C-JPMC]: Bank accepts; however, please also see proposed revisions. Verbiage added to end of section: "Notwithstanding the foregoing, Customer will exempt from public disclosure and keep in confidence, <u>to the extent permitted by or accordance with</u> Texas law, any record deemed by EWS or Bank to constitute or contain trade secrets or proprietary information. Customer agrees to notify Bank of receipt of a public records request and Bank may choose to seek appropriate legal action, including injunctive relief, to prevent disclosure of the requested information." 12/27/21 [Ron P] added/revised verbiage in BROWN above. 1/4/22 mtg: AE agrees with R Pigott revision 1/6/22 Mtg JPMC [Dennis C-JPMC]: JPMC okay with the edit
	"...Confidential Information of the disclosing party to any third party. ..." [Gail R] Will Oracle have (or need) access to the inquiry response data? If so, do we need incorporate language about technical integrator?	10/27/21 [Teresa Rojo-AE]: Oracle is not a technical integrator and will only be developing the programming.
6. Confidentiality. 6.2 Non-Disclosure of Consumer Data.		
	"... Without limiting the foregoing, Customer hereby represents and warrants that its information security program described in Section 4.3 is designed to: (i) ensure the security and confidentiality of Consumer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of such data; and (iii) protect against unauthorized access to or use of such data that could result in substantial harm or inconvenience to any consumer. ..." [Gail R] Corporate ISO and AE ISO will need to review.	10/27/21 [Teresa Rojo-AE]: This will depend on what is decided in 4.3. 11/16/21 Mtg: if 4.3 is not removed - then AE has an issue with this section. 12/15/21 [Dennis C-JPMC]: Please see comments to 4.3. (section 4.3 must be included). 1/31/22 [Gail R email]: The Austin Energy team notified me over the weekend that their questions have been resolved and we are ready to move forward with signing the EWS service terms agreement. ... Please proceed with accepting all changes on the attached document (dated 1.10.22).
9. Indemnification		

COA Exception	COMMENTS
<p>Request to strike entire section: "Customer shall indemnify, defend and hold harmless Bank and all of its Representatives from any and all Losses, and threatened Losses arising out of or relating to (a) Customer's actual or alleged breach of any representation, warranty, covenant or certification in these Service Terms, (b) Customer's actual or alleged breach of any of the confidentiality provisions in these Service Terms, or (c) Customer's failure to comply with the provisions hereof related to Contribution, Inquiries and use of Response Data. Additionally, Customer agrees to indemnify, hold harmless and defend EWS, its directors, officers and employees from and against any and all Losses arising out of or relating to Customer's actual or alleged breach of any representation, warranty or covenant in these Service Terms." [Ron P] As established with JPMC in the executed contract, the City is prohibited from indemnifying contractors.</p>	<p>12/15/21 [Dennis C-JPMC]: Please see proposed language. "9. Liability. To the extent permitted by applicable law, Customer shall be responsible for and will reimburse the Bank for any and all Losses, and threatened Losses arising out of or relating to (a) Customer's actual or alleged breach of any representation, warranty, covenant or certification in these Service Terms, (b) Customer's actual or alleged breach of any of the confidentiality provisions in these Service Terms, or (c) Customer's failure to comply with the provisions hereof related to Contribution, Inquiries and use of Response Data ." 12/27/21 [Ron P]: REJECT proposal - The "to the extent permitted" is zero. Adding this in gives the appearance the City can do this. It cannot. 1/6/22 Mtg JPMC [Dennis C-JPMC]: JPMC if fine with taking out the indemnification provision - but new Liability section will need to remain. [John W] - they will have to discuss further internally. 1/10/22 [Dennis C-JPMC]: Liability reinserted. Pending Customer review. 1/26/22 [Ron P email]: I don't like the language, but JPMorgan is on notice that "to the extent allowed by law" = not allowed in Texas. Therefore, we can accept this, even with my dislike of it.</p>
<p>10. Suspension; Termination 10.2 Termination</p> <p>"...Service to Customer upon five (5) days written notice to Customer. ..." [Gail R] AE will need to advise if this is enough notice.</p> <p>"(a) contrary to these Service Terms or Connectivity Agreement, provided such breach is material in nature and within the five (5) day notice period, ..." [Gail R] AE will need to review/accept.</p>	<p>10/27/21 [Teresa Rojo-AE]: AE will need 6 months in order to get a new vendor otherwise we will not be NACHA compliant. 11/16/21 Mtg: Need discussion with JPMC on what is material breach. 12/13/21 [Ron P]: A material breach is a breach that makes it nearly impossible or impossible to complete the contract because of the breach. 12/15/21 [Dennis C-JPMC]: Bank must maintain urgent termination rights if there is cause. 1/4/22 mtg [John W]: confirm if the 5 day is after 30-day notice. 1/6/22 Mtg JPMC [Dennis C-JPMC]: No - Suspension (30-day notice) is separate issue than Termination (5-day notice). [Ron P] Bank contract has 10-day notice - can JPMC match? - Dennis to inquire on his side. 1/10/22 [Dennis C-JPMC]: Bank will agree to 10 days for termination for cause</p> <p>12/15/21 Dennis C-JPMC removed "or Connectivity Agreement" as per section 1.1 edit</p> <p>10/27/21 [Teresa Rojo-AE]: This is not acceptable language. 11/16/21 Mtg: need additional details on this language from JPMC. 12/15/21 [Dennis C-JPMC]: Excessive levels of returned items impose costs, both financial and reputational, on the ACH network and its participants. While NACHA does have prescribed levels, the Bank, as the ODFI, bears credit risk and may make its own determination as well. 1/4/22 mtg [John W]: Need further clarification on the excessive levels of returned items. 1/6/22 Mtg JPMC [Dennis C-JPMC]: [John W]: okay with discussion - resolve</p>
<p>11. Limitation of Bank's and EWS' Liability. 11.1 Limitation of Bank's Liability</p> <p>Entire section. " Bank assumes no responsibility or liability arising from the transmission, treatment or storage of any data by EWS, including, without limitation, any Inquiry Data, Customer Data and Response Data. Without limitation of the foregoing, Bank shall have no responsibility or liability whatsoever for (a) the content of any Contribution of Customer Data or Inquiry Data transmitted by Customer to EWS and whether Customer properly or timely transmits such data; (b) the content of any Response Data transmitted by EWS to Customer and whether EWS properly or timely transmits such data; (c) any inaccuracy or omission in the Response Data or other data provided by EWS, regardless of the cause thereof, (d) any action taken by the Customer in reliance on Response Data, (e) any storage, use or misuse of Customer Data or Inquiry Data by EWS, and (f) Customer's failure to comply with the Documentation, including, without limitation, applicable technical specifications therein. Further, Bank shall have no responsibility or liability for any failure by Customer or customer of Customer to comply with the applicable requirements hereunder, including requirements in Exhibits A and B, regarding Customer Data, Contributions, Inquiries, use of Response Data and compliance with Applicable Laws." [Ron P] This service is entirely at the City's risk.</p>	<p>11/16/21 Mtg: per AE - this is not a concern</p>
<p>11. Limitation of Bank's and EWS' Liability. 11.2 No Liability of EWS</p>	

COA Exception		COMMENTS
	Entire section. "EWS shall have no liability to Customer under these Service Terms, including without limitation, any duties or obligations (contractual, at law or otherwise) owed by Bank to Customer or by Customer to Bank under these Service Terms. Customer acknowledges that EWS may notify Bank in the event of Customer's non-compliance with (a) the Contribution of data requirements as set forth in the Documentation and Exhibit A, or (b) the requirements for Inquiries, and in the event that EWS does so, Bank agrees to notify Customer thereof and to provide any details that EWS has provided to Bank. EWS shall have the right to suspend the provision of the EWS Service in the event of Customer's non-compliance with the Contribution and Inquiry requirements of Exhibit A and the Documentation." [Ron P] This service is entirely at the City's risk.	11/16/21 Mtg: per AE - this is not a concern
11. Limitation of Bank's and EWS' Liability. 11.3 No Warranties	Entire section. "TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES AND REPRESENTATIONS, EXPRESS, STATUTORY OR IMPLIED, WITH REGARD TO THE EWS SERVICE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND COURSE OF DEALING OR USAGE OF TRADE OR WARRANTIES AS TO ANY RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. THE BANK DOES NOT WARRANT THE SECURITY, SEQUENCE, TIMELINESS, ACCURACY OR COMPLETENESS OF THE RESPONSE DATA OR OTHER DATA OR THAT ANY PART OF THE EWS SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED." [Ron P] This service is entirely at the City's risk.	11/16/21 Mtg: per AE - this is not a concern
15. Defined Terms.	"Confidential Information" means information not generally known to the public and at the time of disclosure is identified as, or would reasonably be understood by the receiving party to be, proprietary or visual, electronic or other form. Confidential Information of the disclosing party include such party's (a) business plans, strategies, forecasts, projects and analyses; (b) financial information and fee structures; (c) business processes, methods and models; (d) employee, customer and supplier information; (e) hardware and system designs, architectures, structure and protocols; (f) product and service specifications; and (g) manufacturing, operations, facilities, assets, purchasing, logistics, sales and marketing information, as well as the terms of these Service Terms. [Ron P] City contracts are not confidential but public record. Please remove this verbiage	11/16/21 Mtg: AE agrees w R.Pigott note 12/15/21 [Dennis C-JPMC]: Bank accepts subject to agreement on 6.1. 1/4/22 Mtg: Acceptance dependent on JPMC agreeing to revision on 6.1 1/6/22 Mtg JPMC [Dennis C-JPMC]: okay with edit.
	"Item" means either: (a) a physical check; (b) an image replacement document (IRD); (c) MICR line information; (d) an automated clearinghouse entry; or (e) an item as defined by the Uniform commercial code." [Gail R] Will AE obtain the banking info from their customers by one of these methods?	11/16/21 Mtg: no - this is not an issue
EXHIBIT A: INQUIRIES / CONTRIBUTION / AUTHORIZED USES OF DATA / OTHER REQUIREMENTS		12/15/21 [Dennis C-JPMC]: Bank is required by EWS to provide Exhibits A. As such, while Bank acknowledges certain provisions will not be applicable to all customers, the Bank is unable to agree to most modifications.
2. Authorized Uses of Response Data 2.4 i	11/29/21 [John W-AE] This section specifies that we cannot "refuse of decline a consumer or company transaction or request solely based on such Response Data." This directly conflicts with the expectations of the NACHA Requirement that is leading this implementation. 2.4 ii is more aligned with our purpose.	12/15/21 [Dennis C-JPMC]: Bank is unable to remove, but note (i) is a permitted use. ACH Originators of WEB debit entries are required to use a "commercially reasonable fraudulent transaction detection system" to screen WEB debits for fraud and the NACHA Web Debit Account Validation Rule specifies "account validation" is part of a "commercially reasonable fraudulent transaction detection system." Account validation is minimum requirement, not the sole determinant. Customer should use Response Data to form an actionable decision based on its risk tolerance. 1/14/22 [Gail Ray]: this is resolved. John had concerns that 2.4.i didn't apply to AE, but Dennis stated if it doesn't apply, then it's not a concern. And since AE doesn't use the EWS response to determine whether or not to extend services to the customer, then it's not a problem. They only use EWS responses to determine which payment method to allow the customer to use.
2.5 Restrictions on Use of Account Status Data		

COA Exception	COMMENTS
<p>Entire section: "Participant shall not refuse or decline an Item based solely on the following Response Data: No Information; No Known Information; Not Located; Non-DDA; Broker Check; Credit Card Check; Home Equity Check; or Line of Credit Check." [Gail R]: If EWS responds with 1 or more of these responses, can AE require customer to provide a different payment method? Or is AE required to accept current/unverified payment method?</p>	<p>11/22/21 Mtg [Jennifer Q]: No action will be taken in this instance; continue to accept payment and if payment is returned, we follow normal process</p>
<p>2.6 Authorized Use of Data by Early Warning</p> <p>"The Participant hereby authorizes Early Warning to use Inquiry Data and Participant Data as contributed pursuant to this Exhibit A, for the purpose of: (a) providing the EWS Service; (b) providing Response Data to Resellers; (c) providing Response Data to others participants for the purpose of conducting value testing; ... The reports and results of the analyses described in clause (a) may be provided to other Inquirers and Contributors, provided that such reports and analyses do not identify specific Inquiry Data or Response Data with respect to any Inquirer or Contributor." 11/29/21 [John W-AE] This specifies that we are authorizing EWS to use the Response Data from our Inquiries and (b)provide to resellers; (c) provide to other participants. These options specifically raise concerns on protecting the customers information as our customers are not agreeing to the resell or distribution of their information (Inquiry Data). This would need to be clarified since we are dealing with sensitive information in the inquiries.</p>	<p>12/15/21 [Dennis C-JPMC]: Participants must understand that some sharing of information is integral to the provision of services. Such information remains subject to confidentiality and information security requirements. E.g.: •A Reseller is a consumer reporting agency that (1) assembles and merges information from other consumer reporting agencies for purposes of furnishing such information to third parties; and (2) does not maintain a database of the assembled or merged information. •https://www.earlywarning.com/channel-partners 1/6/22 Mtg JPMC [John W]: after discussion - okay with provision as is.</p>
<p>3. Inquiry and Participant Data Accuracy of Participant 3.4</p> <p>Entire section: Upon request by Early Warning, and not more than once annually per contributed dataset, Participant shall: (a) certify the accuracy of contributed Inquiry and Participant Data by verifying that a random sample of Participant's Data provided from Early Warning to Participant is accurate; (b) assign individuals to the certification process that have the knowledge and authority to provide such certification; (c) cooperate with Early Warning in the exchange of sample files and meet the established timelines for review and certification of such random sample; and (d) identify any inaccurate or incomplete information and provide a written resolution plan and remediation timelines agreeable to Early Warning (the "Written Resolution Plan") and ensure that inaccurate or incomplete information is not transmitted to the National Shared Database for any future transmission of Inquiry and Participant Data. [Gail R]: AE - how will this be done?</p>	<p>11/22/21 Mtg [AE]: We need clarification from JP Morgan on this item; 12/15/21 [Dennis C-JPMC]: EWS would request the necessary certifications, if any. 1/6/22 Mtg JPMC [Teresa R]: after discussion - okay with provision as is. 1/10/22 [Dennis C-JPMC]: EWS will agree to remove as Customer is not an FSO.</p>
<p>3. Inquiry and Participant Data Accuracy of Participant 3.6</p> <p>"...Early Warning may still charge to Participant a Data Quality Non Compliance Fee. ..." [Ron P] Not sure if this is acceptable</p>	<p>11/22/21 Mtg [Jennifer Q]: Need to follow up with JP Morgan, need to verify how they will be contacting us as well. 12/15/21 [Dennis C-JPMC]: EWS or Bank would send notice to the contact information/address on its books and records. 1/4/22 Mtg [Teresa Rojo]: Can language be added to state notice to the contact information/address on its books and records.as per Dennis's comment above. 1/6/22 Mtg JPMC [Dennis C]: Yes - they can add verbiage. "...Early Warning may still charge to Participant a Data Quality Non-Compliance Fee (as set forth below) upon notice to Customer at the contact information/address on the Bank's books and records. ..."</p>
<p>3. Inquiry and Participant Data Accuracy of Participant 3.7.1 (table)</p> <p>Data Quality Non-Compliance Fee - ... the total monthly bill charged ... [Gail R]: JPMC: is a noncompliance fee related to ONLY the fees paid for EWS services? Or the total monthly banking fees?</p>	<p>12/15/21 [Dennis C-JPMC]: EWS Services only. 1/4/22 Mtg [Gail R]: Please add verbiage specifying fees are for EWS Svcs only 1/6/22 Mtg JPMC [Dennis C]: Yes - they can add verbiage. "20% of the total monthly bill charged for the EWS Service ..."</p>
<p>4. Implementation of Required Releases. 4.1 "Release"</p> <p>"Release" means an enhancement, update, modification, or fix to the EWS Service in the form of software, file changes, or other methods provided by Early Warning" 11/22/21 Mtg [Jennifer Q]: What release or enhancement would AE need to do or would this be on JP Morgans side</p>	<p>12/15/21 [Dennis C-JPMC]: Depending on the nature of the Release, Participant action may be required (though unlikely for integrator connectivity). If a participant objects to a Release/Required Release, the participant may terminate. As noted above, the likelihood of a Release/Required Release applying to an integrator connectivity participant is limited. 1/4/22 Mtg: This resolution will be dependent on the response to Exhibit C. How will the City be notified of these releases. How far in advance will the City be notified? How frequent are the releases? 1/6/22 Mtg JPMC [Dennis C]: unlikely these releases will be applicable to COA [Teresa R]: after discussion okay with verbiage as is.</p>
<p>4. Implementation of Required Releases. 4.4</p>	

COA Exception		COMMENTS
	"Participant agrees that Early Warning has the right to charge Participant a fee each time a Participant has failed to install a Required Release (a "Violation") as set forth in the Table 4.4.1 below (the "Required Release Non-Compliance Fee")." [Ron P] This is draconian but we need to be aware of updates to the software.	11/22/21 Mtg [Jennifer Q]: Need clarification on this from JP Morgan; 90 days might be a tight turn around if it requires an enhancement on AE's side. 12/15/21 [Dennis C-JPMC]: Bank is unable to modify; however, please see comment above. 1/4/22 Mtg [Ron P]: pretty standard language - just need to be aware. AE okay to keep.
4. Implementation of Required Releases. 4.4.1 (table)	Required Release Noncompliance Fee - ... the total monthly bill charged ... [Gail R]: JPMC: is a noncompliance fee related to ONLY the fees paid for EWS services? Or the total monthly banking fees?	12/15/21 [Dennis C-JPMC]: EWS Services only. 1/4/22 Mtg [Gail R]: Please add verbiage specifying fees are for EWS Svcs only. 1/6/22 Mtg JPMC [Dennis C]: Yes - they can add verbiage. "20% of the total monthly bill charged for the EWS Service ..."
4. Implementation of Required Releases. 4.5.1	"If Participant does not upgrade to the most current Release within the twenty-four (24) month notice period prescribed in Section 4.5, Participant shall be subject to ongoing Release support fees for any prior Release as described below in Section 4.5.2." [Ron P] And this [Gail R]: AE will need to upgrade timely to stay in compliance with EWS.	11/22/21 Mtg [Jennifer Q]: What releases will AE need to do on their side? 12/15/21 [Dennis C-JPMC]: Please see comment above. 1/4/22 Mtg [Teresa Rojo]: just need to be aware. AE okay to keep.
4. Implementation of Required Releases. 4.5.2	1/4/22 Mtg [Teresa Rojo]: incorrectly labled 4.5.1	
4. Implementation of Required Releases. 4.8.1	"Notwithstanding the ability to assess, or the assessment of, the two Non-Compliance Fees above, Participant agrees that Early Warning may immediately suspend the provision of the EWS Services for any material breach or repetitive breaches, material or otherwise, by Participant of the terms of this Exhibit A and Early Warning may continue the suspension until the material breach or repetitive breaches have been completely remedied by Participant." 1/4/22 Mtg [John Winemiller]: Can language be added in 4.8.1 about the 30-day notice as referenced in 10.1 (pg6)?	1/6/22 Mtg JPMC [Dennis C]: will discuss offline 1/10/22 [Dennis C-JPMC]: EWS will agree to mirror the language. Added this sentence to the end of section: "In the event that Customer has not remedied or not made substantial progress in remedying the noncompliance within thirty (30) days of such notice, Early Warning may terminate Customer's access to the EWS Services."
EXHIBIT A-1: CONTRIBUTION REQUIREMENTS FOR FINANCIAL SERVICES ORGANIZATION (FSO) PARTICIPANTS		
	re: all of Exhibit A-1 [Ron P] Not applicable to the City	11/22/21 Mtg [Jennifer Q]: JP Morgan needs to remove 12/20/21 [Didi B]: Exhibit has been stricken out of JPMC 12/20/21 version of document
EXHIBIT B: NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA		12/15/21 [Dennis C-JPMC]: The Bank is required by EWS to provide this Exhibit, as is, to all Customers. If certain provisions do not pertain to a specific customer, such provisions will not be applicable. Exhibit B comes from a regulatory source and was not drafted by EWS. The Exhibit provides information for various use cases and it is incumbent on the user of consumer reports to determine what is applicable to their use case and the data they utilize.
I. 3. D. Users Have Obligations When Fraud and Active Duty Military Alerts Are in Files	Entire section: When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of the reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert. [Gail R]: How will AE comply with this?	11/22/21 Mtg [Jennifer Q]: AE does not do credit checks – does this still apply? Can JP Morgan omit this? 12/15/21 [Dennis C-JPMC]: ...If certain provisions do not pertain to a specific customer, such provisions will not be applicable. ... 1/4/22 Mtg: AE is okay with this.
I. 3. E. Users Have Obligations When Notified of an Address Discrepancy	Entire section: Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the address in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed. Federal regulations are available at http://www.consumerfinance.gov/learnmore . [Gail R]: How will AE comply with this?	11/22/21 Mtg [Jennifer Q]: This does not apply, can we omit this? 12/15/21 [Dennis C-JPMC]: ...If certain provisions do not pertain to a specific customer, such provisions will not be applicable. ... 1/4/22 Mtg: AE is okay with this.
I. 3. F. Users Have Obligations When Disposing of Records		

COA Exception		COMMENTS
	Entire section: <i>Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. Federal regulations have been issued that cover disposal. [Gail R]: How will AE comply with this?</i>	11/22/21 Mtg [Jennifer Q]: This does not apply, can we omit this? 12/15/21 [Dennis C-JPMC]: ...If certain provisions do not pertain to a specific customer, such provisions will not be applicable. ... 1/4/22 Mtg: AE is okay with this.
NOTICE TO USERS OF CONSUMER REPORTS UNDER CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT CIVIL CODE SECTION 1785.20-1785.22		
	re: entire document [Ron P] Not applicable to the City (references only California)	11/22/21 Mtg [Jennifer Q]: This does not apply, can we omit this? 1/6/22 Mtg JPMC [Dennis C]: disclose is required - but we can disregard [Ron P} okay for this document to stay in
EXHIBIT C: TECHNICAL INTEGRATOR		
ENTIRE DOCUMENT		
	[Didi B]: The City would like to discuss the definition of a Technical Integrator	
3.	Entire Section: <i>TI Customer shall enter into a written agreement with their Technical Integrator that satisfies the requirements of this Exhibit. [Gail R]: AE needs a written agreement with Oracle for performing the transmission services to EWS. The written agreement shall be provided to EWS upon request.</i>	11/22/21 Mtg [Jennifer Q]: AE is the Technical Integrator; AE is the owner of the Oracle hosted system (CCB) and owns the data. There is one Oracle employee that will have access to the front end data. Can we remove exhibit c since we have no technical integrator? 1/6/22 Mtg JPMC [Dennis C]: Using Oracle services (one person from Oracle) does NOT make them a Technical Integrator. 1/13/22 [Gail R email]: it seems our concerns about whether JPM / EWS considers Oracle a Technical Integrator is now resolved based on the discussions with JPM legal. Yes? 1/14/22 [John W email]: I would concur with Exhibit C comments (resolved)



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
JPMORGAN CHASE BANK ("Contractor")
for
Depository Services**

Contract Number: MA 7400 NA210000173

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between JPMORGAN CHASE BANK having offices at 221 W 6th St, Floor 02, Austin, TX 78701 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document;
- 1.1.2 Negotiated Terms and Conditions dated 08/30/2021; incorporated herein and attached as Exhibit A hereto;
- 1.1.3 Negotiated Documents dated 08/30/2021, attached as Scope of Work-revised 08/30/2021; incorporated herein and attached as Exhibit B hereto;
- 1.1.4 The City's Solicitation RFP 7400 AVB3002 including all documents incorporated by reference;
- 1.1.5 JP Morgan Chase Bank Account Terms dated 08/30/2021; incorporated herein and attached as Exhibit C hereto;
- 1.1.6 JP Morgan Chase Bank Addendum to Account Terms-US dated 08/30/2021; incorporated herein and attached as Exhibit D hereto;
- 1.1.7 JP Morgan Chase Bank Consolidated Service Terms dated 08/30/2021; incorporated herein and attached as Exhibit E hereto;
- 1.1.8 Contractor's Application, dated June 29, 2021, incorporated herein and attached as Exhibit F hereto;
- 1.1.9 Exhibits listed in Section 1.4 not referenced above.

1.2 Term of Contract:

This Contract shall remain in effect for a term of sixty months or the City terminates the Contract.

- 1.3 Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. The Contractor's and City's key personnel are identified as follows:

Role	Name	Phone Number	Email Address
Contractor Contract Manager	Brenda Pollard	(512) 479-2278	brenda.a.pollard@jpmorgan.com
City Contract Manager	Gail Ray	(512) 974-7884	Gail.Ray@austintexas.gov
City Contract Administrator, Procurement Specialist	Didi Broniszewski	(512) 974-9382	Didi.Broniszewski@austintexas.gov

1.4 List of Exhibits:

- Exhibit A Negotiated Terms and Conditions dated 08/30/2021
- Exhibit B Scope of Work-revised 08/30/2021
- Exhibit C JP Morgan Chase Bank Account Terms dated 08/30/2021
- Exhibit D JP Morgan Chase Bank Addendum to Account Terms-US dated 08/30/2021
- Exhibit E JP Morgan Chase Bank Consolidated Service Terms dated 08/30/2021
- Exhibit F Contractor's Application, dated June 29, 2021
- Exhibit 1 Addendum for Privacy and Security of Protected Health Information
- Exhibit 2 Reserved for JPMorgan Early Warning Real-Time Payment Check with Account Owner Verification Integrated Model Service Terms
- Exhibit 3 JPMorgan REVISED Application Pricing Submittal RFP 7400 AVB3002 including clarification
- Exhibit 4 Cash Vault Services Product Guide
- Exhibit 5 JPMC Code-of-Conduct 2021

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

JPMORGAN CHASE BANK

Brenda A Poillard

Printed Name of Authorized Person

B. A. Poillard

Signature

Authorized Officer

Title:

8/31/2021

Date:

CITY OF AUSTIN

Didi Broniszewski

Printed Name of Authorized Person

Adrianna Broniszewski

Digitally signed by Adrianna Broniszewski
Date: 2021.08.31 13:23:11 -05'00'

Signature

Procurement Specialist III

Title:

8/31/2021

Date:

Cyrenthia Ellis

Printed Name of Authorized Person

Cyrenthia Ellis

Digitally signed by Cyrenthia Ellis
DN: cn=Cyrenthia Ellis, o=City of Austin, ou=Purchasing Office,
email=Cyrenthia.Ellis@austintexas.gov, c=US
Date: 2021.08.31 13:31:42 -05'00'

Signature

Procurement Manager

Title:

August 31, 2021

Date

Approved to Form

Ron Pigott

Digitally signed by Ron Pigott
DN: cn=Ron Pigott, o=City of Austin,
ou=Assistant City Attorney,
email=ron.pigott@austintexas.gov, c=US
Date: 2021.08.31 13:40:59 -05'00'

Assistant City Attorney IV - Ron Pigott

EXHIBIT A

CITY OF AUSTIN TERMS AND CONDITIONS – REVISED 8/30/2021 RFP 7400 AVB3002

The Contractor also referred to as JPMorgan Chase Bank agrees that the Contract shall be governed by the following terms and conditions.

1 GENERAL

1.1 TERM OF CONTRACT:

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension as allowed by Texas Government code Chapter 105 and City code Chapter 2-4, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period and is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.
- C. The contract between the City and JPMorgan Chase shall be based upon mutual written agreement of both parties, and will incorporate by reference Bank's account terms and service terms. Further, JPMorgan Chase Bank agrees to execute extension or renewal contracts that are in writing and mutually agreed to by both parties.

1.2 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.3 INVOICE REQUIREMENTS:

The Contractor shall submit a monthly itemized invoice in the form of an Account Analysis. All accounts and fees must be included in the monthly Account Analysis. Additionally, online access to Demand Deposit Account (DDA) statements that can be downloaded as a PDF report are required for each account listed below. The Contractor shall provide additional itemization and/or corrections should it be considered necessary by the City.

1.4 FINAL PAYMENT AND CLOSE OUT:

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms

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of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

1.5 SPECIAL TOOLS & TEST EQUIPMENT:

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

1.6 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code. Any audit or examination will preclude the Contractor's information security policies and procedures.
- B. Records Retention:
 - i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. Notwithstanding anything to the contrary in the resulting Contract, JPMorgan Chase Bank will allow the City of Austin's auditors and independent public accountants, including where state or federal assistance is involved, state and federal auditors identified by the City of Austin, reasonable access during normal working hours to the bank records of the City of Austin as required in connection with their examination of the books and records specifically pertaining to the City of Austin's accounts, use of funds and services provided by JPMorgan Chase Bank to the City of Austin. Any access or examination will be: requested in writing; specifically describe the scope and records required; and subject to JPMorgan Chase Bank's security procedures and record retention policies. JPMorgan Chase Bank may impose reasonable restrictions on the number of individuals allowed access, the frequency and length of access. The scope of the records made available specifically pertain to the City of Austin's accounts. City of Austin shall reimburse JPMorgan Chase Bank for the reasonable cost of copying, collating, researching and producing archived information. Any examination will be at the City of Austin's expense. Additionally, notwithstanding anything in the resulting Contract or RFP, if City discovers any overpayments disclosed by any such audit, the City and Contractor will review such transactions and Contractor will have an opportunity to confirm any overpayment prior to any refunds to the City. Further, JPMorgan Chase Bank is subject to a documentation retention policy which governs the retention period for each particular form of documentation and other information; this policy is largely dictated by law and regulation of the various jurisdictions in which JPMorgan Chase Bank does business. The documentation retention policy will often require retention of documentation and information

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after the termination of JPMorgan Chase Bank's relationship with the relevant customer. The period of retention beyond termination of the relationship will be dependent on the type of information and will be governed by the documentation retention policy.

1.7 FINANCIAL DISCLOSURES AND ASSURANCE:

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract. City will review Contractor's public filings in the event there are any additional follow-up queries regarding Contractor's creditworthiness.

1.8 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

1.9 STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

1.10 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.11 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

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1.12 ATTORNEY’S FEES:

In consideration of the award and execution of this Contract and in consideration of the City’s waiver of its right to attorney’s fees, the Contractor knowingly and intentionally waives its right to attorney’s fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.13 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days’ prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

1.14 FRAUD:

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

1.15 DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.16 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor’s control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.17 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- i. “INDEMNIFIED PARTY” IS THE CITY AND THE CITY’S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.

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- (1) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (2) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY DIRECTLY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
 - ii. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
 - iii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
 - iv. ANY NEGLIGENT ACT OR WILLFUL MISCONDUCT ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS CONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
 - v. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
 - vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.
- B. **THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.**
- C. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- D. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES PROMPTLY UPON RESOLUTION OF THE CLAIM IN ACCORDANCE WITH THIS SECTION.
 - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- E. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- F. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.
- G. Notwithstanding anything to the contrary in this Section,

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- i. the Contractor's liability for indemnification hereunder shall be invoked only to the extent that the claimed damages, losses, and expenses are directly due to the negligence of the Contractor and/or its subcontractors;
- ii. the Contractor's indemnification obligations shall not exceed an amount, in the aggregate, over the term of the contract, an amount that exceeds one time (1) time the average annual revenues received by the Contractor from the City of Austin under the contract; and
- iii. neither party shall be liable to the other for any indirect, incidental, consequential, exemplary, punitive or special damages, including lost profits, regardless of the form of the action or theory of recovery, even if that party has been advised of the possibility of those damages or the same are reasonably foreseeable. Any limitation of liability set forth herein shall not preclude the City from claiming under any insurance provided pursuant to this Agreement up to the full amount payable under such insurance.

1.18 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.19 CONFIDENTIALITY:

The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective Order. The Contractor agrees to use protective measures no less stringent than the Contractor uses in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

Notwithstanding the foregoing, JPMorgan Chase Bank may disclose any confidential information without the consent of or disclosure to the City

(a) to its representatives who need to know such information for the purpose of servicing or evaluating this contract and the related contracts, (b) as required by law or order or requested by any governmental agency or requested by any regulator having jurisdiction over the JPMorgan Chase Bank or to defend or prosecute a claim brought by or against the JPMorgan Chase Bank.

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- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. The Contractor shall destroy the Confidential Information in accordance with the Contractor's policies and procedures, and promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.20 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.

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- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.21 PUBLICATIONS:

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

1.22 ADVERTISING:

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

1.23 NO CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.24 GRATUITIES:

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

1.25 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

JPMorgan Chase Bank has banking and other business relationships in the normal course of business with various persons or entities, which may include employees, officers, directors, etc. of the City. Such relationships generally are governed by our usual and customary terms and conditions. Employees, officers or directors of the bank may be related to employees, officers, directors, etc. of the City. The JPMorgan Chase Bank's Code of Conduct, listed as Exhibit 5 of the Contract between the Bank and the City of Austin, prohibits any employee in general from acting on behalf of the bank in any transaction or business relationship involving such employee, members of his/her family, or other persons or organizations with which such employee or his/her family have any significant personal connection or financial interest.

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1.26 INDEPENDENT CONTRACTOR:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

1.27 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

Notwithstanding anything to the contrary in this Section, Contractor may not assign its rights and duties under this contract without the written consent of the City of Austin; provided, however, Contractor may assign the Contract without the prior written consent of the City of Austin to a successor in interest in connection with a merger, reorganization, consolidation or a disposition of a particular business to which the Contract relates, and may assign the Contract to an affiliate or subsidiary. In the event of an assignment, JPMorgan Chase Bank shall notify the City of Austin and the City of Austin shall have the right to terminate the Contract.

1.28 WAIVER:

The claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

1.29 MODIFICATIONS:

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

1.30 INTERPRETATION:

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1.31 DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit

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to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

1.32 JURISDICTION AND VENUE:

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

1.33 INVALIDITY:

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

1.34 HOLIDAYS:

The following holidays are observed by the City:

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<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.35 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

1.36 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. JPMorgan Chase Bank is willing to discuss with other governmental entities the option of extending a separate contract to the other governmental agencies that have an interlocal agreement with the City, based upon prices, terms and conditions that are mutually acceptable by both parties. Notwithstanding anything to the contrary herein, JPMorgan Chase Bank is not required to extend a contract or accept purchases from other governmental entities that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

1.37 NON-DEBARMENT CERTIFICATION:

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When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs. The Contractor shall notify the Procurement Specialist promptly after being made aware if they become debarred from doing business with the Federal Government during the term of the Contract.

1.38 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.39 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this Contract.
- C. The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.40 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will

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not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

1.41 SUBCONTRACTORS:

- A. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that:
 - i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- B. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- C. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.
- D. Notwithstanding anything to the contrary herein, for all purposes of this contract, "subcontract" shall refer to a third party or an agreement with such third party, if any and as applicable, engaged by Contractor to specifically aid in the performance of its obligations under this contract, but shall not include any third party engaged by Contractor, from time to time, in the performance of certain operational, technological, incidental, or back office functions that assist Contractor in its performance of services, on a common basis, for all or most of its customers utilizing such services, such latter category of third parties being referred to as Third Party Service Providers. Contractor will obtain prior consent of City of Austin to its use of any "subcontractors" in the performance of services, to the extent and in the manner required under this contract, but shall not be required to notify or obtain written consent from the City of Austin or any other party to its engagement of Third Party Service Providers.

1.42 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract

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execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office

P.O. Box 1088

Austin, Texas 78767

OR

PURInsuranceCompliance@austinTexas.gov

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.

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- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Worker’s Compensation and Employers’ Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker’s Compensation Act (Section 401). The minimum policy limits for Employer’s Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
- (1) The Contractor’s policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
- b. 30 Days’ Notice of Cancellation, Form WC420601, or equivalent coverage.
- ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
- (1) The policy shall contain the following provisions:
- a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
- b. Independent Contractors coverage (Contractor/Subcontracted work);
- c. Products/Completed Operations Liability for the duration of the warranty period;
- d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
- b. 30 Day’s Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
- c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
- b. 30 Days’ Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
- c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Commercial Crime/Financial Institution Bond Insurance** for all losses emanating from the handling of City checks or cash including, but not limited to losses resulting from dishonest or criminal acts, forgery or alteration, computer fraud, funds transfer fraud, embezzlement, misappropriation or loss of funds. This policy shall be written for a minimum limit of \$5,000,000.

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- v. **Cyber Liability Insurance**: Coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements**: The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

2 SERVICES

2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

2.2 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
- i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

2.3 GUARANTEE – SERVICES:

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The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from final acceptance. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
- D. Notwithstanding anything to the contrary in the solicitation or the resulting contract, all services to be provided to the City under the contract will be fully and timely performed in accordance with "ordinary care" standard of care imposed upon banks under the Uniform Commercial Code.

2.4 DATA SECURITY:

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

- A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:
 - "Authorized Persons" means (i) the Contractor's employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound by a confidentiality agreement and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

"Highly Sensitive Personal Information" means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

"Personal Information" means information provided to the Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and

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other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information.

“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons, or by the City should the Contractor have access to the City’s systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Persons or a breach or alleged breach of this Contract relating to such privacy and data security practices. The parties agree that for the services contemplated under this Contract that the Contractor shall not have access to the City’s systems.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

B. Standard of Care

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
- iv. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - a. Not create, collect, receive, access, or use Personal Information in violation of law;
 - b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the City, in each case, without the City’s prior written consent; and
 - c. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City’s prior written consent.
- v. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.

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- vi. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- vii. Without limiting the Contractor's obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards designed to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology ("NIST") Cybersecurity Framework and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.
- viii. If the Contractor has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, the Contractor shall, at all times, remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense. The parties agree that for the services contemplated under this Contract, the Contractor shall not receive credit card information and thus does not need PCI DSS compliance.
- ix. At a minimum, the Contractor's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored at the disk level or on portable media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of the Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.
- x. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. The Contractor shall require its subcontractors that receive Personal Information to abide by its Minimum Control Requirements ("MCRs") (accessible at <https://www.jpmorganchase.com/about/suppliers/guidelines-documents>), data protection terms no less rigorous than those set out in this Contract. The Contractor shall also, as part of its third-party oversight program, periodically assess the aforementioned subcontractors to ensure their data protection programs comply with the MCRs.

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C. Security Breach Procedures:

i. The Contractor shall:

- a. Assist the City with any reasonable requests for information regarding the Security Breach via the Contractor's Relationship Manager (Brenda Pollard), Treasury Management Officer (Sigi Portillo), or Client Service Associate, if applicable;
- b. Notify the City of a Security Breach without undue delay after the Contractor confirms the Security Breach caused a loss of or unauthorized access, acquisition, possession, use or disclosure of City's Personal Information; and
- c. Notify the City of any Security Breaches to the business as usual City contact person, and, using best efforts, by telephone at 512-974-4357 and email at cybersecurity@austintexas.gov.

- ii. Immediately following the Contractor's notification to the City of a Security Breach, the Contractor shall investigate the Security Breach, and reasonably cooperate with City as necessary to facilitate City's compliance with any applicable law in relation to the Security Breach. The Contractor shall also provide reasonable assistance in helping City determine who the affected individuals or entities are that City needs to notify.
- iii. The Contractor shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and endeavor to prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- iv. The Contractor agrees that it shall not use the City's name or any other identifying information when making any statement about the Security Breach to any third party without first obtaining the City's prior written consent.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach in accordance with internal record and retention policies, which must provide protection for records for at least the same amount of time as the City's record retention requirements as of the effective date of this Agreement. The parties agree that if City's record retention requirements change after the effective date of this Agreement, the Contractor is only obligated to comply with those changes dictated by law or regulatory requirement.
- vi. The Contractor agrees to provide reasonable assistance, at its own expense, with the City in litigation, investigation, or other action that is necessary to protect City's rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

D. Oversight of Security Compliance

The Contractor shall actively manage and continually assess, or have assessed by a third-party auditor, its information security policies and procedures, including without limitation, through testing the implementation of its information security measures with network, system, application vulnerability scanning tools, and penetration testing at regular intervals. As a heavily-regulated financial institution, the Contractor also regularly undergoes substantial examinations by regulators to ensure its information security policies and procedures conform with applicable laws. Upon the City's written

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request, the Contractor shall provide the City with an applicable SOC1 (SSAE18) or substantively equivalent report. Such report and any copies thereof constitute Contractor's confidential information. City agrees that such assessments will satisfy any audit or inspection requests by or on behalf of City.

- i. **Return or Destruction of Personal Information.** At any time during the term of this Contract, at the City's written request or upon the termination or expiration of this Contract for any reason, the Contractor shall, and shall instruct all Authorized Persons to, at its discretion, promptly return to the City, destroy, or render unusable all copies, whether in written, electronic, or other form of media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and provide confirmation to the City that such Personal Information has been returned to the City or disposed of securely. The Contractor's media sanitization standards shall comply with applicable National Institute of Standard and Technology (NIST) procedures, i.e. the 800-88.
- ii. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding to any exclusions or limitations in this Contract to the contrary.
- iii. **Material Breach.** The Contractor's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, the City may terminate the Contract effective immediately upon written notice to the Contractor without further liability or obligation to the Contractor.
- iv. **INDEMNIFICATION.** THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (EACH, A "CITY INDEMNITEE") FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, ACTIONS, JUDGMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER, AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, ARISING OUT OF OR RESULTING FROM ANY THIRD-PARTY CLAIM AGAINST ANY CUSTOMER INDEMNITEE ARISING OUT OF OR RESULTING FROM SERVICE PROVIDER'S OR AUTHORIZED PERSON'S FAILURE TO COMPLY WITH ANY OF THE OBLIGATIONS OF THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE, TO THE EXTENT PERMITTED UNDER TEXAS LAW, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF RECOVERY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

2.5 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to all City buildings by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the all City

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buildings at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.

- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving all City buildings and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

EXHIBIT B

CITY OF AUSTIN PURCHASING OFFICE SCOPE OF WORK – REVISED 08/30/2021 APPLICATIONS FOR DEPOSITORY SERVICES SOLICITATION NO. RFP 7400 AVB3002

1.0 **PURPOSE**

This solicitation is being conducted in compliance with [Texas Local Government Code Chapter 105](#) and [City Code Chapter 2-4](#). This request for proposal (RFP) is a request for applications for depository services.

The City of Austin “City” is soliciting applications for the performance of depository services for City funds and certain other activities usually performed by a depository bank. Qualified financial institutions are invited to submit a sealed application (“Response” or “Application”) for City Depository for public funds of the City of Austin.

The City reserves the right to enter into secondary agreements with depositories other than the primary depository to make investments of funds that are not immediately needed to pay vendors.

The City also reserves the right to enter into secondary agreements with depositories other than the primary depository to secure services not provided by the primary.

2.0 **TERM OF CONTRACT**

This Contract shall remain in effect for a term of 60 months.

This Contract will be executed and effective August 2021. Services for this contract will begin when the current contract is no longer applicable and no later than June 2022. The City will provide a notice to proceed to the selected Contractor.

3.0 **MINIMUM QUALIFICATIONS**

Applicants shall meet each of the minimum qualifications described below:

- 3.1 A financial institution authorized to do business in the State of Texas;
- 3.2 A financial institution with an office or branch physically located within the Corporate City limits of Austin;
- 3.3 A financial institution that is a member of the Federal Reserve System and is federally insured;
- 3.4 A financial institution that is a direct member of National Automated Clearing House Association (NACHA);
- 3.5 A financial institution that has a current Community Reinvestment Act (CRA) rating of satisfactory or better. A discussion of the Institution’s CRA activities must be included in the Response; and
- 3.6 A financial institution that demonstrates they meet the collateral requirements described in Section 4.2.A.

4.0 **CONTRACTOR REQUIREMENTS**

The Applicant must demonstrate in its Application that it is able to provide the services, accounts, and banking locations required by the City as described in this solicitation. The Successful Applicant (referred to herein as “Contractor” or sometimes as “Depository”) shall provide services for the accounts described in this Section 4.0.

4.1 **Required Accounts and Detailed Services for Each Account**

When services begin for this contract the City will have 29 accounts. However, the City reserves the right to add or subtract accounts as necessary to meet its needs.

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The City of Austin uses an investment pool strategy that consolidates funds that can be legally merged under one investment umbrella. To minimize idle bank account funds, the City uses an extensive Zero Balance Account (ZBA) structure for pooled funds. Those funds that cannot be legally pooled are invested separately and flow through segregated bank accounts and are described below.

Each account will cycle monthly for statement purposes. The Depository shall submit a monthly itemized invoice in the form of an Account Analysis. All accounts and fees must be included in the monthly account analysis. Additionally, online Demand Deposit Account (DDA) statements are required for each account listed below. The Depository shall provide additional itemization and/or corrections should it be considered necessary by the City.

4.1.A. **Investment Pool Receiving Account.** This account, which serves as the City's concentration account for pooled funds, is credited and/or debited with the types of transactions bulleted below.

ACH debit filters are required. Online current and prior day transaction detail is required, as is online access to addenda information for Automated Clearing House (ACH) credits. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required so that no checks will pay from this account. Detailed online access to returned items is required. Safekeeping portfolio is required.

- Departmental deposits of currency and checks, some of which are encoded. Most are delivered via armored carrier.
- Deposit of investment maturities, calls, sales, and interest coupons
- Purchase of investment securities
- Transfers to and from ZBA accounts, including funding of the Controlled Disbursement via ZBA
- Various Electronic Funds Transfer (EFT) credits including wire and ACH
- ACH debits allowed via ACH debit filter
- Returned item chargebacks
- Account Analysis fees
- Deposit slip order fees

4.1.B. **Utility Deposit Receiving Account.** This ZBA account receives daily deposits of utility payments from the City's remittance processing center via EFT and Image Cash Letter (ICL). Daily, the City directly transmits an ICL and direct host to host transmission ACH files for customer utility payments. The ability to accept an X9.37 Cash Letter or X9.100 formatted Cash Letter, as well as a notification system of the receipt of the electronic cash letter and corresponding deposit details, is required. Applicants must offer, or partner with a 3rd party, account validation as part of a commercially reasonable fraudulent transaction detection system to screen ACH WEB debits for fraud to stay in compliance with the NACHA WEB Debit Account Validation Rule. A small amount of cash and pre-encoded paper checks will be delivered daily by armored carrier. In addition, various EFT credits, both wire and ACH, are deposited to the account. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required to ensure no checks will pay from this account. Detailed online access to returned items is required. ACH debit filters are required, as is online access to current and prior day transaction detail.

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- 4.1.C. **PARD Deposit Receiving Account.** The Parks and Recreation Department deposits cash, including coin, and check collections into this ZBA account daily. Most deposits are made through the night depository and over-the-counter; however, seasonally some deposits are delivered by armored carrier. In addition, various EFT credits, both wire and ACH, are deposited to the account. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required to ensure no checks will pay from this account. Detailed online access to returned items is required. ACH debit filters are required, as is online access to current and prior day transaction detail.
- 4.1.D. **Parking Meters Receiving Account.** The Parking Meters Department has numerous credits post to this ZBA account daily, which includes extensive coin deposits that are made by armored carrier. In addition, various EFT credits, primarily ACH, are deposited to the account. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required to ensure no checks will pay from this account. ACH debit filters are required, as is online access to current and prior day transaction detail.
- 4.1.E. **Online Payment Receiving Account.** The City contracts for online payment processing services through a third party that processes credits into this ZBA account daily. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required to ensure no checks will pay from this account. ACH debit filters are required, as is online access to current and prior day transaction detail.
- 4.1.F. **EFT Accounts Payable Account.** From this ZBA account, a number of EFT payments are made, with the exception of those from non-pooled funds. EFTs include domestic and international wire transfers and ACH. Online initiated wire transfers and ACH transactions are processed from this account. Direct ACH file transmission resulting in EFT transactions for vendor payments are processed from this account. These services are required. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required to ensure no checks will pay from this account. ACH debit filters are required, as is online access to current and prior day transaction detail.
- 4.1.G. **Investment Pool Disbursement Account.** This **controlled disbursement** account is used to pay City vendors and to reimburse petty cash funds. Online access to current day **final presentment** data is required and is desired to be available by 10:00 am CST. The account is required to be funded daily by a ZBA transfer so that a zero balance is achieved at the close of business each day. Checks are issued and mailed daily. This account requires payee positive-pay, to be transmitted online by file as well as the occasional manual entry. Positive pay decisions should also be made via internet. Online image access, paid item inquiry and stop payments are required. This account also requires full reconciliation, as well as an electronic file of cleared items. ACH debit blocks are required, as is online access to current and prior day transaction detail. Stale date control service is requested.
- 4.1.H. **Payroll Account.** All City employees are paid through this ZBA account. Approximately 97% of all employees are paid via direct deposit payroll. Provisions for receiving direct deposit files are required and described in more detail in

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Section 4.2.D.4. The remaining employee payroll payments are made by check. This account requires payee positive-pay, to be transmitted online by file as well as the occasional manual entry. Positive pay decisions should also be made via internet. Online image access, paid item inquiry and stop payments are required. This account also requires full reconciliation, as well as an electronic file of cleared items. ACH debit blocks are required, as is online access to current and prior day transaction detail. Stale date control service is requested.

- 4.1.I. **Workers' Compensation Account.** Employee workers' compensation benefits payments are paid from this ZBA account by Sedgwick, by contractual agreement with the City. Payments are made by both a daily debit as well as by check and direct ACH file transmission. The City is responsible for all account activity charges. This account requires payee positive-pay, to be transmitted by file transmission, as well as the occasional online manual entry. Positive pay decisions should be made via internet. Online image access, paid item inquiry and stop payments are required. This account also requires full reconciliation, as well as an electronic file of cleared items. ACH debit filters are required, as is online access to current and prior day transaction detail. Stale date control service is requested.
- 4.1.J. **Utility Deposit Refund Account.** Austin Energy issues security deposit and other refunds to utility customers from this ZBA account. Checks are issued and mailed approximately daily. This account requires payee positive pay, to be transmitted online by file as well as the occasional manual entry. Positive pay decisions should also be made via internet. Online image access, paid item inquiry and stop payments are required. This account also requires full reconciliation, as well as an electronic file of cleared items. ACH debit blocks are required, as is online access to current and prior day transaction detail. Stale date control service is requested.
- 4.1.K. **Medical Claims Account.** From this ZBA account, health care benefits payments are processed and paid by a single weekly EFT payment by online initiated domestic wire transfer or ACH transaction. Although this is not a checking account, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required so that no checks will pay from this account. ACH debit blocks are required, as is online access to current and prior day transaction detail.
- 4.1.L. **Debt Management Accounts: 12 Accounts.** The following 12 accounts are required. These are not ZBAs, although a daily zero balance is achieved manually by the City of Austin. Funds flowing through these accounts are segregated and invested separately from Investment Pool funds. Safekeeping portfolios may be required for each; currently no accounts are actively holding securities. Most transactions through the accounts are wire transfers out or consist of transfers from other accounts or funds. Although these are not checking accounts, payee positive pay without reconciliation/post no checks, or a similar solution, is required so that no checks will pay from these accounts. ACH debit blocks are required, as is online access to current and prior day transaction detail.
- Bergstrom Debt Service Fund
 - Bergstrom Construction Fund
 - Bond Interest and Sinking Fund
 - Hotel Occupancy Tax Debt Service Ser A
 - Prior Lien Bond Fund
 - Interest & Redemption Fund

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- Convention Center/Waller Project Bond Debt Service
- Water/Wastewater Debt Service Fund
- Electric Utility Debt Service Fund
- ABIA Development Corp
- HOT Subordinate Debt Service
- Town Lake Debt Service

4.1.M. **Reserves: 5 Accounts.** The following five accounts are required. These are not ZBAs, although a daily zero balance is achieved manually by the City of Austin. Funds flowing through these accounts are segregated and invested separately from Investment Pool funds. Safekeeping portfolios may be required for each; currently one account is actively holding securities. Most transactions through the accounts are wire transfers out or consist of transfers from other accounts or funds. Although these are not checking accounts, payee positive pay *without* reconciliation/post no checks, or a similar solution, is required to ensure no checks will pay from these accounts. ACH debit blocks are required, as is online access to current and prior day transaction detail.

- EUD Debt Management
- WWW Reserve Fund
- HOT Reserve
- Combined Utility Reserve
- Airport DS Reserve

4.1.N. **Special Purpose Accounts: 1 Account.** The following checking account is required in addition to those listed above. This is a special purpose account that issues checks from time to time as needed. This account requires payee positive-pay, to be transmitted manually online. Positive pay decisions should also be made via internet. Online image access, paid item inquiry and stop payments are required. ACH debit blocks are required, as is online access to current and prior day transaction detail.

- Urban Renewal Agency- Housing imprest fund

4.2 **General Services**

Detailed required services for each DDA account is listed in Section 4.1 above. In addition to the required services described in Section 4.1, the Contractor shall provide the following general services. The estimated volume of services used is listed on the Application Pricing Submittal.

Any deviation from or exceptions to the required services described in this section should be included in the Application.

4.2.A. **Collateral requirements** - All City funds must be collateralized by the depository in accordance with State law ([Chapter 2257 - Collateral For Public Funds](#)) and the City Code. In addition to Chapter 2257 and City Code requirements, the City's Investment Policy, included as Appendix 1, must be followed. This section contains the City's requirements. Note in Section 4.2.A.6, the City has determined that the minimum level of permanent depository collateral to be pledged at all times at the relationship level will be \$10 million, regardless of the City of Austin's collected or ledger balances on deposit. The City's goal is to keep the annual average collected balance under \$500,000.

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- 4.2.A.1 General requirements - The Depository Bank shall deposit and pledge, not later than five days before the effective date of the Contract, approved securities having a market plus accrued interest value no less than equal to 100% collateral level required in this solicitation. Collateral is required to be continuously held at the minimum collateral level detailed in the solicitation, but there may be occasions when collateral will need to be increased above this amount in order to collateralize the combined ledger balances of all City accounts. The Depository is responsible for monitoring the collateral requirements of the City and ensuring that City accounts are appropriately collateralized. Securities pledged to the City must be held at a third-party banking institution approved by the City, or in a Treasury Direct account, in the name of the City with the Federal Reserve Bank.
- 4.2.A.2. Approved securities – Per the City's Investment Policy, the "approved securities" include: obligations of the United States or its agencies and instrumentalities; direct obligations of the State of Texas; other obligation, the principal and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States or its agencies and instrumentalities including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States; and obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than A or its equivalent. Collateralized Mortgage Obligations (CMO's) are excluded and will not be accepted as collateral.
- 4.2.A.3. Collateral substitutions and take downs - Upon approval of the City Treasurer or his/her designee, the Depository may substitute approved securities so long as the total amount of securities pledged is adequate. Likewise, any excess shall be delivered to the Depository upon approval of the City Treasurer or his/her designee when not required as part of the collateral securities.
- 4.2.A.4. Reporting and valuation - The Depository shall provide at least monthly reports valuing the approved securities, showing the current market value plus accrued interest through the date of valuation. Whenever it is determined by the City Treasurer, or his/her designee, that collected funds on deposit are not fully covered by the approved securities, the Depository shall immediately deposit and pledge additional approved securities in an amount sufficient to restore collateral to the required level. Online access to daily collateral reports is desired.
- 4.2.A.5. Title 12 – Title 12 of U.S. Code Paragraph 1823(e) of the Federal Institution Reform, Recovery, Enforcement Act (FIRREA) requires that the City's security interest in a collateral deposit be perfected by incorporating the following conditions in a collateral agreement:
- The agreement must be in writing.

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- The agreement has to be executed by the Depository and the depositing entity making the claim contemporaneously with the acquisition of the asset.
- The agreement must be approved by the Board of Directors or the loan committee of the institution and the approval reflected in the minutes of the board meeting.
- The agreement, continuously since its execution, has been an official record of the institution.

In addition, the agreement must specify that upon receipt by the Custodian Bank of the City Manager's sworn affidavit stating that a contract default has occurred and stating the amount of the City's resulting loss of deposited funds to the extent reasonably ascertainable by the City, the Custodian Bank shall surrender the pledged securities to the City. On receipt, the City is entitled to possession of the securities and may sell the securities at either public or private sale in accordance with the Texas Uniform Commercial Code, and apply the proceeds to cover any loss of deposited funds, costs of sale, or expense sustained by City as a result of the Depository default. Any excess after liquidation shall be delivered to Depository upon the City Treasurer's direction when not required as part of the collateral securities. The Depository shall cooperate with the City in taking any additional actions necessary to perfect the City's security interest in the pledged securities.

The executed collateral agreement incorporating the four preceding conditions must be presented to the City prior to the deposit of any City funds.

- 4.2.A.6. Required collateral structure - The City has determined that the minimum level of permanent depository collateral to be pledged at all times will be \$10 million, regardless of the City of Austin's collected or ledger balances on deposit.

All fees, if any, associated with the provision of collateral must be stated in the Application Pricing Submittal. A detailed calculation of the fee must be included and it must be stated if this fee is based on collected or ledger balances.

- 4.2.B **Deposit Services** - The City contracts with an outside armored carrier to deliver most City deposits to the Depository. The Depository must have available a secure unloading area which will accommodate armored vehicles. The City desires the vault to be located within the Austin city limits. For City departments depositing at a night drop or branch facility, multiple banking locations for deposit processing throughout the City of Austin is desired.

- 4.2.B.1. Credits - The City requires sequentially encoded deposit slips for each entity depositing into City accounts. Reporting of deposits by sequence or serial number through the balance reporting mechanism is required. Deposit slips should be ordered through the Depository and charged through the account analysis.

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- 4.2.B.2. Availability - The City will expect to receive the Depository's best availability published in its most recent availability schedule and any improvements over its published availability will be passed to the City. On occasion, the City will request an end-point float analysis for selected accounts or dates. The Depository's proposed availability schedule must be included in detail in the application.
- 4.2.B.3. Non-encoded checks deposited - Deposits of non-encoded checks are deposited daily by several departments via armored car. Some are deposited at the motor banks and the night depository. The Depository must state on the Application Pricing Submittal its cut-off time for same day credit. A 6 P.M. CST cut-off is desired.
- 4.2.B.4. Encoded checks deposited – The majority of the City's encoded checks are deposited by the City's utility remittance processing center. The applicant must state on the Application Pricing Submittal the cut-off time for same day credit for encoded items. A 6 P.M. CST cut-off is desired.
- 4.2.B.5. Image Cash Letter - The ability to accept an X9.37 Cash Letter or X9.100 formatted Cash Letter, as well as a notification system of the receipt of the electronic cash letter and corresponding deposit details, is required. The Applicant must include a detailed description of the file requirements, reporting/confirmation mechanisms, returns process and notification, and the cut-off time for same day credit for ICL deposits.
- 4.2.B.6. Return items - All checks returned unpaid for insufficient funds must be presented for payment a second time before they are returned to the City as charge-backs. All return items must be charged to the account of original deposit and notification of the item must be made by US mail as well as an image online. The City will make every attempt to ensure that endorsements conform to the Depository's requirements. When the City finds that a check has been charged-back to the incorrect account, the City will request that the charge be reversed and the proper account charged without penalty to the City.
- 4.2.B.7. Currency deposits - Several departments make cash-only and cash/check deposits via armored car to the vault. They are Austin Energy (utility payments), Aviation, Municipal Court, Austin Public Health Department, Development Services Department, Austin Resource Recovery, Austin Water Utility, Austin Police Department, Controller's Office, Animal Services Department, Austin Transportation Department, Telecommunications and Regulatory Affairs Department, Fleet Department, Austin Public Library administration and the Convention Center. The Austin Public Library branches and the Parks and Recreation Department cash deposits are made by personnel to either a night depository or a branch facility (lobby or motor bank). Although difficult to quantify, it is estimated the currency/coin portion of City of Austin deposits is in excess of \$30 million annually.
- 4.2.B.8. Coin deposits – The Parking Meter section of the City's Transportation Department collects coins from parking meters throughout the City and delivers collections to the City's contracted armored carrier. The

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armored carrier delivers deposits to the Depository's cash vault with a deposit slip for credit to the City's account. However, these deposits will not have a pre-declared value. The Depository's cash vault will be expected to sort the coin to obtain a declared value and credit the City's account accordingly.

- 4.2.B.9. Lockbox services – The Austin Travis County Emergency Medical Services (ATCEMS) Department currently utilizes the depository's lockbox services. The Applicant must offer a lockbox remittance processing solution to process and deposit individual and corporate health care payments on behalf of ATCEMS. In lieu of the HIPAA Business Associate Agreement, included as Appendix 3 of the solicitation, upon contract award, the Contractor shall use Exhibit 1-Addendum for Privacy and Security of Protected Health Information listed within the contract between the City and the Contractor.

The required lockbox services include:

- Open, maintain and have exclusive access to a U.S. Post Office Box.
- Collect and open all mail delivered to the box.
- Each envelope received will be a separate transaction. All contents of each envelope, front and back, will be electronically imaged. Credit card payment information is to be redacted from electronic imaging from the transaction files.
- If credit card payment information is received through the lockbox, Contractor will not electronically image the information but will instead send the information, via overnight delivery, to ATCEMS to process the payment.
- Deposit applicable payments into a specified City of Austin bank account.
- Provide secure online access to all required imaged items the next business day so that authorized City staff can access the images and apply the payments to the ATCEMS billing system.
- Retain original documents onsite for a minimum of fourteen (14) days before being destroyed.
- Retain electronic imaged items for a period of ten (10) years from the date of the applicable transaction.

4.2.C. Check Disbursement Services

- 4.2.C.1 Controlled disbursement - The City requires one controlled disbursement account, the Investment Pool Disbursement Account. First presentment reporting via balance reporting must be available by 8 A.M. CST with a second presentment reporting preferably by 10:00 A.M. CST. The City desires a Texas controlled disbursement point. Funding should be automated via either ZBA or bank initiated transfers so as to generate a zero balance at the close of business each day.

Checks drawn on the controlled disbursement account must be honored if presented for payment at the main depository in Austin, upon verification through positive pay.

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- 4.2.C.2. Non-controlled disbursement - The City requires non-controlled disbursement check services through several accounts as described in Section 4.1 above.
- 4.2.C.3. Paid check service - The City requires prompt online access to current-month paid check information. If the check is paid, a legible image of both sides must be available online for viewing.
- 4.2.C.4. Stop Payments - The City requires stop payment services on several accounts. Placement and confirmation must be available online.
- 4.2.C.5. Reconciliation - The following reconciliation services are required:
- Payee Positive Pay Reconciliation – Payee Positive Pay Reconciliation is currently required for the Investment Pool Disbursement Account, Workers' Compensation Account, Payroll Account, and Utility Deposit Refund Account. The City transmits its check issue information daily through the internet or by direct file transmission. Ability to void checks from the issue file without stop payment fees is required.

Upon contract award, the City will require the file layout for this service as soon as possible to allow sufficient time for an interface setup.
 - Paid list reconciliation - A paid list reconciliation will be required for the Investment Pool Disbursement Account, Payroll Account and the Utility Deposit Refund Account. Within five (5) business days after the statement closes, the Depository will provide the following:
 - Electronic access to paid items and exceptions or rejects including check number, amount paid, date paid, and sequence or reference number in check number sequence;
 - Paid report listing each check number, amount paid, date paid, and sequence or reference number in check number sequence; and
 - Bank statement of the account.
- 4.2.C.6. Serial Number Sort - The City requires numeric check serial sorting on all disbursement accounts.
- 4.2.C.7. Stale Dated Check Service – The City desires automatic decisioning abilities for each check that is presented against its accounts with an issue date longer than six months.
- 4.2.C.8. Electronic Paid Check File – All check disbursement accounts require an electronic file of cleared items for reconciliation to the City's general

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ledger. Upon contract award, the Depository shall provide the City with the file layout for this service.

- 4.2.C.9. Paid Check Images – The City requires each month's paid check images, front and back, to be available for viewing online for all check disbursement accounts. Images must be of high quality and admissible as legal documents. Preferred image capabilities include reverse polarization, zoom, and check number or amount indexing.

4.2.D. EFT Services

- 4.2.D.1. Electronic Credits - The City requires internet confirmation of electronic credits. Hard copy or fax notification is not required.

- 4.2.D.2. Electronic Debits - Multiple ACH and wire transfers are processed daily and are typically funded by maturing investments and available balances, including transfers from other fund accounts, in the main account. Ideally, proceeds from maturing investments, which are processed in the securities/safekeeping area, should be posted real-time to City accounts. If, however, they are memo-posted, the City will require a daylight overdraft facility or other mechanism for City accounts to ensure that release of these wires is not delayed due to bank review and approval requirements. The Application response should include details of the daylight overdraft policy.

- 4.2.D.3. ACH File Transmission - The City directly transmits ACH files conforming to National Automated Clearing House Association (NACHA) format for both credit and debit entries daily. The Depository agrees to perform the services of Originating Bank for these ACH entries and to abide by the rules of the NACHA. City agrees to comply with and be subject to the rules and operating guidelines of the NACHA. The Applicant must include a detailed description of the file requirements, reporting/confirmation mechanisms, returns process and notifications, and the cut-off time for next day ACH settlement. Applicants must offer (or partner with a 3rd party) a fraudulent transaction detection system to screen ACH WEB debits for fraud to stay in compliance with the NACHA Web debit account validation rule. Applicants will be required to provide a contingency plan in the event of processing problems for ACH file transmissions in the application response.

- 4.2.D.4. ACH Payroll Direct Deposit - Approximately 97% of all City employees are on direct deposit payroll. For each of its bi-weekly payrolls, the City transmits an ACH file conforming to National Automated Clearing House Association (NACHA) format containing employee direct deposit payroll credits. The Depository shall perform the services of Originating Bank for these automatic deposit entries and abide by the rules of the NACHA. City agrees to comply with and be subject to the rules and operating guidelines of the NACHA. The Applicant must include a detailed description of the direct deposit requirements, reporting/confirmation mechanisms, returns process and notifications, and the cut-off time for next day ACH settlement. Applicants will be required to provide a

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contingency plan in the event of processing problems for direct deposit in the Application response.

- 4.2.D.5. Online EFT Services – The City requires an Internet product for ACH and wire transfer initiation. Online repetitive, semi-repetitive, and non-repetitive initiation capability as well as confirmation capability is required. Password security and secondary authorization capability is required. Online EFT transactions are originated out of the EFT Accounts Payable Account (a ZBA account) for transfers between accounts and vendor payments. In addition, other online EFT transactions are originated out of various other Debt Management and Reserve accounts.
- 4.2.D.6. Outgoing ACH transactions - The City originates ACH debits/credits to transfer funds between City accounts and to pay certain vendors. A number of non-originated ACH Debits are also received each month. An internet product allowing initiation of ACH transactions in standard ACH and CCD+ format is required. Ability to add addendum details is required.
- 4.2.D.7. Incoming ACH transactions - The City receives a number of ACH credits each month, particularly State sales tax and other distributions, Federal grant proceeds, and credit card proceeds. Some of these are received in CCD+ format. Access to addendum details is required.

- 4.2.E. **Additional Online Requirements and Balance/Transaction Reporting:** If the Depository utilizes any supplier or vendor to act on the financial institution's behalf to conduct account management, customer service, collection activities or have fiduciary responsibility over the institution, customer or associate funds, the Depository is required to obtain a satisfactory SOC-1 audit from the supplier or vendor and review it for acceptability. Whenever information is moved across national boundaries, the Depository must ensure compliance with all laws and regulations related to privacy and encryption. The Depository should provide a SOC-1 audit annually for its online product. Further, confidential information should not be placed into a public cloud, and any utilization of a private cloud should be detailed in this response. For any supplier, a SOC-1 audit should be required.

Dual security administration is required for the various entitlements needed to transact banking online.

Additionally, the City requires an extensive balance/transaction reporting internet product. This product is used for a number of functions including reconciliation, cash position management, transaction notification, and accounting/journal entry support. Therefore, the City will require the following capabilities, at a minimum:

- 4.2.E.1. Ability to download the information in CSV format to Microsoft Excel and/or Microsoft Access for selected accounts with a 10-business day minimum online history:
- Current day and previous day balances for all accounts and
 - Transaction detail for all accounts, as listed in Section 4.1 above.

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4.2.E.2. Ability to download the following information in CSV format to Microsoft Excel and/or Microsoft Access for all accounts with a 10-business day minimum online history:

- Prior day closing ledger balance;
- Prior day closing collected balance;
- One Day float;
- Two Day float;
- Summary of prior day account debits and
- Summary of prior day account credits.

4.2.F. **ZBA accounts** - At present, the City requires ten (10) ZBA accounts. A zero balance will be achieved by the Depository in each of the accounts at the close of business each day by transferring an appropriate amount to or from the Investment Pool Receiving Account. Transactions that create daylight overdrafts in ZBAs prior to the close of business will be honored.

4.2.G. **Change orders** – The City requires change orders containing currency and coin. Change orders are placed by phone or internet and returned within 2 business days by armored car in a tamper proof evident, sealed, deposit bag. Payment is made by automated debit by the Depository on the day the order is filled.

4.2.H. **Securities clearance** – The Depository shall serve as transfer agent for security transactions initiated by the City. All transfers must be executed delivery versus payment. Delivery of instructions on-line is desired.

4.2.I. **Safekeeping** - The Depository shall provide safekeeping services for all securities purchased during the term of the depository agreement. All interest payments on securities held are to be posted on the due date or on the next business day if the due date falls on a weekend or bank holiday. The City requires notification of securities called prior to maturity. The City requires that safekeeping receipts be issued within two business days following receipt of securities. Monthly statements of holdings are required. All book entry securities shall be listed at the Federal Reserve under the Depository's customer account. Such securities shall not be commingled with bank assets. The Depository shall keep accurate records specifically identifying which investments belong to the City and the City shall have access to these records at all times. Online access to safekeeping records is desired.

Securities which serve as collateral for repurchase agreements with dealers must be delivered to a third-party custodian bank acceptable to the City. Pursuant to State Law, the custodian bank shall be:

A state or national bank that is designed by the comptroller as a state depository, has its main office or a branch office in this state and has a capital stock and a permanent surplus of \$5 million or more; or

- The Texas Treasury Safekeeping Trust Company; or
- a Federal Reserve Bank or a branch of a Federal Reserve Bank; or
- a federal home loan bank.

4.2.J. **Payroll and Employee Petty Cash check cashing.** All city employees serving as petty cash custodians and employees not on payroll direct deposit will be

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permitted to cash their City petty cash and payroll checks at any of the Depository's locations within the Austin-Round Rock-San Marcos metropolitan service area at no charge, including those employees who do not maintain accounts with your Bank. The Depository's standard check cashing guidelines regarding proper identification will apply to all employees.

- 4.2.K. **Overdrafts.** Applicants will be asked to submit informal and/or formal procedures for handling overdrafts on the City's aggregate account balances. Any agreement required by Applicants to be executed in connection with a formal overdraft facility should be submitted with the Application response. Any overdraft facility will be utilized as a back-up facility and the City does not intend to use it as a source of credit. The term "Overdraft," as used in the preceding sentence for purposes of determining the payable interest to the Depository, shall mean negative balances in all city demand deposit accounts netted against positive balances in all other city accounts as determined on the City's monthly consolidated average net collected balance position.

4.2.K.1. Ledger- Although it is the City's policy to avoid overnight ledger overdrafts at all times, they do occur on an infrequent basis. The Depository will be requested to provide an overdraft facility for this purpose. The terms of an overdraft facility will be negotiated by the parties and inserted in the Depository Contract. Ledger overdraft fee should be inserted on the Application Pricing Submittal in the space provided.

4.2.K.2. Collected - Collected overdrafts may occur from time to time in any City account, particularly the Investment Pool Receiving Account due to the unpredictable level of float in the account. The City desires that no interest charges for overnight collected balance overdrafts in any City account be incurred, unless a collected deficit occurs in the City's total average collected balance position for an entire month. Any deviation from this stipulation must be stated in the Application response. The City reserves the right to add an estimated cost to the total bid if it will be the Applicant's policy to assess collected overdrafts interest charges per occurrence, per account.

The Applicant's money market basis for calculating interest on collected balance deficits, or other calculation method, must be clearly outlined on the Application Pricing Submittal.

4.2.K.3. Daylight - Due to the nature of its business, the City will create daylight overdrafts. The Applicant will be asked to describe its daylight overdraft policy in the Application response. If it is the Applicant's policy not to allow daylight overdrafts, this should be stated as an exception in the Application response.

- 4.2.L. **Reports.** The Depository shall furnish reports/statements regarding the City's accounts and services performed under the contract in a form and content satisfactory to the City of Austin Chief Financial Officer, and comply with requests from external auditors as directed by the City Manager, Deputy City Manager(s), City Chief Financial Officer, City Treasurer, or City Controller.

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- 4.2.M. **Disaster/Pandemic Preparedness.** The City requires that detailed plans be put in place to deliver the services outlined in these specifications during times of disaster or pandemic outbreaks. A discussion of disaster/pandemic preparedness will be required in the Application response.
- 4.2.N. **Errors.** Bank errors resulting in lost interest to either party, such as loss of availability, will be reimbursed by improving or deproving the City's collected balance position. The City will be notified immediately of such improvements or deprovements in writing. A recap of improvements and deprovements in the monthly account analysis is desired. Fee corrections noticed in the Account Analysis will be brought to the Depository's attention and corrected prior to the next month's Account Analysis statement.
- 4.2.O. **Compliance with the Texas Public Funds Collateral Act and City of Austin Investment Policy.** All Applicants must comply with the Texas Public Funds Collateral Act and the City's Investment Policy, included as Appendix 1, which details specific collateral requirements for the City. All Applicants must acknowledge receipt, review, and understanding of the City's Investment Policy.

5.0 INVOICE REQUIREMENTS

As noted above in Section 4.1 above, each account will cycle monthly for statement purposes. The Contractor shall submit a monthly itemized invoice in the form of an Account Analysis. All accounts and fees must be included in the monthly Account Analysis. Additionally, online access to Demand Deposit Account (DDA) statements that can be downloaded as a PDF report are required for each account listed below. The Contractor shall provide additional itemization and/or corrections should it be considered necessary by the City.

6.0 DESIGNATION OF KEY PERSONNEL

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. The City's key personnel are identified as follows:

	Name/ Title	Phone Number	Email Address
City Contract Manager	Gail Ray	(512)974-7884	Gail.Ray@austintexas.gov
City Contract Administrator, Procurement Specialist	Didi Broniszewski	(512)974-9382	Didi.Broniszewski@austintexas.gov

ACCOUNT TERMS

V1.7_02_03_21

INTRODUCTION

This document, as amended or supplemented by account addenda for each country in which the Accounts are held, (collectively, the “Account Terms”) contains the general terms, conditions and disclosures for the Accounts and Services selected by the Customer and constitutes an agreement between the Bank and the Customer and supersedes all previous drafts, discussions and negotiations, whether oral or written, between them in connection with the opening of Accounts and receipt of Services.

References to the “Bank” shall mean **JPMorgan Chase Bank, N.A.**, and any of its affiliates. References to the “Customer” shall mean the entity to which the Bank, as an independent contractor, provides Accounts and Services. All accounts subject to the Account Terms are, regardless of their location, referred to as “Accounts”. References to “Services” shall mean services offered by the Bank and subject to the Account Terms and any applicable Service Terms. References to “Service Terms” shall mean any terms and conditions regarding specific types of Accounts or Services that are subject to the Account Terms. Use of a Service constitutes acceptance of the relevant Service Terms. In addition to the Account Terms and Service Terms, the Accounts are subject to other Account-related documentation, including signature cards and application forms (the “Account Documentation”).

The Customer shall not transfer any of its rights and obligations in an Account or with respect to a Service, or create any form of security interest over such rights and obligations in an Account, without the prior written consent of the Bank. Failure to obtain the Bank’s prior written consent constitutes a breach of these Account Terms by the Customer and may result in immediate closure of Accounts or termination of Services.

The Account Terms, Account Documentation and Service Terms may vary applicable law to the maximum extent permitted under any such law. Any provision of applicable law that cannot be varied shall supersede any conflicting term of the Account Terms, Account Documentation or Service Terms.

The Account Terms may be supplemented or amended as set forth in Section 17.6 (Amendments; Supplement; Waivers) herein.

1. Authorized Persons.

1.1 Authorized Persons. The Bank is authorized to rely on any document or designation that identifies a person authorized to act on behalf of the Customer (“Authorized Person”) with respect to the Accounts and Services, until the authority for such Authorized Person is withdrawn by the Customer upon written notice to the Bank, and the Bank has had a reasonable opportunity to act on such notice. The Customer will provide a specimen signature for Authorized Persons in the manner requested by the Bank.

1.2 Authorizations. Each Authorized Person is independent of the Bank and, subject to any written limitation provided by the Customer and received and accepted by the Bank, is authorized on behalf of the Customer to: open, operate and close Accounts; overdraw Accounts as permitted by the Bank; appoint and remove Authorized Persons; execute or otherwise agree to any form of agreement relating to the Accounts or Services, including Account Documentation; execute guarantees, indemnities or other undertakings to the Bank in relation to guarantees, letters of credit or other financial transactions, or in relation to missing documents; draw, accept, endorse or discount checks, drafts, bills of exchange, notes and other financial instruments (“Items”); receive materials related to security procedures; and give instructions (“Instructions”), including requests and payment orders, by means other than the signing of an Item, with respect to any Account transaction. Without limitation, such Instructions may direct: (i) the payment, transfer or withdrawal of funds; (ii) the disposition of money, credits, items or property at any time held by the Bank for account of the Customer; (iii) the provision of access as described in Section 1.4 (Third Party Access) and Section 2.1 (Third Party Instructions) below; (iv) the provision of information regarding the Accounts; (v) any other transaction of the Customer with the Bank; or (vi) the amendment or cancellation of any prior Instruction.

1.3 Facsimile Signatures. If the Customer provides the Bank with facsimile signature specimens, or if the Customer issues Items with a facsimile signature on one or more occasions, the Bank is authorized to pay Items signed by facsimile signature (including computer generated signatures) if the actual or purported facsimile signature, regardless of how or by whom affixed, resembles the specimens filed with the Bank by the Customer, or resembles a specimen facsimile signature otherwise employed for the Customer’s benefit.

1.4 Third Party Access. The Customer may request that the Bank permit a third party to have access to an Account by submitting an access request in a form acceptable to the Bank (an “Access Request”, and the third party designated in such form will be referred to as a “Third Party”). Each Third Party is authorized by the Customer to issue Instructions to the Bank in relation to an Account, including to initiate payments and transfers against an Account, and to access and receive balance and transaction information (including account statements, information reporting and transaction advices) by any method of communication, including the Bank’s electronic channels, facsimile transmission, in writing, by telephone and SWIFT message, and the Bank is authorized to act on such Instructions and provide such access as described in this Section and Section 2.1 (Third Party Instructions) below. Subject to the Third Party’s completion of documentation required by the Bank, the Bank is authorized to act upon any Instructions issued in the name of any authorized person of the Third Party who has been nominated by the Third Party in a form acceptable to the Bank, and such authorized person shall be deemed an Authorized Person with respect to the provisions of these Account Terms relating to the use of the Accounts and the giving of Instructions with respect to the Accounts. The Customer may revoke an Access Request at any time by giving the Bank written notice of such revocation; such revocation shall be effective when the Bank has received such notice and has had a reasonable opportunity to act upon it.

2. Security Procedures; Confirmations.

2.1 Security Procedures Generally. When issuing Instructions, the Customer is required to follow the Bank’s security procedures as communicated to the Customer by the Bank from time to time, including the procedures set forth herein, and shall be bound by such security procedures for use

of the Service. Upon receipt of an Instruction, the Bank will use the security procedures to verify that the Instruction is effective as that of the Customer. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, call back procedures or similar security devices. It is understood that the purpose of the security procedure is to verify the authenticity of, and not to detect errors in, Instructions. The Customer shall safeguard the security procedure and make it available only to persons that it has authorized. Any Instruction, the authenticity of which has been verified through such security procedure, shall be effective as that of the Customer, whether or not authorized.

Security Procedure for Verbal or Written Instructions. Unless the Customer and the Bank have agreed in writing to an alternate security procedure, the Bank may verify the authenticity of verbal or written (including those transmitted by facsimile) funds transfer Instructions by telephonic call-back to an Authorized Person. The Customer agrees that this security procedure is commercially reasonable for such Instructions.

Security Procedure for Instructions Received through Electronic Channels. If the Bank receives an Instruction in the name of the Customer by means of any of Bank's electronic channels, the Customer's SWIFT BIC codes, or other electronic channels through which the Bank has notified Customer that it will accept Instructions, then Bank may rely on authentication procedures established by such electronic channels as the security procedure. Any such Instruction shall be deemed to have been given by an Authorized Person and shall be effective as that of the Customer, whether or not authorized. By using an electronic channel to provide Instructions to the Bank, the Customer agrees that this security procedure is commercially reasonable for such Instructions.

Security Procedure for Third Party Instructions. The security procedures applicable to Instructions from any Third Party shall be those security procedures established by the Bank with the Third Party. Any Instruction that the Bank receives from the Third Party, the authenticity of which has been verified through such security procedure, shall be effective as that of the Customer, whether or not authorized, and shall be deemed an Instruction given on behalf of the Customer for all purposes of these Account Terms. The Bank is authorized to act upon any Instructions received via any of the SWIFT BIC codes specified in an Access Request whether or not such SWIFT BIC codes are associated with the Customer or the Third Party.

2.2 Confirmations. If the Customer, other than with respect to security procedures, chooses to confirm an Instruction, any confirmation must be clearly marked as a confirmation, and, if there is any discrepancy between an Instruction and a confirmation, the terms of the Instruction shall prevail. Subject to Section 2.1 (Security Procedure for Verbal or Written Instructions), the Bank may, at its option, confirm or clarify any request or Instruction using any means, even if a security procedure appears to have been followed. If the Bank is not satisfied with any confirmation or clarification, it may decline to honor the Instruction.

3. Deposits.

3.1 Processing Incoming Items. All Items deposited or cashed are received for collection only and are subject to receipt of final payment. The Bank may agree with other banks and clearing houses to vary procedures regarding the collection or return of Items, and deadlines to the extent permitted by applicable law or market practice. The Bank chooses the method of collecting Items and may use other banks in the process. The Bank will present Items in accordance with the custom and market practice of the jurisdictions in which the Items are handled for collection. The Bank is not responsible for actions or omissions of other banks, nor for the loss or destruction of any Item in the possession of other banks or in transit. The Customer shall use reasonable efforts to assist the Bank in locating or obtaining replacements of Items lost while in the Bank's possession. For purposes of determining when an Item is sent to the Customer, the provision of an image of the Item or information identifying the Item (e.g., Item number, amount, date of Item) is a sufficient substitute for the actual Item.

3.2 Availability of Funds; Credits Not Received. Credits and deposits to an Account will be available in accordance with the Bank's availability policy and applicable law. If the Bank credits an Account: (i) in contemplation of receiving funds for the Customer's credit and those funds are not actually received by the Bank; or (ii) in reliance on a transaction which is subsequently returned, reversed, set aside or revoked, or if the Bank does not receive funds for the Customer's credit for value on the date advised by or on behalf of the Customer, or if final settlement is not received by the Bank for any reason, then the Bank shall be entitled to debit any Account of the Customer with the amount previously credited and/or with any other charges incurred, even if doing so creates or increases an overdraft.

3.3 Collection Basis Processing. If an Item is processed by the Bank on a collection basis, the Bank may defer credit to the relevant Account until it has received final, non-reversible, payment in accordance with applicable law and market practice.

4. Payment of Items.

4.1 Processing Outgoing Items. The Bank is authorized to pay any Item drawn on the Account, in accordance with the Bank's usual procedures, including any Item that purports to be a substitute check. The Bank is authorized to debit the Account on which the Item is drawn on the day the Item is presented, certified or accepted, or at such earlier time when the Bank receives notice by electronic or other means that an Item drawn on an Account has been deposited for collection. The Bank may determine Account balances in order to decide whether to dishonor an Item for insufficient funds at any time between receiving such presentment or notice and the time of the return of the Item, and need make no more than one such determination.

4.2 No Inquiry. The Bank is authorized to pay all Items presented to it or cashed at the Bank, regardless of amount and without inquiry as to the circumstances of issue, negotiation or endorsement or as to the disposition of proceeds, even if drawn, endorsed or payable to cash, bearer or the order of the signer or any Authorized Person or to a lender in payment of the signer's or Authorized Person's obligations.

4.3 Limitations. The Customer shall immediately notify the Bank if it becomes aware that any Items (whether completed or blank) are lost or stolen. The Customer shall not allow any third party to issue Items against or otherwise use the Accounts unless specifically agreed to in writing by the

Bank. The Customer shall not issue Items that are post-dated, and the Bank shall not be liable for any damages caused by premature payment or certification of a post-dated Item. Further, the Customer shall not put any condition, restriction, or legend on any Item; and the Bank is not required to comply with any such condition, restriction or legend.

4.4 Electronic Processing; Specifications. The Bank may process any Item by electronic means. All Items issued by the Customer against any Account must comply with industry standards and the Bank's check specifications and image standards, published from time to time. The Bank shall not be liable for damages or losses due to any delay or failure in procuring, collecting, or paying Items not conforming to such specifications or standards, except to the extent such losses or damages are the direct result of the Bank's gross negligence or willful misconduct.

5. Funds Transfer Instructions.

5.1 Processing Funds Transfer Instructions. The Customer may issue funds transfer Instructions against Accounts, subject to the Bank's acceptance. Funds transfer Instructions will be received, processed and transmitted only on the Bank's funds transfer business days, and within the Bank's established cut-off hours on such days. Instructions requesting cancellation or amendment of funds transfer Instructions must be clearly marked as such and received at a time and in a manner affording the Bank a reasonable opportunity to act on the cancellation or amendment Instruction. The Customer may reverse, amend, cancel or revoke any Instructions only with the consent of the Bank and, if applicable, the beneficiary's bank. The Bank will debit the Account for the amount of each funds transfer Instruction accepted by the Bank, and the Customer authorizes the Bank to debit the Account for, or deduct from the amount of the funds transfer, all associated fees, including debit and credit processing charges or to otherwise deduct such fees as set forth in the Contract between the Bank and the City of Austin. In processing a funds transfer, other banks may deduct fees from the funds transfer. No restrictions upon the acceptance of funds transfer Instructions by the Bank or upon the Accounts that the Bank may debit shall be binding unless agreed to by the Bank in writing. The Bank shall not be required to inquire into the circumstances of any transaction.

5.2 Acting on Instructions. Notwithstanding any Instructions by the Customer to the contrary, the Bank reserves the right to use any funds transfer system and any intermediary bank in the execution of any funds transfer Instruction and may otherwise use any means of executing the funds transfer Instruction that the Bank deems reasonable in the circumstances.

5.3 Inconsistent Name and Number. The Bank and other financial institutions, including the beneficiary's bank, may rely upon the identifying number of the beneficiary, the beneficiary's bank or any intermediary bank included in a funds transfer Instruction, even if it identifies a person different from the beneficiary, the beneficiary's bank or intermediary bank identified by name.

5.4 Foreign Exchange.

- (a) If the Bank accepts a funds transfer Instruction issued in the Customer's name for payment in a currency (the "Non-Account Currency") other than the currency of the Account (the "Account Currency"), the Bank is authorized to enter into a foreign exchange transaction to sell to the Customer the amount of Non-Account Currency required to complete the funds transfer and debit the Account for the purchase price of the Non-Account Currency. If the Bank receives a payment to the Account in a Non-Account Currency, the Bank is authorized to purchase the Non-Account Currency from the Customer and to credit the purchase price to the Customer's Account in lieu of the Non-Account Currency.
- (b) The applicable foreign exchange rate and spread for any of the foregoing transactions shall be determined by the Bank in its sole discretion and may differ from foreign exchange rates and spreads at which comparable transactions are entered into with other customers or the range of foreign exchange rates or spreads at which the Bank otherwise enters into foreign exchange transactions on the relevant date. The Bank may generate additional profit or loss in connection with the Bank's execution of a foreign exchange transaction or management of its risk related thereto in addition to the applicable spread. Further, (i) the Bank may execute such foreign exchange transactions in such manner as the Bank determines in its sole discretion; and (ii) the Bank may manage the associated risks of the Bank's own position in the market in a manner it deems appropriate without regard to the impact of such activities on the Customer. Any such foreign exchange transaction will be between the Bank and the Customer as principals, and the Bank will not be acting as agent or fiduciary for the Customer.
- (c) Notwithstanding any prior action or course of dealing, subject to applicable law, the Bank has no obligation to cancel, reverse or otherwise buy back foreign currencies purchased by the Customer under a Service and the Bank makes no commitment to buy back currencies. The Customer acknowledges that it may not be able to sell back certain foreign currencies once purchased.

5.5 Cancellation of Foreign Exchange Drafts. Subject to applicable law, the Bank may cancel any draft issued by the Bank on behalf of the Customer in a Non-Account Currency if the draft is not presented for payment within one hundred eighty (180) calendar days after the date of issuance, and the Customer authorizes the Bank to recredit the Customer's Account with an equivalent amount of Account Currency at a foreign exchange rate and spread, and at such date and time, as the Bank determines in its sole discretion. Following such cancellation, the Customer shall be responsible for all claims that may be asserted against the Bank in respect of the draft.

6. Interest; Fees; Taxes.

6.1 Interest. The Bank may apply interest on balances in Accounts at rates determined by the Bank in its sole discretion, subject to any withholding or deduction for tax as required by applicable law (including the Foreign Account Tax Compliance Act ("FATCA")). The Bank may deduct from the Accounts charges for early withdrawals, which may include a deduction from principal (if permitted or required by law). If the rate applied by the Bank is negative, the Customer may be required to make a negative rate payment, including on non-interest bearing Accounts, which the Bank shall be entitled to collect by debiting the Account.

6.2 Fees and Taxes.

- (a) The Bank may impose and the Customer will pay fees for Accounts and Services provided by the Bank, including transaction, maintenance, balance-deficiency, and service fees and other charges (collectively "Fees") as set forth in Exhibit 3 of the Contract between the Bank and the City of Austin. The Customer will pay all Fees only as agreed to in the Contract between the Bank and the City of Austin. The Bank may debit any Account for Fees and/or Taxes, even if such debit creates or increases an overdraft of the Account. References to "Taxes" shall mean any taxes (including value added taxes, sales taxes and similar taxes), levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings (together with any related interest, penalties, fines, and expenses) in connection with the Fees, Accounts or Services (including payments or receipts to an Account) except if such Taxes are imposed on the overall net income of the Bank.
- (b) All payments (including Fees and interest on overdrafts) from the Customer to the Bank pursuant to the Account Terms, the Service Terms and any Account Documentation shall be in full, without set-off or counterclaim, and free of any withholding or deduction (collectively, a "Deduction") related to any tax or other claim, unless a Deduction is required by applicable law. If any Deduction is required by applicable law in respect of any payment due to the Bank, the Customer shall:
 - (i) ensure that the Deduction is made;
 - (ii) pay the amount of the Deduction as required by applicable law;
 - (iii) increase the payment in respect of which the Deduction is required so that the net amount received by the Bank after the Deduction shall be equal to the amount which the Bank would have been entitled to receive in the absence of any requirement to make any Deduction; and
 - (iv) deliver to the Bank, within thirty (30) days after it has made payment to the applicable authority, a certified copy of the original receipt issued by the authority, evidencing the payment to the authority of all amounts required to be deducted.
- (c) All Fees are exclusive of Taxes. In addition to any Fees or other amounts due, to the extent allowable by the laws of the State of Texas and the Austin City Code and Charter, and except to the extent the Bank is otherwise compensated for such Taxes under this Section 6, the Customer will pay or reimburse the Bank for any Taxes which the Bank is required to account for to any tax authority under any applicable law and, where required by applicable law, the Customer shall account for any Taxes directly to the applicable tax authority.

6.3 Tax Documentation and Information. The Customer will provide the Bank with such documentation and information as the Bank may require in connection with taxation, and warrants that such information is true and correct in every respect and shall immediately notify the Bank if any information requires updating or correction.

7. Account Statements.

The Bank will issue Account statements, confirmations, or advices ("Account Statements") at the frequency and in the manner advised to the Customer from time to time. The Customer is responsible for ensuring that an Authorized Person promptly examines each Account Statement and any accompanying Items that are made available to it by the Bank, and reporting any irregularities to the Bank in writing, including any claim of unauthorized funds transfer activity. The Bank shall not be responsible for the Customer's reliance on balance, transaction or related information that is subsequently updated or corrected or for the accuracy or timeliness of information supplied by any third party to the Bank. Electronic Account Statements, if applicable, shall be deemed to be received by the Customer when the Bank sends notice to the Customer that the Account Statement has been posted by electronic means (including by posting such Account Statement on a Bank website).

8. Overdrafts.

8.1 Overdrafts. The Bank may debit an Account even if the debit may cause or increase an overdraft. Unless otherwise agreed in writing, the Bank is under no obligation to permit any overdraft or to continue to permit overdrafts after having permitted an overdraft or to provide notice of any refusal to permit an overdraft, in each case notwithstanding any prior action or course of dealing. Any overdraft shall be immediately due and payable by the Customer to the Bank, unless otherwise agreed in writing. If the Bank permits an overdraft, the Bank is authorized to charge interest on the amount of the overdraft as long as the overdraft is outstanding, at a rate determined by the Bank, up to the maximum rate permitted by law at the time of the overdraft or at the specific rate agreed in writing between the Customer and the Bank. Subject to applicable law, interest shall accrue on any negative balance in an Account notwithstanding closure of the Account and/or termination of these Account Terms. If the Bank pays an Item that causes or increases an overdraft, the Bank may deduct applicable Fees and expenses from the Account without notice.

8.2 Order of Payment. When Items and other debits to the Account are presented to the Bank for payment on the same day and there are insufficient available funds in the Account to pay all of these transactions, the Bank may choose the order in which it pays transactions, including the largest transaction first or any other order determined by the Bank, in its sole discretion.

9. Set Off; Security Interest.

9.1 Set-Off. The Bank may at any time, without prejudice to any other rights which it may have, and without prior notice or demand for payment, combine, consolidate or merge all or any of the Accounts of the Customer or may retain, apply or set off any money, deposits or balances held in, or standing to the credit of, any Account in any currency towards payment of any amount owing by the Customer to the Bank or any of its affiliates. The Bank shall be entitled to accelerate the maturity of any time deposit or fixed term deposit. For the purposes of this Section the Bank may effect currency conversions at such times or rates as it may think reasonable and may effect such transfers between any Accounts as

it considers necessary. These rights are limited by the Customer's rights as set forth in state law and as reflected in the Contract. Additionally, they are limited to the extent funds are required to pay any obligation to the extent of annual appropriations.

9.2 Security Interest. The Customer grants to the Bank a lien and security interest in any Accounts of the Customer at the Bank, in order to secure any and all obligations and liabilities of the Customer to the Bank or any of its affiliates.

10. Confidential Information; Agents; Consents.

10.1 Confidential Information. "Confidential Information" means and includes all non-public information regarding the Customer, its Accounts or the Services. The term Confidential Information does not include information which is or becomes publicly available by means other than the Bank's breach of this section, information the Bank develops independently without the use of Confidential Information, or information the Bank obtains from a third-party that is not reasonably known to have confidentiality obligations for such information.

- (a) The Bank will maintain Confidential Information in the same manner it maintains its own confidential information.
- (b) The Customer authorizes the Bank and its agents, employees, officers and directors and affiliates to use Confidential Information (i) to provide services to and administer the relationship with Customer, (ii) for any operational, credit or risk management purposes, (iii) for due diligence, verification or sanctions or transaction screening purposes, (iv) for the prevention or investigation of crime, fraud or any malpractice, including the prevention of terrorism, money laundering and corruption, (v) to improve and develop products or services, including, but not limited to using data analytics, (vi) for compliance with any legal, regulatory or tax requirements or tax reporting or any industry standard, code of practice, or internal policies or (vii) with prior consent of the Customer.
- (c) In connection with the permitted uses set forth in subsection (b), the Customer authorizes the Bank and its agents, employees, officers and directors and affiliates to disclose Confidential Information to (i) any subcontractor, consultant, agent, or any other unaffiliated third party or service provider, including the transmission of information to other banks and clearing houses and through channels and networks operated by third parties that the Bank reasonably believes is required in connection with the Services and provided that such parties are subject to equivalent confidentiality obligations; (ii) to the Bank's professional advisors, auditors or public accountants; (iii) the Bank's subsidiaries, affiliates and branches and their relevant parties as set forth in subsection (i) and (ii) herein; (iv) to a proposed assignee of the Bank's rights under the Account Documentation; and (v) with the consent of the Customer.
- (d) In addition to the foregoing, the Bank may use and disclose Confidential Information as required by (i) applicable law or courts of competent jurisdiction; (ii) governmental or regulatory or supervisory authorities, or law enforcement agencies with jurisdiction over the Bank's or Customer's businesses; or (iii) to establish, exercise or defend claims, enforce legal rights, or satisfy the legal obligations of the Bank.
- (e) The Customer acknowledges that: (i) permitted disclosures of Confidential Information may be transmitted across national boundaries in the context of outsourcing arrangements and through networks, including networks owned and operated by third parties; and (ii) the Bank may process or store, or engage service providers to process or store Confidential Information on its behalf, both in its own premises and those of its services providers, located in, amongst others, the European Economic Area, the United States of America, India, the Philippines, Singapore, Hong Kong, Australia, China, Japan, Brazil, Mexico, Argentina, Colombia, Chile, South Africa, Russia and any other country where the Bank or such service providers conduct business.

10.2 Agents. The Bank may appoint or retain any agent (who may be any affiliate of the Bank or any unaffiliated third party) either at the Account location or outside, to perform data processing, collection and/or any other services in connection with the Accounts and Services.

10.3 Consents. The Customer represents and warrants that prior to submitting to the Bank information about natural persons related to the Customer (including Authorized Persons, users of the Bank's electronic access systems, officers and directors, employees, beneficial owners, and customers and persons on whose behalf the Customer is receiving or transmitting funds, issuing items or maintaining an Account), the Customer shall have obtained such consents as may be required by applicable law or agreement, for the Bank to process and use the information for purposes of providing the Accounts or Services.

11. Liability Limitation; Force Majeure.

11.1 Liability. The Bank, its agents, employees, officers and directors, shall not be liable for any damage, loss, expense or liability of any nature which the Customer may suffer or incur, except to the extent of losses or expenses directly resulting from the gross negligence or willful misconduct of the Bank, its agents, employees, officers or directors. Except for Customer's reimbursement obligations contained herein or in any Service Terms, neither party, nor its respective agents, employees, officers and directors shall not, in any event, be liable for indirect, special, consequential or punitive loss or damage of any kind (including lost profits, loss of business or loss of goodwill), in each case, whether or not foreseeable, even if such party, its agents, employees, officers or directors have been advised of the likelihood of such loss or damage, and regardless of whether the claim for loss or damage is made in negligence, gross negligence, for breach of contract or otherwise; provided, however, that the foregoing shall not apply to the extent such loss or damage is caused by fraud on the part of such party, its agents, employees, officers or directors. Customer shall promptly provide the Bank with a notice of any claims it receives regarding a Service. Notwithstanding the foregoing, any limitation of Bank's liability with regard to these Account Terms shall only be the extent permitted by the laws of the State of Texas.

11.2 Force Majeure. Neither the Bank nor the Customer shall be liable for any loss or damage, expense or liability of any nature to the other for its failure to perform or delay in the performance of its obligations resulting from an act of God, act of governmental or other authority, de jure or de facto, legal constraint, civil or labor disturbance, fraud or forgery (other than on the part of the other party or its employees), war, terrorism, catastrophe, fire, flood or electrical, computer, mechanical or telecommunications failure or malfunction, including inability to obtain or interruption

of communications facilities, or failure of any agent or correspondent, or unavailability or failure of or the effect of rules or operations of a payment or funds transfer system, including non-availability of appropriate foreign exchange or foreign currency, or any cause beyond its reasonable control.

12. Responsibility.

As permitted by Texas Law, the Customer agrees that it shall allow the Bank to reverse credit, or reimburse the Bank, for returned or dishonored items that had previously been credited to the Customer's Accounts, and, the Customer agrees that it shall reimburse the Bank for all overdraft fees, service fees, and out of pocket expenses as may be determined by Automated Clearing House rules or Uniform Commercial Code or other applicable regulations, in each case, incurred by the Bank, including but not limited to, fees imposed by applicable law, or rules of clearinghouse networks, funds transfer systems, and the like where such fees are incurred in each case as a direct result of: (i) the Customer's breach of any obligations or warranties imposed upon or imputed to, the Customer as a result of its depositing, originating, or negotiating any item or entry, either under the Bank's account terms, rules of applicable funds transfer systems, Federal Reserve Operating Circulars, the Uniform Commercial Code, clearinghouse rules, or the Check 21 Act and implementing regulations; (ii) the Customer's breach of any of the Originator responsibilities under applicable NACHA rules, or (iii) compliance by the Bank and any receiving depository financial institution with any request the Customer makes for a cancellation, stop payment, reversal or recall of any item or entry. This reimbursement obligation supersedes the indemnification obligations of the Customer, as elsewhere stated in these Account Terms or in the applicable Service Terms.

13. Notices.

13.1 Notice to the Customer. All Account Terms, Service Terms, Account Documentation, notices and other documents may be delivered, made available and/or made accessible to the Customer by ordinary mail or courier at the address of the Customer provided to the Bank, or by facsimile transmission, electronic means and channels (including SWIFT message, emails and by posting on a Bank website) or by such other means as the Customer and the Bank may agree upon from time to time.

13.2 Notice to the Bank. Unless otherwise arranged, all notices to the Bank must be sent to the Bank officer or service representative managing the Account or to any other address notified by the Bank to the Customer in writing from time to time, and must be sent by ordinary mail, by courier, by facsimile transmission, by electronic transmission or by such other means as the Customer and the Bank agree upon from time to time. The Bank shall have a reasonable time to act on any notices received.

14. Termination.

Either the Bank or the Customer may close an Account and/or terminate a Service:

- (a) by giving the other party not less than thirty (30) calendar days' prior written notice of intent to close or terminate, or
- (b) immediately upon written notice to the other party in the event of: (i) a breach of the Account Terms, Account Documentation or Service Terms by the other party; (ii) the other party's inability to meet its debts as they become due, receivership, administration, liquidation, or voluntary or involuntary bankruptcy; or the institution of any proceeding therefor, any assignment for the benefit of the other party's creditors, or anything analogous to the foregoing in any applicable jurisdiction, or a determination in good faith by the terminating party that the financial or business condition of the other party has become impaired; (iii) a determination by the terminating party, in its sole opinion, that termination is necessary or required by applicable legal, tax or regulatory requirements, or as a result of a court or regulatory agency order or proceeding; or (iv) a good faith belief by the terminating party that the other party is engaged in activities that are inconsistent with the terminating party's policies, provided however, that any closure and/or termination will be effective only after the Bank has had reasonable time to act on such notice.

The Bank shall only be required to process requests or Instructions for transactions that the Bank reasonably estimates will be completed prior to the date of closure of the Account or termination of the relevant Service, but shall not be precluded from completing a request or Instruction received by it prior to the date of the closure or termination. Any such closing or termination shall not affect the Customer's liabilities to the Bank arising prior to, or on, such closing or termination, all of which shall continue in full force and effect. Notwithstanding anything to the contrary in any Service Terms, upon the closing of an Account, all Services linked to such Account are simultaneously terminated (unless otherwise specifically agreed to by the parties). In the absence of Instructions from the Customer on transfer of monies standing to the credit of an Account that is being terminated, the Bank may issue a cashier's check and send it to the address of the Customer on the Bank's record.

15. Account Disclosures.

15.1 Rejection of Funds; Reversal of Erroneous Postings.

- (a) The Bank may return or refuse to accept all or any part of a deposit or credit to an Account, at any time, and will not be liable to the Customer for doing so, even if such action causes outstanding Items to be dishonored and returned, or payment orders to be rejected.
- (b) The Bank may reverse any transactions posted to the Account if it determines such posting was made in error and that Customer was not entitled to the funds posted.

15.2 Withdrawal. The Bank may refuse to allow withdrawals from Accounts, may block or suspend an Account, or perform any other function in certain circumstances, including where: (i) there appears to be a dispute relating to an Account, including disputes regarding the persons

authorized to issue Instructions; (ii) as required by applicable law, legal process affecting the Account, or order of any relevant government regulatory, judicial or tax authority, including a levy or restraining notice; (iii) the Account is being used as collateral to secure indebtedness to the Bank or its affiliates; (iv) documentation requested by the Bank has not been presented; or (v) the Customer fails to pay its indebtedness to the Bank or its affiliates when due.

15.3 Payable Branch; Deposits Outside of the U.S. Any amount standing to the credit of any Account with the Bank is payable exclusively at a branch in the country at which the Account is held; however, payment may be suspended from time to time in order to comply with any applicable law, governmental decree or similar order, in any jurisdiction, for the time period affecting the Bank, its officers, employees, affiliates, subsidiaries, agents or correspondents. The Customer acknowledges that deposits held in a branch of the Bank located outside the United States are not payable in the United States and: (i) are not insured by the Federal Deposit Insurance Corporation or any other United States governmental agency; (ii) are subject to cross-border risks; and (iii) have a lesser preference as compared to deposits held in the United States in the event of a liquidation of the Bank.

15.4 Commissions and Rebates. In connection with the provision of any Service by the Bank to the Customer, the Bank may from time to time receive commission, rebate or similar payments from other banks or third parties.

16. Governing Law and Procedure.

16.1 Governing Law. The Account Terms, the relevant Account Documentation and the rights and obligations of the Customer and the Bank in respect of each Account shall be governed by and construed in accordance with the laws of the jurisdiction in which the branch holding the relevant Account is located.

16.2 Waiver of Jury Trial; Limitation of Claims. The Customer and the Bank hereby knowingly, voluntarily and intentionally irrevocably waive, to the fullest extent permitted by applicable law, all right to, and will not seek, prejudgment interest and a trial by jury in any action, proceeding or counterclaim, of whatever type or nature, arising out of these Account Terms, the Account Documentation or the relationship established hereby. Any claim in connection with any Account or Service, unless a shorter period of time is expressly provided, must be brought against the Bank within two (2) years of the occurrence of the event giving rise to the claim.

16.3 Venue. In relation to each Account, the courts of the country, state or province in which the branch or affiliate of the Bank at which the Account is held shall have exclusive jurisdiction to settle any disputes that arise out of or are connected with the Account Terms, the Account Documentation and/or the Account and the Customer agrees to submit to the jurisdiction of such courts and waive any objection to venue or their convenience as a forum.

17. Miscellaneous.

17.1 Languages. If the Account Terms, Account Documentation or Service Terms are translated into, or appear in a language other than English, the English language version shall control.

17.2 Successors and Assigns. The Account Terms, Service Terms and Account Documentation will be binding on each of the parties' successors, assigns and transferees. The parties agree that neither party may assign or transfer any of its rights or obligations under the Account Terms, Service Terms or Account Documentation without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed; except that the Bank may assign or transfer the Account Terms, Service Terms and Account Documentation (a) to any affiliate or subsidiary of the Bank, or (b) in connection with a merger, reorganization or other restructuring involving the Bank or its business; upon notice to the Customer, and the Customer hereby consents to the same.

17.3 Order of Precedence. Any terms of any supplement, amendment, agreement, Service Terms or notice that are inconsistent with a provision of the Account Terms or the Account Documentation shall supersede such provision of the Account Terms or the Account Documentation for purposes of the particular Account or Service that is the subject thereof. The Account Terms and Account Documentation supersede and replace any other account conditions previously sent to the Customer.

17.4 Interpretation. Section and subsection headings are for convenience only and shall not affect the meaning of the Account Terms, the Service Terms and any Account Documentation. References to Schedules, Sections, Subsections and Clauses are to Schedules, Sections, Subsections and Clauses of the Account Terms, the Service Terms and any Account Documentation. Words in the singular import the plural and vice versa. If any provision of the Account Terms, the Service Terms and any Account Documentation shall be held to be illegal, invalid, or unenforceable the validity of the remaining portions of the Account Terms the Service Terms and any Account Documentation shall not be affected. The term "including" shall in all cases mean "including without limitation" unless otherwise indicated. The term "affiliates" shall mean with respect to any entity, an entity, whether directly or indirectly, that controls, is controlled by, or is under common control with that entity. The term "applicable laws" or similar terms shall mean any law, statute, order, decree, rule, injunction, license, consent, approval, agreement, guideline, circular or regulation of a government authority.

17.5 Compliance; Transaction Screening. The Customer shall comply with all applicable laws and with the Bank's policies notified to the Customer. The Bank is required to act in accordance with Bank policies, the laws of various jurisdictions relating to the prevention of money laundering and the implementation of sanctions, including economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State. The Bank is not obligated to execute payment orders or effect any other transaction where a party to the transaction is a person or entity with whom the Bank is prohibited from doing business by any law applicable to the Bank, or in any case

where compliance would, in the Bank's opinion, conflict with applicable law or market practice or its own policies and procedures. Where the Bank does not execute a payment order or effect a transaction for such reasons, the Bank may take any action required by any law applicable to the Bank including freezing or blocking funds. Transaction screening may result in delays in the posting of transactions and/or funds availability. The Bank may direct the Customer (a) to make changes to the activity in the Customer's Accounts, including to cease and desist from using the Accounts for particular types of transactions or for transactions involving particular parties from time to time, and (b) not to use the Accounts to send payments with certain characteristics. The Customer agrees to comply with such directions.

17.6 Amendments; Supplements; Waivers. All amendments must be in writing. The Account Terms may be amended or supplemented on notice to the Customer, including by terms contained in any Service Terms or Account Documentation. The Service Terms may be amended or supplemented on notice to the Customer. These amendments or supplements may impose restrictions on the Accounts and Services, as the Bank deems necessary in the course of its business, and will be effective on notice to the Customer or at such other time to be specified in the notice; provided that amendments or supplements that are required by law may be implemented immediately or as required by law. By signing an Account signature card, Account application or similar document or by using or continuing to use any of the Accounts or Services, the Customer agrees to the Account Terms, the Account Documentation, Service Terms and any amendments or supplements, as applicable.

The Bank may waive any of provision of these Account Terms, the Account Documentation or the Service Terms, but such waiver shall apply only on that occasion. Such waiver shall not constitute a waiver of any other provision of the Account Terms, the Account Documentation or the Service Terms. Any such waiver shall not affect the Bank's right to enforce any of its rights with respect to other customers or to enforce any of its rights with respect to later transactions with Customer and is not sufficient to modify the terms and conditions of the Account Terms, the Account Documentation or the Service Terms. The rights and remedies in the Account Terms, the Service Terms and any Account Documentation are cumulative and are not exclusive of any other rights or remedies provided by applicable law.

17.7 RESERVED.

17.8 Internet Services; Notice of Claims. The Customer agrees at its sole expense: (i) to advise each of its employees, officers, agents or other persons accessing any Service by or on behalf of Customer ("Users") of their obligations under the Account Terms, Account Documentation or under any Service Terms or ancillary Service material, including the obligation to refrain from using the Service via the Internet in the countries identified by the Bank; and (ii) to provide the Bank with all information reasonably necessary to setup and provide Services for the Customer, including advising the Bank of the countries from which Users will access any Service via the Internet.

17.9 Recordings. To the extent permitted by applicable law, the Customer acknowledges that the Bank may record and monitor all electronic communications (e.g., telephone and email communication) for the purposes of ensuring compliance with the Bank's legal and regulatory obligations and the Bank's internal policies. The Customer shall notify and obtain their employee's consent to such recording and monitoring where required by applicable law.

17.10 Instructions. Instructions may be sent to the Bank using such means as the Bank may permit from time to time. All Instructions, whether Items, payment orders or otherwise, are subject to applicable laws, and rules, policies, operations and market practices of the applicable clearing or settlement systems or payment networks.

17.11 Electronic Copies. The Bank may retain copies (paper, electronic or otherwise) of any documents or Items relating to the Accounts and Services in a form preserving an image of any such documents or Items, including signatures, or a regular business record and discard the original documents or Items. The Customer hereby waives any objection to the use of such records in lieu of their paper equivalents for any purpose and in any forum, venue or jurisdiction, including objections arising from the Bank's role or acquiescence in the destruction of the originals.

17.12 Intellectual Property. All intellectual property rights in or relating to a Service, including any trademarks, service marks, logos, and trade names used in conjunction with a Service are the property of the Bank or its licensors and are protected by applicable copyright, patent, trademark and other intellectual property law. Except as provided herein, the Customer shall not reproduce, transmit, sell, display, distribute, establish any hyperlink to, provide access to, modify, or commercially exploit in whole or in part any part of a Service, without the prior written consent of the Bank. Further, Customer shall not make any public announcements (including interviews) or publish any promotional or marketing materials, publicity or press releases, customer listings, testimonials or advertising in relation to the Accounts or Services or the subject matter of these terms and conditions without obtaining the prior written approval of Bank.

17.13 Know Your Customer. To assist in the prevention of the funding of terrorism and money laundering activities, applicable law may require financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for the Customer: when the Customer opens an Account, the Bank may ask for the Customer's name, address, date of birth (for natural persons), and/or other information and documents that will allow the Bank to identify the Customer. The Bank may also request and obtain certain information from third parties regarding the Customer. For purposes of this provision, the Customer, to the extent required by applicable law, shall include any Authorized Person or signatory on an Account.

Information. To fulfill the Bank's "know your customer" responsibilities, the Bank will request information from the Customer from time to time, inter alia, regarding the Customer's organization, business, Third Parties and, to the extent applicable, Authorized Persons and beneficial owner(s) of the Customer, the Customer's customers, and their beneficial owners, including relevant natural or legal persons, and the Customer shall procure and furnish the same to the Bank in a timely manner. The Bank may also request further information and/or documentation in connection with the provision of the Accounts or Services. Any information and/or documentation furnished by the Customer is the sole responsibility of the Customer and the Bank is entitled to rely on the information and/or documentation without making any verification whatsoever (except for the authentication under the security procedures, as applicable). The Customer represents and warrants that all such information

and/or documentation is true, correct and not misleading and shall advise the Bank promptly of any changes and, except as prohibited by applicable law, the Customer agrees to provide complete responses to the Bank's requests within the timeframes specified. The Customer will notify the Bank in writing if any Accounts or monies it holds or places with the Bank are subject to restrictions or otherwise held or received by the Customer in a capacity other than previously disclosed to the Bank, including monies being held for the benefit of third parties, whether as fiduciary or otherwise, monies subject to encumbrances, monies received as intermediary, processor or payment service provider, or arising from undisclosed business or similar sources. The Bank may, at its sole discretion and subject to such further conditions as it may impose, including execution of further documentation in form and manner acceptable to the Bank, permit the holding of such Accounts or deposits or receipt of funds. Unless prohibited by applicable law, the Customer agrees to promptly disclose to the Bank activity in the Customer's Accounts that is suspicious or violates applicable laws or sanctions.

If the Customer fails to provide or consent to the provision of any information required by this Section, the Bank may close any Account or suspend or discontinue providing any Service without further notice.

17.14 Click-Thru and Electronic Signatures. The Bank may make Service Terms and Account Documentation available to the Customer via electronic means (including by posting on a Bank website or electronic signature platform). The Bank may request that an Authorized Person "click" or electronically sign to indicate the Customer's approval of such terms. The Customer agrees that the act of "clicking" its acceptance or applying its electronic signature (or any similar act which has the same effect) with respect to any such Service Terms or Account Documentation will be evidence of Customer's acceptance of such Service Terms and Account Documentation, to the same extent, and with the same force and effect, as if Customer had manually executed a written version of such Service Terms and Account Documentation. To the extent that provisions in the Contract conflict with such Service Terms and Account Documentation, the provisions of the Contract shall supersede the conflicting provisions of such Service Terms and Account Documentation to the extent that such conflicting provisions are not legally required for the Bank to provide Accounts and Services.

18. Interpleader; Reimbursement.

18.1 Interpleader. The Bank may apply to an appropriate court for resolution of any dispute relating to the Customer's Accounts, including any dispute: (i) regarding the ownership of or entitlement to the funds; (ii) regarding the persons authorized to issue Instructions or act on behalf of the Customer; or (iii) by or amongst persons authorized to act or purportedly authorized to act on behalf of the Customer. If permitted by the court, the Bank may pay funds held by the Bank for the account of the Customer into the court pending resolution of such dispute.

18.2 Reimbursement. To the extent permitted by the Constitution and laws of the State of Texas, and as authorized by Section 1.17 B of the Negotiated Terms and Conditions, listed as Exhibit A of the Contract between the Bank and the City of Austin, the Customer agrees to reimburse the Bank for any expenses, including reasonable legal and attorney's fees that the Bank incurs because of any such dispute between Customer and a third party or any dispute over what persons are authorized to represent or act for the Customer.

19. Provisional Recredit.

In connection with any dispute regarding an Account, the Bank may choose to credit the Account pending completion of the Bank's investigation of the dispute. If the Bank determines that the Customer is not entitled to such credit, then, the Bank may reverse the provisional recredit to the Account, even if that reversal results in an overdraft.

ADDENDUM TO ACCOUNT TERMS UNITED STATES OF AMERICA

V1.11_07_22_20

Accounts maintained by the Customer with the Bank are subject to the Bank's Account Terms. This addendum ("Addendum") amends or supplements the Account Terms with respect to Accounts maintained in the United States of America ("U.S.") and to Services provided in connection with such U.S. Accounts, regardless of the location where Services are provided. Capitalized terms used in this Addendum, and not otherwise defined, have the meanings set forth in the Account Terms. By using any Account maintained in the U.S., the Customer acknowledges receipt of, and agrees to be bound by, the Account Terms which includes this Addendum, each as may be amended or supplemented from time to time.

Section 2 of the Account Terms (Instructions; Security Procedures) is amended by adding the following provision:

- 2.3 The Customer represents and warrants to the Bank that the Customer has not requested funds transfer security procedures other than those expressly agreed by the Customer and the Bank.

Section 3 of the Account Terms (Deposits) is amended by adding the following provisions:

- 3.4 Verification; Adjustments. Receipts issued by the Bank for deposits are based solely on the amounts stated in the deposit ticket. Credits for Items received for deposit or collection (whether or not accompanied by a deposit ticket) are subject to verification and the Bank's receipt of final payment of deposited Items. The Bank may make adjustments to the Account for any errors appearing on deposit tickets or occurring during processing or otherwise, but the Bank has no obligation to do so for *de minimis* discrepancies.
- 3.5 Foreign Currency Items. The Bank may handle Items drawn on a non-U.S. bank or Items payable in a foreign currency on a collection basis, not for deposit, even if the Bank has received the Items in a deposit. The Customer may not receive provisional credit for such Items or, if provisional credit has been given, the Bank may revoke it. Credit for Items payable in a foreign currency will be converted into U.S. dollars at a foreign exchange rate and spread, and at such date and time, as the Bank determines in its discretion.
- 3.6 Endorsements. Endorsement must be placed on the back of Items only in the area within 1.5 inches from the trailing edge of the Item. The trailing edge of the Item is defined as the left-hand edge of the check looking at it from the front. If the Customer is authorized in writing to endorse Items on the Bank's behalf, the Customer agrees to comply with the endorsement standards of the Bank.
- 3.7 Encoding. If the Customer encodes information on an Item, the Customer warrants to the Bank and to all other collecting and paying banks of that Item that it is properly encoded and the Customer will be liable for losses related to encoding errors, including any loss due to delay in processing caused by an encoding error.
- 3.8 Return or Charge Back. The Customer should not use carrier documents (Items placed inside envelopes) in either high-speed forward or return cash letters. The Bank may charge the Account for Items returned unpaid to the Bank or for claims based on asserted unauthorized signatures, endorsements or alterations.
- 3.9 Collections. The Customer agrees that the Bank may collect any Item deposited to Customer's Account by electronic means. The Bank has no duty to inspect such Item during the deposit and collection process.
- 3.10 Variance. The Bank may agree with other banks and clearing houses to vary procedures regarding the collection or return of Items, and to vary applicable deadlines, to the maximum extent permitted by applicable laws, and rules, policies, operations and practices of the applicable clearing or settlement systems or payment networks (collectively "Rules & Regulations").
- 3.11 Substitute Checks. The Customer will not deposit any substitute checks (that are not returned Items) unless the Bank expressly agrees to accept such Items for deposit. In the absence of the Bank's express agreement, the Customer will be solely responsible for any loss or claim in connection with its use of substitute checks.
- 3.12 Night Depository Deposits. The Bank is not liable for any deposit made through the use of the Bank's night depositories until the Bank issues a written acknowledgement of the deposit. The Bank's count of the amount deposited in a night depository will be conclusive. The Customer is solely responsible for any loss that may be incurred before the Bank verifies the contents of the deposit.
- 3.13 Remotely Created Checks. If the Customer deposits a remotely created check ("RCC"), as such term is defined in Federal Reserve Regulation CC, the Customer warrants to the Bank, with respect to each RCC, that the person on whose account the RCC is drawn, authorized the issuance of such RCC in the amount and to the payee stated on the RCC. The Customer authorizes the Bank to debit the Customer's account for any claim or return based upon an unauthorized RCC and the Customer agrees to indemnify and hold the Bank harmless from and against any claims, liabilities, costs and expenses (including attorneys' fees) resulting directly or indirectly from any breach of the foregoing warranty.
- 3.14 Electronically-Created Items. The Customer should not deposit electronically-created items ("ECIs") to its account, as such term is defined in Federal Reserve Regulation CC. ECIs are included in the definition of an Item. If the Customer does deposit an ECI, the Customer authorizes the Bank to debit the Customer's account for any claim, return or adjustment related to the ECI, and the Customer agrees to indemnify and

hold the Bank harmless from and against any claims, liabilities, costs and expenses (including attorneys' fees) resulting directly or indirectly from the Customer's deposit of the ECI.

- 3.15 ATM Cards. The Bank may issue one or more automated teller machine ("ATM") cards ("Cards") and personal identification numbers ("PINs") to Customer's employees or agents for use in initiating certain Account transactions at Bank owned ATMs. Unless otherwise agreed by Bank, Customer agrees that Cards will be used only at ATMs owned by the Bank and Customer shall be liable for any transactions and fees resulting from the use of such Cards. The Customer agrees that the types of transactions offered through the use of any Card may be limited by the Bank, in its sole discretion. The Bank may cancel any Card at any time and for any reason, and will notify Customer of such cancellation. The Customer agrees to obtain possession of and return to the Bank or destroy all cancelled Cards. If the Customer believes a Card or PIN has been lost or stolen, the Customer shall immediately contact the Bank's ATM call center. All ATM transactions are subject to verification. Any deposit transaction through an ATM that is not made on a business day or made after the Bank's designated cut-off time will be processed on the Bank's next business day.
- 3.16 Internet Gambling. The Customer agrees not to conduct any transactions through the Account that are directly or indirectly related to unlawful Internet gambling, including the acceptance or receipt of any funds or deposits in connection therewith. The term "unlawful Internet gambling," as used in this section, shall have its meaning set forth in 12 C.F.R. Section 233.2(bb).

Section 4 of the Account Terms (Payment of Items) is hereby amended by adding the following provisions:

- 4.5 Cashing Items. The Bank may, in its discretion, cash Items drawn on an Account when presented by the holder. If a holder who is not a deposit customer of the Bank presents an Item drawn on the Account for cash, the Bank may refuse to cash the Item, or may charge the holder a fee for cashing the Item unless otherwise agreed to by the Bank and only within the parameters as agreed.
- 4.6 Signatures. If the Customer establishes an Account which purports to: (i) require two or more signatures on Items drawn on the Account, or (ii) limits the amount for which an Item can be issued, the Customer acknowledges that any such requirements are solely for the Customer's own internal control purposes. The Customer agrees that, provided that the Bank follows its usual and customary procedures for processing and paying Items, the Bank will not be liable for paying any Item (a) lacking the required number of signatures, or (b) in an amount exceeding the applicable limit.
- 4.7 Fraudulent Items. The Bank provides Services to which the Customer may subscribe, such as Positive Pay and Reverse Positive Pay, which are reasonably designed to prevent payment of unauthorized or altered Items. Customer agrees that failure to use such Services will constitute Customer negligence contributing to the making of an unauthorized signature or the alteration of an Item, and the Customer will assume the risk that Items paid against its Account may be unauthorized or altered. In that event, the Customer will be precluded from asserting any claims against the Bank for paying any unauthorized, altered, counterfeit or other fraudulent Items. The Bank shall not be required to re-credit Customer's Account or otherwise have any liability for paying such Items to the extent such Services would likely have prevented such loss.
- 4.8 Obscured Endorsements. To the extent allowed by Texas law, the Customer assumes responsibility for losses that the Customer or the Bank may incur as the result of processing delays caused by the Customer's: (i) issuance of an Item in such a manner that information, marks or bands on the back of the Item obscure endorsements; or (ii) placement of an endorsement on the back of the Item which obscures other endorsements.
- 4.9 Negotiation Outside of U.S. If an Item is transferred or negotiated outside of the U.S. and is subsequently sent to the Bank for deposit, collection or payment in the U.S., the Customer shall be deemed to make, to the Bank, the transfer and presentment warranties under the Rules & Regulations, as if such Item were negotiated or otherwise transferred in the U.S.
- 4.10 Stop Payments. A stop payment Instruction from the Customer will be effective with respect to an Item if: (i) the Bank has a reasonable opportunity to act on such Instruction prior to its payment or encashment, which shall be at least one (1) full Business Day following the Business Day on which the Bank received the Instruction; and (ii) the Instruction is in the form required by the Bank, the information is complete and is delivered to the location designated by the Bank. For purposes of this Section, "Business Day" means a day on which the Bank is generally open for business in the jurisdiction where the Account is maintained. Stop payment Instructions, unless otherwise provided, will be valid for one (1) year and will automatically renew up to six (6) additional years unless the Bank receives Customer's revocation of a stop payment Instruction. The Customer may request, through the Bank's call center or other authorized representative, a non-renewable stop payment, which will be effective for a 180-day period. The Bank shall not be liable for any Item properly paid or cashed prior to the effective time of a stop payment request. The Customer acknowledges that a stop payment instruction does not limit or vary its obligation to pay the subject Item and, notwithstanding a stop payment instruction, the Bank may properly pay such an item to a person entitled to enforce it.

- 4.11 Standard of Care. Any Item issued by the Customer drawn on its Account shall be deemed to be endorsed in the name of the payee if: the Item is endorsed or deposited into an account in a name that is substantially similar to that of the payee; the payee is a fictitious person; the Customer was wrongfully or erroneously induced to issue the Item payable to the stated payee; the deposit of the item was accomplished by an employee entrusted with responsibility for the Item or person working in concert with such an employee; or the Customer or payee failed to act with ordinary care with respect to the Item. The Bank shall not be liable for any loss caused by the alteration or unauthorized signature or endorsement on any Item issued by the Customer, unless the Customer establishes that the Bank failed to handle the Item with ordinary care, and that such failure substantially contributed to the loss. If the Bank's failure to act with ordinary care substantially contributed to the loss on the item, the loss shall be allocated between the Customer and the Bank based upon the extent to which their respective failures to exercise ordinary care contributed to the loss. The Bank may process any Item by electronic means and is not required to inspect the Item paid by automated payment processing.

Section 5 of the Account Terms (Funds Transfer Instructions) is amended by adding the following provisions:

5.4 Foreign Exchange.

...

(d) If the Bank accepts a funds transfer Instruction issued in the Customer's name for payment from its Account in the Account Currency to a beneficiary account the Bank determines is a Non Account Currency account, the Bank is authorized in its discretion to enter into a foreign exchange transaction to convert the Account Currency funds into an amount of the relevant Non-Account Currency of such beneficiary account and complete the funds transfer as provided in Section 5.4(a) above.

- 5.6 Funds Transfer by Check. If the Customer, through the Bank's funds transfer services, requests that payment be made by check, the Customer authorizes the Bank to debit the Customer's Account on receipt of the Instruction and to issue a check as agent for the Customer in accordance with the Instruction. If the Customer requests the Bank to place a stop payment on the check before the check has been presented for payment, such request must be clearly identified as a stop payment request, including the reference number given for the transaction, and it must be received by the Bank at a time and in a manner designated by the Bank from time to time. If the check is not presented for payment within one hundred eighty (180) days after issuance, the Bank may place a stop payment on the check and transfer the funds back to the Account.

- 5.7 Credit Entries Received Through Automated Clearing House (ACH) System. Credit given by the Bank to the Customer for an ACH credit entry shall be provisional, until the Bank receives final payment. If the Bank does not receive final payment, the Bank may revoke the provisional credit and charge back the amount of the entry to the Account, or obtain a refund from the Customer, in which case the originator of the credit entry shall not be deemed to have paid the Customer the amount of such entry. The Bank shall not be obligated to notify the Customer of the receipt of a payment order or ACH entry for credit or debit to an Account.

- 5.8 Same Day Amend and Cancel. The Customer may subscribe to a service to enable same day amendment and cancellation of payment orders. All cancellation or amendment messages sent to the Bank shall be in the format specified by the Bank and must be received by the Bank no later than such time as may be established by the Bank upon notice to the Customer.

- 5.9 Priority/Timed. The Bank will determine the order in which it processes payment orders. If the Customer's payment order bears the codeword "PRIORITY" in such field as the Bank specifies, the Bank will use reasonable efforts to execute such payment order in advance of the Customer's standard payment orders. If the Customer's payment order bears the codeword "TIMED" in such field as the Bank specifies, the Bank will endeavor, but will have no obligation, to process the payment order by the time requested by the Customer within the payment order. For "TIMED" payment orders, funds in the Customer's Account are reserved by the Bank on the payment value date until processed. For the avoidance of doubt, all payment orders are subject to the Bank's acceptance, and the Bank will have no liability for failure to process payments by the time requested by the Customer.

- 5.10 Real Time Payments. Payments received through the Real Time Payment System operated by The Clearing House Payments Company LLC ("RTP System") will be processed pursuant to the RTP Operating Rules and any other applicable Rules & Regulations, to which the Customer agrees to be bound. If the Customer receives a payment through the RTP System on behalf of another person or entity, such other person or entity must be a resident of, or otherwise domiciled in the United States. In the further transmission of any such payments, the Customer agrees to comply with all applicable US laws and regulations, including, without limitation, those administered by the US Office of Foreign Assets Control.

- 5.11 Messaging Standards. To the extent there is any inconsistency between a fund transfer financial messaging standard and the governing law set forth in Section 16.1, the governing law set forth in Section 16.1 will govern.

Section 6 of the Account Terms (Interest; Fees; Taxes) is amended by adding the following provisions:

- 6.4 Earnings Credit Account Analysis. The Customer may instruct the Bank to calculate and apply a credit (the "Earnings Credit") on eligible Accounts by calculating an earnings credit rate (the "ECR") to balances held in an Account (the "ECR Balance"). The ECR and ECR Balance are set out in the Account Statements. The Bank, in its sole discretion, may establish a threshold on the ECR Balance (the "Threshold") and apply (a) ECR to the portion of the ECR Balance that is below the Threshold and (b) interest to the portion of the ECR Balance that is above the Threshold. The Earnings Credit calculated for each billing period will be applied by the Bank as an offset (the "ECR Application") against Fees actually incurred by the Customer during the same billing period for the use of certain of the Bank's products or services. Fees eligible

for the ECR Application shall be determined by the Bank in its sole discretion. Any excess Earnings Credit remaining after the ECR Application expires immediately and will not be carried forward or backward in relation to the billing period in which the Fees are charged. If the Earnings Credit is insufficient to offset all Fees, the Customer remains responsible for paying all remaining Fees.

Section 7 of the Account Terms (Account Statements) is amended by adding the following provisions:

- 7.2 Images Sufficient. The Customer acknowledges that Account Statements and images of paid Items are available to it and are sufficient to allow it to make all examinations and reports of Account activity including errors, as required in this Section. The Bank is not required to return paid or cancelled Items with the Account Statement.
- 7.3 Obligation to Inspect. The Customer must notify the Bank in writing, within a reasonable period of time not to exceed 90 calendar days of the date of an Account Statement, of (i) the failure to receive the Account Statement, or (ii) any errors, unauthorized payments, charges, alterations, discrepancies or irregularities reported on the Account Statement ("Errors"). The Customer must notify the Bank in writing of any unauthorized, improper, or missing endorsements within six (6) months after the date of the Account Statement on which the Item was reported to have been paid. The Customer must provide the Bank with all information necessary for the Bank to investigate any claim based upon an endorsement or Error, and must provide all supporting evidence that the Bank requests. Failure to comply with the time frames set forth above shall be deemed conclusive proof that the Customer failed to exercise reasonable care and promptness in examining Account Statements and paid Items or identifying Errors and that such failure may cause subsequent loss to the Bank. If the Customer fails to comply with the notice requirements set forth above, the Bank is not required to reimburse the Customer for the Customer's claimed loss and the Customer shall be barred from bringing any action against the Bank.
- 7.4 Inactive Accounts. If an Account has no activity other than charges assessed or interest credited by the Bank for a period of six (6) or more months, the Bank is not required to provide a paper Account statement until additional activity occurs in the Account. If an Account has no activity other than charges assessed or interest credited by the Bank for a period of twelve (12) or more months, the Customer may be unable to access the Account until the Customer contacts the Bank. The Bank shall send a notice to the Customer address found on the Bank's books and records regarding such inactivity before the Customer's access to the Accounts are modified.
- 7.5 Advice Services. The Customer may subscribe to Bank services for the delivery of account-related information ("Advices") to a party designated by the Customer, including information relating to credits and debits to a Customer account, and the return or rejection of certain payments. Advices may be sent via SWIFT, electronic mail, facsimile transmission, ordinary mail, telephone, through internet sites, or as otherwise agreed by the parties. The Customer is responsible for maintaining the accuracy of the information that is required for delivery of Advices, including the address, telephone and/or facsimile number of the recipient and, if applicable, the messaging components and conditions that will trigger the transmission of the Advices.

Section 10 of the Account Terms (Agents; Information) is amended by adding the following provision:

- 10.4 Offshoring. Certain services may be performed by Bank or any affiliate, including affiliates, branches or units located in any country in which Bank conducts business or has a service provider. The Customer authorizes Bank to transfer Customer information to such affiliates, branches or units at such locations as the Bank deems appropriate. Bank reserves the right to store, access, or view data in locations it deems appropriate for the services provided.

Section 15 of the Account Terms (Account Disclosures) is amended by adding the following provisions:

- 15.5 Withdrawal Limitations on Certain Account Types. U.S. federal regulations limit the number of pre-authorized or automatic transfers or withdrawals or telephonic/electronic instructions (including check, draft, debit card or similar order payable to third parties) that can be made from a savings account (including a savings sub-account (as described below) and a money market deposit account) to a total of six (6) per calendar month or statement cycle or similar period. The Customer agrees to comply at all times with such restrictions. Exceeding these withdrawal limits may result in the Bank converting the savings account into a non-interest bearing demand deposit account, with any attendant changes in pricing and account terms and conditions. Further, the Bank is required by U.S. law to reserve the right to require at least seven (7) days' notice prior to a withdrawal from a savings account (including a savings sub-account) or an interest-bearing negotiable order of withdrawal account ("NOW Account").
- 15.6 NOW Accounts. The Customer, if eligible, may open a NOW Account. There is no limit on the number of withdrawals that the Customer may make from the demand deposit or NOW sub-account.
- 15.7 Administrative Subaccounts. The Bank is authorized, for regulatory reporting and internal accounting purposes, to divide an Account: (i) in the case of a demand deposit checking Account, into a non-interest bearing demand deposit sub-account and a non-interest bearing savings sub-account; (ii) in the case of a NOW Account, into an interest bearing NOW sub-account and an interest bearing savings sub-account, and, in both cases, to transfer funds on a daily basis between these sub-accounts in accordance with U.S. law at no cost to the Customer. The Bank will record the sub-accounts and any transfers between them on the Bank's books and records only. The sub-accounts and any transfers between them will not affect the Account number, balance requirement or use of the Account, except as described herein.
- 15.8 Savings Subaccounts. The Bank will establish a target balance for the Customer's demand deposit or NOW sub-account, which it may change at any time. To the extent funds in the demand deposit or NOW sub-account exceed the target balance, the excess will be transferred to the Customer's savings sub-account, unless the maximum number of transfers from the savings sub-account for that calendar month or statement cycle have already occurred. If withdrawals from the demand deposit or NOW sub-account exceed the available balance in the demand deposit or NOW sub-account, funds from the Customer's savings sub-account will be transferred to the demand deposit or NOW

sub-account up to the entire balance of available funds in the savings sub-account to cover the shortfall and to replenish any target balance that the Bank has established for the demand deposit or NOW sub-account. If a sixth transfer is needed during a calendar month or statement cycle, it will be for the entire balance in the Customer's savings sub-account, and such funds will remain in the demand deposit or NOW sub-account for the remainder of the calendar month or statement cycle.

- 15.9 Branch Designation. The Bank, for its administrative purposes may designate a branch of the Bank as the branch of record of an Account which may be different from the branch at which the Account is opened. This designation requires no action on the part of the Customer and will not change the Bank's operations, Services or customer support.
- 15.10 No Fiduciary Relationship. Bank's relationship with Customer concerning the Accounts is that of a debtor and creditor. No fiduciary, quasi-fiduciary or other special relationship exists between Bank and Customer or any third parties regarding the Accounts.

Section 16 of the Account Terms (Governing Law) is amended by replacing Section 16.1 with the following provision:

- 16.1 Except as otherwise agreed in writing by the Bank and the Customer, the rights and obligations of the Customer and the Bank in respect of each Account maintained in the U.S. shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its conflict of laws rules). Each of the Customer and the Bank irrevocably and unconditionally submits to the exclusive jurisdiction and venue of any State or Federal court sitting in Travis County, Texas over any action, suit, proceeding, claim or controversy arising out of or relating to the Account Terms which includes this Addendum. The rights and remedies of the Bank under this Addendum, the Account Terms, the Account Documentation, the Service Terms, and any other agreement by the Customer in favor of the Bank are in addition to the rights and remedies of the Bank under applicable law (as provided above in this Section), are cumulative and may be exercised successively or concurrently, and are retained by the Bank.

Section 16 of the Account Terms (Governing Law) is amended by adding the following provision:

- 16.4 In the event the Bank is required to remit funds to any state as abandoned property, the Account may be charged for fees in remitting funds to that state. In addition, the Bank may charge fees in connection with its handling of dormant funds and accounts.

Section 17 of the Account Terms (Miscellaneous) is amended by adding the following provisions:

- 17.15 When the Customer provides the Bank any information requested by the Bank under its "Know Your Customer" or Anti-Money Laundering or other compliance policies pertaining to any natural or other persons, the Customer represents and warrants to the Bank that the Customer has obtained that person's consent that the Bank may make continued use of that person's information in order for the Bank to discharge any of its responsibilities in connection with "Know Your Customer" or Anti-Money Laundering, or other compliance purposes.
- 17.16 Beneficial Ownership. Customer agrees to adhere to the FinCEN Customer Due Diligence final rule which requires certain entities to provide and certify beneficial ownership information to the Bank at 10% and provide information on a controller when opening a new USD account. The Bank is required to collect and validate certain information (e.g. Name, Address, DOB, SSN or Passport # for non US individuals) for new accounts impacted by the rule. If an entity is exempt from rule, the Bank may require documentation to support the exemption.
- 17.17 Payable Through Accounts. If the Customer is a bank or financial institution and is not organized under the laws of the U.S., it shall not permit its customers to conduct banking transactions in the U.S. through the Customer's Account, and shall not provide its customers with check stock, drafts, wire transfer capabilities or any other means which would enable its customers to draw on the Customer's Account. These types of arrangements are typically called "payable through accounts" and are prohibited under these Account Terms. The Customer acknowledges that the sale of U.S. dollar checks or drafts to third parties is prohibited without the express written approval of the Bank.
- 17.18 No Advice. The Customer acknowledges and agrees that the Bank has not provided and will not provide any investment, tax or accounting advice or recommendation in relation to the Accounts or any investments made under any Service.
- 17.19 ERISA Status. The Customer will notify the Bank in writing, reasonably in advance of the Account opening, if any Accounts or monies it holds or places with the Bank are subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), together with all the rules promulgated thereunder, or Section 4975 of the Internal Revenue Code, together with all the rules promulgated thereunder. The Bank may, in its sole discretion and subject to such further conditions as it may impose, including, without limitation, execution of further documentation in form and manner acceptable to the Bank, permit the holding of such Accounts or deposits or receipt of funds.
- 17.20 Additional Representation for ERISA Benefit Plans.
(i) If the Customer is or represents a "benefit plan," as defined in Section 3(42) of ERISA, and U.S. Department of Labor Regulations Section 2510.3-101, as modified by Section 3(42) of ERISA (together, the "Plan Asset Rules" and each such benefit plan investor, a "Benefit Plan"), or is acting on behalf of one or more Benefit Plans, the Customer represents and warrants that:
- (1) the Bank has not or will not provide advice with respect to the services obtained by the Benefit Plan.
 - (2) the Benefit Plan fiduciary (the "Plan Fiduciary") is independent of the Bank, and is not an individual acting for his or her own Individual Retirement Account, and such Plan Fiduciary is either (a) a bank as defined in Section 202 of the Investment Advisers Act of 1940 (the "Advisers Act"), or similar institution that is regulated and supervised and subject to periodic examination by a State or Federal agency; (b) an insurance carrier which is qualified under the laws of more than one state to perform the services of managing,

acquiring or disposing of assets of a Benefit Plan; (c) an investment adviser registered under the Advisers Act or, if not registered as an investment adviser under the Advisers Act by reason of paragraph (a)(1) of Section 203A of the Advisers Act, is registered as an investment adviser under the laws of the state in which it maintains its principal office and place of business; (d) a broker-dealer registered under the Securities Exchange Act of 1934, as amended; or (e) has, and will at all times have, total assets of at least U.S. \$50,000,000 under its management or control;

- (3) the Plan Fiduciary is capable of evaluating investment risks independently, both in general and with respect to the Accounts and Services;
- (4) the Plan Fiduciary is a "fiduciary" with respect to the Benefit Plan within the meaning of Section 3(21) of ERISA, Section 4975 of the Code, or both, and is responsible for exercising independent judgment in evaluating the receipt of Services by the Benefit Plan;
- (5) the Bank has not exercised any authority to cause the Benefit Plan to agree to these Account Terms; and
- (6) the Plan Fiduciary has been informed (a) that the Bank is not undertaking to provide impartial investment advice or to give advice in a fiduciary capacity in connection with the Services; and (b) of the existence and nature of the financial interests of the Bank, as disclosed in the Account Terms and Service Terms.

(ii) The representations and covenants in the above clauses are intended to comply with the U.S. Department of Labor's Reg. Sections 29 C.F.R. 2510.3-21(a) and (c)(1) as promulgated on April 8, 2016 (81 Fed. Reg. 20,997). If these regulations are revoked or repealed, these representations shall be deemed no longer in effect.

17.21 FDIC Part 370 Disclosure. If the Customer's Account is eligible for "pass through" deposit insurance from the Federal Deposit Insurance Corporation (the "FDIC") as set forth in the Federal Deposit Insurance Act and 12 CFR § 330, then the Customer acknowledges and agrees that if the Bank becomes insolvent or enters into receivership (hereinafter a "Bank Receivership"), the Customer will: (a) cooperate fully with the Bank and the FDIC in connection with determining the insured status of funds in each Account, and (b) provide the FDIC with the information that identifies each beneficial owner and its interest in the funds in each such Account within 24 hours of the Bank Receivership, unless it falls within one of the enumerated exceptions in 12 CFR 370.5(b). The information described in (b) must be sent to the Bank in the format specified by the FDIC (see: www.fdic.gov/regulations/resources/recordkeeping/index.html). The Bank shall provide the Customer an opportunity to validate its capability to deliver the information described in (b) in the format specified by the FDIC so that a timely calculation of deposit insurance coverage for the Account can be completed.

The Customer further acknowledges and agrees that following a Bank Receivership: (i) a hold will be placed on each Account once a receiver of the Bank is appointed so that the FDIC can conduct the deposit insurance determination and such hold will not be released until the FDIC obtains the necessary data to enable the FDIC to calculate the deposit insurance coverage for each Account; (ii) its failure to provide the necessary data to the FDIC may result in a delay in receipt of insured funds and legal claims against the Customer from the beneficial owners of the funds in the applicable Account; and (iii) failure to provide the data the FDIC requires may result in the applicable Account being frozen until the information is received, delaying receipt of FDIC insurance proceeds.

Notwithstanding other provisions in this Agreement, this section survives after the FDIC is appointed as the Bank's receiver, and the FDIC is considered a third party beneficiary of this section.

AVAILABILITY POLICY - FOR ACCOUNTS MAINTAINED IN THE U.S.

The Bank's policy is to make funds available to the Customer on the same, next or second business day after the day of deposit depending on the type of deposit and when the deposit is made as described below. If the Customer will need the funds from a deposit immediately, the Customer should ask the Bank when the funds will be available.

A. Determining the Day of a Deposit. If a deposit is made to an account on a business day before the Bank's cutoff time established for that location (which will be no earlier than 2 p.m. local time), then the Bank will consider that day to be the day of deposit. However, if a deposit is made after the cutoff time or on a day that is not a business day, then the Bank will consider the deposit to have been made no later than the next business day. For determining the availability of deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. Availability with respect to any deposit will be determined by the location of the banking center or other facility where the deposit was received. For deposits made at the Bank's automated teller machines (ATMs) the cutoff time is 11 p.m. Eastern Time unless otherwise noted on the ATM screen.

B. Same Day Availability. Funds from the following deposits made at a banking center or at an ATM that do not require deposit envelopes will be available on the business day the Bank determines the deposit is made:

- Cash;
- Wire transfers; and
- Electronic direct deposits to an account.

C. Next Day Availability. Funds from the following deposits are available on the first business day after the business day the Bank determines the deposit is made:

- U.S. Treasury checks that are payable to the Customer;
- Checks drawn on a Bank affiliate that holds the applicable account (excluding a Controlled Disbursement site); and
- At least, the first \$225 from a day's total deposits.

If the deposit is made in person to a Bank employee, funds from the following deposits are also available on the first business day after the business day the Bank determines the deposit is made:

- State and local government checks that are payable to the Customer, if a special deposit slip, available upon request at any Bank banking center is used;
- Cashier's, certified, and teller's checks that are payable to the Customer, if a special deposit slip, available upon request at any Bank banking center, is used; and
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to the Customer.

If a special deposit slip is not used, availability of funds from these deposits will follow the schedule identified in the Availability of Other Check Deposits section below.

D. Availability of Other Check Deposits. Generally, funds from all other deposits of checks drawn on banks (as defined in Federal Reserve Regulation CC) will be available no later than the second business day after the day of deposit. Checks that require special handling may receive delayed availability. The amount of funds available to the Customer will be reduced by the amount of any deposited check that is returned unpaid. If the Bank reprocesses the check, the funds will become available no later than the second business day after the business day in which the check is reprocessed.

E. Longer Delays May Apply. In some cases the Bank may not make all of the funds that are deposited by check available. Depending on the type of check deposited, funds may not be available as set forth above. However, the first \$225 of the aggregate deposit will be available on the first business day after the day of deposit.

If the Bank is not going to make all of the funds from a deposit available at the times shown above, it will notify the Customer and specify when the funds will be available. If a deposit is not made directly to a Bank employee, or if the Bank decides to take this action after the Customer has left the premises, the Bank will mail or otherwise send the notice to the Customer by the business day after the day of deposit.

Funds deposited by check may be delayed for a longer period under the following circumstances:

- The Bank believes a deposited check will not be paid;
- Deposited checks for all of the Customer's accounts total more than \$5,525 in any one day;
- The Customer redeposited a check that has been returned unpaid;
- The Customer has overdrawn one or more of its accounts repeatedly in the last six months; or
- There is an emergency, such as failure of communications or computer equipment.

In such circumstances, funds will generally be available no later than the seventh business day after the day of deposit. Inclement weather or transportation problems may lead to additional delays under certain availability schedules. Customer may have specific availability schedules related to a banking service.

F. Special Rules for New Accounts. If the account is a new account, the following special rules may apply during the first thirty days the account is open:

- Funds from deposits of the first \$5,525 of that day's total deposits of cashier's, certified, teller's, traveler's and federal, state and local government checks payable to the Customer will be available on the first business day after the day of deposit. The excess over \$5,525 will be available no later than the ninth business day after the day of deposit. If the deposit of checks (other than U.S. Treasury checks) is not made in person to one of the Bank's employees, the first \$5,525 may not be made available until the second business day after the day of deposit; and
- Funds from all other check deposits will be made available no later than the fifteenth business day after the day of deposit.

G. Large Dollar Deposits. The U.S. Federal Reserve Banks will not forward process any Item over \$99,999,999.99 and considers such Items as "non-cash items." Such Items should not be deposited in the Account. If Customer does deposit such an Item, the Bank may refuse to process such Item or handle it as a collection Item. If handled as a collection Item, Customer credit and availability will be deferred accordingly.

This Availability Policy and availability schedules may be changed without notice.

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JPMorgan Chase Bank, N.A. Member FDIC.

Consolidated Service Terms

J.P. Morgan Chase provides an array of treasury services to meet your business needs. This booklet contains important information about J.P. Morgan Chase solutions that we provide. If you would like to add a service that is covered in this booklet, please contact your Commercial Banking Representative

TREASURY SERVICES (United States)
Commercial Bank

Welcome to JPMorgan Chase Bank, National Association ("J.P. Morgan", "Chase", or "Bank"). We are pleased that you have decided to maintain a banking relationship with us. This Consolidated Service Terms booklet ("Booklet") contains the terms and conditions for certain cash management services ("Service Terms") J.P. Morgan may provide to you. By executing the Account Terms Acceptance Letter, Certificate Regarding Accounts, Business Signature Card, service implementation form or similar document, or by using or continuing to use any of the services referenced herein after receipt of this Booklet, you agree that the Service Terms included in this Booklet, in addition to the Account Terms and such supplements, amendments, notices and additional service terms provided to you from time to time will govern your existing and future deposit accounts maintained with us, in addition to those services that the Bank provides to you, as applicable.

This Booklet includes Treasury Services Service Terms applicable to all Commercial Banking customers. All Service Terms are subject to the Bank's Account Terms. Any modifications to this Booklet, including but not limited to any changes, amendments, deletions, and/or additions, will not be binding upon the Bank unless such modifications are acknowledged and agreed to in writing by an officer of JPMorgan Chase. JPMorgan Chase Bank, N.A. is organized under the laws of U.S.A. with limited liability.

We look forward to serving your business needs and thank you again for choosing Chase.

SERVICES FOR CUSTOMERS

- A. ACH Origination
- B. ACH Transaction Blocking & ACH Transaction Review
- C. Lockbox
- D. Coin & Currency
- E. Positive Pay, Reverse Positive Pay and Payee Verification
- F. Controlled Disbursements
- G. Image Cash Letter
- H. Check Print
- I. ACH Tax Payment
- J. Remote Capture Service Terms
- K. Electronic Channels

Service Terms – Consolidated Service Terms Booklet

The services described herein (each a "Service") are subject to the Bank's Account Terms (as may be amended from time to time), which are hereby incorporated by reference into each Service Terms. By using any of the Services described hereunder, the Customer acknowledges that it has received and agreed to the Account Terms, as supplemented by these Service Terms. Capitalized terms in the Service Terms, unless otherwise defined herein, shall have the meanings set forth in the Account Terms

A. ACH ORIGATION

The Automated Clearing House (ACH) is a batch processing payment system that U.S. banks use to exchange and settle credit and debit transactions on behalf of their clients or themselves. The origination of ACH Entries and the transmission and issuance of related transactions and information will be pursuant to these terms and the Operating Rules and Guidelines (collectively the "Rules") of the National Automated Clearing House Association. Capitalized terms used in this subpart, unless otherwise defined in this subpart shall have the same meanings as set forth in the Rules. The Customer and the Bank agree to comply with and be bound by the Rules as in effect from time to time, including without limitation, the provision making payment of a Credit Entry by an RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Credit Entry and the Customer acknowledges that it has received notice of such rule and of the fact that if such settlement is not received, the RDFI will be entitled to a refund from the Receiver of the amount credited and the Customer will not be deemed to have paid the Receiver the amount of such Credit Entry.

1. Service. Bank provides automated clearing house ("ACH") origination services that will enable Customer to do one or more of the following:

- originate ACH Debit Entries;
- originate ACH Credit Entries; and
- instruct the Bank to issue or transmit prenotifications, reversals, requests for return, notifications of change or other information pertaining to the Entries.

Origination of ACH Credit Entries and origination of ACH Debit Entries are two separate services and approval or set up for one ACH service does not automatically create the ability to utilize the other. The Rules and these Service Terms shall apply to all Entries, whether or not transmitted through an ACH Operator.

It is Customer's responsibility to provide Entries and instructions to Bank with all the necessary information to complete Customer's requested transactions. Customer agrees to transmit Entries to Bank in the manner, at the times and in accordance with approved media, content and format as agreed by Bank and Customer. Bank may reject or delay processing transactions or information if instructions are not complete or are inaccurate, contain an inactive Company ID or otherwise do not meet the criteria Bank specifies for acceptance. All requests to Bank must be received by Bank before Bank's established cut-off time in order for processing to commence on that ACH processing day. Any request that is incomplete or that Bank finishes receiving after the relevant cut-off time will be processed by Bank on the next day Bank processes ACH transactions. All transactions are subject to acceptance by Bank. Bank will notify Customer of any transactions or other transmissions that are rejected or returned. If Customer wants Bank to re-process those transactions or transmissions, Customer must correct them and re-submit them. Customer agrees to furnish Bank with copies of any authorizations or notifications, if requested, as well as any other information reasonably requested by Bank relating to Entries originated by the Customer. Customer shall provide Bank's auditors and other personnel with reasonable access at all reasonable times to the Customer's facilities, data and records relating to the initiation of Entries for the purpose of auditing Customer's compliance with these Service Terms and the Rules.

2. Security and Data Protection Procedures. All instructions received by Bank in Customer's name are subject to verification pursuant to mutually agreed security procedures. If Bank follows those procedures, Bank may process and transmit transactions or information in Customer's name. Unless Customer and Bank both otherwise agree, transmissions to Bank will be authenticated and/or encrypted using commercially reasonable security technologies meeting standards acceptable to Bank. If Customer uses a security procedure other than as described above, Customer acknowledges that Customer refused Bank's security procedure and chose another and Customer agrees to be bound by any transaction, whether or not authorized, issued in Customer's name and accepted by Bank in compliance with the security procedure Customer chose. If Customer elects not to utilize recommended message authentication and/or encryption technology, Customer assumes all responsibility for unauthorized disclosure or unauthorized access to Customer's data that occurs during transmission or while such data is in storage. Customer shall not disclose any Receiver's account number or routing number to any third party for such third party's use, directly or indirectly, in initiating a separate Debit.

3. Settlement and Exposure Limits. On the settlement date, Bank will credit Customer's account with Bank that Customer specifies for the total of:

- Customer's Debit Entries that Bank processed for settlement that day;
- RCCs issued for deposit to Customer's account on that day; and
- any returned or reversed Credit Entries.

Bank may delay the availability of funds deposited into Customer's account by Debit Entry or RCC until those transactions cannot be reversed in accordance with the Rules or applicable law.

Bank will debit Customer's account with Bank that Customer specifies for the total of Credit Entries processed in Customer's name and for any returned Debit Entries and RCCs. Bank may require Customer to pay Bank the amount of any Credit Entries on the date of transmission to Bank or otherwise prior to the settlement date. Bank also may require Customer to maintain collateral with Bank in an amount Bank specifies.

Bank may from time to time establish or revise maximum dollar limits for the total value of all outstanding files of Credit Entries and/or Debit Entries and RCCs that Bank will release on Customer's behalf. Bank may change or cancel the limits at any time without prior notice to Customer; although Bank will try to notify Customer before Bank does that.

- 4. Warranties;** Except as specified below, Customer will be deemed to make the same warranties to Bank as Bank makes pursuant to the Rules. In the case of an Entry to another account with Bank, warranties will be deemed to be given as of the time Bank first processes the Entry. Customer will not be deemed to warrant the power of the Bank under applicable law to comply with the requirements of the Rules or the conformity of Entries and other data Bank transmits to the file specifications contained in the Rules. The Customer further represents, warrants and covenants that (a) each Entry and RCC it originates will comply with all applicable U.S. laws and regulations and acknowledges that Entries may not be initiated that violate the laws of the United States, (b) unless Customer has identified itself to Bank as a Third Party Sender (as defined in Section 7) and obtained Bank's express consent to originate Entries as a Third Party Sender, Customer will not originate any Entries, or use any of its Company IDs to originate Entries, on behalf of third parties (including, without limitation, any affiliate of Customer), and (c) Customer will not permit a third party to originate Entries using a Customer account as the offset account unless Customer obtains Bank's express consent to do so.

Customer agrees to indemnify Bank and Bank's employees, officers, directors and agents, and hold all of them harmless from and against any and all claims, demands, losses, liabilities or expenses (including attorneys' fees and costs) resulting directly or indirectly from (a) Customer's breach of any warranty made under these Service Terms and (b) compliance by Bank and the RDFI with any request Customer makes for a cancellation, stop payment, reversal or recall of any Entry or any RCC created by Bank under Section 1 hereof.

Bank shall have no responsibility for any delay by any ACH Operator or RDFI in processing any Entry the Bank transmits to the ACH Operator or failure to process or credit or debit any such Entry.

- 5. Stop Payments; Reversals and Recalls; Rejections.** Customer's instruction to cancel, stop payment of, reverse or recall one or more Entries must be received by Bank in such time and manner as Bank specifies. Bank will process these transactions in accordance with Bank's procedures advised to Customer. Any reversal or recall initiated by Bank is subject to acceptance by the RDFI. Instructions to reverse or recall an ACH Credit Entry that are not initiated by Customer in time to meet the prescribed NACHA deadline for reversals may be originated by Bank as a Debit Entry; Customer shall obtain authorization from the Receiver in accordance with the Rules for any such Debit Entry and all other terms of these Service Terms applicable to Debit Entries shall apply. Entries or other instructions may not be amended or modified.

If Customer originates Debit Entries to an account or accounts at a financial institution that is not a Participating Depository Financial Institution in the ACH system (such account hereafter called a "Non-ACH Eligible Account"), all such Debit Entries will be rejected unless Customer subscribes to a service, subject to Bank's prior consent, pursuant to which Bank will process each such Debit Entry to a Non-ACH Eligible Account by preparing a remotely created check, as such term is defined in Federal Reserve Regulation CC (an "RCC"), on the Customer's behalf. The RCC will be drawn in the amount and on the Non-Eligible ACH Account of the individual or entity specified as the receiver in the Customer's instructions and will be deposited to the Customer's designated account with Bank. Such RCC will thereafter be processed through the check clearing system. If the Customer is using such service, the Customer hereby authorizes the Bank to create each RCC as described herein and the Customer warrants to the Bank, with respect to each RCC, that the person on whose account the RCC is drawn authorized the issuance of such RCC in the amount and to the payee stated in the RCC. The Customer authorizes the Bank to debit the Customer's account for any claim or return based upon an unauthorized RCC. All other terms herein related to Entries shall also apply to RCCs created under this Section. The Bank shall not create or process RCCs or other paper drafts in lieu of ACH Debits under any circumstances other than for Non-ACH Eligible Accounts and only when the Bank has consented to provide such service, even if the Customer includes an instruction in its file for the Bank to otherwise originate an RCC or paper draft.

- 6. Third Party Service Providers.** Customer may choose to use a third party service provider or service bureau to issue Entries or other instructions, handle returned Entries or perform other functions for and on Customer's behalf. If Bank accepts such Entries or other instructions, Customer will be bound by them. Customer is responsible for all actions taken or not taken by Customer's provider and Customer is responsible for all costs and expenses of Customer's provider.

- 7. Third Party Sender.** If Customer is a Third Party Sender, as such term is hereafter defined, (a) Customer warrants that the Originator has agreed to be bound by the Rules and has satisfied the obligations of an Originator under the Rules; (b) in any case where the Originator fails to perform its obligations under the Rules as an Originator, Customer shall indemnify, defend and hold Bank harmless from and against any and all claims, demands, losses, liabilities and expenses, including attorneys' fees and costs, that result directly or indirectly from the failure of the Originator to perform its obligations as an Originator under the Rules; (c) Customer agrees to cooperate with Bank regarding any request for information concerning the identity of any Originator; and (d) Customer represents, warrants and covenants that neither these Service Terms nor anything related to the ACH Origination Services violates, contravenes or is inconsistent with any of the terms, conditions or provisions of any agreement, understanding or arrangement between Customer and the Originator. Further, Bank will rely on Customer to evaluate the legitimacy of the Originators and their transactions originated by Customer and for ensuring that instructions do not involve illegal activities. Customer must notify Bank immediately if Customer suspects or become aware of any activity or transaction of an Originator that Customer believes may be of an illegal or illegitimate nature or that involves the proceeds of illegal activity or that was conducted, in part or whole, for the purpose of disguising the source of funds. Bank will be entitled at any time upon notice to Customer to decline to provide the ACH Origination Services, or terminate the provision of ACH Origination Services, for any Originator on whose behalf are originating Entries if Bank determines that there are excessive returns or reversals of Entries originated on behalf of such Originator or if Bank becomes aware of any information indicating suspicious, fraudulent or illegal

activity related to such Originator or for any other reason. As used herein, "Third Party Sender" means an entity that is not an Originator, that has authorized an ODFI or another Third Party Sender to transmit, for the account of the Third Party Sender or another Third Party Sender, (i) a credit entry to the account of a Receiver in order to effect a payment from the Originator (i.e., the third party on whose behalf the Third Party Sender is transmitting the entry) to the Receiver, or (ii) a debit entry to the account of a Receiver in order to effect a payment from the Receiver to the Originator (i.e., the third party on whose behalf the Third Party Sender is transmitting the entry). Without limitation of the foregoing, Third Party Senders include U.S. regulated financial institutions, brokers and other financial intermediaries as well as any other regulated or unregulated payment processors that are customers of the Bank and use their accounts to process payments for third parties (including affiliates of the Customer).

- 8. IAT Entries.** If Customer is originating Entries that are required to be formatted under the Rules as IAT Entries, Customer will comply with all applicable Rules relating thereto, and Customer will originate such Entries only through one of Bank's ACH origination channels that support IAT origination. Some of Bank's ACH origination channels do not accommodate IAT Entries; upon request, the Bank will advise Customer as to which of Bank's ACH origination channels can be used for IAT origination.

If a foreign currency conversion is performed by Bank in connection with an IAT Entry, Customer acknowledges that the foreign currency exchange rates fluctuate, and accepts the risk of such fluctuation, including fluctuations in rate between the time Customer submits the Entry Data Instructions and the time the transaction is executed and/or reversed, returned or recalled. Any payment returns and/or reversals will be credited to Customer's account in the currency in which Customer's account is denominated, and Customer is responsible for any rate fluctuations.

In the event of an erroneous or duplicate IAT Entry originated for payment to a receiving bank outside the United States, the rights of Bank and Customer with respect to reversal or recall of such Entry are subject to the laws, regulations and payment system rules of the receiving bank's jurisdiction.

Customer acknowledges and agrees that IAT Entries may be delayed in processing or posting due to the Bank's or RDFI's review of such Entries for OFAC compliance. Further, Customer understands and acknowledges that unlike PPD Credit Entries, there is no requirement under the Rules that IAT Credit Entries that are made available to an RDFI by its ACH operator by 5:00 pm on the banking day prior to the Settlement Date be made available to the Receiver at the opening of business on the Settlement date; cleared IAT Credit Entries must be made available no later than the Settlement Date of the Entry, but funds are not required to be available at opening of business on the Settlement Date.

- 9. Incorporation of Account Documentation; Termination.** The provisions of the account documentation, including terms and conditions governing the operation of business accounts and services, are incorporated into these Service Terms by reference. By acknowledging or signing the applicable account documentation or by using or continuing to use the ACH Origination Services, Customer agrees to these Service Terms. In addition to Bank's termination rights under the aforementioned documentation, Bank shall have the right to terminate or suspend these Service Terms and the Services upon notice to Customer in the event of the Customer's breach of the Rules.

B. ACH TRANSACTION BLOCKING & ACH TRANSACTION REVIEW

ACH Transaction Blocking is a Service that allows a Customer to block and return ACH debit and credit Entries originated to the Customer's account with the Bank. ACH Transaction Review allows the Customer to review ACH debit and credit Entries originated and posted to the Customer's account with the Bank and to instruct the Bank to return some or all of these transactions.

1. ACH Transaction Blocking:

- (a) **Service.** The Customer can select from a variety of authorization or blocking criteria and advise the Bank in a manner and form acceptable to the Bank. The Bank will return any blocked transaction indicating that the ACH debit was not authorized or that the ACH credit was refused.
- (b) **Company IDs.** If the Customer elects an option that blocks or allows ACH debits or credits from specified companies, the Customer must supply the Bank with the applicable ACH Company ID of the Originator as it appears on the Company/Batch Header Record. The Company ID will be the sole criterion for blocking debit and credit Entries (unless Customer has also set maximum dollar limits) and Bank will have no obligation to take any other steps to determine the identity of the Originator. The Customer will be solely responsible for obtaining the correct Company ID for each such Originator.

The Customer understands that Company IDs are not unique and that a Company ID may identify more than one Originator, and one Originator may have multiple Company IDs. The Customer understands that Company IDs are not a perfect filter and that transactions from Originators may be blocked or allowed if the Originator uses a Company ID other than the one Customer identifies. The Bank will not be responsible for transactions blocked or allowed in accordance with the instructions the Customer provides for the Company ID.

- (c) **Transactions Not Affected by Blocking.** ACH debit and credit blocks do not apply to certain transactions. The following types of ACH-related transactions will not be blocked:

- debits or credits to the Customer's account to offset any ACH credit or debit Entries originated by the Customer through Bank ;
- reversals of previously received ACH credit or debit Entries;
- returns or reversals by the RDFI of ACH debit or credit Entries originated by the Customer through the Bank;
- Reclamation Entries (debits);

- debits or credits to the Customer's account initiated by the Bank or Bank's agent or affiliate to correct processing errors, effect back valuations, make other adjustments or, with respect to debits, for fees, charges or other amounts the Customer owes the Bank or Bank's affiliates; and
- debits or credits to the Customer's account that the Bank posts pursuant to its internal procedures in order to comply with applicable law, regulations or payment system rules or guidance.

2. ACH Transaction Review:

- Service.** Customer shall use filter criteria available through the service to select the types or categories of incoming ACH debit and/or credit transactions it wishes to review or the Customer may elect to review all incoming ACH transactions subject to Section 2(d) below.
- Review and Return Process.** Based upon the filter criteria selected by the Customer, ACH transactions meeting that criteria will be made available for the Customer to review not later than a designated time on the banking day following the day on which the transactions are posted to the Customer's account. The details provided by the Bank for each Entry will include account number, dollar amount, company ID, receiver's name, standard entry class code and settlement date.
- The Customer shall advise the Bank by means of an agreed upon transmission method not later than the Bank's designated cut-off time on the same day as transaction information is made available of those transactions, if any, that are unauthorized and that the Customer wishes to return. The Bank is entitled to rely on any instructions which it receives and which it reasonably believes to be genuine. The Bank shall return all such transactions and make corresponding adjustments to the Customer's account to which the transactions had been posted. All transactions reported to the Customer as to which Bank does not receive a timely instruction from the Customer will remain posted or be returned based on the Transaction Review profile default decision setting established by the Customer.
- ACH Transactions Not Subject to Review.** The following types of ACH transactions will not be made available for the Customer's review and decisioning:
 - debits or credits to the Customer's account to offset any ACH Entries originated by the Customer through the Bank ;
 - reversals of previously received ACH Entries;
 - returns or reversals by the RDFI of ACH Entries originated by the Customer through the Bank;
 - Reclamation Entries;
 - debits or credits to the Customer's account initiated by the Bank or Bank's agent or affiliate to correct processing errors, effect back valuations, make other adjustments, or to comply with legal requirements or for fees or charges the Customer owes the Bank or Bank's affiliates; and
 - if the Customer is also subscribing to the ACH Transaction Blocking service, any transactions blocked and returned pursuant to that service.
- Certain Reviewed Transactions Maybe Returned/Posted Despite Instructions.** Certain transactions reviewed and approved by the Customer may nevertheless be returned by the Bank. This will happen if (i) there are insufficient funds in the Customer's account to cover the amount of an ACH debit or other charge, (ii) a stop payment was previously placed on the transaction, or (iii) the Bank determines the transaction must be returned for legal or regulatory reasons. Certain transactions that the Customer advises should be returned may nevertheless be posted by the Bank; these include ACH debits or credits to the Customer's account that the Bank posts pursuant to its internal procedures in order to comply with applicable law, regulations or payment system rules or guidance.

C. LOCKBOX

Lockbox is a remittance processing Service offered to customers to support their accounts receivables business needs. Through this service, the Customer's remittance deposits are sent to a Post Office Box and picked up by the Bank and delivered to or via courier for further processing and posting to the Customer's deposit account.

- Lockbox Service.** The Bank shall provide the Customer remittance processing and deposit services as described in these Service Terms (the "Service" or "Lockbox Service") to support its accounts receivables business needs. Through this Service, the Customer's remittances are sent to a designated post office box ("Post Office Box") and/or delivered to or via courier to the designated Bank location by the Customer. The Bank will maintain the Post Office Box for the Customer's remittances and will have unrestricted and exclusive access to the Post Office Box while providing the Lockbox Service. The Bank may direct the Customer to include specific codes or formats within its assigned address in order to ensure mail is identified correctly. The Customer is responsible for ensuring its customers' payments to Customer are properly addressed in order to prevent delays in processing. Customer agrees to instruct customers to not send cash to the Bank in connection with the Lockbox Service.

The Bank will collect all mail from the designated Post Office Box and deliver it to the Bank's lockbox processing site(s). The Bank will open the mail, process the remittance information and process the checks or cheques (collectively, "checks") eligible for this Service (the "Items") in accordance with the Customer's instructions and the Statement of Work and/or Service Guide (as such terms are defined below), if applicable. Upon completion of the remittance processing work, Bank will image the eligible Items and process them for credit to the Customer account or process for collection the Items received, except: (i) Items which the Customer has instructed the Bank in writing, and the Bank has agreed not to process; (ii) Items which the Bank believes should receive the Customer's special attention; (iii) Items for which the Customer is not the payee, unless (x) the Customer has instructed the Bank to accept all payees or (y) the Customer has provided proper authorization to process for credit or collection of such Items; and (iv) any other matter or merchandise received (collectively, "Remittance Processing"). The Bank will not process

such excepted Items or other matters or merchandise, but will forward them to the Customer unprocessed. The Bank assumes no responsibility for the inadvertent processing of Items excepted from processing. The Bank will, in accordance with the Customer's instructions, either (1) not process credit card payments and forward them to the Customer unprocessed or (2) process credit card payments as point of sale transactions, obtaining authorization as required by applicable card rules; provided, however, the Bank will not place phone calls for authorization of referrals or process credit transactions. The Bank shall not be deemed a merchant processor and shall not be liable for any data entry errors or any chargeback. The Bank assumes no liability for any matter or merchandise received through the Post Office which is not a depositable Item, including cash. Any failure by the Bank to process an Item other than as provided herein does not constitute a failure by the Bank to exercise ordinary care. The Customer irrevocably appoints the Bank (and all persons the Bank designates in connection with the Lockbox Service) to endorse Items with the Customer's name. The Customer shall be liable to the Bank as a general endorser on all Items processed by the Bank and shall be deemed to make all of the warranties of a transferor of such Item under applicable law.

- (a) The Customers requiring "Caller Service" or "Business Reply Mail Service" (as such terms are used by the United States Postal Services ("USPS")) or any similar service at the USPS or Canada Post Corporation ("CPC") for remittance collection must obtain prior approval from the Bank. Upon approval, the Customer will secure such services directly with the USPS or the CPC, as the case may be, and ensure the Bank is authorized to collect the mail. The Bank shall not be responsible for delays in processing due to the Customer's failure to pay the USPS or the CPC, as the case may be, for such services or any other action taken or not taken by the USPS or the CPC, as the case may be.
- (b) The Bank may, at its sole discretion, provide the Customer additional optional Services including, without limitation, Decision Manager (as defined below), non-deposit remittance Items (i.e., the Bank will process and deposit only Items that meet the Customer directed rules for deposit), early transmission of remittance data, customized grouping and sorting of Items (i.e., the Customer instructs the Bank to further group and sort the contents of its mail according to criteria specified by the Customer) and imaging and additional data capture requirements of remittance data to create customized transmission files and reporting (collectively, the "Value Add Services"). The Customer shall submit to the Bank a completed implementation requirements document (the "Statement of Work") instructing the Bank to perform the Value Add Services agreed to by the Customer and the Bank. The Customer may receive user guides and other materials ("Service Guides") setting forth the terms and conditions upon which such Value Added Services shall be provided to the Customer by the Bank. The Customer acknowledges and agrees that Remittance Processing and, if applicable, the provision of Value Add Services (collectively, "Pre-Deposit Processing") may result in Items not being deposited until completion of such Pre-Deposit Processing in accordance with Customer's instructions. Decision manager ("Decision Manager") is an exception workflow tool to which clients can subscribe. Upon the Bank's review of the mail and remittance information for Items that do not meet a Customer's specified requirements for deposit (e.g., check and invoice amounts do not match, incorrect payee name, incorrect amount, etc.) or reported as processing exceptions ("Exception Items"), the Bank will notify the Customer of such Exception Items by posting such Exception Items on a designated website or application. The Customer must communicate its decision for Exception Items within the deadline indicated in the Statement of Work. The Customer agrees that the Bank shall not deposit such Exception Items until the Bank receives an instruction from the Customer. If the Customer fails to provide an instruction within the timeline specified, the Bank will either return the Item unprocessed to the Customer or follow the default instruction specified in the Statement of Work.
- (c) If the amount of an Item written in words and figures differ, the Item will be processed for amount written in words. If the Item is accompanied by an invoice or statement and the amount on the statement matches the amount written in figures, and the Customer has requested, and the Bank has agreed, to process such Item for the amount written in figures, the Item may be processed for the amount written in figures. In the event the Bank processes the Item for the amount written in figures, the Customer indemnifies the Bank for any claim which may arise from that action.
- (d) The Service is limited to Items drawn on domestic banks so to the extent the Bank notices that any Items drawn on foreign banks have been deposited, such Items shall be forwarded to the Customer as unprocessable; provided, however, upon Customer's request, but at the sole discretion of the Bank, the Bank may process or collect foreign checks on behalf of Customer subject to terms and conditions in the Account Documentation.

- 2. **Availability Schedule.** The Bank will deposit eligible Items to the Customer's designated deposit account in accordance with the Bank's Availability Schedule provided to the Customer. The Customer agrees that Items that require special handling may receive delayed availability.
- 3. **Returned Items; Re-presentation.** If any Item is rejected, reversed, or returned to the Bank unpaid for any reason or there is a claim involving an Item deposited to the Customer Account, the Bank will charge back that Item, together with any fees or other amounts allowed on such claims or for returned Items, against the Customer Account, regardless of whether such debit causes an overdraft to the Customer Account. If, however, the Bank has been instructed in writing by the Customer to re-present Items which have been dishonored or returned to the Bank unpaid for reasons other than account closed, the Bank may do so automatically and without notice to the Customer, and the Bank reserves the same rights to debit the Customer Account should any such Items remain unpaid after the re-presentation.
- 4. **Original Documents; Image Storage.** Unless the Bank has agreed otherwise, the Bank will image all Items and associated remittances and retain original documents on site for no longer than fourteen (14) days. All original documents will be destroyed fourteen (14) days after processing. The Bank will store Imaged Items for a period of seven (7) years from the date of the applicable transaction regardless of any additional imaging service requested by the Customer. If the Customer elects, the Bank will provide images of the Items ("Imaged Items") received together with images of related documents ("Imaged Documents"), through a delivery media ("Delivery Media") at the intervals agreed upon between the Bank and the Customer. If the Customer elects storage of Imaged Documents, the Bank will store Imaged Documents for a period of thirty (30) days (Short Term Storage) to ten (10) years (Long Term Storage) from the processing date of the applicable transaction, per the Customer's selection. If the Customer elects to image and not store Imaged Documents with the Bank, such images will be delivered to the Customer through the Delivery Media.

- 5. Security for Imaged Items.** The Bank has specified Security Procedures for receiving and accessing Imaged Items, Imaged Documents and lockbox transaction data. The Bank is not obligated to send any images or data or allow access through the Delivery Media to any images or data which are not requested or accessed in accordance with the Security Procedures. The Customer acknowledges that once it has accessed images by any Delivery Media, persons having access to the Customer's computers and image archives may have access to the Imaged Items, Imaged Documents and lockbox transaction data.
- 6. Accuracy; Legibility.** The information delivered to the Customer through the Delivery Media will be the same as the information in the data entry file provided to the Customer for the applicable time period. If the data entry file contains errors, those errors will also occur on the Delivery Media. The Bank will provide images that are as legible as possible given the legibility of the underlying remittance documents and the selected Delivery Media. The Bank has no liability or responsibility for the condition of the original remittance items provided to the Bank, and it reserves the right to review and approve sample remittance items for legibility prior to providing this Service. The Customer is responsible for reviewing images obtained through the Delivery Media and to promptly notify the Bank of any images that are not clear.
- 7. Disclosures.** As between the Customer and the Customer's clients, if applicable, certain payments collected hereunder may be subject to various cut-off times and payment deadlines (the "Disclosures"). The Customer acknowledges and agrees that the Bank has no duty to inquire as to the content of any such Disclosures, is not bound by them, and makes no representations or warranties, explicitly or implicitly, regarding same. The Customer is responsible for ensuring that the processing and payment cut-off times established by the Bank are in compliance with the Disclosures and the Customer's responsibilities under applicable laws and regulations.

D. COIN & CURRENCY

Coin and Currency Services, also referred to as Cash Vault Services, provides coin and currency delivery and deposit services to companies that use large quantities of cash. With a nationwide vault network, Customers can place orders for coin and currency, make deposits and track activity by location through electronic reporting options.

1. Cash Orders

- 1.1. Placement of Cash Orders.** The Customer may issue written instructions for the Bank to release United States coin and currency ("Cash") to an armored courier service (the "Courier") as designated by the Customer in accordance with the Bank's guidelines ("Cash Order"). The Customer acknowledges that Cash Orders may be transmitted to the Bank only during such times as set forth in the guidelines. The Bank is authorized to debit the account of the Customer designated in the Cash Order for the amount set forth in the Cash Order. If the Bank has agreed to such an arrangement, the Customer may also place a Cash Order directly at one of the Bank's branch locations by issuing a check to debit the Customer's account at the Bank or as a "cash for cash" exchange. If there are insufficient funds in the designated account, the Bank is authorized to refuse the Cash Order, to fill a partial Cash Order or to debit the designated account even if such debit causes an overdraft, or to debit any other account of the Customer at the Bank.
- 1.2. Cash Order Limits.** The Bank and the Customer may agree to limit the amount of Cash that may be delivered pursuant to a Cash Order ("Cash Limit").
- 1.3. Discrepancies for Cash Orders.** All Cash Orders must be validated by the Customer within 24 hours of receipt. If a currency strap, coin bag or wrapped coin discrepancy is identified, the Customer may contact Cash Services Customer Support at 888-872-0517 to request a Cash Order Claim Form. The completed form and proper documentation must be sent to the Bank and post marked within 48 hours of receipt of the Cash Order. Any claims post marked after the 48 hour period may be denied and the Customer will have no right to refuse or receive an adjustment after such time period.
- 1.4. Cancellations and Amendments.** A Cash Order may be cancelled by the Customer telephonically, electronically or in writing by a person the Bank reasonably believes to be authorized to act on behalf of the Customer and only if the cancellation is received within a reasonable time before the Cash is delivered to the Courier ("Cancellation"). A Cash Order may only be amended telephonically and the Bank will not be responsible for any change in a Cash Order it has received. Any attempt to amend a Cash Order electronically may result in duplicate Cash being delivered.
- 1.5. Notice of Rejection/Execution.** If the Bank rejects a Cash Order request, it will promptly notify the Customer of the reason. The Bank will notify the Customer when it has executed a Cash Order. Unless, within three (3) business days after receipt of notification of the execution of a Cash Order the Customer notifies the Bank in writing that a Cash Order was unauthorized or otherwise unenforceable against the Customer, the Bank shall not be liable for executing the Cash Order as notified, including any loss of interest.
- 1.6. Security Procedure.** The Bank must receive a Cash Order using a touch-tone telephone, or other electronic communications device mutually agreed upon by the Customer and the Bank, based upon codes assigned by the Bank to the Customer that identify the Customer and the location (collectively, "Codes"). The Customer agrees that use of the Codes constitutes a security procedure for verifying the authenticity of the Cash Order as being that of the Customer ("Security Procedure")... The Customer and the Bank will maintain reasonable security and control of the Codes. The Bank is not responsible or liable for detecting any error in the transmission or content of any Cash Order or Cancellation and the Security Procedure is not intended to detect any such error. No agreement or instruction of the Customer restricting acceptance of any Cash Order or Cancellation is binding on the Bank, except as set forth in these Service Terms or in a writing signed by the Customer and the Bank. These Security Procedures do not apply to Cash Order requests made by the Customer at one of our branch locations when the Customer is making a "cash for cash" exchange or issuing a check to debit the Customer's account at the Bank.

1.7. Geographical Limitations. The Customer represents and warrants that all Cash Orders will be used by Customer in its normal course of business at the Customer's store/office locations in the United States.

2. Cash Deposits

2.1. Standard Courier Service. The Customer may deliver and pick up shipments of Cash or checks to or from the Bank by using the services of a Courier that has been authorized by the Bank, who will act solely as the Customer's agent. The Courier must comply with the Bank's guidelines, as amended from time to time, and must maintain all licenses and permits required by law in addition to adequate insurance to cover its liabilities in providing courier services to the Customer. The Bank may refuse to permit any courier to enter its premises with or without cause, in which case the Bank will use reasonable efforts to promptly notify the Customer. With regard to Customer's Courier, Customer is responsible for any individual's actions while at the Bank's facilities including theft, property damage, intentional crimes and any other act or omission even if such actions would be considered outside the scope of their employment and whether the individual is impersonating an employee of the courier if the Bank has followed its customary procedures for identifying the individual.

2.2. Deposit Presentment and Processing for Standard Courier Service. With regard to deposits delivered to one of the Bank's vault locations, the Customer's Courier must deliver deposits in sealed tamper-proof plastic security deposit bags that meet the standards described in the Bank's guidelines and contain only Cash and checks. The bags may also contain food stamps if the Customer provides proof satisfactory to the Bank of the Customer's authority to redeem food stamps. The Bank will open the bags and process the deposits.

(a) **Delivery to Vault.** If the Bank agrees to accept the Customer deposits at a vault location, the Bank will provide a receipt indicating the number of bags it has received. This receipt is not an acknowledgment of the contents of any bag, nor is any telephonic or other acknowledgment of a deposit of which the Customer notifies the Bank by telephone or by electronic means.

(b) **Delivery to Branch for Delayed Processing.** If the Bank agrees to accept the Customer deposits at a branch location, the Bank will not verify the amount of the deposits at the time of receipt but will provide the Customer with a receipt showing the amount indicated in the Customer's deposit slip. This receipt is not an acknowledgment of the contents of any bag.

2.3. Courier Service through the use of a Smart Safe or Recycler Machine. The Customer may use the services of a courier that has been authorized by the Bank, who will act solely as the Customer's agent. The courier must comply with the Bank's guidelines, as amended from time to time, and must maintain all licenses and permits required by law in addition to adequate insurance to cover its liabilities in providing courier services. The Bank may refuse to permit any courier to enter its premises with or without cause, in which case the Bank will use reasonable efforts to promptly notify the Customer. The Customer will receive Advance Credit only for Cash placed in Deposit Cassette (as defined below) component of the machine. The Customer's courier is authorized to transmit the Cash information only with regard to the Deposit Cassette component of the machine to the Bank on the Customer's behalf and the Bank, upon receipt of such data transmission, will provide provisional credit to the Customer's designated account. The courier will deliver the Cash to the Bank as directed by the Bank at the Customer's expense. The Customer authorizes the Bank to instruct the courier to pick up any Cash for which the Bank has given provisional credit at any time at the Customer's expense. For purpose of these Service Terms, "Deposit Cassette" is the component of the machine whereby the Customer places Cash into such component and only the courier is able to access such Cash once it is placed in the Deposit Cassette.

2.4. Deposit Presentment and Processing through the use of a Smart Safe or Recycler Machine. The Customer agrees that once the Cash is in the Deposit Cassette component of the machine, the Customer no longer has any ownership, control or rights with regard to the physical Cash and that the Bank is authorized to rely upon the transmitted information from the Customer's courier with regard to deposits or adjustments to the Customer's deposit account with the Bank. Once the Customer's courier has completed the verification of the Cash from the Deposit Cassette component of the machine and has transmitted the deposit/adjustment information to the Bank, the Cash is then placed into the Bank's inventory at the courier's location. In the event of a dispute related to the amount credited to the Customer's deposit account, the Customer will initiate its claim and request for an investigation with its courier.

2.5. Discrepancies. All deposits are subject to verification. If there are differences between the amount credited by the Bank and the amount shown on the deposit slip prepared by the Customer, the receipt provided to the Customer or its agent upon initial presentment or the transmission received from the courier on the Customer's behalf, the currency will be re-counted for discrepancies over the minimum amount specified in the Cash Vault Services Product Guide listed as Exhibit 4 of the Contract between the Bank and the City of Austin, the "Threshold" amount, the Customer's representative designated in the service implementation questionnaire will be notified of the adjustment, and an adjustment fee will be charged. If the discrepancy is in the Threshold amount or less, the Bank will not adjust the Customer's account, the Bank will retain the discrepancy amount, and no adjustment fee will be charged. The Bank's determination and records as to its receipt of any bag and as to the contents of any bag is conclusive and binding on the Customer.

2.6. Relationship upon Delivery of Bags. Until the Bank recounts the contents of the bags and enters a final credit to the Customer's account, the Bank is not responsible for any claimed contents of the bags. The Customer should not include anything in a bag other than Cash and its deposit slip, and the Bank shall have no responsibility or liability if there is any other property included or claimed to have been included in a bag.

2.7. Delivery to Unattended Facility. If the Bank agrees to allow the Customer to use one of the Bank's unattended facilities (including but not limited to a night depository or commercial ATM), the Bank may provide the Customer with an access device (such as a key or card that may require a personal identification number ("PIN")). The Customer must return all access devices to the Bank upon request. The Bank will process any deposits delivered to an unattended facility as provided for in the Bank's guidelines. If the Customer receives a receipt from an

unattended facility, the receipt is not an acknowledgment of the contents of any bag or of the receipt of any bag. While the Customer or the Customer's Courier is physically present at one of the Bank's unattended facilities, the Customer is a licensee only and the Bank has no responsibility for the safety of the Customer or its Courier while at such facility.

- 2.8. Liability at Unattended Facility.** The Customer assumes all risks of using any unattended facilities, including risks of theft, robbery and personal injury; the Bank is not responsible if a facility fails to operate properly in any way, including failing to open, close, lock or unlock. It is the Customer's responsibility to verify that its bags have dropped down completely into the facility, and the Customer agrees that it will not leave any bags in any facility that does not appear to be operating properly. The Bank will not be liable to the Customer if any unattended facility, tele-entry or online system is closed or otherwise unavailable for use at any time.
- 2.9. Geographical Limitations of Cash Deposits.** Cash Deposits must be delivered to the Bank by Customer's courier and from Customer's physical store/office locations in the United States. Cross-border cash deposits (i.e., cash brought into the United States from outside the United States) are strictly prohibited

E. POSITIVE PAY, REVERSE POSITIVE PAY AND PAYEE VERIFICATION

JPMorgan Chase Bank, N.A. (the "Bank") will provide Customer, in accordance with the provisions set forth in these Service Terms, with one or more of the services listed below (each a "Service") that help prevent check fraud on deposit accounts by identifying discrepancies between checks ("Items") presented to the Bank for payment from the Customer's demand deposit account associated with the Service (the "Account") and those Items that are issued by Customer. The provisions of the Bank's account documentation, including terms and conditions governing the operation of business accounts and services as well as other service guides or material (the "Account Documentation") are incorporated into these Service Terms by reference. By signing the applicable Account Documentation or by using or continuing to use any of these Services, the Customer agrees to these Service Terms.

1. Services.

With Positive Pay, the Customer sends check issuance information to the Bank and the Bank compares such information to Items being presented for payment. With Reverse Positive Pay, the Bank sends the Customer information on Items being presented for payment and the Customer does its own comparison. Payee Verification is an enhanced feature for Positive Pay whereby the Customer includes payee name information and the Bank compares such information against the payee names on Items being presented. As a condition precedent for receiving Payee Verification, the Customer must be receiving Positive Pay in connection with the same Account.

2. Issuance Information.

The following information is defined as "Issuance Information" for each Item: i) Account number on which the Item is drawn; ii) Item serial number; iii) dollar amount; iv) issue date, (not as part of Reverse Positive Pay); and v) for Payee Verification only, the payee name. For Positive Pay and Payee Verification, the Customer will provide the Bank the Issuance Information by the banking day on which the Customer issues Items by means of a mutually agreed upon transmission method. The Bank will compare the Issuance Information with the Items presented to the Bank for payment against the Account. For Reverse Positive Pay, the Bank will send the Customer the Issuance Information and the Customer will compare such information with the Items they have issued.

3. Discrepancies.

For Positive Pay and Payee Verification, if an Item is presented to the Bank for which it has not received timely Issuance Information or that contains information different from the Issuance Information for that Item, the Bank will notify the Customer by means of a mutually agreed upon method, by the designated time of the Banking Day following the Banking Day the Item is presented to the Bank for payment. The Customer shall advise the Bank by means of a mutually agreed upon method by the designated time on that same Banking Day whether any such Item is authorized for payment ("Presentment Decision"). In the event that the Customer fails to timely inform the Bank about any Item for which a Presentment Decision is requested, the Bank is authorized to return such Item unless otherwise agreed by the Customer and the Bank. For Reverse Positive Pay, the Bank will provide Issuance Information to the Customer of Items presented for payment; the Customer shall advise the Bank by means of a mutually agreed upon method by the designated time on that same Banking Day whether any such Item is not authorized for payment, and in the event that the Customer fails to timely inform the Bank as required, the Bank is authorized to pay such Item(s) unless otherwise agreed by the Customer and the Bank. The Bank is entitled to rely on any instructions by the Customer which it receives and which it reasonably believes to be genuine. If a Customer attempts to change an instruction previously given by sending an email or other message to the Bank, the Bank may, but has no obligation to, act upon such change request.

4. Payee Verification Additional Terms.

For Payee Verification, Customer acknowledges that Items which have been converted to ACH transactions prior to being presented for payment will not be eligible for this service and the payee name information will not be compared to the Issuance Information for Items that have been converted to ACH transactions. If Customer fails to provide the Issuance Information in the file format required by the Bank, the Bank will not be liable for failing to detecting any discrepancy between the Item and the Issuance Information or for processing and payment of such Item. The Bank reserves the right to set a threshold amount for Items (as may be revised by the Bank from time to time) to be reviewed under the Payee Verification service (the "Threshold Amount"). The Items below the Threshold Amount will be handled according to the standard Account Documentation governing the Customer's Account; however, Customer will not be liable for such Items if the discrepancy would have otherwise been detected under this Service. With regard to Payee Verification, the Bank will compare the payee name provided in the Issuance Information to the payee lines contained in the name/address block identified on the Item (presented as provided for in the Bank's set-up requirements) and will otherwise be limited to those parameters specifically agreed to by the Customer and Bank.

5. Voided Items.

The Customer agrees to place a void on an Item in the Issuance Information only with respect to Items that are not in circulation. If the Customer decides to stop pay an Item that it has already issued, the Customer is required to place a Stop Payment request pursuant to the relevant terms of the Account Documentation, outside of these services.

6. Item Payment.

The Bank is not obligated to maintain signature cards for the Account and whether or not the Bank does maintain such signature cards, in no event shall the Bank be obligated to inspect any Item for the presence or authenticity of any signature or to determine whether any signature is authorized. The Customer acknowledges that the Bank's adherence to these procedures in these terms, in lieu of signature examination, will constitute the exercise of good faith and ordinary care by the Bank in handling Items presented for payment against the Account.

7. Over the Counter Presentment.

The Bank may, without liability to the Customer, refuse to pay any Item presented for encashment at any of the Bank's branch locations. If an Item is presented for encashment at one of the Bank's branch locations at the teller line and the account is under the Positive Pay or Payee Verification Service, the Customer authorizes the Bank to pay such Item based upon the Positive Pay information at the teller line. If an Item is presented for encashment at one of the Bank's branch locations at the teller line and the account is under the Reverse Positive Pay Service, (i) the Customer authorizes the Bank to pay such Item pursuant to the Bank's policies and procedures for encashment, (ii) Customer assumes the risk of any loss that would have been prevented through the use of Positive Pay or Payee Verification services; and (iii) Customer agrees to unconditionally release, indemnify and hold harmless the Bank against any and all liability loss or claim relating to an Item being cashed or returned over-the-counter. Subject to the Contract between the Bank and the Customer, the Bank may charge a person who cashes an Item drawn on the Customer's Account a fee at the time of encashment.

F. CONTROLLED DISBURSEMENTS

Controlled Disbursement Accounts help customers effectively manage the disbursement process to gain control over idle balances and automate funding transfers and is designed to provide disbursement totals early each business day.

- 1. Controlled Disbursement Account.** Each controlled disbursement account ("Controlled Disbursement Account"), except as set forth herein, shall be opened and maintained in accordance with the Account Documentation. Customer agrees that if it fails to utilize one of the Bank's positive pay services on the Controlled Disbursement Account, that failure will constitute Customer negligence contributing to the making of any unauthorized signature and Customer assumes the risk that checks or drafts ("Items") presented against the Controlled Disbursement Account may be forged or altered, to the extent that the positive pay services the Bank offers may have prevented any loss. The Bank will have no liability for any loss related to an Item presented against the Controlled Disbursement Account which would otherwise generally have been returned under such positive pay services.
- 2. Payment of Items.** Bank, on each banking day, will advise Customer of the total amount of Items drawn against the Controlled Disbursement Accounts that are presented for payment, on that day, to the Bank by a Federal Reserve Bank or another depository institution pursuant to a same-day settlement arrangement. Bank will honor Items which are properly payable, but shall have no obligation to pay any Item should sufficient immediately available funds to cover such Items not be transferred to the Controlled Disbursement Account in accordance with these Service Terms and the Account Documentation.
- 3. Over-the-Counter Presentment.** Bank may, without liability to Customer, refuse to pay any Item presented for encashment at any of the Bank's branch locations.
- 4. Funding Account for Controlled Disbursement.** Customer will maintain with Bank a designated account for purposes of funding the Controlled Disbursement Account, or the funding account may be maintained at an affiliated bank or other financial institution (the "Funding Account"). Customer authorizes Bank to debit the Funding Account for the total amount of the Items presented and any funds transfers against the Controlled Disbursement Account, and to promptly transfer such amount to the Controlled Disbursement Account even though such a debit may bring about or increase an overdraft. All funds transfers from the Funding Account to the Controlled Disbursement Account shall be in immediately available funds. Customer will maintain sufficient available funds in the Funding Account to cover Items and funds transfers presented against the Controlled Disbursement Account, and the Bank shall have no obligation to transfer funds, process Items for payment or complete any funds transfers unless there are sufficient available funds in the Funding Account. The Bank is authorized to debit the Funding Account for any obligations owed directly or indirectly on the Controlled Disbursement Account. The Bank shall not be liable for failure to pay any Item presented for payment against any Controlled Disbursement Account due to insufficient funds in the Funding Account.
- 5. Media.** Bank will transmit to Customer by the transmission method or media agreed to by Customer and Bank information regarding Customer's Controlled Disbursement Account.
- 6. Routing Transit Number.** Customer agrees to use the designated controlled disbursement account routing transit number on the Items it issues from the Controlled Disbursement Account. Customer acknowledges that if it fails to use such designated controlled disbursement account routing transit number the Bank is authorized to terminate this Service or any Service feature upon notice to the Customer.

- 7. Financial Condition.** In the event of the deterioration of the financial condition of the Customer, as determined in the Bank's sole discretion, the Bank may immediately terminate the Service, any Service feature, and/or may convert any Controlled Disbursement Account to a stand-alone demand deposit account without prior notice to the Customer.
- 8. Third Party Usage.** Customer agrees that it will not permit a third party to write checks on or otherwise issue payment transactions or instructions on Customer's Controlled Disbursement Account. Customer agrees to indemnify and hold Bank harmless from and against any and all actions, claims, demands, losses, liabilities or expenses whatsoever, including attorney's fees and costs, resulting directly or indirectly from Customer's breach of this Section 8. This indemnity shall survive the termination of these Service Terms. Notwithstanding anything to the contrary, Customer acknowledges that, if Customer breaches this Section 8, Bank may immediately terminate this Service or any Service feature upon notice to the Customer.

G. IMAGE CASH LETTER

1. Service.

JPMorgan Chase Bank, N.A. (the "Bank") which may include designated agents of the Bank, will provide Customer with image cash letter services for Checks as defined below (the "Service") in accordance with the provisions set forth in this document (the "Service Terms"). The provisions of the Bank's account documentation, including account terms and conditions governing the operation of business accounts and services and the ACH Origination Service Terms as may be applicable ("Account Documentation") are incorporated into these Service Terms by reference. By signing the applicable Account Documentation or by using or continuing to use the Service, Customer agrees to these Service Terms.

2. Transmission and Processing.

Customer shall provide through its own methods or devices the captured check images and check data from the Check, including the magnetic ink character recognition formatting (MICR) information through electronic transmissions (the "Transmissions") in the format and specifications required by the Bank's File Standards and within the cut-off times provided by the Bank. Customer authorizes Bank to process the Transmissions as substitute checks, electronic images or photos in lieu, as may be applicable for further clearing through any other financial institution, clearinghouse or Federal Reserve Bank. If the Customer is eligible and has chosen to have Checks processed as ACH transactions, Bank will convert eligible Checks to ARC or POP entries, as defined and provided for in the ACH Origination Service Terms. Customer agrees that it is solely responsible for the creation and transmission of these Transmissions to the Bank. If any Transmission (including any source document for purposes of these Service Terms) does not meet the Bank's or any transferee's standard requirements for processing, Customer assumes all risk of loss or delay in processing such Transmission and authorizes the Bank to either (a) return the Transmission to the Customer without further processing, (b) process the Transmission as sent from the Customer, (c) process the Checks as photocopies in lieu of the originals, or (d) repair or attempt to repair the Transmission for further processing. Under this Service, "Checks" shall mean original paper checks and drafts drawn in US dollars on, or payable through, banks located in the United States (including Puerto Rico, Guam and the US Virgin Islands), endorsed for deposit to Customer's account at the Bank.

3. Image Cash Letter File Deposit Time.

The Transmissions must be sent to the Bank prior to the deposit deadline. Any Transmission will be deemed to have been received by the Bank when the entire file has been written onto the Bank's system and made available for the Bank to validate. Based upon the size of the Transmission file, there may be a significant delay between the time Customer begins to send the file and the completion of the transfer as stated above. As a result, Customer will make every effort to send the Transmission file as early as possible. Files that are received after a deposit deadline will be considered deposited as of the next deposit deadline. Processing fees and funds availability will be assessed based on the deposit deadline that is met.

4. Customer Responsibility.

Customer shall be solely responsible if any Transmission for which Customer has been given provisional credit is returned or reversed, and neither Bank nor its subcontractors shall be liable or responsible for same. Customer acknowledges that all credits received for deposit are provisional, subject to verification, final settlement or return. Information and data reported hereunder: (a) may be received prior to final posting and confirmation and is subject to correction and (b) is for informational purposes only and may not be relied upon. Customer agrees that Bank shall have no liability for the content of payment-related information as received from the Customer. Customer shall be solely responsible for the original Checks, including storage and retrieval. Customer agrees to provide a legible copy of an image or the original Check if requested by the Bank within five (5) business days of such request. If Customer is unable to provide the original or legible copy, Customer shall be liable for any associated loss or claim involving the Check. Customer will not present a Transmission or the original Check or substitute check more than once to the Bank if the initial Transmission was processed as an ACH transaction and shall be responsible for any and all losses or claims resulting from the Customer presenting such Check or Transmission for payment more than once through any method.

5. Suspension/Cancellation of Service.

Bank reserves the right to suspend or terminate the Service, in whole or in part if Bank believes Customer is in breach of these Service Terms or is otherwise using or accessing the Service in a manner inconsistent with the rules and regulations relating to the Service being provided and such breach, use or access is not cured within five business days after notice to Customer or any other mutually agreed upon time period. Further, this Service will automatically terminate if the Customer's account with the Bank is closed for any reason. Either party may terminate the Service upon thirty (30) days' prior written notice to the other party; provided, however, that the terms of Section 9 will apply to any termination prior to the time period set forth in the Pricing Schedule.

6. Intellectual Property Ownership.

Neither these Service Terms nor the provision of the Service transfer to Customer any ownership or proprietary rights in the Bank's technology or any work or any part thereof, and all right, title and interest in and to the Bank's technology will remain solely with Bank or its subcontractors.

7. WARRANTIES AND DISCLAIMERS.

7.1 CUSTOMER WARRANTY. CUSTOMER WARRANTS AND REPRESENTS TO THE BANK THAT: (A) EACH TRANSMISSION CONTAINS ACCURATE AND LEGIBLE IMAGES OF ALL OF THE INFORMATION ON THE FRONT AND BACK OF THE ORIGINAL CHECKS AT THE TIME EACH CHECK WAS TRUNCATED; (B) EACH TRANSMISSION ALSO CONTAINS A RECORD OF ALL APPLICABLE MICR-LINE INFORMATION REQUIRED FOR A SUBSTITUTE CHECK AND THE ACCURATE AMOUNT OF THE CHECK; (C) EACH TRANSMISSION CONFORMS TO THE TECHNICAL STANDARDS FOR AN ELECTRONIC ITEM SET FORTH IN REGULATION J AND FEDERAL RESERVE BANK OPERATING CIRCULARS AND FOR A SUBSTITUTE CHECK SET FORTH IN REGULATION CC; (D) NO PERSON WILL RECEIVE A TRANSFER, PRESENTMENT OR RETURN OF, OR OTHERWISE BE CHARGED FOR, THE CHECK (EITHER THE ORIGINAL CHECK, OR A PAPER OR ELECTRONIC REPRESENTATION OF THE ORIGINAL CHECK) SUCH THAT THE PERSON WILL BE ASKED TO MAKE PAYMENT BASED UPON A CHECK IT HAS ALREADY PAID; (E) CUSTOMER WILL NOT REDEPOSIT THROUGH THIS SERVICE ANY TRANSMISSION REPRESENTING A CHECK PREVIOUSLY DEPOSITED AND RETURNED TO THE CUSTOMER; (F) CUSTOMER WILL EMPLOY COMMERCIALY REASONABLE SECURITY MEASURES AND FIREWALLS SUFFICIENT TO PROTECT THE TRANSMISSIONS AND STORAGE TO ENSURE NO UNAUTHORIZED ACCESS OR DUPLICATE PRESENTMENT; (G) CUSTOMER WILL ONLY TRUNCATE AND CREATE TRANSMISSIONS FOR CHECKS THAT ORIGINATED AS PAPER CHECKS; (H) CUSTOMER HAS ESTABLISHED AN ANTI-MONEY LAUNDERING PROGRAM IN COMPLIANCE WITH ANTI-MONEY LAUNDERING LAWS AND REGULATIONS APPLICABLE TO IT AND SUCH ANTI-MONEY LAUNDERING PROGRAM INCLUDES POLICIES, PROCEDURES AND CONTROLS DESIGNED TO DETECT AND PREVENT MONEY LAUNDERING WHICH CUSTOMER BELIEVES EFFECTIVELY PREVENTS THE USE OF CUSTOMER'S OPERATIONS, PERSONNEL OR FACILITIES FOR MONEY LAUNDERING PURPOSES; (I) CUSTOMER WILL ONLY ACCESS THE SERVICE AND SEND TRANSMISSIONS TO THE BANK FROM LOCATIONS WITHIN THE UNITED STATES; AND (J) CUSTOMER IS IN COMPLIANCE WITH ALL LOCAL LAWS AND REGULATIONS APPLICABLE TO IT IN THE USE OF THIS SERVICE.

7.2 DISCLAIMER. BANK AND ITS SUBCONTRACTORS MAKE NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO ANY OF THE TECHNOLOGY OR SERVICE AND/OR ACCESS TO OR USE OF THE SERVICE OR TECHNOLOGY PROVIDED TO CUSTOMER HEREUNDER. BANK AND ITS SUBCONTRACTORS SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET, AND CUSTOMER ASSUMES ALL SUCH RISKS. CUSTOMER SHALL MAKE AN INDEPENDENT ASSESSMENT OF THE ADEQUACY OF THE INTERNET IN USE OF THE SERVICE PURSUANT TO THE BANK'S PROCEDURES. CUSTOMER FURTHER ACKNOWLEDGES THAT THE SELECTION AND USE BY IT OF ANY THIRD PARTY SECURITY AND COMMUNICATIONS SOFTWARE AND THIRD PARTY SERVICE PROVIDERS IS THE SOLE RESPONSIBILITY OF CUSTOMER, AND BANK DISCLAIMS ALL RISKS RELATED THERETO, NOTWITHSTANDING THAT THE BANK MAY RECOMMEND CERTAIN SECURITY AND/OR COMMUNICATIONS SOFTWARE AND SERVICES. CUSTOMER AGREES TO, AT ITS SOLE EXPENSE, PROCURE AND MAINTAIN ALL HARDWARE, BROWSERS, SOFTWARE AND TELECOMMUNICATIONS EQUIPMENT NECESSARY TO ACCESS THE SERVICE IN ACCORDANCE WITH THE BANK'S RECOMMENDED SYSTEM CONFIGURATION.

8. INDEMNIFICATION.

IN ADDITION TO ITS INDEMNIFICATION OBLIGATIONS IN THE ACCOUNT TERMS, AND EXCEPT FOR LOSSES OR EXPENSES CAUSED BY BANK'S FAILURE TO EXERCISE ORDINARY CARE OR WILLFUL MISCONDUCT, CUSTOMER AGREES TO INDEMNIFY BANK FOR ANY LOSS OR EXPENSE SUSTAINED (INCLUDING ATTORNEY'S FEES AND EXPENSES OF LITIGATION) RESULTING FROM (i) CUSTOMER'S LACK OF AUTHORITY TO MAKE THE WARRANTIES PROVIDED HEREIN; (ii) ANY ACTION TAKEN OR NOT TAKEN BY BANK WITHIN THE SCOPE OF ITS AUTHORITY UNDER THESE SERVICE TERMS IN HANDLING A CHECK; AND (iii) A BREACH OF ANY WARRANTY OR INDEMNITY REQUIRED TO BE MADE BY BANK WITH RESPECT TO A CHECK UNDER APPLICABLE LAW, CLEARING HOUSE RULE OR REGULATION.

9. Pricing Schedule/Volume/Termination Penalties.

Bank and Customer agree to the terms of the Pricing Schedule which are incorporated herein by reference, including the length of time the Service will be provided, the charges/fees and the volumes, as may be stated in the Pricing Schedule.

10. Audit.

Customer authorizes the Bank to audit for compliance with these service terms its facilities where the Checks are imaged, stored and destroyed as well as where the Transmissions are processed under this Service upon reasonable prior written notice from the Bank.

11. Customer Offering Mobile Check Delivery Application.

If Customer offers its own customers ("Customer's Client") a mobile deposit solution through the Customer's (or its vendor's) mobile check delivery application ("Application"), allowing the Customer's customer to capture pictures of the front and back of eligible Checks from their mobile device and to send the images to Customer through the Application, Customer also represents and warrants the following:

A. Customer will only send images of Checks that are made payable to Customer.

- B. Customer has established internal controls and procedures relating to Checks delivered to it through an Application, to comply with the requirements of these Service Terms.
- C. Customer's Clients are required to enter into the Customer's Application service terms and conditions or a similar agreement setting forth the Customer's Client's obligations and limiting the use of the Application for only original paper checks that are made payable to the name of the Customer. Such terms shall include the Customer Client's agreement that use of the Application constitutes their issuance and delivery of the Check to the Customer, and the Customer is a holder of the Check.
- D. Customer prohibits use of the Application from OFAC prohibited countries.

12. Online Adjustments Services.

If Bank and Customer agree, Customer will submit its adjustment requests through the web-based SVPCO Online Adjustment Service ("Online Adjustment") based on the following terms:

For Customers choosing the deposit account option where they settle for the Items through the Customer's deposit account at Bank ("Deposit Account") option, Customer agrees to be bound by the SVPCO Electronic Adjustment Exchange Rules, as may be amended from time to time ("SVPCO Rules"). Bank will assist the Customer in implementing and registering for Online Adjustment. Customer will designate at least one Administrator by submitting the Secure ID Token Form for Online Adjustments ("Form"). After the initial registration, Customer will be able to update its designated users directly through SVPCO. Bank may conclusively rely upon any information or instructions purported to be sent by the Customer through Online Adjustment. Customer agrees that Bank may charge Customer's Account for any adjustments and related fees. Customer agrees that the Bank shall have no responsibility with regard to the adjustment information transmitted through Online Adjustment. Notwithstanding anything to the contrary in these Service Terms or the Account Documentation, Online Adjustment will automatically terminate upon the termination or expiration of the agreement covering the SVPCO online adjustment service between Bank and The Clearing House.

H. CHECK PRINT

The Check Print Service enables the Customer instruct the Bank to create and mail checks and/or documents on behalf of the Customer.

1. **Print Orders.** The Bank will execute each print order requested by the Customer which is received by the Bank in a manner described in these Service Terms or as otherwise provided by the Bank (the "Print Order"). Print Order information shall include payee names and addresses. Customer agrees that it will not include any other personally identifiable information or any protected health information in its Print Orders. Print Orders may include printing of non-payment documents ("Documents") if agreed to by the Bank based upon these Service Terms.
2. **Check Pull Requests.** For any Print Order received by the Bank, the Customer may request the Bank to pull a check(s) from processing by completing the Bank's manual check pull request form ("Check Pull Request"); provided, however, that a Check Pull Request will not be effective unless and until it is received by the Bank in the form required and the Bank has had a reasonable time to act upon such request. A Print Order may not be amended or modified. The Bank has no obligation to adjust or stop the payment or posting of a Print Order it has accepted.
3. **Receipt of Print Orders.** The Customer shall transmit Print Orders to Bank to the location and in compliance with the formatting and other requirements of the Bank set forth in its operating procedures. Bank may reject any Print Order that does not comply with these Service Terms.
4. **Issuance of Checks/Documents.** For each Print Order accepted by the Bank, the Bank will: (a) cause a check to be printed and completed; (b) cause a laser facsimile signature authorized by the Customer to be placed on the check; (c) if agreed upon, cause other documents to be completed and included with the check issuance ("Documents"); and (d) mail or send the check by courier along with any Documents as agreed upon (collectively, the "Issuance"). The Customer expressly grants the Bank the authority to create and process such Issuances.
5. **Notice of Rejection.** The Bank will promptly notify the Customer if a Print Order is rejected by the Bank and will advise the Customer as to the reason. The notice or advice shall be deemed commercially reasonable if made available through the Check Print Service or given electronically, orally, by telephone or facsimile transmission.
6. **Control.** The Bank is not responsible or liable for the detection of errors contained in any Print Order as received from the Customer and is entitled to rely on the information contained therein.
7. **Reliance Upon Instructions.** The Customer is responsible for, and the Bank may rely upon, the contents of any notice or instructions that Bank believes in good faith to be from the Customer without any independent investigation. The Bank shall have no duty to inquire into the authority of the individual giving such notice or instruction. In the event the Bank receives conflicting notices or instructions, the Bank is authorized to act on either the notice or instruction, or it can refuse to act. No restriction on the Bank's acceptance of any Print Order will be binding on the Bank, except as set forth in these Service Terms unless agreed to in writing by the Bank and the Bank has had a reasonable opportunity to act upon such change.
8. **Limitation of Liability.**

The Bank's liability shall be limited to direct damages caused by the Bank's failure to use reasonable care. Reasonable care in providing the Check Print Service shall be measured by the relevant provisions of any service levels or business requirements and the standard of reasonableness of the procedures established for the transaction involved. Mere inadvertence or honest mistake of judgment shall not constitute a failure to perform

such obligations or a failure to exercise reasonable care and in no case will be deemed wrongful. Notwithstanding the foregoing, any limitation of liability with regard to these Check Print Service Terms shall be only to the extent permitted by the laws of the State of Texas.

- 9. Cashier's Checks.** If the Bank creates cashier's checks under the Check Print Service, the following additional terms will apply: (a) Customer will send the cashier's check print file information ("File Information") to the Bank by the Bank's cut off time on a given day ("Day One"); (b) the Customer authorizes the Bank to debit the Customer's designated account ("Funding Account") for the amounts shown on the File Information on Day One; (c) as the cashier's checks from the File Information are being processed, the account reconciliation issue file ("ARP File") must match the date of funding found in the File Information of the next banking day ("Day Two"); (d) for any cashier's check for which there is insufficient funds in the Funding Account on Day One to fund the purchase of the cashier's check, the Bank is authorized to reject the creation of such cashier's check; (e) fully funded cashier's checks will be printed on Day Two; (f) if the Customer is using one of the Bank's online services, Customer will be able to view information regarding the cashier's checks which were funded and created and those that were rejected; (g) any information from the File Information which can not be used to create a cashier's check will be communicated to the Customer for further research and reconciliation; (h) if any cashier's check is returned as undeliverable, the cashier's check will remain outstanding in the Bank's cashier's check account and escheated according to applicable laws and regulations. If the payee of a cashier's check claims that the cashier's check was lost, stolen or destroyed before the funds are escheated, such claim will be handled in accordance with the Bank's procedures.

I. ACH TAX PAYMENT

- 1. Service.** Bank will provide a service (the "Service") whereby Customer can direct Bank, via touchtone telephone or internet platform, to make tax payments through the automated clearing house (ACH) system from an account with Bank that Customer specifies. Customer may use the service to pay:

- any federal taxes covered by the Federal Tax Deposit Coupons (Form 8109) that Customer has executed and delivered to Bank from time to time;
- certain state taxes; and
- certain municipal taxes.

Bank may pay taxes from Customer's account in accordance with any instructions issued in Customer's name that Bank verifies pursuant to the security procedures specified in these Service Terms. In using the Service, Customer agrees to comply with and be bound by the Operating Rules of the National Automated Clearing House Association ("NACHA Rules").

- 2. Receipt of Instructions and Cancellations.** Customer may issue instructions and cancellations only during service hours that Bank specifies, and Customer acknowledges that Bank may change such service hours upon prior notice to Customer. Bank must receive instructions, including but not limited to payment cancellation instructions, not later than 6:00 p.m. ET (or such other time as Bank specifies) on the Business Day prior to the day on which the tax payment is due. For purposes of this Section, "Business Day" means a day on which the Bank is open for business in its New York office. Instructions received after such time shall not be processed until the following business day and Customer shall be liable for any charges, fees or costs associated with such payment. Bank may reject or delay processing of a tax payment if the request is not complete or is inaccurate or otherwise does not meet the criteria Bank specifies for acceptance herein or in the User Guide (as hereafter defined).

The Service is not designed or intended to be used for any ACH tax payment that is required to be formatted as an "International ACH Transaction" (or IAT) under the NACHA Rules. Customer agrees not to use or attempt to use the Service to originate any ACH tax payment that is required to be formatted under the NACHA Rules as an "International ACH Transaction" (or IAT). Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, losses, fines, penalties, damages, liabilities and expenses, including, without limitation, legal fees and expenses, resulting directly or indirectly from any ACH tax payment processed or requested to be processed by Customer via the Service which should have been formatted under the NACHA Rules as an IAT.

3. Tax Payment Security Procedures.

- (a) A Bank-issued or approved access code and PIN and/or other security device ("Security Device") is required to access the Service. The Customer shall be bound by and adhere to the security procedures and other procedures for use of the Service advised to it in writing through any medium by the Bank, as may be revised from time to time upon notice to the Customer (the "User Guide"). The Customer shall notify the Bank immediately of loss or theft of a Security Device, any unauthorized use of a Security Device or any other breach of security. The Bank may dishonor or disable any Security Device at any time and will inform the Customer of the same. The Customer agrees that any use of the Service with a Security Device is deemed to be carried out directly by and on behalf of the Customer. The Customer agrees to safeguard all Security Devices and to instruct each Authorized User (as defined below) to do the same.
- (b) This Section 3(b) applies to use of the Service through the designated internet platform, but does not apply to touchtone telephone access. Customer shall designate an administrator (the "Administrator") who shall have authority in accordance with the operational instructions for the Service provided to Customer in the User Guide. Customer agrees to notify Bank of any change in Administrator in the manner and form designated by Bank. Any such changes shall be effective at such time as Bank has received such notice and has had a reasonable opportunity to act upon it. In accordance with the procedures contained in the User Guide, the Administrator shall be responsible for (i) designating individuals as users ("Authorized Users"); (ii) identifying the functions of the Service; (iii) requesting, creating, controlling, disseminating, and/or canceling user entitlements; (iv) receiving and distributing materials, notices, documents and correspondence relating to the security procedures; and (v) advising each Authorized User of his/her obligations hereunder and under the User Guide. The Administrator shall provide to the Bank, upon the Bank's request, a list of Authorized Users.

- 4. Open Network Access.** The Customer acknowledges that there are certain security, corruption, transmission error and access availability risks associated with using open networks such as the internet, and the Customer assumes all such risks. The Customer shall make an independent assessment of the adequacy of the internet and the Bank's security procedures. The Customer further acknowledges that the selection and use by it of any third party security and communications software and third party service providers is the sole responsibility of the Customer, and the Bank disclaims all risks related thereto, notwithstanding that the Bank may recommend certain security and/or communications software and services. The Customer agrees to, at its sole expense, procure and maintain all hardware, browsers, software and telecommunications equipment necessary to access the Service in accordance with the Bank's recommended system configuration.
- 5. Funding.** Customer authorizes Bank to debit Customer's applicable account for the amount of each tax payment and for any applicable bank fees and charges when due. In the event Customer does not have sufficient funds in Customer's applicable account to cover the amount of a tax payment, Bank shall have no obligation to make the tax payment for Customer. Bank may require Customer to pay Bank the amount of each tax payment on the date of transmission of the tax payment instruction or otherwise prior to the tax payment due date. Bank may from time to time establish or revise maximum dollar limits for the total value of all outstanding files of tax payments that Bank will release on customer's behalf. Bank may change or cancel the limits any time without prior notice to Customer, although Bank will try to notify Customer before Bank does that. Funds Bank receives and holds pursuant to the Service shall be held as a deposit liability to Customer and not in trust for Customer or the taxing authority.
- 6. Warranties; Indemnity.** Except as specified below, Customer will be deemed to make the same warranties to Bank as Bank makes pursuant to the NACHA Rules although Customer will not be deemed to warrant the power of the Bank under applicable law to comply with the requirements of the NACHA Rules or the conformity of tax payments and other data Bank transmits to the file specifications contained in the NACHA Rules. Customer further represents and warrants to Bank that: (i) Customer shall not access the Service from any jurisdiction in which the Service is not authorized; and (ii) each tax payment Customer originates will comply with applicable U.S. laws and regulations and Customer acknowledges that payments may not be initiated that violate the laws of the United States.
- Customer agrees to indemnify Bank and Bank's employees, officers, directors and agents, and hold all of them harmless from and against any and all claims, demands, losses, liabilities or expenses (including attorney's fees and costs) resulting directly or indirectly from (a) Customer's breach of any warranty made under this Section and (b) compliance by Bank with any request Customer makes for a cancellation, stop payment, reversal or recall of any tax payment.
- Bank shall have no responsibility for any delay by any ACH Operator (as such term is defined in the NACHA Rules) or taxing authority in processing any tax payment Bank transmits to such entity or failure by such entity to process or apply any tax payment.
- 7. Stop Payments; Reversals and Recalls.** Customer's instruction to stop payment of, reverse or recall one or more tax payments must be received by Bank in such time and manner as Bank specifies. Bank will process these transactions in accordance with Bank's procedures advised to Customer. Any reversal or recall initiated by Bank is subject to acceptance by the relevant taxing authority. Tax payment instructions may not be amended or modified.
- 8. Payment Limits.** Bank may from time to time establish or revise (a) maximum dollar limits for each payment to be made by the Customer to a specified taxing authority, and (b) aggregate limits for all payments to be made by the Customer to a specified taxing authority within a 24-hour period. Bank may change or cancel the limits at any time without prior notice to Customer, although Bank will endeavor to give prior notice to Customer. Bank may require Customer to pay Bank the amount of any tax payment on the date of transmission to Bank or otherwise prior to the settlement date. Bank also may require Customer to maintain collateral with Bank in an amount Bank specifies.
- 9. Limitation of Liability.** Bank's maximum aggregate liability in connection with the Service shall be limited as provided in the Account Documentation (as defined in Section 10 below) and shall be further limited to the lesser of the amount of any penalty or interest actually imposed by the applicable taxing authority or the total fees Customer paid Bank during the prior 12 months. Notwithstanding the foregoing, any limitation of liability with regard to these Service Terms shall be only to the extent permitted by the laws of the State of Texas.
- 10. Incorporation of Account Documentation; Termination.** The Bank's terms governing the operation of business accounts and services ("Account Documentation") are incorporated herein, as the same may be amended from time to time. If and to the extent that there is a conflict between the Account Documentation and these Service Terms, the provisions of these Service Terms shall prevail. In addition to Bank's termination rights under the Account Documentation, Bank shall have the right to terminate or suspend these Service Terms and the Service upon notice to Customer in the event of Customer's breach of the NACHA Rules.

J. REMOTE CAPTURE SERVICE TERMS

Remote Capture is a remote scanning service that processes remittances and promotes Customers' efficiency in their businesses. Through this service, the Customer's remittance deposits can be imaged and transferred to the Bank via a Bank supplied data platform for further processing and posting to the Customer's deposit account.

1. Service

The Bank, which may include designated agents of the Bank, will provide Customer with Remote Capture services for domestic transactions (the "Service") in accordance with the provisions set forth in this document (the "Service Terms"). The Service allows Customer to electronically transmit

deposits of eligible checks and items (eligible checks and items are limited to personal checks, money orders, business checks, cashiers checks, traveler's checks payable in U.S. Dollars and drawn on U.S. banks or U.S. Postal Service Money Orders, payable to the Customer) by using a capture device, including a desktop scanner or mobile device (hereinafter referred to as a "Scanner"), to create an electronic image of an original paper check or item and other paper source documents (collectively, "Item") and transmitting the image of the Item ("Item Image") and related data to Bank. The provisions of the Lockbox Service Terms, Account Terms, Client Access Service Terms, and any other applicable Service Terms as may be amended from time to time (collectively, the "Account Documentation") are incorporated into these Service Terms by reference. By signing the applicable Account Documentation or by using or continuing to use the Service, Customer agrees to these Service Terms. If and to the extent there is a conflict between the Account Documentation and these Service Terms, the provisions of these Service Terms will prevail.

- a. Customer agrees that after the Item Image has been created and transmitted to the Bank for deposit, Customer shall not otherwise transfer or negotiate the original Item, substitute check or any other image of the Item. Customer further agrees that Customer shall be solely responsible for the original Items, including storage, retrieval and destruction. Customer must have in place policies and procedures for the secure storage and destruction of the original Items.
- b. Customer agrees that a copy made from the Item Image or substitute check of the Item, as defined by federal law, will become the legal representation of the Item for all purposes, including return item processing.
- c. Subpart B of Federal Regulation CC (availability of funds) does not apply when electronic images of Items are transmitted to Bank. Funds from deposits made via this Service will be available in accordance with the availability schedule for the Service. However, Bank may apply additional delays on the availability of funds based on any other factors as determined in the Bank's sole discretion.

2. Processing

Customer shall provide through Bank approved devices, including a desktop scanner or mobile device, the Item Images in the format and specifications and in accordance with the procedures required by the Bank. The Bank may process the Items as substitute checks, electronic images or photos-in-lieu, as may be applicable for further clearing through another financial institution, clearinghouse or the Federal Reserve Bank. Customer assumes sole responsibility for the creation of these images and their subsequent provision to the Bank. If any Item Image does not meet the Bank's or any transferee's standard processing requirements, in processing such Items, Customer assumes all risk of loss or delay and authorizes the Bank to either (a) return the Item to the Customer without further processing, (b) process the Item as sent from the Customer, (c) process the Items as photos--in-lieu of the originals, or (d) repair or attempt to repair the items for further processing. Access to the Item Images and the use of a mobile device in conjunction with the Service are governed by the Client Access Service Terms, as may be amended from time to time.

3. Deposit Time

Item Images are deemed received by the Bank when the Item Images have been transferred onto the Bank's system and validated by the Bank. Based upon the size of the batch of items, there may be a significant delay between the time Customer begins to send the items and the completion of the transfer as stated above. If Bank receives and validates the submitted deposit transmission no later than the Bank's designated cut off time (the "Cutoff Time") on a day that the Bank is generally open for business, i.e., Monday through Friday excluding weekends and state or federal holidays ("Business Day"), Bank will consider that Business Day to be the day of deposit (i.e., the date deposit is credited). If Bank receives and validates the submitted deposit transmission after the Cutoff Time or on a non-Business Day, the deposit will be considered to be made on the next Business Day. Whether the Cutoff Time has been met will be determined by the time displayed on the Bank's internal system clocks which may not necessarily be synchronized with the internal clock displayed on Customer's computer or device. For this reason, Bank suggests that Customer submit its deposit transmissions to Bank sufficiently in advance of the Cutoff Time to avoid the possibility of missing the Cutoff Time.

4. Foreign Items

The Service only accepts and processes Items drawn on U.S. chartered banks.

5. Warranties.

5.1 Customer represents and warrants to Bank that:

- Customer will capture and transmit all Item Images using Bank approved hardware and software applicable to the Service's function;
- Any image Bank receives accurately and legibly represents all of the information on the front and back of the Item as of the time the Item was truncated;
- The information Customer transmits to Bank corresponding to an Item contains a record of all applicable MICR-line information required for a substitute check and the accurate amount of the Item;
- The Item Image conforms to the technical standards for an electronic Item set forth in Regulation J or Federal Reserve Bank Operating Circular 3, and for a substitute check set forth in Regulation CC;
- No person will receive a transfer, presentment, or return of, or otherwise be charged for, the Item (either the original Item, or a paper or electronic representation of the original Item) such that the person will be asked to make payment based on an Item it has already paid;
- Customer will not redeposit through this Service any Item previously deposited and returned to Customer;

- Customer will employ commercially reasonable security measures, including firewalls, sufficient to protect against unauthorized access or duplicate presentment;
- Customer will only transmit Items that originated as paper checks;
- Customer will comply with all applicable laws and regulations;
- Customer will not use the Service for any purpose prohibited by foreign exchange regulations, postal regulations or any other treaty, statute, regulation or authority; and
- If the Customer is depositing Items on behalf of third parties, the Customer also represents and warrants to the Bank that with respect to each Item deposited through the Service, the owner of the Item has authorized the electronic transmittal of the Item and guarantees all prior endorsements; Customer has established an anti-money laundering program in compliance with anti-money laundering laws and regulations applicable to it and such anti-money laundering program includes policies, procedures and controls designed to detect and prevent money laundering, including "know-your-customer" policies and procedures, monitoring of transactions for suspicious activities and reporting of suspicious activities, which Customer believes effectively prevents the use of Customer's operations, personnel or facilities for money laundering purposes.

6. New Features. Bank may, from time to time, introduce new features to the Service or modify or delete existing features in its sole discretion. Bank shall notify Customer of any of these changes to features. By using any new or modified features when they become available, Customer agrees to be bound by the rules concerning these features.

7. Disclaimer.

Bank makes no representations or warranties, whether express, implied or statutory regarding or relating to any of the software, capture devices or other hardware and/or access to or use of them or the related materials and the Service. Bank specifically disclaims any and all implied warranties of merchantability and fitness for a particular purpose and non-infringement. Bank and its subcontractors also do not guarantee that Customer's access to the Services will be uninterrupted, error free or secure.

8. Indemnification.

Customer agrees to indemnify and hold the Bank harmless for any loss or expense (including attorney's fees and expenses of litigation) resulting from: breach of any of the warranties made by Customer pursuant to these Service Terms or the Lockbox Service Terms; any claim pertaining to any warranty or indemnity that Bank makes with respect to an Item under the Check Clearing for the 21st Century Act, Federal Reserve Board Regulations CC and J and all other laws, regulations and industry and clearing house rules applicable to Items as either the bank of first deposit, truncating or reconverting bank.

9. Customer Liability.

Customer shall be solely responsible if any item for which Customer has been given provisional credit is returned or reversed, and neither Bank nor its subcontractors shall be liable or responsible for same. Customer acknowledges that all credits received for deposit are provisional, subject to verification, final settlement, warranty claims or return. Information and data reported under these Service Terms: (a) may be received prior to final posting and confirmation and are subject to correction and (b) are for informational purposes only and may not be relied upon. Customer agrees that Bank shall have no liability for the content of payment-related information as received from the Customer. Customer shall be solely responsible for the original Items, including storage, retrieval and destruction. Customer agrees to provide a legible copy of an image or the original Item if requested by the Bank. If Customer is unable to provide the original or legible copy, Customer shall be liable for any associated loss or claim involving the Item.

10. Suspension/Cancellation of Service.

Bank reserves the right to suspend or terminate the Service, in whole or in part if Bank believes Customer is in breach of these Service Terms or is otherwise using or accessing the Service in a manner inconsistent with the rules and regulations relating to the Service being provided and such breach, use or access is not cured within five business days after notice to Customer or any other mutually agreed upon time period. Further, this Service will automatically terminate if the Customer's account with the Bank is closed for any reason. Either party may terminate the Service upon thirty (30) days' prior written notice to the other party.

11. Intellectual Property Ownership.

Neither these Service Terms nor the provision of the Service transfer to Customer any ownership or proprietary rights in the Bank's technology or any work or any part thereof, and all right, title and interest in and to the Bank's technology will remain solely with Bank or its subcontractors.

12. Audits. Customer agrees that the Bank shall have the right to audit for compliance with these Service Terms Customer's books, records, processes and procedures for managing and maintaining the security and safety of the scanners, transmissions and original Items, including the right to audit Customer's and Customer's agents, if any, physical locations where Customer scans original Items and processes electronic check images and data related to the Service. Customer agrees that the use of scanners, including mobile devices, in conjunction with this Service is limited to the United States.

K. ELECTRONIC CHANNELS

1. Service and Service Terms.

The Bank will provide a service (the “**Service**”) for electronic access to the Customer’s account information, reports and data (collectively, “**Data**”) and for the electronic transmission to the Bank of messages, service requests, and payment and non-payment instructions (each an “**Instruction**”) and from the Bank of messages, notifications and alerts, via the J.P. Morgan Access® Online, J.P. Morgan Access® Mobile, J.P. Morgan Host-to-Host/managed file transfer and J.P. Morgan Treasury Services API channels. The Bank reserves the right to modify the applications and products available via the Service. The Service is governed by these terms (the “**Service Terms**”), which incorporate the Bank’s terms governing the business accounts and services, including service terms that govern the Bank’s processing of Instructions transmitted via the Service (collectively, the “**Account Documentation**”), as the same may be amended from time to time. If and to the extent that there is a conflict between the Account Documentation and these Service Terms, the provisions of these Service Terms shall prevail. Capitalized terms used in these Service Terms, and not otherwise defined, have the meaning set forth in the Global Account Terms or other account terms applicable to the Customer. JPMorgan Chase Bank, N.A. is organized under the laws of U.S.A. with limited liability.

2. Security Procedures and Other Controls

2.1. General. The security procedures for each channel are set forth below, as may be modified on notice to the Customer through any medium (each, a “**Security Procedure**”). Any Instruction, the authenticity of which has been verified through a Security Procedure, shall be effective as that of the Customer, whether or not authorized, and notwithstanding that the Instruction may result in an overdraft of an Account. Controls unilaterally implemented by the Bank shall not be deemed to be Security Procedures for purposes hereof unless explicitly identified as such in writing. The Customer is responsible for implementing any procedures and requirements set forth in the applicable documentation provided to it by the Bank, as well as any subsequent modification to the procedures and requirements that are designed to strengthen the Security Procedures.

2.2. Security Procedures and Other Controls for Access Online and Mobile Channels.

2.2.1. Access Online. The Security Procedure for verifying payment Instructions given in the Customer’s name via the Access Online channel is validation of a user ID and confidential password of an Authorized User (as defined in Section 2.6 below), a token code generated by a Bank issued or approved security device (“**Security Device**”) assigned to that Authorized User and Bank transaction review as specified in Section 2.5.

2.2.2. Access Mobile. The Security Procedure for verifying payment Instructions given in the Customer’s name via the Access Mobile channel is either (i) validation of the registration with the Bank of the mobile device, a biometric identifier, and the private swipe key of an Authorized User (as defined in Section 2.6 below) and transaction review as specified in Section 2.5 or (ii) validation of a user ID and confidential password of an Authorized User (as defined in Section 2.6 below), a token code generated by Security Device assigned to that Authorized User and transaction review as specified in Section 2.5.

2.2.3. Controls Offered to Customer. For Access Online and Mobile, the Customer may choose to apply certain controls offered by the Bank to the Customer from time to time designed to reduce the Customer’s risk of unauthorized transactions. The Customer is responsible for choosing controls that are appropriate for the Customer taking into account, among other things, the nature and scale of the Customer’s business, including the size, type and frequency of payment orders normally issued to the Bank, and the nature of its technical environment, internal accounting controls and information security policies and procedures (collectively, “**Customer Internal Controls**”). The Security Procedure that is established by agreement of the Customer and the Bank herein is established in view of the Customer Internal Controls applied by the Customer. For the avoidance of doubt, none of the controls described in this Section are part of the Security Procedures for the channels.

2.3. Security Procedures and Certificate Procedures for Host-to-Host/Managed File Transfer Channel. The Security Procedure for verifying payment Instructions given in the Customer’s name via the Host-to-Host/managed file transfer channel is authentication of a digital signature certificate, which authenticates transmitted files on the basis of the corresponding security key (the “**Signature Certificate**”) and transaction review as provided in Section 2.5. The Customer and the Bank will use the following procedures for the use of a transport certificate, which establishes a secure session between the Bank and the Customer on the basis of a corresponding security key (the “**Transport Certificate**”) and the Signature Certificate. Each of the Signature Certificate and the Transport Certificate are referred to herein as a “**Certificate**” and the corresponding security key as a “**Security Key**”.

2.3.1. Certificate Procedures and Requirements. The Customer shall comply with the Bank’s procedures and requirements for Certificates and Security Keys notified to the Customer, including but not limited to Certificate validity period, key strength and cryptographic specifications, as amended from time to time. Any request to the Bank to add, update or delete a Security Key shall include the applicable Certificate, a text file or other physical representation of the public Security Key of such Certificate and any other information in the manner and form designated by the Bank. The Bank shall have the right to rely on any request that the Bank believes in good faith to have been sent by the designated security administrator (“**Security Administrator**”), notwithstanding that such Security Administrator may be a third party acting on behalf of the Customer.

2.3.2. Certificate Expiration. Notwithstanding any courtesy notifications the Bank may send to the Customer regarding the Customer’s impending Certificate expiration, the Customer acknowledges that it is the Customer’s sole responsibility to update the Certificate prior to its expiration date. The Bank shall have no liability for any loss or damage (including, for the avoidance of doubt, any indirect, special, punitive or consequential damages or losses) arising from the Customer’s failure to timely update its Certificate. To allow for proper execution of administrative procedures, and to prevent any lapse in service or emergency procedures, the Customer must request a Certificate change at least 30 days prior to actual Certificate expiration.

2.4. Security Procedure and Certificate/Token Procedures for API Channel. The Security Procedure for verifying payment Instructions given in the Customer’s name via the API channel is authentication of a Signature Certificate and transaction review as provided in Section 2.5.

2.4.1. **Secure Session.** The Customer and the Bank will establish a secure session between the Customer and the Bank by validation of either (i) a Transport Certificate or (ii) a Bank-generated token ("**API Token**").

2.4.2. **Certificate Procedures and Requirements.** The Customer and the Bank will use the procedures set forth in Sections 2.3.1 and 2.3.2 for the use of Certificates for the API channel.

2.4.3. **API Token Procedures and Requirements.** The Customer shall comply with the Bank's procedures and requirements for API Tokens, as amended from time to time, including but not limited to the generation and safekeeping of any credentials used for the validation of the API Token, notified to the Customer. The Bank shall have the right to revoke an API Token at any time, including in reliance on a request or communication related to an API Token that the Bank believes in good faith to have been sent by the Security Administrator, notwithstanding that such Security Administrator may be a third party acting on behalf of Customer. Any request to the Bank to update an API Token shall be made solely in the manner and form designated by the Bank.

2.5. **Transaction Review.** In addition to the Security Procedures described above, the applicable Security Procedure for each channel also includes transaction review based on various risk characteristics. The transaction review shall be conducted in accordance with commercially reasonable protocols selected by the Bank. Additional authentication from the Customer, such as call-back verification, may be required to complete certain transactions identified by the Bank through transaction review.

2.6. **Confidentiality/Security Breach.** The Customer will be responsible for safeguarding and ensuring that the Security Procedures, Security Devices, API Tokens and any credentials used for the validation of the API Token are known to and used (i) in the case of Access Online and Mobile, only by individuals designated as users by the Security Administrators ("**Authorized Users**"), or, (ii) in the case of the Host-to-Host/managed file transfer and API channels, only by the Security Administrators, as applicable. The Customer shall notify the Bank immediately in the event of any loss, theft or unauthorized use of a Security Procedure, a Security Device, API Token, any credentials used for the validation of the API Token or any other breach of security. The Bank may dishonor or disable any Security Device, API Token, any credentials used for the validation of the API Token or any aspect of the Security Procedures at any time without prior notice and will inform the Customer of the same. In addition, each Customer must implement its own physical and logical security, as well as management controls, that appropriately protect the hardware, software, and access controls used in the transaction process from unauthorized access and use.

2.7. **Security Administrator Designation.** The Customer shall designate Security Administrators who shall have equal authority as specified in Section 2.8 below. The Bank is entitled to rely on any such designation of a Security Administrator. The Customer agrees to notify the Bank of any change in Security Administrators in the manner and form designated by the Bank. Any such change shall be effective at such time as the Bank has received such notice and has had a reasonable opportunity to act upon it.

2.8. **Security Administrator Responsibilities.** Each Security Administrator shall be authorized by the Customer to and be responsible for (i) designating individuals as Authorized Users with respect to the Access Online and Mobile channels; (ii) identifying the functions of the Service that each Authorized User may access; (iii) requesting, creating, controlling, disseminating, and/or canceling user entitlements with respect to the Access Online and Mobile channels; (iv) managing the Customer's Certificates and corresponding Security Keys or API Tokens and any credentials used for the validation of the API Token with respect to the Host-to-Host/managed file transfer and API channels, as applicable; (v) receiving and distributing materials, notices, documents and correspondence relating to the Security Procedures, as applicable; and (vi) advising each Authorized User of his/her obligations hereunder or under any of the applicable Account Documentation. The Security Administrators shall provide to the Bank, upon the Bank's request, a list of Authorized Users for the Access Online and Mobile channels. In the absence of a valid designation of a Security Administrator at any time or in the event that, after reasonable efforts, the Bank is unable to contact a Security Administrator, the Bank may deliver Security Devices, API Tokens (and any attendant credentials) and materials and deliver/receive Security Keys to/from any person authorized to act on behalf of the Customer with respect to the Accounts.

2.9. **Processing.** The Customer acknowledges that the application of the Security Procedures and any controls unilaterally implemented by the Bank may cause delays in processing Instructions or result in the Bank declining to execute an Instruction.

3. Open Network Access; Equipment

THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES AND REPRESENTATIONS, EXPRESS, STATUTORY OR IMPLIED, WITH REGARD TO THE SERVICE ARE HEREBY DISCLAIMED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND COURSE OF DEALING OR USAGE OF TRADE OR WARRANTIES OF NON-INFRINGEMENT OR WARRANTIES AS TO ANY RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. TO THE EXTENT THAT ANY IMPLIED WARRANTIES CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, ANY SUCH IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 30 DAYS FROM THE INITIAL DELIVERY DATE OF THE RELEVANT SERVICE. THE BANK AND ITS THIRD PARTY DATA AND SERVICE PROVIDERS DO NOT WARRANT OR GUARANTEE THE SECURITY, SEQUENCE, TIMELINESS, ACCURACY, PERFORMANCE OR COMPLETENESS OF THE DATA OR THAT ANY PART OF THE SERVICE WILL BE ERROR-FREE, WITHOUT DELAY OR UNINTERRUPTED.

The Customer is responsible for, at its sole expense, obtaining, installing, maintaining and operating all browsers, software, hardware, telecommunications equipment or other equipment (collectively, "**System**") necessary for the Customer to access and use the Service in accordance with the Bank's recommended system configuration. The Bank makes no endorsement of any System or third party site, notwithstanding that the Bank may recommend certain Systems or provide a link to a third party site where the Customer may download software. The Customer shall at all times maintain current and effective anti-virus, anti-spyware or other security software and shall take all reasonable measures to maintain the security of its System. The Customer acknowledges that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet. The Customer further acknowledges that it has made an independent assessment of the adequacy of the Internet, the System and the Security Procedures in connection with the use of the Service. The Customer assumes all risks and liabilities associated with the operation, performance and security of its System and the use of the Internet or other open networks, failure or use of Customer's or third party equipment, hardware, browsers, operating systems and/or other software or programs, and services or persons outside of the Bank's control, and the Bank disclaims all such risks. The Customer shall not use any equipment, hardware, software or program that harms the Bank. The Customer agrees to indemnify and hold the Bank, and its agents, employees, officers and directors,

harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses arising, directly or indirectly, from the Customer's use of Customer's or third-party software or program. The Bank may in its discretion provide training or information on best practices to the Customer from time to time but in so doing it will not be considered a consultant or advisor with respect to cybersecurity.

4. Instructions; Data

- 4.1.** The Customer shall be solely responsible for the genuineness and accuracy, both as to content and form, of all Instructions given to the Bank's in the Customer's name and verified through the applicable Security Procedure.
- 4.2.** The Customer acknowledges that Data may not have been reviewed by the Bank, may be inaccurate, and may be periodically updated and adjusted. The Bank is not obligated to assure the accuracy of Data and will not be liable for any loss or damage arising out of the inaccuracy of Data. Further, the Bank shall have no liability for the receipt or viewing by any party of Data sent to the destinations designated by the Customer, including but not limited to email addresses, fax and telephone number(s).

5. Customer Warranties

The Customer represents, warrants and covenants to the Bank that: (i) prior to submitting any document or Instruction that designates Authorized Users, the Customer shall obtain from each individual referred to in such document or Instruction all necessary consents to enable the Bank to process the data set out therein for the purposes of providing the Service; (ii) the Customer has accurately designated in writing or electronically the geographic location of its Authorized Users and shall provide all updates to such information; (iii) the Customer shall not access the Service from any jurisdiction which the Bank informs the Customer or where the Customer has knowledge that the Service is not authorized; and (iv) the Security Procedures offered to the Customer conform to the Customer's wishes and needs and the Customer has not requested Security Procedures other than those expressly agreed by the Customer and the Bank. The Customer hereby represents, warrants and covenants to the Bank that these Service Terms constitute its legal and binding obligations enforceable in accordance with its terms.

6. Miscellaneous

- 6.1.** The additional jurisdiction specific provisions set forth in the attached Exhibit are applicable to the Customer based on the domicile of the Customer. Where any local laws or regulations of any jurisdiction apply as a result of the Customer's Authorized Users accessing the Service from such jurisdiction or as a result of the location of such accounts in such jurisdiction, the jurisdictional specific provisions of that jurisdiction set forth in the attached Exhibit shall apply to the use of the Service by such Authorized Users.
- 6.2.** These Service Terms shall be governed by and construed in accordance with the laws of the State of Texas, USA (without reference to the conflict of laws rules thereof).
- 6.3.** All disputes relating to or in connection with these Service Terms solely arising outside the United States shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be (i) Singapore where the dispute arises solely in Asia and (ii) London where the dispute arises elsewhere (other than the United States) and the arbitration shall be conducted in English, except that (a) disputes solely between a Customer domiciled in the People's Republic of China and JPMorgan Chase Bank (China) Company Limited shall be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration in accordance with its rules in effect at the time an application is made, with the place of arbitration being Beijing and the arbitration being conducted in English; and (b) disputes involving a Customer domiciled in Taiwan shall be irrevocably submitted to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the borough of Manhattan in New York City. With respect to any dispute, suit, action or proceedings arising in the United States relating to these Service Terms, the Customer irrevocably submits to the exclusive jurisdiction of the courts of Travis County, Texas and the United States District Court located in the City of Austin.

7. Mobile

- 7.1.** Accepting use of the Bank's SMS text notification service and/or Access Mobile channel constitutes the Customer's authorization for the Bank to send Data, message notifications and alerts through any communication service providers, including both Internet and telecommunications providers, which shall each be deemed to be acting as the Customer's agent. Such providers may not encrypt communications.
- 7.2.** Authorized Users may be required to accept an application agreement or license in order to download Access Mobile. The Customer acknowledges that the Account Documentation shall in all cases govern the provision of these services.
- 7.3.** The Customer acknowledges that the Bank shall not be liable for any delays in any Data, message notification or alert delivered via any mobile device.

EXHIBIT A - JURISDICTION SPECIFIC PROVISIONS

A. Australia & New Zealand

To the extent that any supply made by the Bank under these Service Terms is a taxable supply for the purposes of the Australian Goods and Services Tax, or that goods and services tax under the New Zealand Goods and Services Tax Act 1985 is payable in respect of any supply under this License Agreement, ("GST"), the fees payable in respect of that taxable supply ("**original amount**") will be increased by the amount of GST payable in respect of that taxable supply. Customer must pay the increased amount at the same time and in the same manner as the original amount.

B. Indonesia

The Bank and the Customer agree that, for the effectiveness of any termination of these Service Terms or the Services provided hereunder, they hereby waive any provisions, procedures and operation of any applicable law to the extent a court order is required for the termination of these Service Terms and the Account Documentation as applicable to the services provided under these Service Terms.

Section 7.3 shall be replaced by "Except for losses directly resulting from errors or delay caused by the Bank's gross negligence or willful misconduct, the Customer acknowledges that the Bank shall not be liable for any delays in any Data, message notification or alert delivered via any mobile device."

C. Malaysia/Labuan

In relation to accounts held in Malaysia (excluding Labuan) and/or where the Service is provided in Malaysia (excluding Labuan) references in the Service Terms to "Bank," shall mean J.P. Morgan Chase Bank Berhad. In relation to accounts held in Labuan and/or where the Service is provided in Labuan, references in the Service Terms to "Bank," shall mean J.P. Morgan Chase Bank, N.A., Labuan Branch. The Service provided by J.P. Morgan Chase Bank Berhad shall be accessed through <http://www.jpmorganaccess.com.my> and the Customer undertakes not to access or utilize or attempt to access or utilize the Service through any other JPMorgan website.

D. Republic of China (Taiwan)

Section 7.3 shall be replaced by "Except for losses directly resulting from errors or delay caused by the Bank's gross negligence or willful misconduct, the Customer acknowledges that the Bank shall not be liable for any delays in any Data, message notification or alert delivered via any mobile device."

The Customer acknowledges that it will take steps to ensure it enters into the correct website before attempting to access the Service.

E. European Union.

The Customer acknowledges that it is not a "consumer" for the purpose of the European Union's Electronic Commerce Directive ("**ECD**") (i.e., that it is not an individual) and agrees that the Bank shall not be required to make any disclosures or do any other thing which a non-consumer may agree not to require under the UK rules and legislation implementing the ECD. For further information on the Bank, please see "Notice regarding EU e-commerce information" in the Terms & Conditions on <http://www.jpmorgan.com>.

- A. The Bank will collect information about the Customer and the Customer's employees and agents (such as, without limitation, authorized signatory details) which may constitute personal data for the purposes of the data protection law. Such personal data may be collected by or on behalf of the Bank in a number of ways (the "**Collection Methods**"), including via documentation relating to the provision to or use by the Customer of electronic banking services or via the Customer's use of such electronic banking services and via other correspondence or communications between the Customer and the Bank.
- B. Details of the Bank's processing activities of personal data can be found in its EMEA Privacy Policy, which is available on the Bank's website at www.jpmorgan.com/privacy/EMEA. The Bank's EMEA Privacy Policy may be updated or revised from time to time without prior notice. The EMEA Privacy Policy may be used to assist the Customer with providing a fair processing notice to the Customer's underlying data subjects.
- C. The Customer agrees that it has an appropriate legal basis to provide personal data to the Bank and that the Customer will provide any requisite notice to individuals and ensure that there is a proper legal basis for the Bank to process the personal data as described in and for the purposes detailed in the Bank's EMEA Privacy Policy. Both the Customer and the Bank will comply with its respective obligations under applicable data protection and privacy laws.

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Eligibility for particular products and services is subject to final determination by J.P. Morgan and/or its affiliates.

City of Austin, Texas

Depository Services Proposal

RFP 7400 AVB3002

June 29, 2021

Prepared by:

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DISCLOSURE STATEMENT

This document was prepared exclusively for the benefit and internal use of the party to whom it is directly addressed and delivered (the "Organization") in order to assist the Organization in evaluating certain products or services that may be provided by J.P. Morgan.

Chase, J.P. Morgan, and JPMorgan Chase and InstaMed are marketing names for certain businesses of JPMorgan Chase & Co. and its affiliates and subsidiaries worldwide (if and as used herein may include as applicable employees or officers of any or all of such entities irrespective of the marketing name used). Products and services may be provided by commercial bank affiliates, securities affiliates or other J.P. Morgan affiliates or entities. In particular, securities brokerage services other than those which can be provided by commercial bank affiliates under applicable law will be provided by registered broker/dealer affiliates such as J.P. Morgan Securities LLC, J.P. Morgan Institutional Investments Inc. or by such other affiliates as may be appropriate to provide such services under applicable law. Such securities are not deposits or other obligations of any such commercial bank, are not guaranteed by any such commercial bank and are not insured by the Federal Deposit Insurance Corporation. We are not responsible for the performance of our partners, their continued service levels, or their ability to provide services.

The information herein does not purport to set forth all applicable issues and is not intended to constitute advice on legal, tax, investment, accounting, regulatory or any other matters. J.P. Morgan makes no representations as to such matters or any other effects of any transaction and shall have no responsibility or liability to you with respect thereto. You should consult with your own advisors regarding such matters and the suitability, permissibility and effect of any transaction. In no event shall J.P. Morgan nor any of its directors, officers, employees or agents be liable for any use of, for any decision made or action taken in reliance upon, or for any inaccuracies or errors in, or omissions from, the information herein. The information herein is not intended as nor shall it be deemed to constitute advice or a recommendation regarding the issuance of municipal securities or the use of any municipal financial products. J.P. Morgan is not providing any such advice or acting as the Organization's agent, fiduciary or advisor, including, without limitation, as a Municipal Advisor under Section 15B of the Securities and Exchange Act of 1934, as amended.

This proposal is subject to and conditioned upon a mutually agreeable contract between the Organization and J.P. Morgan. J.P. Morgan also requires execution of all applicable product and service agreements. Implementation of products and services is subject to and conditioned upon the condition of satisfactory completion of J.P. Morgan's "Know Your Customer" due diligence and meeting product requirements. These steps are included in J.P. Morgan's client onboarding process.

This document may contain information that is confidential and/or proprietary to J.P. Morgan, which may only be used in order to evaluate the products and services described herein and may not be disclosed to any other person. Such information is marked "confidential" and may not be copied, published or used, in whole or in part, for any purpose other than as expressly authorized by J.P. Morgan.

To help the United States government fight the funding of terrorism and money laundering activities, U.S. law (Section 326 of the USA PATRIOT Act) requires banks and certain other financial institutions to obtain, verify, and record information that identifies each client that opens an account. What this means for our clients: Before opening a new account, we will require you to provide name, address, taxpayer identification number, and other information and/or documentation that will allow us to identify the account owner(s), as required by law.

Please note that we do not issue cards and prohibit use of our cards in any country against which the United States has imposed sanctions. A current list of such sanctioned countries, as well as information about sanctions, is available on the U.S. Department of the Treasury website: treas.gov/offices/enforcement/ofac.

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This document does not constitute a commitment by any J.P. Morgan entity to extend or arrange credit.

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J.P. Morgan supports sustainable business practices and adheres to the principles of environmental sustainability wherever possible.



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Exhibits

Exhibit 1. Chase Branch Locations

Exhibit 2. Availability Schedule(s)

Exhibit 3. Insurance Coverages

Exhibit 4. J.P. Morgan Information Security Program Letter

Offer and Certifications

OFFER CERTIFICATION

Please see completed Offer Certification following this page.

OFFER CERTIFICATION

Instructions. Offerors shall complete and sign the Offer Certification section of this section as indicated. Offerors shall not complete any portions of the Acceptance section below. Submittals with incomplete and/or unsigned Offer Certification are not considered to be Offers and will be rejected as nonresponsive.

Company Name: **Company Name** JPMorgan Chase Bank, N.A.

Company Address: **Address** 221 W 6th Street

City, State, Zip: **City State and Zip** Austin, TX 78701

Company's Austin Finance Online Vendor Registration No. **Registration No.** CHA7140050

Company's Officer or Authorized Representative: **Officer's Name** Brenda Pollard

Title of Officer or Authorized Representative: **Officer's Title** Authorized Officer

Email: **Offeror's Email Address** brenda.a.pollard@jpmorgan.com

Offeror's Phone: **Phone** (512) 479-2278

Offeror's Signature: 

Date: **Date Signed** June 28, 2021

OFFER: The above signed, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Offeror, by submitting and signing below, acknowledges that he/she has received and read the entire document packet including all revisions, and addenda and agrees to be bound by the terms therein, *unless otherwise provided in Offeror's proposal. The statements made in this Offer and Certifications are based upon information and belief, following due inquiry of other employees, officers, and agents of bidder that the undersigned deems appropriate under the circumstances."*

ACCEPTANCE BY THE CITY

For City Staff only. The City will complete and sign this section only if the City accepts the Offer.

Contract Number: _____

Printed Name of City's Authorized Procurement Staff: _____

Title of City's Authorized Procurement Staff: _____

Signature: _____

Date: _____

Email: _____

Phone: _____

ACCEPTANCE: The Offer is hereby accepted. Contractor is now bound to sell the materials or services specified in the Contract.

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

Please see completed Non-Discrimination and Non-Retaliation Certification following this page.

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

✓
(Check)

OFFEROR HEREBY CERTIFIES

Offeror has read the following and will [make all reasonable efforts to](#) comply with Austin City Code, Sec. 5-4-2.

1. Not to engage in any discriminatory employment practice defined in this chapter;
2. To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment;
3. To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
4. To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
5. To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
6. To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
7. To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter.

For the purposes of this Offer and any resulting Contract, Contractor [has a policy consistent with](#) **adopts** the provisions of the City's Minimum Non-Discrimination and Non-Retaliation Policy set forth below.

SUSPENSION AND DEBARMENT CERTIFICATION

Please see completed Suspension and Debarment Certification following this page.

SUSPENSION AND DEBARMENT CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

☒
(Check)

OFFEROR HEREBY CERTIFIES

Offeror has **NOT** been debarred from contracting with the City of Austin, any other local governments or states, or the US federal government.

Suspended or Debarred Offerors. The City finds that offerors, including any subcontractors that may be included in the Offer, that are suspended or debarred from contracting with the US federal government, any state or local government, as of the submission date of their offer, are not sufficiently responsible to contract with the City. The City may reject and set aside any offer, or terminate for cause any contract resulting from an offer, in which the offeror falsely certified they were not suspended or debarred when in fact they were.

NON-COLLUSION AND NON-CONFLICT OF INTEREST CERTIFICATION

Please see completed Non-Collusion and Non-Conflict of Interest Certification following this page.

NON-COLLUSION AND NON-CONFLICT OF INTEREST CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

✓
(Check)

OFFEROR HEREBY CERTIFIES

Offeror has **NOT** engaged in collusion and is not aware of any conflicts of interests as described below.

Offeror. The term “Offeror”, as used in this document, includes the individual or business entity submitting the Offer. For the purpose of this Affidavit, an Offeror includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and any person or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

Anti-Collusion Statement. Offeror has not in any way directly or indirectly:

- a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
- b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

Preparation of Solicitation and Contract Documents. Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

Participation in Decision Making Process. Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

Present Knowledge. Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.

City Code. As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.

Chapter 176 Conflict of Interest Disclosure. In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:

- a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income; Section 0810, Non-Collusion, 1 Revised 12/22/15 Non-Conflict of Interest, and Anti-Lobbying Certification;
- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
- c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

Based on Section 176.001 of the Texas Local Government Code, business relationships as defined in the code do not include a connection based upon "a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency."

As J.P. Morgan Chase Bank, N.A. is chartered by the Office of the Comptroller of the Currency and subject to and reports, to its federal banking regulators, it is our understanding that we are not required to file the Conflict of Interest Questionnaire and will not provide the form.

ANTI-LOBBYING CERTIFICATION

Please see completed Anti-Lobbying Certification following this page.

ANTI-LOBBYING CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

✓
(Check)

OFFEROR HEREBY CERTIFIES

Offeror has and will continue to comply with the City's Anti-Lobbying Ordinance, Chapter 2-7, Article 6.

Applicability. This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement.

No Lobbying Period. The No-Lobbying Period begins on the date this Solicitation was initially published and continues through the earlier of (i) 60-days following Council authorization of any contracts resulting from this Solicitation, (ii) the date the last resulting contract is signed, (iii) the date this Solicitation is cancelled.

Prohibited Communications. During the No Lobbying Period, Respondents to this Solicitation or their Agents, shall not make prohibited communications to City officials or City employees.

Ordinance. https://www.austintexas.gov/financeonline/afo_content.cfm?s=15&p=145

Rules. https://www.austintexas.gov/financeonline/afo_content.cfm?s=16&p=77

NONRESIDENT BIDDER AND MANUFACTURING CERTIFICATION

Please see completed Nonresident Bidder and Manufacturing Certification following this page.

NONRESIDENT BIDDER AND MANUFACTURING CERTIFICATION

Instruction. Offerors shall read and checking the applicable boxes in response to both certifications below.

☒ **YES** ☐ **NO**
(Check One)

OFFEROR HEREBY CERTIFIES

Offeror **IS (YES)** or **IS NOT (NO)** a Nonresident Bidder in accordance with Texas Government Code Ch. 2252.002.

If "Yes" is checked, provide the name of the state where
Nonresident Bidder's Principle Place of Business is located.

Columbus, Ohio
(State)

☐ **YES** ☐ **NO**
(Check One)

OFFEROR HEREBY CERTIFIES

Offer **INCLUDES (YES)** or **DOES NOT INCLUDE (NO)** Equipment, Supplies and/or Materials in accordance with Texas Government Code Ch. 2252.002

If "YES" is checked, provide the name of the State where majority
of the Equipment, Supplies and/or Materials were manufactured

(State)

Reciprocal Preference. In accordance with Texas Government Code Ch. 2252.002 (see below), the City must apply a reciprocal preference to a Nonresident Bidder's offer, consistent with the applicable preference granted by the state of the Nonresident Bidder's principal place of business. The City will also apply a reciprocal preference to a Resident Bidder or Nonresident Bidder's offer, consistent with the applicable preference granted by the state where the majority of the equipment, supplies and/or materials were manufactured.

Resident bidder. An Offeror whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

Nonresident Bidder. An Offeror that is not a Resident Bidder.

Statute: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm>

SUBCONTRACTING UTILIZATION FORM

Please see completed Subcontracting Utilization Form following this page.

SUBCONTRACTING UTILIZATION FORM

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
- b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☒ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

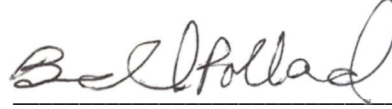
☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	JPMorgan Chase Bank, N.A.		
City Vendor ID Code	CHA7140050		
Physical Address	221 W 6Th St, Floor 02		
City, State Zip	Austin, TX, 78701		
Phone Number	(512) 479-2278	Email Address	brenda.a.pollard@jpmorgan.c
Is the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		
Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed Subcontracting/Sub-Consulting Utilization Form , and if applicable my completed Subcontracting/Sub-Consulting Utilization Plan , shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the Request For Change form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my Subcontracting/Sub-Consulting Utilization Plan , it is a violation of the City's M/WBE			

Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Brenda Pollard - Authorized Officer



06/28/2021

Name and Title of Authorized Representative (Print or Type)

Signature/Date

SUBCONTRACTING UTILIZATION PLAN

Not applicable.

Addendums

Please see the following addendums within this section:

Addendum 1 - June 15, 2021 (Signed)



**ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS**

Solicitation: RFP 7400 AVB3002

Addendum No: 1

Date of Addendum: 6/15/21

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Additional Information:

The City anticipates completing final negotiations of the contract with the recommended firm between July 7, 2021 thru July 14, 2021.

II. Changes to the Solicitation Documents:

The solicitation documents have been updated to as follows:

- a) RFP Cover Sheet has been updated.
- b) Application Pricing Submittal – RFA 7400 AVB3002.xlsx has been replaced with REVISED Application Pricing Submittal – RFP 7400 AVB3002.xlsx.
- c) Added Appendix 5 City of Austin EMS PP (patient payment).
- d) Reference Depository Solicitation Instructions, add **Section 10.10 Exceptions**.

III. Additional Information:

Attendance sheet for Pre-Offer Conference held Tuesday, June 8, 2021 is attached.

IV. Questions:

Q1: Application Pricing Submittal- Can the Purchasing department please send us an updated pricing application with additional rows unlocked as we foresee more line pricing items that will need to be added other than the highlighted green rows available?

A1: *Additional rows have been added to the Application Pricing Submittal as requested and can be found as file named REVISED Application Pricing Submittal – RFP 7400 AVB3002.xlsx. Also, an additional 25 rows have been added to section 6. Other in case applicants require more lines.*

Q2: Electronic Funds Transfer / ACH Originated Transactions / ACH Non-Originated CR/DR – Under ACH Originated there are line items for ACH Notification of Change, ACH NOC Online and ACH NOC Email and under ACH Non-Originated there are line items for Notif of Change – Email and Notif of Change –Transm, are these lines duplicates?

A2: *Yes, ACH Notification of Change, ACH NOC Online, and ACH NOC Email are duplicates of Notif of Change – Email and Notif of Change –Transm. The duplicate lines have been removed from the REVISED Application Pricing Submittal form.*

Q3: Balance and Transaction Reporting and Account Management / Web/CSR Transaction Initiated - Please provide a description of this service item and confirm 0 volume.

A3: *Balance and Transaction Reporting and Account Management / Web/CSR Transaction Initiated is not required for this solicitation and should be disregarded. See updated REVISED Application Pricing Submittal form.*

- Q4:** Balance and Transaction Reporting and Account Management / Web/CSR Monthly Hosting - Please provide a description of this service item and confirm 0 volume.
- A4:** *Balance and Transaction Reporting and Account Management / Web/CSR Monthly Hosting is not required for this solicitation and should be disregarded. See updated REVISED Application Pricing Submittal form.*
- Q5:** Balance and Transaction Reporting and Account Management /Int. Rec & Pay – Connect - Please provide a description of this service item.
- A5:** *Balance and Transaction Reporting and Account Management /Int. Rec & Pay – Connect is not required for this solicitation and should be disregarded. See updated REVISED Application Pricing Submittal form.*
- Q6:** Balance and Transaction Reporting and Account Management / Int. Rec & Pay – Report - Please provide a description of this service item.
- A6:** *Balance and Transaction Reporting and Account Management / Int. Rec & Pay – Report service items are related to the Lockbox processing services and have been moved to the Wholesale Lockbox section of the updated REVISED Application Pricing Submittal form.*
- Q7:** On the pricing sheet you have Positive ledger balance of \$7MM and indicate in RFP collected balance of \$500,000. Is the \$500,000 collected balance ok to use for FDIC Insurance? On line 330 of the excel spreadsheet it says positive ledger balance of \$7 million – column H has 12 for volume. I am not sure what that line is for from a pricing perspective. Directly above on line 329 it mentions FDIC or NCUA which is typically based on collected balances and in H there is no volume. Seems like that should be \$500,000 and then J would be a factor times the collected balances to get a total price. Just trying to understand what those two lines are. Also, most banks don't call it FDIC Insurance but something else like "Recoupment".
- A7:** *This was a formatting error on the Application Pricing Submittal. The cell that states "FDIC or NCUA Insurance – average daily" should have been combined with the cell that states "Positive ledger balance of \$7 million". This has been corrected on the REVISED Application Pricing Submittal form to now read "FDIC or NCUA Insurance based on average daily positive ledger balance of \$7 million". Additionally, "FDIC or NCUA Insurance" may also be known as "Recoupment Fee" or "Balance Based Charges". Although the City's goal is to keep the annual average collected balance under \$500,000, our average ledger balance is \$7MM. The Applicant should provide pricing, if any, based on the City's average ledger balance of \$7MM.*
- Q8:** On the pricing spreadsheet you have Branch Deposit Immediate Verif and Branch Deposit Post Verif as the same amounts – is that correct?
- A8:** *Branch Deposit Immediate Verif and Branch Deposit Post Verif should not have the same amounts. See updated REVISED Application Pricing Submittal form. The service item Branch Deposit Immediate Verification, AFP Service Code 100000, has been updated with the correct title of "Teller Line Cash Verification" and the annual volume has been corrected to 500,000. The service item Branch Deposit Post Verification, AFP Service Code 100007, has been consolidated with service item Night Drop Cash Verification, AFP Service Code 100000. The annual volume of 1,750,000 is correct.*
- Q9:** What is the \$ volume for both Branch Services deposits per year are?
- A9:** *The total amount of branch deposits processed was approximately \$26.3MM for calendar year 2019, which was 7% of the total branch/vault deposits processed for the year. Note, due to impact of the pandemic during calendar year 2020, we used 2019 activity as a basis for "typical" City operations.*
- Q10:** What is the \$ volume for Vault Services per year
- A10:** *The total amount of vault deposits processed was approximately \$364.8MM for calendar year 2019, which was 93% of total branch/vault deposits processed for the year. Note, due to impact of the pandemic during calendar year 2020, we used 2019 activity as a basis for "typical" City operations.*

Q11: Coin Deposit Section 4.2.B.8 what is the total \$ amount of coin deposited per year.

A11: *The total amount of coin deposits processed was approximately \$1MM for calendar year 2019. Note, due to the impact of the pandemic during calendar year 2020, we used 2019 activity as a basis for “typical” City operations.*

Q12: In reference to the Community Reinvestment Act (CRA), how does the City define “target neighborhoods”?

A12: *The Office of the Comptroller of the Currency designates distressed and underserved areas in relation to the Community Reinvestment Act (CRA) as target neighborhoods. Below is a link to the most recent bulletin and census tract list as of February 9, 2021.*

<https://occ.treas.gov/news-issuances/bulletins/2021/bulletin-2021-5.html>

Q13: Electronic Funds Transfer / Funds Transfer Services - FW surcharge \$10 Million + DC – Please provide a description of this service item.

A13: *Electronic Funds Transfer / Funds Transfer Services - FW surcharge \$10 Million + DC is a surcharge fee for each incoming Fedwire credit or outgoing Fedwire debit which exceeds \$10M.*

Q14: City of Austin Terms and Conditions - Due to the highly regulated nature of our services, we require our treasury services terms and conditions to be governing agreements in the contract. Is the City willing to include our agreement as part of the final contract and to negotiate any conflicting terms between the City's terms and the Bank's terms to reach mutual agreement with respect to the final contract?

A14: *The City is able to include the awarded firm's terms and conditions in the final contract. The City's terms and conditions will take precedence. Applicants should include any terms and conditions that are not consistent with the City's as an exception and should refer to section 4.3 of Solicitation Instructions. If there are exceptions, the applicant should include them in Section 10.10 of their application. These may be considered for negotiation if the firm is awarded the contract.*

Q15: Where do we put exceptions to the solicitation?

A15: *Exceptions to the solicitation should be submitted as section 10.10 of the application.*

Q16: What ERP system does the City utilize?

A16: *The City does not have a unified ERP system. The City's Financial Management system is CGI Financial.*

Q17: 10.8.5 b. – Lockbox Services – Is a 3rd party vendor utilized for EMS billing? If so, please provide the name of the vendor.

A17: *The City does not utilize a 3rd party vendor for EMS billing. Lockbox processing services are currently provided by the depository JPMorgan Chase Bank.*

Q18: Application Pricing Submittal – Deposits - Additional Address Paper – Please provide a description of this service item.

A18: *Application Pricing Submittal – Deposits - Additional Address Paper is related to receiving a paper copy of the monthly statement for each bank account.*

Q19: Application Pricing Submittal – Deposits - Check Returns – Are you currently receiving electronic notification of return items or a data transmission of this information?

A19: *The City is not currently receiving electronic notification or data transmission of return items. The City is notified about a check return by paper notification mailed to the City or by City staff manually pulling the return report from the online banking platform. The City prefers to receive electronic notifications for check returns.*

Q20: Application Pricing Submittal – Deposits - Lobby/Branch Services – On Branch Deposit Immediate Verification and Post Verification and Night Drop Cash Verification how the amounts are determined (dollars, straps, per 100, etc.)?

- A20:** *For the Branch Deposit Immediate Verification, AFP Service Code 100000, (this is also known as Teller Line Cash Verification) fees are currently charged per \$1 for a deposit of dollars deposited over the counter to a branch teller. The Branch Deposit Post Verification, AFP Service Code 100007, should be consolidated with the Night Drop Cash Verification, AFP Service Code 100000. The fees for this service code are currently charged per \$1 for a deposit of dollars deposited via the branch night drop/depository.*
- Q21:** Application Pricing Submittal – Deposits -Vault Services – Please explain the difference between a Vault Deposit and Vault Deposit per \$1,000 (New).
- A21:** *Vault deposit, AFP Service Code 100100, is charged for the total number of deposits processed through the cash vault. A Vault Deposit per \$1,000, AFP Service Code 10011Z, is charged per \$1,000 deposited for processing through the cash vault.*
- Q22:** Is the City assigning any value for cost to transition in your evaluation? If so what is the amount?
- A22:** *Applicant should clearly notate on the Application Pricing Submittal form any and all fees the City will be charged by the depository associated with transitioning from the current depository to a new depository relationship.*
- Q23:** On pricing page you ask for cut-off times for encoded and non-encoded checks is this what type of deposit (branch, Cash Vault, electronic?).
- A23:** *Applicant should provide a breakdown of the cut off times associated for each available deposit type, for both encoded and non-encoded checks.*
- Q24:** Section 10.6 indicates a notice to proceed commencing June 1, 2022. Is that the “go live” date for the services?
- A24:** *Although we will be executing a signed contract no later than August 31, 2021, the services, and resulting account analysis invoicing, for the new contract are not anticipated to begin prior to June 1, 2022.*
- Q25:** Are you expecting a response to the line items in the Scope of Work, or just the questions in Section 10?
- A25:** *The Solicitation Instructions, Section 10, references sections/lines from the Scope of Work to be specifically responded to within the Application Proposal. For example, Section 10.8.4 of the Solicitation Instructions states: “Confirm an understanding and agreement to each of the requirements described in Section 4.2.B of the Scope of Work. Include requested information and documentation for each section.”*
- Q26:** 4.2.B.9 - Lockbox services- To the extent that Bank provides financial services to your company wherein which we have access to protected health information (PHI), and the services we provide are not otherwise exempt from HIPAA, the Bank is willing to negotiate a mutually agreed agreement regarding the Privacy and Security of PHI. Will the City consider negotiating the HIPAA agreement?
- A26:** *The City is open to negotiating the terms of the HIPAA agreement. The City of Austin would prefer to use the City’s Business Associate Agreement (see Appendix 3 to this solicitation) concerning protected health information (PHI) and Health Insurance Portability and Accountability Act (HIPAA) information.*
- Q27:** 10.8.3 And Section 4.2.A- Is the City willing to agree to standing collateral substitution rights so long as the custodian ensures substituted collateral is of equal or greater value?
- A27:** *No, the City is not willing to agree to standing collateral substitution rights.*
- Q28:** Is the City willing to forego a provided monthly collateral statement for online access to daily collateral statements?
- A28:** *Yes, the City is willing to forego a provided monthly collateral statement for online access to daily collateral statements providing the City staff is able to access the statements through the online*

platform for a minimum of three (3) years but preferably accessible throughout the five (5) year duration of the depository contract.

Q29: What is the typical size (\$amount) and frequency of ACH files for Payroll?

A29: *The average full payroll direct deposit ACH file amount is \$32MM for an average of 17,000 direct deposits and is transmitted to the bank bi-weekly. There are also two (2) supplemental payroll runs between each payroll cycle. Each supplemental direct deposit ACH file typically ranges between \$1k - \$100k for approximately 50 direct deposits and are transmitted to the bank weekly.*

Q30: What is the typical size (\$amount) and frequency of ACH files for Vendors?

A30: *The average ACH vendor payment file amount is \$3MM for an average of 50 vendors and the file is transmitted to the bank daily.*

Q31: Please provide a copy of the current lockbox coupon.

A31: *A copy of the current lockbox coupon can be found in Appendix 5: City of Austin EMS PP.*

Q32: Depository- According to Texas Statutes- CHAPTER 2257. COLLATERAL FOR PUBLIC FUNDS, a letter of credit issued by a federal home loan bank is acceptable for collateral - will COA accept this type of collateral as well?

A32: *The list of acceptable depository collateral can be found in Appendix 1 City of Austin Investment Policy, Section IV.B.1.c.*

Q33: Treasury-Vault Services – Which armored car vendor is COA contracted with?

A33: *The City of Austin is currently contracted with Brinks Armored Car.*

Q34: Vault Services – Is the contract directly with the vendor?

A34: *The Depository must directly operate, or contract directly with a 3rd party, a cash vault to process the City's deposits delivered by armored car.*

Q35: Image Cash Letter – Where are the checks currently received?

A35: *The checks included in the Image Cash Letter are received at the City's utility remittance processing center.*

Q36: ACH – Is COA currently receiving returns via email and transmission?

A36: *Yes, the City is currently receiving returns via email and transmission.*

Q37: Is COA able to provide a sample file for Lockbox transmission data capture?

A37: *No, a sample file for Lockbox transmission data capture cannot be provided as the City does not currently receive a data transmission file. However, the City desires a lockbox processing solution that is capable of converting patient payment coupon data into a downloadable healthcare industry standard 835 file format.*

Q38: Does COA have a preference for a flat fee or line item discounts?

A38: *The City cannot disclose a preference for flat fee or line item discounts - Please respond to the Application Pricing Submittal as instructed.*

V. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: Adrianna Broniszewski
Didi Broniszewski, Procurement Specialist III
Purchasing Office

Digitally signed by Adrianna
Broniszewski
Date: 2021.06.15 08:35:08 -05'00'

6/15/21
Date

ACKNOWLEDGED BY:

Brenda Pollard

Name



Authorized Signature

June 28, 2021

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICIATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

Addendum 2 - June 16, 2021 (Signed)



**ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS**

Solicitation: RFP 7400 AVB3002

Addendum No: 2

Date of Addendum: 6/16/21

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Questions:

Q1: In regards to the following Question 12-The OCC does not identify any "target neighborhoods" in the City of Austin. I just want to be sure I am not missing something. Should we just speak to our activity in the community?

A1: *Per the website link included in the Addendum #1, question # 12 response, the Office of the Comptroller of the Currency identified 1 census tract located partially within the Austin city limits. Applicants should include responses to the items listed in Section 10.9 of the Solicitation Instructions.*

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: Adrianna Broniszewski
Digitally signed by Adrianna Broniszewski
Date: 2021.06.16 15:07:41 -05'00'
Didi Broniszewski, Procurement Specialist III
Purchasing Office

6/16/21
Date

ACKNOWLEDGED BY:

Brenda Pollard
Name


Authorized Signature

June 28, 2021
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.