

1. **RECITALS.** WHEREAS, Profituity, LLC (“Profituity”) is a service provider that offers payment-related services, including ACH processing, Check 21 processing, and related solutions; and WHEREAS, the Customer desires to engage Profituity to provide certain services described in this Agreement, and Profituity agrees to perform these services under these Terms and Conditions set forth herein; NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions contained herein, the parties agree to the following:
2. **DEFINITIONS.**
 - 2.1. **Automated Clearing House (“ACH”):** A network for processing electronic funds transfers in the United States, governed by the rules of the National Automated Clearing House Association (“NACHA”).
 - 2.2. **NACHA Operating Rules (“Rules”):** The governing rules and standards for the ACH network, established by NACHA, which must be adhered to by all parties.
 - 2.3. **ACH Entry (“Entry”):** A credit or debit instruction initiated by the Customer and transmitted through the ACH network.
 - 2.4. **“Receiver”:** The individual or entity whose account is credited or debited in an ACH Entry.
 - 2.5. **“Originator”:** The Customer who initiates ACH Entries and is responsible for their accuracy and compliance with applicable rules.
 - 2.6. **Originating Depository Financial Institution (“ODFI”):** A financial institution that transmits ACH Entries into the network on behalf of the Originator.
 - 2.7. **Receiving Depository Financial Institution (“RDFI”):** A financial institution that receives ACH Entries from the network and credits or debits the Receiver’s account as instructed.
 - 2.8. **Third-Party Sender (“TPS”):** A type of Third-Party Service Provider that acts as an intermediary between the Originator (Customer) and the ODFI to process ACH Entries.
 - 2.9. **“Settlement”:** The process of crediting or debiting funds to the appropriate accounts following the processing of ACH Entries.
 - 2.10. **“Settlement Date”:** The date an exchange of funds with respect to an Entry is reflected on the books of the applicable Federal Reserve Bank(s) and with respect to a non-monetary Entry, the date specified in the “Settlement Date” field of the Entry.
 - 2.11. **“Check 21 Services”:** Processing services that convert paper checks into electronic items (Image Replacement Documents or Substitute Checks) for transmission and Settlement.
 - 2.12. **“Substitute Check” or “Image Replacement Document”:** A paper reproduction of an original check created in accordance with the Check Clearing for the 21st Century Act (“Check 21”).
 - 2.13. **Notification of Change (“NOC”):** A notification sent by an RDFI to indicate corrections to information contained in an ACH Entry.
 - 2.14. **“Effective Entry Date”:** The date specified by the Originator for an ACH Entry to be settled.
 - 2.15. **“Reclamation Entry”:** A debit Entry initiated to recover funds paid in error to a Receiver, typically due to the Receiver’s death or ineligibility.
 - 2.16. **“Return Entry”:** An ACH Entry that is returned by the RDFI for a valid reason under the Rules, such as insufficient funds or incorrect account information.
 - 2.17. **“Business Day”:** A day when Profituity is open for business and the ACH Operator is processing transactions.
 - 2.18. **“Threshold Limits”:** The maximum dollar amount or volume of Entries established by Profituity for Customer transactions.
 - 2.19. **“Regulation CC”:** Federal Reserve regulations governing the availability of funds and the collection and return of checks.
 - 2.20. **“Prenotification Entry” or “Prenotification” or “Prenote”:** A non-monetary Entry initiated by an Originator to an RDFI prior to the initiation of the first credit or debit Entry to a Receiver’s account with the RDFI.
 - 2.21. **“Reinitiated Entry” or “Reinitiation” or “Reinitiate”:** Following the return of an Entry, an Entry initiated to the same Receiver’s account in the same amount in payment or fulfillment of the same underlying obligation.
 - 2.22. **“Reclamation Entry”:** A debit Entry initiated by an Originator to reclaim from an RDFI any amounts received by a recipient after the death or legal incapacity of a recipient or the death of a beneficiary.
 - 2.23. **“Return Fee”:** A fee charged by an Originator to a receiver for a debit Entry or other item that was returned for insufficient or uncollected funds, to the extent permitted by applicable legal requirements.
 - 2.24. **“Return Fee Entry”:** A single Entry initiated by an Originator to the account of a Receiver to collect a return fee.
 - 2.25. **“Protected Information”:** Any sensitive or confidential information, including consumer bank account information and personally identifiable information, that is protected under applicable laws and regulations.
3. **ACH PROCESSING SERVICES.**
 - 3.1. **Authorization.** The Customer authorizes Profituity to transmit ACH Entries on the Customer’s behalf as a Third-Party Sender (TPS) through its designated account(s). The Customer understands that not all transactions are eligible for electronic processing and authorizes Profituity to process such ineligible transactions when applicable as paper drafts, through image exchange, or as Image Replacement Documents (IRDs). This authorization remains in effect until sixty (60) days after Notice of Termination.
 - 3.2. **Processing, Transmittal, and Settlement by Profituity.** Profituity agrees to:
 - a) Process Entries received from the Customer that conform to the Rules and required file specifications;
 - b) Transmit such Entries as a TPS to the ODFI, to which will be sent to the Federal Reserve (“ACH Operator”) acting as an ACH processor; and
 - c) Settle funds for such Entries in accordance with the Rules and this Agreement.

Profituity will process and transmit Entries provided the following conditions are met: (i) Entries are received by Profituity by 4:30 PM (Central Time) on a Business Day via one of the following methods: HTTPS secured web API, HTTPS secured web application, or Secure FTP/SSH upload; (ii) The Effective Entry Date is at least one Business Day after submission; (iii) The ACH Operator and Profituity are open for business on the processing day; (iv) the dollar amount of Entries does not exceed Customer’s Threshold Limits as defined by Profituity; and (v) The Entry is submitted by an authorized user in compliance with Profituity’s prescribed methods. If these conditions are unmet (excluding threshold violations), Profituity will make reasonable efforts to process the Entries by the next available Business Day. Funds deemed un-cleared by Profituity remain in its custody until final Settlement. Profituity reserves the right to adjust fund availability without notice. Profituity shall settle funds to the Customer following the established hold time expiration (<https://help.profituity.com/ck/hold-times>). Profituity will notify Customers of non-processing days and holidays annually, or for new Customers at the time this Agreement is executed. These non-processing days coincide with Federal Reserve Bank holidays, which are publicly available at <https://www.frb services.org/about/holiday-schedules>. It is the Customer’s responsibility to plan submission of Entries in accordance with the published holiday and non-processing schedule.
 - 3.3. **UCC Article 4A Disclosure.** In the case of credit Entries subject to UCC Article 4A (CCD credit entries to non-consumer accounts), the Customer is hereby notified that: (i) the Entry may be transmitted through the ACH network; (ii) the rights and obligations of the Customer are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, unless the Customer and Profituity have agreed that the laws of another jurisdiction shall govern their rights and obligations; (iii) credit given by the RDFI to the Receiver for the Entry is provisional until the RDFI has received final Settlement through a Federal Reserve Bank or otherwise has received payment; and (iv) if the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver’s account, and the Customer will not be considered to have paid the amount of the credit Entry to the Receiver.
 - 3.4. **Customer Representations, Agreements, and Warranties.** Customer hereby: (i) assumes the responsibilities of, and makes the warranties of, an Originator under the Rules and agrees to reimburse the ODFI for returns, reversals, adjustments, reclamations, and warranty claims and responsibilities related to Customer’s ACH Entries; (ii) agrees to comply with, and be bound by, the Rules, including but not limited to the requirements of Article Two (Rights and Responsibilities of ODFIs, Their Originators and Third-Party Senders), Section 2.16 (Obligations of Third-Party Senders, and of ODFIs and Originators that Use Third-

Party Senders); (iii) agrees to comply with all applicable state and federal laws, rules and regulations, including, but not limited to, sanction laws administered by the Office of Foreign Assets Control ("OFAC"), the Electronic Funds Transfer Act, the Unlawful Internet Gambling Enforcement Act, the Uniform Commercial Code, and Federal Reserve Board Regulation CC and E (the foregoing and the ACH Rules are, collectively, the "Applicable Rules"); and (iv) acknowledges that ACH Entries may not be initiated that violate the laws of the United States, including but not limited to the sanctions laws, regulations, rules, and orders administered by OFAC, laws, regulations, rules, and orders administered by the Financial Crimes Enforcement Network ("FinCEN"), and any state laws, regulations, or orders applicable to the providers of ACH payment services. Customer agrees to perform its obligations under this Agreement and in accordance and compliance with the Rules. Profituity recommends Customer obtain a current copy of the Rules that is published annually. A copy of the Rules book may be purchased at <https://www.nacha.org/store>. Customer further understands that it is subject to all applicable laws and regulations and that these may supersede provisions in this Agreement. Customer expressly agrees that it will not initiate Entries that violate the laws of the United States. Customer further represents and agrees that:

- a) Each person shown as the Receiver on an Entry received by Profituity from Customer, has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry.
- b) That such authorization is operative at the time of transmittal of the Entry by Profituity as provided herein.
- c) Each Entry contains the Receiver's correct account number and all other information necessary to enable the RDFI to Customer with its requirements under the Rules and that all information transmitted with an Entry is related to the payment represented by such Entry.
- d) Customer has obtained written authorization or authorization that is compliant with the Rules from the Receiver.
- e) Customer shall retain the original or legally acceptable copy of the authorization as required in the Rules, for a minimum of two (2) years from the termination or revocation of the authorization and shall produce the original or legally acceptable copy of the authorization within seven (7) Business Days upon Profituity's request. Failing to provide proper authorization, or failing to provide proper authorization within allowed time, may result in a fine of \$100.00 per un-provided authorization. Customer will be responsible for any fines incurred to Profituity resulting from a Rules violation.
- f) Customer will follow procedures and post, provide, or include, at Profituity's direction, any notices, or updates to such notices, which may be required. Customer shall strictly follow any and all operational procedures provided by Profituity, as amended from time to time.
- g) Customer shall only transmit Entries that it has expressly been approved for.
- h) Customer shall transmit Entries to Profituity that comply with Profituity's formatting and other requirements. The dollar amount of Entries transmitted by Customer to Profituity on any one day shall not exceed Threshold Limits as defined by Profituity. Profituity reserves the right to periodically review and modify Threshold Limits for compliance.
- i) If a Receiver alleges that an Entry was made in error, the Customer is obligated to confirm the correctness of the Entry. In the event it is confirmed that an error was made, the Customer must take corrective action to rectify the mistake. Such corrective action must be initiated and completed within a reasonable time frame, as dictated by the nature of the error and in compliance with applicable laws, regulations, and industry standards.
- j) Customer agrees to implement and maintain commercially reasonable security measures to protect sensitive and confidential information. This includes, but is not limited to, consumer bank account information and personally identifiable information.

3.5. Approved Types of Entries. Customer hereby acknowledges receipt of, and agrees to adhere to, the Rules related to the initiation of those types of Entries for which they have been expressly approved. Customer is restricted to transmitting only the types of Entries that have been expressly approved and are listed on this Agreement. Requirements for each Entry type can be viewed from Profituity's Help Center:

- a) Accounts Receivable Entry (ARC). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of ARC Entries. [View Requirements](#)
- b) Back Office Conversion Entry (BOC). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of BOC Entries. [View Requirements](#)
- c) Cash Concentration or Disbursement Entry (CCD). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of CCD Entries. [View Requirements](#)
- d) Point-of-Purchase Entry (POP). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of POP Entries. [View Requirements](#)
- e) Predetermined Payment & Deposit Entry (PPD). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of PPD Entries. [View Requirements](#)
- f) Re-Presented Check Entry (RCK). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of RCK Entries. [View Requirements](#)
- g) Telephone-Initiated Entry (TEL). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of TEL Entries. [View Requirements](#)
- h) Internet-Initiated/Mobile Entry (WEB). Customer hereby acknowledges receipt of, and agreement to adhere to, the Rules related to initiation of WEB Entries. [View Requirements](#)

3.6. Rejected Entries or Files. Profituity shall have the right to reject any Entry or file. Profituity shall make reasonable efforts to notify the Customer of such rejection but is not required to. Profituity shall have no liability to Customer by reason of the rejection of any such Entry, or Entries, or the fact that such notice is not given at an earlier time than that provided for herein. Customer acknowledges understanding that Profituity may reject Entries for any reason permitted or required in the Rules, or if the Entry would cause Profituity to violate any laws of the United States, the Federal Reserve, other regulatory risk control program, or any other law or regulation. Profituity reserves the right to assess Customer a \$35.00 fee for any such Entry or Entries resulting in deletion. It is the responsibility of the Customer to remake any rejected Entries or files with any necessary required corrections.

3.7. Initiation of Reversals, Corrections, or Changes. Profituity does not support reversals, corrections or changes to Entries or files once they have been submitted to the ODFI. The deadline for any modifications or cancellations of Entries or files by the Customer is by 4:30 pm (Central Time).

3.8. Reclamation Entries. The Customer, Profituity, or ODFI may initiate a Reclamation Entry or written demand for payment in accordance with the Rules under the following conditions: (i) the Receiver is deceased; and (ii) neither the Receiver's estate nor any other account holder is entitled to the payment. The Reclamation Entry is a debit entry that must be originated in an amount equal to or less than the pension, annuity, or other benefit payment to which the Receiver was not entitled. The reclamation entry or written demand for payment must contain the following information:

- a) the name of the Receiver;
- b) the deceased Receiver's account number;
- c) the exact amount of the entry being reclaimed; and
- d) the approximate date the entry being reclaimed was initiated.

Additionally, Reclamation Entries must contain the word "RECLAIM" in the "Company Entry Description" field. The Reclamation Entry, or written demand for payment, must be originated within five (5) Business Days after receiving notice of the Receiver's death. If a Reclamation Entry is returned by the

RDFI, the Customer may make a written demand for payment within fifteen (15) Business Days after receiving the returned Reclamation Entry.

- 3.9. **Returned Entries.** Customer acknowledges that Entries initiated into the ACH Network may be returned for any reason, subject to limited exceptions. Profituity shall notify Customer of the receipt of a returned Entry, or Entries, from the ACH Operator no later than one Business Day after the Business Day of such receipt and shall credit or debit such Entries to Customer's account or deduct such Entries from Customer's funds held by Profituity. Customer will provide collected funds to indemnify Profituity if any debit is returned after Profituity has credited funds to Customer's account. Profituity may, but shall have no obligation to, re-transmit a returned Entry.
- 3.10. **Dishonored Returns.** The Customer, Profituity, or ODFI reserves the right to dishonor a return received from an RDFI under the following conditions: (i) the return was untimely; (ii) the return contained incorrect information; (iii) the return was misrouted; (iv) the return was a duplicate; (v) the return resulted in an unintended credit to the Receiver during the reversal process. In the case in which the above conditions are met, a dishonored return must be transmitted within five (5) Business Days following the Settlement date of the Return Entry. The Customer acknowledges that the RDFI has the right to contest a dishonored return. Failure by the Customer to utilize the dishonored return process does not preclude its right to seek recovery against an RDFI through other means, outside of the ACH return process.
- 3.11. **Reinitiation of Returned Entry Provisions.** The Customer, Profituity, or ODFI may Reinitiate an Entry, other than an RCK Entry, that was previously returned, only if:
- The Entry was returned due to insufficient or uncollected funds.
 - The Entry was returned for stopped payment and reinitiation has been separately authorized by the Receiver after the receipt of the Return Entry.
 - The Customer has taken corrective action to remedy the reason for the return.

The Customer, Profituity, or ODFI may Reinitiate an RCK Entry that was previously returned if:

- The RCK Entry has been returned for insufficient or uncollected funds; and
- The item to which the RCK Entry relates has been presented no more than on time through the check collection system (as a check, substitute check, or image) and no more than one time as an RCK Entry.

In all cases, Reinitiation of the Entry must take place within 180 days after the Settlement Date of the original Entry. The Customer, Profituity, or ODFI may reinitiate an Entry that has been returned for insufficient or uncollected funds a maximum of two (2) times following the return of the original Entry. The Customer is obligated to submit Reinitiated Entries as a separate batch that contains the word "RETRY PYMT" in the "Company Entry Description" field. The descriptor "RETRY PYMT" will supersede the original content of the "Company Entry Description" field present in the primary Entry, including content mandated by these Rules.

- 3.12. **Return Fee Entry Provisions.** The Customer may initiate a Return Fee Entry, provided it aligns with prevailing legal requirements, concerning the return of: (i) a debit Entry to a consumer account held by a Receiver; (ii) ARC, BOC, or POP Entries directed at a non-consumer account of a Receiver; (iii) an item eligible for conversion to a debit Entry but remained unconverted. For Return Fee Entries based on the return of an Entry, such Entry must be returned due to insufficient or uncollected funds, identifiable under return codes R01 or R09. In the context of a Return Fee Entry based on a returned check, said check must indicate its return due to "Not Sufficient Funds," "NSF," "Uncollected Funds," or terminology of similar intent. The Customer can meet Return Fee Entry authorization requirements by presenting a notice during the authorization of the foundational Entry or at the acceptance of the original item. This notice, compliant under Regulation E, is applicable irrespective of the account classification as consumer or non-consumer. Return Fee Entries authorized via notice must employ the standard entry class code "PPD." A Return Fee Entry authorized in a manner other than by notice must use the standard entry class code appropriate to the manner of authorization. The

Customer is obligated to submit Return Fee Entries as distinct batches, distinctly marked "RETURN FEE" in the "Company Entry Description" field. The "Company Name" field must consistently reflect the Originator's identity as in the underlying Entry. For Return Fee Entries stemming from a returned check, the "Company Name" field should mirror the check's payee. The Customer may impose only one Return Fee in relation to an underlying Entry or item that was returned, whether such Return Fee is collected via the ACH or otherwise. The Customer is prohibited from initiating a Return Fee Entry concerning the return of another Return Fee Entry. Return Fee Entries authorized via notice must have their Settlement Date fall within 45 days post the Settlement Date of the Return Entry of the underlying debit Entry or the return of the other underlying item.

- 3.13. **Notifications of Change.** Profituity shall notify Customer of all NOCs received by Profituity related to Entries transmitted by Customer no later than two (2) Business Days after receipt of such NOC. Customer shall ensure that changes requested by NOC are made within six (6) Business Days of Customer's receipt of the information or prior to initiating another Entry to the Receiver's account, whichever is later. The ODFI reserves the right to refuse a NOC Entry in cases where the ODFI is unable to identify the Entry or the Originator.
- 3.14. **Prenotification Provisions.** The Customer may, at its discretion, proceed with the origination of a Prenotification Entry, prior to any substantive transactional Entry. Following the origination of a Prenotification Entry to a Receiver's account, the Customer may advance with subsequent Entries to the Receiver's account post the third Business Day subsequent to the Settlement Date of the Prenotification Entry. This is contingent upon the absence of a Return or a NOC in connection with the Prenotification received by the ODFI. In instances where the ODFI is in receipt of a Return Entry or a NOC, arising from the Prenotification, by the commencement of business on the second Business Day post the Settlement Date of the Prenotification, the Customer is obligated to refrain from transmitting any subsequent Entries to the Receiver's account until the cause for the Return Entry is rectified or the adjustments as stipulated by the NOC are implemented.
- 3.15. **Micro-Entry Provisions.** Profituity does not support the initiation, processing, or settlement of Micro-Entries to any Receiver's account. Customers are prohibited from transmitting Micro-Entries through Profituity's systems.
- 3.16. **Data Security Requirements.** The Customer agrees to comply with the Rules, including the Supplementing Data Security Requirements, available here <https://www.nacha.org/rules/supplementing-data-security-requirements>, to ensure the security of Protected Information during the initiation, processing, and storage of Entries. Specifically:
- The Customer must establish, implement, and update appropriate policies, procedures, and systems to: (i) protect the confidentiality and integrity of Protected Information until its destruction; (ii) safeguard against threats or hazards to the security of Protected Information; and (iii) prevent unauthorized use or access to Protected Information that could result in harm to a natural person.
 - If the Customer originates more than 2 million Entries, DFI account numbers must be rendered unreadable when stored electronically.

The Customer agrees to periodically review and update its policies, procedures, and systems to: (i) address evolving security threats and risks; (ii) incorporate regulatory changes or updates to the Rules; and (iii) comply with guidance provided by Profituity regarding data security standards. The Customer assumes full responsibility for any fines, penalties, or damages arising from its failure to comply with these Data Security Requirements.

- 3.17. **Cancellations or Amendments by Customer.** Customer shall have no right to the cancellation or amendment of any Entry, or Entries, after its receipt by Profituity. However, Profituity shall use reasonable efforts to act on a request by Customer for cancellation, modification, or deletion of an Entry prior to transmitting it to the ACH Operator, but will have no responsibility for the failure to comply with such a request. All requests must be made in writing and faxed, delivered, or emailed to Profituity. Profituity reserves the right to assess Customer a \$35.00 fee for each requested cancellation, modification or deletion of Entry or Entries.

4. **CHECK 21 PROCESSING SERVICES.** Check 21 processing shall be provided to the Customer if indicated in this Agreement or when an eligible item cannot be electronically presented through the ACH or for any other acceptable reason as determined by Profituity. In such cases, Profituity enables the Customer to use its software, or compatible third-party software configured to meet Profituity's transmission specifications, along with an imager to scan paper checks and create an image cash letter file. This file, formatted as X9.37 or another approved standard, will be transmitted to Profituity, which will facilitate its transfer to a financial institution for processing.

4.1. **Authorization.** The Customer authorizes Profituity to process and transmit check images and related data ("Items") on the Customer's behalf through Profituity's Check 21 Processing Services. This authorization includes the use of Profituity's software, or other software tested and approved by Profituity, in conjunction with imaging hardware to create electronic image cash letter files ("Image Files") in the required format (e.g., X9.37). The Customer understands that Items processed via Check 21 may be converted into Substitute Checks as permitted by the Check 21. This authorization remains in effect until sixty (60) days after written Notice of Termination is provided by either party.

4.2. **Processing, Transmittal, and Settlement by Profituity.** Profituity agrees to:

- a) Process Image Files received from the Customer that conform to Profituity's transmission specifications and comply with applicable laws, regulations, and industry standards, including Regulation CC and Check 21;
- b) Transmit such Image Files to the receiving financial institution or clearinghouse for further processing, presentment, and settlement as authorized under this Agreement; and
- c) Settle funds for successfully processed Items in accordance with the timelines and requirements set forth in this Agreement.

Profituity will process and transmit Items provided the following conditions are met: (i) Items are received by Profituity by 4:30 PM (Central Time) on a Business Day; (ii) The Item conforms to Profituity's formatting requirements and specifications; (iii) the financial institutions or clearinghouses involved in processing the Items are open for business on the relevant Business Days; (iv) the total dollar amount of Items does not exceed the Customer's established Threshold Limits, as defined and periodically reviewed by Profituity; and (v) the Items are submitted by an authorized user in accordance with Profituity's prescribed methods. If these conditions are unmet (excluding threshold violations), Profituity will make reasonable efforts to process the Items on the next available Business Day. Funds for processed Items are considered un-cleared until final Settlement occurs. Profituity reserves the right to adjust fund availability timelines without prior notice. Settlement to the Customer will occur following the expiration of applicable hold times, as detailed in Profituity's published policies. (<https://help.profituity.com/ck/hold-times>).

- 4.3. **Availability of Funds.** Customer understands and agrees that items transmitted using Check 21 Services are not subject to the funds availability requirements of Regulation CC.
- 4.4. **Eligible Items.** Customer agrees to scan and transmit only "checks" as that term is defined in Regulation CC. Customer agrees that the image of the check transmitted to Profituity, as it is converted to an Image Replacement Document or Substitute Check for subsequent presentment and collection, shall be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code.
- 4.5. **Unacceptable Items.** Customer understands and agrees that it will not transmit the following items using the Check 21 Services: (i) items containing an alteration on the front of the item, or which Customer knows or suspects, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn; (ii) any check previously converted to a Substitute Check as defined in Regulation CC; (iii) any item issued by a financial institution in a foreign country; (iv) any item that has been re-deposited or returned; (v) items that are "stale dated" or "postdated"; (vi) items that are incomplete or non-negotiable; (vii) remotely created checks; and (viii) items that are drawn on or otherwise issued by the U.S. Treasury Department.
- 4.6. **Image Quality.** The Image Files transmitted to Profituity by Customer in accordance with Profituity's transmission specifications shall contain images of the front and the back of the

check or items scanned remotely by Customer. The checks or items shall be of such quality that the following information can clearly be read by sight review of the images: (i) the amount of the item; (ii) the payee; (iii) the drawer's signature; (iv) the date of the item; (v) the item number; (vi) the information identifying the drawer and the paying bank that is printed on the check, including the MICR line; and (vii) all other information placed on the item prior to the time an image of the item is captured, such as any required identification written on the front of the item and any endorsements applied to the back of the item. The image quality of the check must also comply with the requirements established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve Board, including the requirements under federal Regulation CC, or any other regulatory agency, clearing house or association. The Customer shall ensure that all required information is captured from the MICR line of the check. Images may be rejected for quality purposes if it does not meet the criteria established.

4.7. **Check Retention and Destruction.** Customer agrees to securely store each original check that is used in conjunction with Check 21 Services for a reasonable period of time after the transmission to Profituity in order to verify Settlement and credit. Until such time that the check is destroyed, Customer agrees to securely store using commercially reasonable methods. After such reasonable time period expires, Customer agrees to destroy the original check. Customer understands and agrees that it is responsible for any loss caused by the failure to secure an original check.

4.8. **Customer Representations, Agreements, and Warranties.** Customer makes the following representations and warranties with respect to the use of the Check 21 Services and each image of an original check that is transmitted to Profituity using the Check 21 Services: (i) Customer is responsible for the accurate scanning of all checks, for the results of the use of the Check 21 Services, and for submitting and transmitting accurate, complete and readable Image Files to Profituity; (ii) Customer shall assure that all checks are properly endorsed prior to scanning and that the images created accurately represent all of the information on the front and back of the checks, including all endorsements; (iii) each image of a check transmitted to Profituity is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check; (iv) the amount, the payee, signature(s), and endorsement(s) on the original check are legible, authentic, and authorized; (v) each check that Customer submits to Profituity will not be resubmitted in any format to Profituity, or deposited or resubmitted to any other person or financial institution for payment, resulting in the same drawer's account to be debited twice; (vi) each check that the Customer submits to Profituity is drawn in United States dollars on a financial institution located within the United States, excluding its territories; (vii) Customer will only transmit eligible items and has handled the original items in accordance with applicable laws, rules and regulations; (viii) each Substitute Check meets all the requirements for legal equivalence under Check 21; (ix) Customer will not transmit duplicate items; (x) Customer will retain possession of each original check deposited using the Check 21 Services for a reasonable amount of time and neither the Customer nor any other party will resubmit the original check for payment; (xi) Customer has not knowingly failed to communicate any material information to Profituity and all information provided to Profituity by Customer is accurate and true; (xii) Customer and its clients are reputable and are not using Profituity or its Check 21 Services as a conduit for money laundering, illegal activity or transactions, or other illicit purposes; (xiii) the sum of all items presented does not exceed Customer's Threshold Limits as defined by Profituity; (xiv) Customer will comply with this Agreement and all applicable rules, laws, regulations and requirements; (xv) Customer will indemnify and hold harmless Profituity from any damages, liabilities, costs, expenses or other harm arising out of any violation thereof; and (xvi) all checks are made payable to the Customer.

4.9. **Security Procedures.** Customer is responsible for establishing and maintaining commercially reasonable measures to safeguard against unauthorized access and network infections. Customer acknowledges and agrees that it has approved such security procedures and that the procedures are adequate for the purposes intended. Customer bears the risk of loss or alteration of

information in transit from Customer's systems to Profituity's systems.

- 4.10. Rejected Items or Image Files. Profituity shall have the right to reject any Item or Image File. Profituity shall make reasonable efforts to notify the Customer of such rejection but is not required to. Profituity shall have no liability to Customer by reason of the rejection of any such Item, or Items, or the fact that such notice is not given at an earlier time than that provided for herein. Customer acknowledges understanding that Profituity may reject Items for any reason permitted or required, or if the Item would cause Profituity to violate any laws of the United States, the Federal Reserve, other regulatory risk control program, or any other law or regulation. Profituity reserves the right to assess Customer a \$35.00 fee for any such Item or Items resulting in deletion. It is the responsibility of the Customer to remake any rejected Items or Image Files with any necessary required corrections.

- 4.11. Initiation of Reversals, Corrections, or Changes. Profituity does not support reversals, corrections or changes to Items or Image Files once they have been submitted to the receiving financial institution or clearinghouse. The deadline for any modifications or cancellations of Items or Image Files by the Customer is by 4:30 pm (Central Time).

- 4.12. Returned Items. Customer acknowledges that Items may be returned for any reason, subject to limited exceptions. Profituity shall notify Customer of the receipt of a returned Item no later than one Business Day after the Business Day of such receipt and shall credit or debit such returns to the Customer's account or deduct such amounts from the Customer's funds held by Profituity. Customer will provide collected funds to indemnify Profituity if any debit is returned after Profituity has credited funds to Customer's account. Profituity may, but shall have no obligation to, re-transmit a returned Item.

5. REPRESENTMENT SERVICES. Representment Services shall be provided to the Customer if indicated in this Agreement.

- 5.1. Authorization. The Customer authorizes Profituity to represent all eligible returned items forwarded to Profituity in accordance with applicable laws and industry standards. If Profituity did not electronically present the original item, the Customer authorizes its financial institution to forward all returned items associated with the Customer to Profituity immediately upon the failure of the first presentation. This authorization shall remain in effect until: (i) Profituity receives Notice from the Customer terminating this authorization, provided such Notice affords Profituity reasonable time to act; and (ii) all financial obligations of the Customer to Profituity under this Agreement have been fully satisfied. Profituity retains the right to complete the recovery process for any returned items forwarded to it prior to the termination of this authorization.

- 5.2. Services Provided by Profituity. Profituity shall represent eligible returned items in accordance with the applicable Rules. Profituity will remit to the Customer 100% of the face value of all successfully recovered items. Recovered amounts will be transmitted to the Customer via ACH to the business bank account designated by the Customer on the first Business Day following successful recovery. If the Customer is entitled to a portion of any recovered fees ("Commissions"), such Commissions will be paid to the Customer on or before the twenty-fifth (25th) day of each month, based on cumulative recovery activity from the preceding month, provided the related fees have been successfully recovered. In the event an item is subsequently returned unpaid after Profituity has transmitted recovered funds to the Customer, Profituity will debit the Customer's account for the amount of the returned item. Profituity does not guarantee the recovery or payment of any returned item submitted for representment.

- 5.3. Customer Representations, Agreements, and Warranties. Customer agrees to provide notice to the check writer or Receiver at the point of sale, on an invoice, in a service agreement, or other acceptable location. When applicable, Customer agrees to complete a Bank Release Authorization form, provided by Profituity, and will forward to the financial institution(s) utilized by the Customer so that all returns will be forwarded to Profituity after first presentation. If Customer accepts payment directly, it is the responsibility of the Customer to mark the item appropriately within the solution immediately. Customer will be responsible for resolving any issues and fees, including return item bank fees, arising from accepting payments on items that have already been

paid or have already been sent for payment through the Representment system. Customer acknowledges and agrees by virtue of acceptance and participation in this service that:

- Profituity is not acting as an insurer of items or as a collection agency.
- Profituity is providing access to an automated software program to be used by the Customer for the purpose of allowing Customer to represent their returned or dishonored items.
- Profituity will oversee the software's operation and provide the secured hosting that the software runs on, but any activity that occurs outside of the software's function is the responsibility of the Customer.
- Data processing entails the risk of human and machine errors, omissions, delays and losses, including inadvertent loss or misstatement of data that may give rise to loss or damage and Profituity shall not be liable for any errors, or unintentional negligence or misconduct.
- Profituity shall not be responsible for delays in receipt of Customer information or processing of Customer information because of causes beyond its reasonable control, including, without limitation, failures or limitations on the availability of third party telecommunications or other transmission facilities, including (if applicable) the Customer's failure to properly enter and/or transmit information.
- Profituity, or Profituity affiliate, will retain the right to complete their check recovery process for all returned check items forwarded to Profituity prior to any termination.

- 5.4. Secondary Collections. Customer is responsible for utilizing third-party collection affiliates to apply additional collection action in cases where the representment attempts fail or where items don't qualify for representment.

6. GENERAL TERMS.

- 6.1. Customer Representations and Updates. Customer represents that all information provided in the on-boarding process and this Agreement is correct and complete. The Customer agrees to notify Profituity in writing of any changes to the information provided in the Agreement or any changes affecting the Customer during the Term of this Agreement. Such changes shall include, but are not limited to, changes in Customer's name or address, changes in ownership or legal structure, and changes to any bank account information. The Customer shall be liable for any losses or expenses incurred by Profituity arising from the Customer's failure to report such changes.

- 6.2. Debit and Credit Authorization. Customer hereby authorizes the account(s) provided in conjunction with this Agreement to be debited and/or credited by Profituity according to these Terms and Conditions. This authorization is also applicable for any new account information provided by Customer to Profituity. Customer authorizes its Financial Institution to accept all credits and debits made to its account as a result of Profituity's services.

- 6.3. Account. Profituity may, without prior notice or demand, obtain payment of any amount due and payable to it, under this Agreement, including any Addenda(s), Schedule(s), or Exhibit(s), or pursuant to this Agreement, by debiting the account(s) of Customer, and shall credit the account for any amount received by Profituity by reason of the return of an Entry transmitted by Profituity, for which Profituity has previously received payment from Customer. Customer further agrees to credit the ODFI for any credit Entries originated and for any debit Entries Returned by a RDFI if the ODFI does not receive payment from Profituity. Customer shall, at all times, maintain a balance of funds available in the account sufficient to cover its payment obligations under this Agreement. In the event there are not sufficient available funds in the account to cover Customer's obligations under this Agreement, Customer agrees that Profituity may debit any account maintained by Customer and made available to Profituity now or in future, or take other measures it deems appropriate, along with a returned invoice fee of \$75.00.

- 6.4. Account Reconciliation. Entries transmitted by Profituity will be reflected on Customer's settlement statement provided by Profituity. Customer agrees to notify Profituity promptly of any discrepancy between Customer's records and the information shown on any such statement. If Customer fails to notify Profituity of any such discrepancy within thirty (30) days of receipt of a settlement statement containing such information, Customer agrees

that Profituity shall not be liable for any losses of any kind, including any loss of interest with respect to an Entry shown on such settlement statement, resulting from Customer's failure to give such notice. Customer understands that in the cases in which transmission of Entries did not occur, that no such settlement statement exists and therefore cannot be provided by Profituity.

- 6.5. **Payment Terms.** Customer agrees to pay all fees due to Profituity on a monthly basis as specified in this Agreement, including any Addenda, Schedules, or Exhibits, or as amended by Profituity from time to time. Payment shall be made via ACH by Profituity debiting the account(s) provided by Customer. Customer further agrees to maintain a commercial checking account with a United States bank and ensure sufficient available funds to meet all obligations under this Agreement, including the full amount of each Entry transmitted by Profituity on the Settlement Date. Profituity has the right to change pricing, at its sole discretion, at any time. Profituity will specify the effective date of such changes, and the Customer agrees to adhere to the updated pricing. Profituity reserves the right, without liability and without prejudice to any other remedies, to:
- suspend the provision of services until all outstanding amounts owed by Customer are paid in full;
 - require prepayment of all amounts due before providing further services;
 - debit any account maintained by Customer and made available to Profituity; and/or
 - take any other measures Profituity deems appropriate.
- Customer is solely responsible for the payment of any and all sales, use, excise, value-added, utility, or other similar taxes related to the services provided under this Agreement or associated fees and charges. Any such tax amounts required under applicable law shall be remitted to Profituity as necessary.
- 6.6. **Notices and Instructions.** Profituity shall be entitled to rely on any written notice, oral or electronic communication believed by it in good faith to be genuine and to have been communicated by an authorized representative, or by an individual who, in good faith, Profituity believes is authorized to act on behalf of the Customer. Customer shall maintain responsibility of notifying Profituity of any changes, including additions and deletions, of authorized representatives. All notices shall be deemed to have been sufficiently given and received for all purposes when delivered by hand, email, or courier, or five (5) days after being sent by certified or registered mail, postage and charges prepaid, return receipt requested. Notices to Profituity shall be sent to Profituity, LLC, 5500 Brooktree Road, Suite 104, Wexford, PA 15090, or via email to support.dept@profituity.com. Notices to Customer shall be sent to the mailing or physical address provided in this Agreement, or to any email address provided by Customer, including, but not limited to, the primary contact, billing contact, or beneficial owner.
- 6.7. **Term, Termination, and Survival.** Profituity will provide selected services as indicated on this Agreement. The term of this Agreement shall commence as of the date executed by the Customer and shall continue until terminated as set for in this section. Customer may terminate this Agreement for "Cause" at any time upon giving Notice thereof to Profituity. For purposes of this Agreement, the term "Cause" shall include: (a) the bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for Profituity, (b) an intentional or grossly negligent or illegal act committed by Profituity against Customer, and (c) Profituity's negligence, willful and/or reckless misconduct that causes damage to the Customer. Customer shall have the right to terminate this agreement at any time by providing thirty (30) days advance Notice of termination to Profituity. Profituity, or Profituity's ODFI, may terminate this Agreement at any time by Notice of such termination to Customer. Such Termination will be considered effective immediately, or at such later date as may be stated in Notice. Profituity, or Profituity's ODFI, may also suspend or terminate this Agreement at any time for a breach of the Rules or the Agreement. The termination or expiration of this Agreement shall not affect any obligations of the Customer that, by their terms, are intended to survive such termination or expiration, and such provisions shall remain in full force and effect.
- 6.8. **Amendment.** Profituity reserves the right to amend this Agreement, including, without limitation, the Terms and Conditions, and any Schedules, Addenda, or Exhibits, from time to time. Any such

amendments shall become effective and binding upon the Customer as of the date they are made available on Profituity's website at <https://profituity.com>, or as of such later date as may be specified therein. Customer agrees to review the Terms and Conditions regularly and acknowledges that continued use of Profituity's services constitutes acceptance of any such amendments.

- 6.9. **Force Majeure.** Profituity shall not be liable for, and Customer shall have no rights with respect to any delays and/or failures in performance or non-performance of services, which is due to acts beyond Profituity's reasonable control. Such acts shall include, but shall in no way be limited to, acts of God, acts of third-parties, acts of governmental authorities or any agencies or commissions thereof, acts of war, accidents, breakdowns of equipment, strikes, lockouts, riots, fires, communication line failures, or other interferences with production and the supply or transportation of products, raw materials or components. As soon as possible following the occurrence of a force majeure event, Profituity shall promptly send Notice to Customer of the event causing such delay or failure and describe in such Notice the effects of such cause and its actual or expected duration, if known. In any such event, Profituity shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and Profituity continues to use commercially reasonable efforts to recommence performance as soon as practicable.
- 6.10. **Liability, Limitations on Liability, and Indemnity.** Customer is responsible for the results of using a TPS, any services provided by Profituity, and for the accuracy and adequacy of the data Customer or Profituity provides. Customer authorizes the ODFIs to act on any instruction which has been or reasonably appears to have been sent by Profituity or Customer, including but not limited to funds transfer instructions. ODFI is not obliged to take any further steps to confirm or authenticate such instructions and will act on them without getting further confirmation. Customer understands that if it or Profituity provides the ODFIs with incorrect information or if there is any error in the instruction it accepts full responsibility for losses resulting from any of the errors, duplication, ambiguities, or fraud in the information that was provided to the ODFIs. The ODFIs are not responsible to third-parties (such as, but not limited to, third-party service providers and the third-parties to whom wire or ACH debit or credits are transmitted hereunder) and Customer shall defend, indemnify, and hold the ODFIs harmless from, the actions or omissions of Profituity, or any claim made against the ODFIs arising out of Customer's use of the services, breach of this Agreement, or breach of any warranty under the Rules. Customer further represents and agrees that:
- In no event shall Profituity be liable to Customer, or to any other person or entity, under this Agreement, or otherwise, for any punitive, consequential, incidental, special, punitive or indirect loss or damage, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages.
 - Profituity shall be responsible only for performing the services expressly provided for in this Agreement.
 - Profituity shall not be responsible for any of Customer's acts or omissions, including, without limitation, any amount, accuracy, or timeliness of transmittal or due authorization of any Entry received from Customer, or those of any other person or entity.
 - Customer agrees to indemnify, defend, and hold Profituity harmless from and against any and all loss, liability, claim, or expense, including attorneys' fees and expenses, resulting from or arising out of (i) any claim by any person or entity alleging that Profituity is responsible for any act or omissions of Customer or any other person or entity or (ii) any breach of, or failure to fully comply with, this Agreement by Customer or any person or entity associated or affiliated with Customer.
 - Customer agrees that Profituity's maximum liability under this Agreement, under any circumstance, shall be limited to the amount of fees the Customer has paid Profituity during the prior six (6) months of this Agreement. Profituity will not be liable for loss of interest resulting from any error or delay.

- 6.11. Investigative Reports. Customer acknowledges and agrees that Profituity may conduct audits and investigations at any time to ensure the Customer's compliance with this Agreement and the applicable Rules. Such audits or investigations may include obtaining investigative reports, consumer reports, financial institution inquiries, or any combination thereof, concerning the Customer and any principals, officers, beneficial owners, or employees associated with the Customer. By entering into this Agreement, Customer authorizes Profituity to request and obtain such reports and inquiries from third-parties, including but not limited to consumer reporting agencies, financial institutions, or other relevant sources, and consents to the release of such information to Profituity. This authorization extends to the maintenance, renewal, extension, or updating of this Agreement. Customer further agrees that all references, including banks and consumer reporting agencies, are authorized to release any personal or business credit or financial information that Profituity deems necessary to verify, investigate, or research any statements, references, or data provided in connection with this Agreement.
- 6.12. Customer Analysis and Audit. Profituity and the ODFIs reserve the right to routinely analyze and audit Customer's compliance with this Agreement and the Rules, including Customer's transactional and return activity. In the event the Customer exceeds its established Threshold Limits, or is not in compliance with the Rules, Profituity and the ODFIs reserve the right to take any actions deemed necessary, including, but not limited to, modifying Threshold Limits, hold times, pricing, suspension, or termination of this Agreement.
- 6.13. Event of Default. An Event of Default is any failure of the Customer to comply with: (i) any of the requirements contained in this Agreement; (ii) any representation, warranty or statement made in this Agreement; or (iii) a case is commenced with respect to Customer under any applicable bankruptcy, insolvency or other similar law or Customer makes a general assignment for the benefit of Creditors, or Customer's financial condition materially deteriorates to the point that Bank deems itself insecure. If any Event of Default occurs Profituity shall be entitled to all remedies available at law and in equity, and Profituity may immediately terminate this Agreement without prior Notice. In addition and not in lieu of the foregoing, if any Event of Default shall occur and be continuing Profituity may take any action to cease accepting Entries and delay forwarding funds associated to Entries. In any Event of Default Profituity shall be entitled to all costs and expenses incurred, including without limitation attorney fees, cost of litigation and interest on any funds advanced to cover Entries.
- 6.14. Non-Assignment. Customer may not assign this Agreement or any of the rights or duties hereunder to any person without Profituity's prior written consent which will not be unreasonably withheld.
- 6.15. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. The individuals signing this Agreement in a representative capacity on behalf of Profituity or Customer, as applicable, individually represent and warrant that they have full and complete authority to sign and to fully bind Profituity or Customer, as applicable, to this Agreement. This Agreement is not for the benefit of any other person, and no other person shall have any right against Profituity or Customer hereunder.
- 6.16. Right of Setoff. Subject to applicable law, Profituity may exercise its right of setoff or secure interest against any and all collected funds that are un-cleared or pending release to Customer without Notice, for any liability or debt of Customer, whether joint or individual, whether direct or contingent, whether now or hereafter existing, and whether arising from overdrafts, returns, reversals, ACH credits, endorsements, guarantees, loans, attachments, garnishments, levies, attorneys' fees, or other obligations. All parties to this Agreement now and in the future authorize Profituity to exercise its right of setoff against any and all collected funds that are on hold or pending release, as well as any account made available to Profituity through any Agreements made between Profituity and Customer.
- 6.17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, and Profituity and Customer hereby consent to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania located in Allegheny County, Pennsylvania with respect to any controversy or claim arising out of, or relating to, this Agreement.
- 6.18. Entire Agreement. This Agreement, which includes these Terms and Conditions, and any Addenda(s), Schedule(s) or Exhibit(s) attached hereto, is the complete Agreement between Profituity and Customer with respect to the subject matter hereof and supersedes any prior Agreement(s) between Profituity and Customer with respect to such subject matter. In the event performance of the services provided herein in accordance with the Terms and Conditions of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Profituity is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Profituity shall incur no liability of any kind or nature to Customer as a result of such violation or amendment.