



REMOTE DEPOSIT CAPTURE AGREEMENT

This Remote Deposit Capture Services Agreement (“Agreement”) is entered into between Legacy Bank

(“Bank”) and _____ (“Customer”), and forms part of the deposit account agreement and disclosure for the account(s) of Customer (collectively, and the “Deposit Account Agreements”). In the event of conflicts between the terms of this Agreement and the terms of the Deposit Account Agreements, the terms of this Agreement shall control.

1. **Background.** Bank offers the Product and Services for the conversion of Checks to Substitute Checks, which would enable Customer to transmit paper checks converted to Imaged Items to Bank for processing and deposit into the deposit account of Customer maintained at Bank (“Account(s”).
2. **Definitions.** Capitalized terms defined in this Agreement shall have the meanings indicated in this Agreement (including in Exhibit A.)
3. **Services.** Bank will provide to Customer the Product and Services described in this Agreement to enable Customer to transmit Imaged Items to Bank or the Bank’s designated processor to be cleared as Substitute Checks. Bank and Customer will comply with the terms and provisions of this Agreement with respect to the use of the Product and the performance of the Services. If the Customer is approved by Bank to transmit Items to Bank to be cleared as ACH entries, an ACH agreement (“ACH Agreement”) will be required to be executed by Customer and Bank. In that event, unless otherwise provided, all ACH entry transactions will be governed by the ACH Agreement and all Substitute Check and Image Exchange Item transactions will be governed by this Agreement.
4. **Implementation.** Customer will capture digitized images of Checks using Software and equipment provided by or through Bank or other Software and equipment acceptable to Bank, and will ensure that the output files are compatible with the Product. Any software necessary shall be maintained by Customer, except as the parties may otherwise agree in writing, and must meet technical specifications acceptable to Bank. Customer shall transmit its output files as provided in the Documentation.
5. **Customer Responsibilities.** In connection with the Product and Services, Customer shall comply with the following:

5.1 **Customer’s General Responsibilities.**

- 5.1.1 Customer shall maintain one or more bank accounts at Bank for the receipt of deposit of Items.
- 5.1.2 Customer shall be responsible for training its own employees in the use of the Product and Services.
- 5.1.3 Customer will only submit Checks for processing to Bank that meet the definition of “Check” in Exhibit A and will ensure that the Checks scanned meet the ANSI X9.37 standards for image quality required by Regulation CC, or other standards established by Bank or applicable law. Customer will not process any third party Checks. Bank’s processing of any Imaged Items that do not meet the definition on Exhibit A (“Non-qualifying Items”) shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.
- 5.1.4 Unless prior approved by Bank in writing, customer will not attempt to scan and transmit to Bank any Check which is drawn on a deposit account of Customer at Bank or any other financial institution, or a deposit account of any business entity of which Customer is a principal, officer or authorized signer.
- 5.1.5 Customer will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank. Notwithstanding the foregoing, Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the Deposit Account Agreements.
- 5.1.6 Customer will (i) ensure that Checks are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks as set forth in paragraph 5.1.10 and the Documentation, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.
- 5.1.7 Customer will use the Product and Services, including the entering, processing and transmittal of Imaged Items, in accordance with the Documentation. In addition, Customer will provide, at its own expense, an Internet connection, such as via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Service, all of which must satisfy any minimum requirements set forth in the Documentation or as otherwise may be acceptable to Bank. Customer will provide, or obtain from another party selected by Customer at Customer’s expense, support and maintenance of such Internet connection and all other computer hardware, software, and equipment required to use the Service, including without limitation troubleshooting Internet connectivity issues with Customer’s internet service provider (ISP), and Bank will not be responsible therefore.
- 5.1.8 Customer shall be responsible for verifying Bank’s receipt of Customer’s transmission(s) by verifying that deposits have been posted to the appropriate Accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
- 5.1.9 Customer shall be responsible for installing and implementing any changes and upgrades to the Product and Services as required by the Bank within 5 days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Product and Services. Customer will ensure that the equipment for the Service is clean and operating properly, and inspect and verify the quality of images and ensure that the digitized images of Items are legible for all posting and clearing purposes.

- 5.1.10. Customer shall exercising due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by the Bank or otherwise required for use of the Service and shall further prevent the use of the Services by unauthorized persons. Customer assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Service or disclosure of any confidential information or instructions by Customer, its employees and agents.
- 5.1.11. Customer will retain each Original Check in accordance with the Documentation. If not directed otherwise by the Bank and except as provided in paragraph 5.1.6, Customers will store Original Checks in a safe and secure environment for such time as Customer deems necessary and advisable for a time period of sixty (60) days after such Item has been digitized and processed. Customer shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to Original Checks, and (b) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties. Customer will promptly (but in any event within 5 business days) provide any retained Original Check (or, if the Original check is no longer in existence, a sufficient copy of the front and back of the Original Check) to Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as Bank otherwise deems necessary. Customer will use a commercially reasonable method which is consistent with any requirements of Regulation CC and approved by Bank to destroy Original Check after Customer's retention period as expired.
- 5.1.12. Customer understands and agrees that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Customer and Customer's Account charged for the amount of the Item plus any associated fee as disclosed in Bank's schedule of fees. Bank's right to charge the Account of Customer will apply without regard to whether the Item is timely returned to Bank or whether there is any other claim or defense that the Item has been improperly returned to Bank.
- 5.1.13. Customer shall maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Agreement.
- 5.1.14. Customer represents, agrees and warrants to Bank that (except as otherwise specifically disclosed in writing to Bank) Customer is not now engaged and will not during the term of this Agreement engage, in any business that would result in Customer being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations.
- 5.1.15. Customer will not engage in any activity directly or indirectly related to the use of the Service that is illegal or fraudulent.

5.2 Remote Deposit Capture Service.

- 5.2.1 Customer's Account will be provisionally credited upon Bank's acceptance of Imaged Items for deposit which are received by Bank from Customer through the Service.
 - 5.2.2 Customer will create images of Check at Customer's location by use of scanning hardware and Software approved or provided by Bank. Customer will enter all amounts and any other required information correctly.
 - 5.2.3 The Imaged Items will be transmitted by Customer to Bank, or Bank's authorized processor, over the Internet through a web-based interface.
 - 5.2.4 Bank will maintain the appropriate Account for Customer to receive credit and provide other specific information required by Bank related to the Service. As set forth in paragraph 9.2, all deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the Deposit Account Agreements.
6. **Compliance with Law.** Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to the Products and Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Agreement. Customer shall have the responsibility to fulfill any compliance requirement or obligation that Bank and/or Customer may have with respect to the Service under all applicable U.S. federal and state laws, regulations, rulings, including but not limited to, the federal Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.
7. **Communications Security Software.** At any time during the term of this Agreement, Bank may require in its sole discretion the use of Software in connection with the product and Services. If Software is required, Bank will provide to Customer a copy of the Software or instructions on how to obtain the necessary Software.
- 7.1 To the extent the Bank requires the use of Software in connection with the Service, Customer will implement and use the Software, as set forth in the Documentation and any applicable materials relating to the Documentation to transmit output files to Bank.
 - 7.2 Customer acknowledges that (i) its license to any Software that may be required for the Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Customer or otherwise provided to Customer, (ii) Bank may provide certain "first level" support to Customer with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Customer with respect to the Software, and (iii) Customer will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.

- 7.3 Customer will use the Software solely for the purpose of transmitting output files to Bank consistent with this Agreement and not for communications with any other party. Customer will not allow access to the Software or the use of the Product by any person other than Customer, and will only process Items arising from a transaction or obligation between Customer and this direct payor.
- 7.4 Customer will promptly return all copies of the software and Documentation, including materials related to the Documentation, to Bank upon termination of the Agreement.
- 7.5 Customer will not reproduce the Software or other functionality or content included or used for the Service or on which the Service is based. Additionally, Customer will not decompile, reverse engineer or disassemble the Software or otherwise attempt to derive computer source code from the Software functionality of the Service.
- 7.6 Consistent with paragraph 8.9, Bank may, from time to time, require and change the Software required for this purpose, provided such change does not result in any additional license or maintenance fees payable by Customer. Customer will be responsible to install and implement changes to the Software within 5 days following notice of such change.

8. Bank Rights and Responsibilities.

- 8.1 For all Imaged Items processed by Customer pursuant to this Agreement, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Image Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Documentation and as otherwise established by the Bank from time to time.
- 8.2 Unless otherwise agreed by Customer and Bank, Bank will process any returned Items in accordance with applicable law and Deposit Account Agreements.
- 8.3 Subject to paragraph 8.5 below, availability of credit from Items processed under this Agreement will be subject to the availability schedule of Bank, which may be amended without notice.
- 8.4 Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish exposure limitations and assign them to Customer.
- 8.5 In addition to any other rights Bank may have as regards the Accounts of Customer, Bank may hold and use funds in any deposit Account following termination of this Agreement for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, Customer recognizes that under the Rules, the UCC, Regulation CC and the rules of any image exchange network Bank's representations and warranties as regards Image Exchange Items and Substitute Checks may expose Bank to claims for several years following processing of the Image Exchange Item or Substitute Check,.
- 8.6 Bank shall be excused from failing to act to delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In the event of any foregoing failure or delays, Customer acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment provided such Original Items have not been previously imaged or processed in connection with the Product and Services. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.
- 8.7 Customer acknowledges that Bank may from time to time establish minimum amounts to be funded by Customer as reserve amounts. Bank will provide notice to Customer of any reserve requirement, and Customer shall immediately fund the reserve amount with good funds. Bank may withhold and use any amounts due to Customer to maintain any reserve amounts at levels specified by Bank. To secure all obligations of Customer to Bank arising from this Agreement, Customer grants to Bank a security interest in all Accounts of Customer at Bank, all funds in those Accounts, any reserve Accounts or funds therein, all Items, whether now or hereafter established by or for the benefit of Customer at Bank, and all proceeds of the foregoing. Bank's security interest will survive after termination of this Agreement. This security interest is supplemental to and not in lieu of security interest granted by Customer to Bank under any other agreement.
- 8.8 The Bank may at its sole discretion conduct an on-site inspection, at any time and from time to time, of the customer's place of business, to ensure compliance with the provision of this Agreement.
- 8.9 In connection with Bank's entry on the premises of Customer for the purposes of installation of the equipment and Software for the Service, if applicable, for the purpose of conducting an on-site inspection pursuant to Section 8.8, or in connection with providing support to Customer pursuant to Section 7.2, Bank shall not be liable or responsible to Customer or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into Customer's system, including any which allegedly delay, alter or corrupt the data of Customer, whether related to the transmission of Imaged Items or other data to Bank or whether caused by the equipment, Software, Bank, Internet service providers, Internet browsers, or other parties providing communication services to or from Bank to you.
- 8.10 Bank may add, delete or change the features or functions of the Service, at any time in Bank's sole discretion. If Bank deems it reasonably practicable to do so and if the change adversely affects Customer's usage of the Service, Bank will notify Customer of the change in advance. Otherwise, Bank will notify Customer of the change as soon as reasonably practicable after it is implemented, which notice may

be given electronically. Bank may cause the Service to be temporarily unavailable to Customer, either with or without prior notice, for site maintenance, security or other reasons, and Customer acknowledges that factors beyond Bank's reasonable control, such as telecommunications failure or equipment failure, may also cause the Service to be unavailable to Customer. Customer may deposit Original Checks and other times to any deposit Account at Bank in person or any other manner permitted by agreement between Customer and Bank, and Customer will be responsible for maintaining procedures and facilities to enable Customer to do so if the Service is unavailable to Customer.

9.0 Processing Times

- 9.1 Generally, Checks scanned and transmitted before three (3) p.m. on a business day will be received by the Bank on that day. Transmissions processed after these hours on a business day, or on any day that is not a business day, are treated as occurring on the next business day.
- 9.2 Imaged Items processed for deposit through the Service will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at the location where Bank or its designated agent posts the credit to the Account. A deposit of Imaged Items will be deemed to have been received and accepted by Bank for deposit when all the following have occurred: (i) Bank has preliminarily verified that the image quality of the imaged Items is acceptable to Bank in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Bank for deposit may be rejected by Bank in Bank's sole discretion.
- 9.3 Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Customer. Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.
- 9.4 If under Paragraph 9.2 above an Imaged Item is not accepted for deposit, Customer may then submit the Original Check to Bank for processing or contact the maker to reissue the Check. If Customer submits the Original Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require Customer to have the make reissue the check.
- 9.5 It is Customer's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank as set forth in the Deposit Account Agreements or as otherwise established by Bank. Customer is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

10 Security Procedures

- 10.1 Customer will be solely responsible for establishing, maintaining, and following such security protocols as deemed necessary to ensure that output files transmitted directly to bank are intact, secure and confidential until received by Bank.
- 10.2 Customer agrees to implement security procedures that bank may offer to verify the authenticity of any output files transmitted to Bank in the name of Customer. Regardless of the security procedures implemented by Customer, Customer agrees that Bank may rely on and Customer will be obligated on the output file, whether or not the output file was authorized by Customer. Also, if an output file was authorized by Customer, customer will be obligated on the output file even if Bank did not verify its authenticity using the security procedures and even if the security procedures would have prevented error. Customer agrees that the security procedures are intended to verify authenticity and not to detect error.
- 10.3 Customer shall comply with online instructions for using the Product and Service by taking reasonable steps to safeguard the confidentiality and security of any passwords, equipment, and other proprietary property or information provided in connection with the Service.
- 10.4 Customer shall limit access to any passwords and equipment to persons who have a need for such access, closely and regularly monitor the activities of employees who access the Service; notify Bank immediately if Customer has any reason to believe the security of confidentiality required by this provision has been or may be breached; and immediately change the password if Customer knows or suspects the confidentiality of the Password has been compromised in any way. Security procedures are not designed for the detection of errors, e.g., duplicate transmissions of Imaged Items or errors in information provide to Bank. Bank is not obligated to detect errors by Customer.
- 10.5 Customer may appoint an individual (an "Administrator") with the authority to determine who will be authorized to use the Service on Customer's behalf. Customer assumes sole responsibility for the actions of the Administrator, the authority the Administrator gives others to act on Customer's behalf, and the actions of the person designated by the Administrator to access and use the Product and Service.
- 10.6 Customer agrees to change the password(s) periodically and whenever anyone who has had access to the password is no longer employed or authorized by Customer to use the Product and Service.
- 10.7 Bank may elect, at Bank's discretion, to verify authenticity or content of any transmission by placing a call to any authorized signer on Customer's Account or any other person designated by Customer for that purpose. Bank may deny access to the Service without prior

notice if unable to confirm any person's authority to access the Service or if Bank believes such action is necessary for security reasons.

10.8 Customer warrants each time Imaged Items are transmitted using the Product and Service that Bank's security procedures are commercially reasonable (based on the normal size, type, and frequency of transmissions). Customer agrees to be responsible for any transmission Bank receives through this Service, even if not authorized by Customer, provided it includes a password or is otherwise processed by Bank in accordance with this security procedure.

11 **Customer Representations and Warranties.** Customer makes the following representations and warranties with respect to each Item processed by Customer pursuant to this Agreement:

11.1 The Imaged Item is a digitized image of the front and back of the Check and accurately represents all the information on the front and back of the Check as of the time Customer converted the Check to an Imaged Item;

11.2 The Imaged Item contain all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and

11.3 All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

11.4 There will be no duplicate presentment of a Check in any form, including as digitized image, as paper negotiable instrument or otherwise and Customer assumes responsibility for any such duplicate presentment of any check.

12 **Fees.** Customer will pay to Bank the initial setup and service fees listed in Bank's Schedule of Fees to be provided to Customer. Bank may increase, alter, add or otherwise change fees and other amounts payable under this Agreement by Customer upon 30 days notice. Fees may, at Bank's option, be billed and paid through Bank's account analysis system.

13 **Term and Termination.**

13.1 The term of this Agreement will commence upon full execution of this Agreement and will continue thereafter until terminated as follows:

13.1.1 Customer may terminate this Agreement at any time, with or without cause, upon 30 days prior written notice to Bank.

13.1.2 Bank may terminate this Agreement at any time immediately upon notice to Customer, (including, without limitation if Bank discovers any breach of this Agreement by Customer, willful misconduct, bad checks or fraudulent activities on the part of Customer or any other party with respect to Items processed by Customer under this Agreement).

13.2 Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items, that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same. Upon termination, Bank may terminate Customer's access to the Product and Services, and Customer will terminate its access to and use of the Product and Services, except to the extent necessary to process and collect Items that were in process prior to the termination date. Within 7 days after termination of this Agreement, Customer will, at its expense, promptly uninstall and remove all software provided for the Service from its computers and return to Bank all hardware and equipment provided by Bank for the Service, including scanner, the Documentation and any materials relating to the Documentation in its possession or under its control, destroy all copies of the Documentation and materials relating to the Documentation that cannot be returned, and certify in writing to Bank that all copies have been returned or destroyed. Customer will be responsible and liable to Bank for the replacement cost of all lost, stolen or damaged equipment that was provided by Bank to Customer in connection with the Service. Customer agrees not to develop a product or service substantially similar to the Product and Services within 3 years after termination of this Agreement.

13.3 All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 5 through 12 will survive any such termination.

14 **Customer Indemnification.** Customer will indemnify and hold harmless Bank, its licensors and providers of the Product and Services, and their respective directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Customer, or any person acting on Customer's behalf (including without limitation Customer's authorized processor, if any), in connection with Customer's use of the Product or Services or processing of Items under this Agreement, including without limitation (a) the breach by Customer of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Customer or its Customers or any third party on behalf of customer, (c) any misuse of the Product or Services by Customer, or any third party within the control or on behalf of Customer, (d) the failure by Customer to comply with applicable state and federal laws and regulations, or (e) any fine, penalty or sanction imposed on Bank by, any clearing house, or any governmental entity, arising out of or connected with any Item processed by Bank for Customer or at Customer's instruction; (ii) any act or omission of Bank that is in accordance with this Agreement or instructions from Customer; (iii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Imaged Item to Bank; (iv) any loss or corruption of data in transit from Customer to Bank; (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by Customer under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check; or (vi) any claims, loss or damage resulting from Customer's breach of, or failure to perform in accordance with, the terms of this Agreement.

Disclaimer. BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS, AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND CUSTOMER HEREBY WAIVES AND RELEASES BANK, ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS, AND EMPLOYEES FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE PRODUCTS, OR OTHER MATTERS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC USE, PURPOSE OR APPLICATION, OR IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PRODUCT WILL BE ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

16. **Bank's Liability.**

- 16.1 Bank will not be liable to Customer for any of the following: (i) any damages, costs or other consequences caused by or related to Bank's actions that are based on information or instructions that Customer provides to Bank; (ii) any unauthorized actions initiated or caused by Customer or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Image Exchange Item or Substitute Check for any reason (other than the breach of contract, gross negligence or willful misconduct of Bank), including without limitation, that the Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) Customer's or any other party's lack of access to the Internet or inability to transmit or receive data; (vi) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems, or (vii) if Customer does not follow or comply with the representations or warranties set forth in Section 10 above.
- 16.2 Bank's liability for errors or omissions with respect to the data transmitted or printed by Bank in connection with this Agreement will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the Image Exchange Items or Substitute Checks to the Payor Financial Institution.
- 16.3 Notwithstanding anything to the contrary in this Agreement, Bank's aggregate liability for claims related to this Agreement, whether for breach, negligence, infringement, in tort or otherwise, arising during any 12 month period shall be limited to any amount equal to the amount of fees paid by Customer to Bank under this Agreement for such 12 month period.
- 16.4 Except as otherwise specifically provided in this Agreement, in no event will either party be liable to the other for any consequential, indirect, incidental, special, exemplary or punitive damages, including without limitation any loss or use or loss of business, revenue, profits, opportunity or good will, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if such party has been advised or should have known of the possibility of such damages.
- 16.5 Customer and Bank acknowledge and agree that the limitations of liability in this Section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into this Agreement without the limitations of liability set forth in this Section.

17. **MISCELLANEOUS.**

- 17.1 **Assignment.** Neither party may assign its rights or obligations under this Agreement without the written consent of the other party; provided, however, Bank may assign or transfer this Agreement, by operation of law or otherwise, to any person that becomes the successor entity of Bank, in connection with a change of control (which shall include a direct or indirect transfer of all or substantially all of Bank's stock or assets to a third party, a merger, reorganization or other such transaction, or any such transaction by a parent corporation of Bank) and Customer hereby consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer will succeed to and be bound by this Agreement. Bank may subcontract any of the work, services, or other performance required of Bank under this contract without the consent of Customer.
- 17.2 **Consent to Breach Not Waived.** Neither party will, by lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- 17.3 **Notices.** Notices must be in writing, must be delivered according to clause (a), (b) or (c) below, and must be delivered to the address set forth on the signature page of this Agreement, or to such other address as a party may designate by notice in accordance with this provision. All notices under this Agreement will be deemed given on the date of (a) sending by regular U.S. mail, (b) delivery by a nationally recognized overnight courier, or (c) delivery by certified mail, return receipt requested.
- 17.4 **Force Majeure.** Neither party will be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

- 17.5 **Entire Agreement: Amendment.** Bank may amend this Agreement at any time from time to time as determined in its sole discretion and without prior notice to Customer. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation.
- 17.6 **Severability.** If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.
- 17.7 **Applicable Law.** This Agreement will be governed by federal law, and to the extent not preempted, by internal laws of the State of Colorado (with regard to that state's principles of conflicts of law).
- 17.8 **Relationship of Parties.** Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.
- 17.9 **Headings.** The titles or captions used in this Agreement are for convenience only and will not be used to construe or interpret any provision hereof.
- 17.10 **Arbitration.** Any claim, dispute or controversy arising from or relating to your use of the Service, the terms and conditions set forth in this Agreement or the validity, enforceability or scope of the arbitration provision set forth in this Agreement ("Claim"), will be resolved, upon the election of you or us, by binding arbitration under this arbitration provision and the Commercial Arbitration Rules ("Arbitration Rules") administered by the American Arbitration Association ("AAA"), and any amendment of them, in the form in effect at the time a Claim is filed. A party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in that lawsuit by any other party or parties. Any participatory arbitration hearing (other than telephonic hearings) will be held in Colorado, unless both parties agree otherwise. If you would like to obtain a copy of the Arbitration Rules and filing forms, you may contact the AAA by calling 1-800-778-7879. The Arbitration Rules and filing forms also can be obtained from the AAA website at www.adr.org. All Claims shall be filed at an AAA office. If the applicable Arbitration Rules are modified, superseded, or replaced, an equivalent set of rules of AAA will govern the arbitration. If for any reason AAA is unable or unwilling or ceases to serve as arbitration administrator, we will substitute an equivalent national arbitration organization utilizing a similar code or procedure. There shall be no authority for any Claims to be arbitrated on a class action basis. Further, arbitration can only decide our or your Claim and may not consolidate or join the claims of other persons who may have similar claims. The arbitrator will decide whether you or we will ultimately be responsible for paying any fees in connection with the arbitration. Unless inconsistent with the applicable law, each party shall bear the expense of their respective attorneys', experts' and witness fees, regardless of which party prevails in the arbitration. Both parties fully understand and agree that they will not have a right to litigate any Claim in any court if either party chooses to have the Claim resolved by binding arbitration. Further, in agreeing to arbitrate all Claims you are waiving your right to a jury trial. This arbitration provision and the exercise of any of the rights you and we have under it do not prohibit you or us from exercising any lawful rights either of us has to use other remedies available preserve, foreclose or obtain possession of real or personal property, exercise self-help remedies, including any setoff rights which we may have. This arbitration provision relates to a transaction involving interstate commerce, and is governed by the Federal Arbitration Act ("FAA"). The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statute of limitations and shall honor claims or privileges recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. This arbitration provision will survive termination of your use of the Services. Either of us may bring an action to compel arbitration of any Claim and/or stay the litigation in any court having jurisdiction; such motion may be brought at any time in a lawsuit in court, until the entry of a final judgment. If any portion of this arbitration provision is deemed invalid or unenforceable, it should not invalidate the remaining portions of this arbitration provision.

EXECUTED as the last date indicated below.

Legacy Bank

Customer Name: _____

By: _____

By: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

EXHIBIT A DEFINITIONS

"ACH" means Automated Clearing House.

"Business Day" means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

"Check" means an Original Check, as defined in Regulation CC, except that Check does not include a Substitute Check or a remotely created check.

"Confidential Information with respect to either party as recipient" means any information obtained by, or disclosed or made available to such party (whether in writing, verbally or by observation of objects or processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient's possession before the time of disclosure, (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party's other Confidential Information. The Documentation and any materials relating to the Documentation will be deemed the Confidential Information of Bank for purposes of this Agreement. Any nonpublic personal information regarding Customer's Customers shall be deemed the Confidential Information of Customer for purposes of this Agreement.

"Documentation" means all documentation, application, user set-up form, system requirements guide, schedule of fees, the user manual, any other user guides/quick references, all instructions (including on-line instructions) relating to the Product and Services which Bank may provide to Customer from time-to-time in connection with the Product or Services.

"Imaged Item" means the digitized image of a Check that is created by Customer and transmitted to Bank using the Service.

"Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.

"Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

"Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items or Items payable in a medium other than United States money.

"Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

"Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.

"Payor Financial Institution" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.

"Product" means collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the Services.

"Regulation CC" means 12 C.F.R. Part 229, as it may be amended from time to time.

"Services" means the services described in this Agreement, to be provided by Bank to Customer to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints.

"Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.

"Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

"UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Agreement.

"United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

SCHEDULE B

Legacy Bank Remote Deposit Deadlines, Holiday Schedule, Fees

Deposit Deadline:

The Remote Deposit deadline, (“Cut-off Time”) is 3:00 PM each business day, (Monday through Friday, excluding holidays), at Legacy Bank. Deposits made after the “Cut-Off Time” on any business day or non-business days, (Saturday’s, Sunday’s and legal holidays) will be considered made on the next business day.

Legal Holidays:

- New Years Day
- Martin Luther King Day
- Presidents Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veteran’s Day
- Thanksgiving Day
- Christmas Day

For Federal holidays falling on Saturday, all Federal Reserve Banks and branches will be open for business on the proceeding Friday.
For Federal holidays falling on Sunday, all Federal Reserve Banks and branches will be closed the following Monday.

Fees:

Monthly Usage Fee:

Canon CR 25	\$55.00
Canon CR 55	\$75.00
(Scanner repairs covered under usage agreement)	

Vasco Key Deposit	\$25.00
-------------------	---------