



## **THE BANK OF DELMARVA CASH MANAGEMENT AGREEMENT**

This Cash Management Agreement ("Cash Management Agreement" or "Agreement") contains important information about the Cash Management Services ("Services") The Bank of Delmarva offers. Please read it carefully and retain it for future reference. The terms "you" and "your" refer to all holders and authorized users of any Account that may be accessed through the Services. The terms "we," "us," "our," and "Bank" refer to The Bank of Delmarva. By signing an application and/or by using the Services, you agree to the following terms and conditions. Continued use of the Services is contingent on your Account(s) remaining in good standing with the Bank and the other conditions stated in this Cash Management Agreement.

### **DEFINITIONS**

Throughout this Cash Management Agreement, the following words have the meanings indicated below.

**"Access Code"** means the user identification, password, personal identification number, personal security code, security code, one-time security passcode, or other authentication device, whether one or more than one, that you choose or is assigned to you by the Bank and that may change from time to time, that allows you to access one or more Services.

**"Account"** means your deposit and loan account(s), whether one or more than one, that may be accessed by the Services according to your request. Generally, all accounts with the same owner/tax identification number may be accessed through the Services; however, the Bank reserves the right to restrict access to certain accounts on a case by case basis (such as an escrow account). Linking accounts with different owners/tax identification numbers requires separate enrollment.

**"Business"** means a corporation, partnership, limited liability company, or other organization organized under the law of a State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized.

**"Business Day(s)"** means Monday through Friday, excluding holidays.

**"Cash Management Agreement"** means this Cash Management Agreement, instructions about the Services given online, and our Deposit Account Agreements and Disclosures.

**"Electronic Banking System"** means the components that permit you to make or initiate Transactions through the various Services, including telephone lines and equipment, Personal Computers (PCs), computer systems, mobile devices, Internet access and web sites, and the automated clearinghouse system/Federal Reserve Board.

**"Rules"** means the operating rules of the National Automated Clearing House Association ("NACHA") and the Mid-Atlantic Clearing House Association/Federal Reserve Board.

**"Service(s)"** means all of the Cash Management Services described in this Cash Management Agreement, including any addendum thereto. Some Cash Management Services may be

subject to separate enrollment requirements and additional terms and conditions.

“**Transaction(s)**” means all electronic funds transactions performed through the Services.

## **TERMS AND CONDITIONS**

### **A. General**

These terms and conditions apply to all of our Services. This Cash Management Agreement supersedes all prior oral or written agreements, understanding or communications regarding the Services. This Cash Management Agreement also supersedes the terms of any of your existing or future resolutions or agreements with us, which may require the instructions of one or more named individuals to access funds in your Account. Please note, any person granted access to the Services may authorize us to make Transactions to and from your Account on your behalf. ***This means that you authorize us to act upon the instruction of only ONE person in connection with Service Transactions, even though the Account signature card, your resolutions or other agreements with us require 2 or more signatures on checks.***

1. **Available Services:** Through the Services, you may access your Account to:
  - Obtain balance and statement information
  - Review recent Transaction information
  - Transfer funds between your Accounts, including setting up scheduled recurring transfers (“SRTs”) to keep Account balances within certain limits
  - Import and export Account information into compatible financial management software
  - Submit Stop Payment requests
  - Originate ACH transactions
  - Make federal tax payments
  - Send electronic mail to the Bank
  - Initiate Wire Transfers

Online statements for your Accounts are available to the Company Administrator. If the Company Administrator gives online statement access to one or more users, the users will have access to ALL of your online statements, **EVEN IF the users do not have access to all Accounts through the Services. User access to online statements, if given at all, only should be given to those users to whom you want to give access to ALL statements.**

2. **Accounts.**

- a. If the Bank permits and if you authorize us to combine the accounts of Businesses and individual personal accounts together, any person authorized to perform Transactions can perform these Transactions, including transferring funds if such functionality is available, for all Accounts accessible through the Services, even though these Accounts have different owners. Anyone authorized to access Services may access ALL of your Accounts. Anyone authorized to access Services has access to all information about all Accounts available

through the Services. **WHEN YOU LET ANOTHER BUSINESS OR PERSON ACCESS YOUR ACCOUNT, FUNDS MAY BE TAKEN FROM YOUR ACCOUNT FOR PURPOSES THAT DO NOT BENEFIT YOU.** We allow access between the Accounts of different Businesses and persons through a single ID and Access Code for your convenience only (linking accounts with different owners/tax identification numbers requires separate enrollment/forms). Each Business, individually and collectively, agrees to indemnify, protect, hold harmless and defend us from and against any and all damages, expenses, liabilities or costs (including attorney's fees and court costs), of whatever kind or nature, arising from or relating to (1) providing Services to any of the Businesses or persons signing the Cash Management Services Application, or (2) allowing any Account to be linked for access via the Services. By authorizing us to combine Accounts, each account owner agrees that we are not responsible for unauthorized Transactions performed by any person authorized to access the Services to, from or between the combined Accounts.

An Administrator may set permissions and make one or more Accounts not accessible through the Services. Even though the Account has been made not accessible through the Services, information about the Account may still be available through information on the periodic statements of the Accounts that remain accessible to the Services.

b. Because certain information and transactions are not processed by us until after the close of our Business Day, some Account transactions may not be reflected until the next Business Day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in our information system. If you are unable to access the Services, you can contact your branch or Customer Service (1-800-787-4542) for additional information.

**3. Information Processing and Reporting.** The Services require us to receive, process and report information involving your Accounts. We are not responsible for determining the accuracy, timeliness or completeness of any information that you or others provide to us. We do not have a duty to interpret the content of any data transmitted to us, except to the limited extent set forth in this Agreement. Unless otherwise agreed in writing, we are not required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information we receive from you or third parties.

a. You assume the sole responsibility for providing us with complete and accurate information in the form and format that we require (e.g., in connection with wire and ACH transfers). We are not responsible for confirming such information, or for monitoring or refusing to process duplicate instructions by you or your agents. For example, if you give us a wire transfer instruction that is incorrect in any way, you agree that we may charge your Account for the payment whether or not the error could have been detected by us. We are not obligated to detect errors in your Transaction instructions.

b. You must accurately describe transaction beneficiaries, intermediary financial institutions, and the beneficiary's financial institution in Transaction instructions. If you describe any beneficiary or institution inconsistently by name and number, other institutions and we may process the transaction solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution.

c. You acknowledge that it is not possible for the Services to be totally free from operator, programming or equipment error, and that errors in processing and compiling data may occasionally occur (e.g., due to the failure of others to provide accurate information, telecommunication failures, or a breakdown in an electronic data interchange). As such, you agree to review and verify all results and to maintain adequate controls for insuring both the accuracy of data transmissions and the detection of errors. Unless otherwise required by law,

our sole responsibility for any reporting errors caused by us will be to reprocess the information for the period in question and to provide corrected reports at our own expense. You agree to maintain adequate backup files of the data you submit for a reasonable period of time in order to facilitate any needed reconstruction of your transactions (e.g., in the event of a telecommunication failure). If we are unable to provide a Service for any reason, we will promptly inform you of the problem and will take reasonable steps to resume processing.

**4. Transfers; Stop Payments.** All transfers into your Accounts will be “provisionally credited” (made available for withdrawal pending system posting) to your Account upon completion of your session. You may request to transfer funds to and from certain Bank of Delmarva account(s), including transfers from your deposit accounts to your loan and line of credit accounts (payments). Transfers completed after nightly processing or anytime on Saturday, Sunday, or any bank holiday will be posted on the next business day, provided funds are available. For Principal and Interest Loan/Line of Credit Payments – Loan/line of credit payments will be applied as specified in your loan/line of credit documents, but in general first to Escrow then to interest that is due, then to principal, and finally to any charges owed. Any additional amounts paid will be applied to principal and MAY advance the next scheduled due date. Partial prepayments will not excuse any later scheduled payments until paid in full. For Interest Only Loan/Line of Credit Payments – Loan/line of credit payments will be applied as specified in your loan/line of credit documents, generally first to Escrow, then to interest that is due, then to charges owed, and finally to principal. Any amounts paid without a "Notice of Loan Payment Due" will be applied to principal and will NOT advance to the next scheduled due date. Partial prepayments will not excuse any later scheduled payments until paid in full. For Final Payments - The actual amount of final payment will depend upon the loan/line of credit payment record. If you have questions about how your loan/line of credit payment will be applied or to obtain your final payment amount please contact the Loan Department at 410-548-1100. Subject to and in accordance with the terms of this Agreement and the terms of your Deposit Account Agreements and Disclosures, you may use the Electronic Banking System to place and cancel stop payment orders relating to items written from your Account. For a stop payment order to be effective, we must receive the order at a reasonable time before we receive the item to which it relates. We will not be responsible or liable if an item is paid before a request can be processed. You are responsible for verifying the status of items prior to requesting a stop payment order, including reviewing all Account information received or made available through the current posting date in order to determine whether the item was already paid or presented for payment. In order to enable us to place or cancel a stop payment order, you must supply us with all of the information that we require through the Electronic Banking System. If you fail to provide this information or provide inaccurate information, we will not be liable or responsible for failing to place or cancel a stop payment order.

**5. Equipment and Technical Requirements.** To perform Transactions, you must have the telephonic or other electronic equipment necessary for the Services, such as a PC with modem and/or World Wide Web access, or a mobile device. A list of compatible browsers and operating systems can be found at our website, [www.bankofdelmarva.com](http://www.bankofdelmarva.com). It is your responsibility to acquire the equipment, software or internet service necessary to access the Services.

**6. Data Recording.** When you access any of the Services, your instructions may be recorded. You consent to such recording.

**7. Fees; Debit Authorization.** The monthly fee is \$10. We charge \$50 for each international wire transfer and \$15 for each incoming wire transfer. Other fees may apply to your Account. Refer to our general Fee Schedule for further information. If you do not have sufficient funds in your Account on the date a fee or charge is due, you authorize us to charge the amount to any other Account you have with us. We may change the fees (See Section

A(15)). In addition, you agree to pay for all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Services, this Agreement, and/or the software or equipment made available to you (excluding any income tax payable by us). You authorize us to debit all fees and other amounts due from your Account and you acknowledge that we may process these debits as Automated Clearing House ("ACH") Entries (as defined below in Section B). ACH Entries are subject to and you agree to be bound by the rules of the National Automated Clearing House Association. You may revoke your authorization allowing us to process ACH Entries under this Section A(7) by giving us written notice to the address below (see Section A(16)); provided that we must be afforded a reasonable opportunity to act on such notice prior to the date of any scheduled debit.

8. **New Services.** We may incorporate new options into these Services. By using such new options, you agree to be bound by the rules concerning those options, which will be mailed to you or disclosed through the Services, as appropriate.

9. **Termination of Services.** You may terminate your use of these Services by giving us 3 Business Days advance notice. Your termination of one or more of these Services will act as a termination for any joint owners on your Account(s). If you do not use the Services for 180 consecutive days, your use of the Services will terminate automatically without prior notice. We may terminate your use of these Services, in whole or in part, at any time without prior notice for any reason, including without limitation, a breach of the Rules. We have no duty to provide any of these Services after termination, including, but not limited to, any "future" or "recurring" Transactions you previously scheduled.

#### 10. **Security.**

a. You agree to comply with all reasonable instructions or recommendations we may issue to you regarding security. You agree to set up, maintain and regularly review your security arrangements concerning access to, and use of, the Services and information stored on your computing and communications systems, and your control of the Access Code to ensure that your computing and communications systems and the Access Code are protected against intrusion according to best industry practice.

b. You understand the importance of your role in preventing misuse of your Account and you agree to protect the confidentiality of your Account, Account number, Access Code, and any equipment necessary to access the Services (including any mobile devices). You understand that identification information by itself or together with information related to your Account may allow unauthorized access to your Account or loans. Emails sent via the Services are not encrypted. Requests for personal information, such as your Account number, should only be sent to us through your Services Mailbox.

c. You are solely responsible for the security of your Access Code and your computers and other devices you use to access the Services (including any mobile devices). You agree to make sure that any computer or other device you use to access the Services is free from and adequately protected against computer viruses and other destructive components. You are solely responsible for the performance and protection of your browsers, including the prompt adoption of all security patches and other security measures issued or recommended from time to time by the browser supplier or any provider of any mobile device application that we make available to access the Services. You are strictly responsible for establishing and maintaining commercially reasonable security measures to safeguard against unauthorized transmissions and network infections. You agree that such measures will include, but not be limited to, security technology that provides a minimum level of security equivalent to 128-bit RC4 encryption technology for the transmission of Transactions over the Internet. We are not responsible for any Trojan Horses, spyware, or electronic virus or viruses that you may encounter

or that infect your computing system. You agree to scan your PC and other electronic media using a reliable virus product to detect and remove any Trojan Horses, spyware, or viruses routinely according to best current industry practice.

d. You acknowledge that there are certain security, corruption, transmission error and access availability risks associated with using open networks such as the Internet and/or telecommunication lines or circuits. We cannot and do not warrant data transfers utilizing the open Internet. You assume all risks relating to the foregoing.

e. To gain access to the Services, you will need one or more Access Codes. From time to time, you may be provided with a temporary Access Code through the Services, including by text to an approved mobile device. You agree to change any temporary Access Codes when prompted by the Services. The Services offer additional security measures: registration of your computer or mobile device as a location that is authorized to access the Services; the generation of a One-Time Security Passcode if Services are accessed from a computer or mobile device that has not been registered; dual control for all transfer instructions delivered to us through ACH Services, Federal Tax Payment Services, and Wire Transfer Services, *i.e.*, one user must initiate the transfer and another user must approve the transfer and enter a token code generated through use of a security token or one-time pass code sent to an approved mobile device; and any additional security procedures described in this Cash Management Agreement under specific Services.

The Access Code and additional security measures described in this *Section A(10)* as they may change from time to time are the security procedures that you and we agree will be used to authenticate your funds transfer instructions through the Services. You agree that the security procedures are commercially reasonable (based on the normal size, type, and frequency of your Transactions) and designed to authenticate your Transactions. Some of our Services allow you or your Administrator to set Transaction limitations and establish internal controls, all of which are additional security procedures. Your failure to set such limitations and implement such controls or your failure to take advantage of all security procedures we offer increases your exposure to, and responsibility for, unauthorized Transactions. **You, jointly and severally, agree to be bound by and assume full liability and responsibility for any Transaction direction for any Account we receive through the Services, even if the Transaction direction is not authorized by you, if the Access Code you have selected was used to gain access to the Services and the Transaction is otherwise processed by us in accordance with our security procedures.** During the term of this Agreement, you agree to maintain insurance to adequately cover the risk of unauthorized access to your computer systems and other devices you use to access the Services.

f. You agree that you will not disclose, and will prevent the disclosure of, your Access Code. If the confidentiality of a Access Code is compromised, you shall notify us immediately as set forth below in *Subsection 10(h)*. You assume sole responsibility for maintaining the Access Code. When you access any of the Services, your instructions may be recorded. You consent to such recording.

g. We reserve the right, in our sole discretion, to further authenticate any request for a Service prior to effecting the same. We are entitled to rely on any communication, instrument, document, telephonic or computer instruction believed by us in good faith to be genuine and correct and to have been given, signed or sent by anyone on your behalf. We shall not be liable to you for the consequences of such reliance or non-reliance.

h. You agree that you will monitor the Account each day. You must notify us immediately if you or any person you permit to access the Services knows of or suspects any unauthorized access to the Services or the Electronic Banking System or any unauthorized

Transaction or instruction. You must call Customer Service immediately between the hours of Monday – Wednesday 8:00am – 5:00pm and Thursday – Friday 8:00am – 6:00pm at (410) 548-7892 or toll free at 1-800-787-4542 and then follow up with written notice as described in Section A(16).

**11. Limitations on Frequency and Dollar Amount of Transactions.** Federal banking regulations (as implemented by our procedures) restrict the number of transfers and withdrawals from any type of savings or money market Account to another of your Accounts with us or to a third party by means of a preauthorized, automatic, telephone, or electronic banking transfer to 6 per month, with no more than 6 by check, draft, check card, point-of-sale, electronic check or similar order to third parties.

Security concerns may cause us from time to time to place other limits on Transactions.

**12. Limitation of Liability. We provide the Services and related documentation “as is” without any warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.** We are not responsible for any errors or failures caused by the malfunction of the Electronic Banking System. We also are not responsible or liable for any computer virus caused by use of the Electronic Banking System.

**We shall have no liability to you for any unauthorized transaction made using your Access Code that occurs before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.** We have no liability for failing to complete a Transaction to or from your Account in time or in the correct amount under any of the following circumstances:

- a. If, through no fault of ours, you do not have enough money (available funds) in your account to make the Transaction.
- b. If the Transaction would go over the credit limit on your overdraft line.
- c. If the Electronic Banking System was not working properly and you knew about the breakdown when you started the Transaction.
- d. If circumstances beyond our control (such as fire or flood) prevent the Transaction, despite reasonable precautions that we have taken.
- e. If you have not properly followed instructions for operation of the Electronic Banking System.
- f. If the funds in your Account are subject to a "hold" due to legal process, similar encumbrance or as otherwise permitted in the Cash Management Agreement.
- g. If the Transaction would exceed one of the established limits contained in the Cash Management Agreement.
- h. If the Account is dormant.
- i. If your own components making up the Electronic Banking System were not functioning properly.
- j. If you did not provide us with correct names or account information for those persons or entities to whom you wish to direct payment.

k. If we have received incomplete or inaccurate information from you or a third party involving the Account or Transaction.

l. If we have a reasonable basis for believing that unauthorized use of your Access Code or Account has occurred or may occur.

m. If we or you have terminated this Cash Management Agreement or closed the Account.

In other cases, if we fail or delay in making a Transaction pursuant to your instructions, or if we make a Transaction in an amount which is less than the amount in your instructions, then (unless otherwise required by law) our liability shall be limited to interest on the amount which we fail to timely pay or transfer, calculated from the date on which the Transaction was to be made until the date it was actually made or you notify us of the problem, whichever occurs first, but in no event to exceed 30 days' interest. We may pay such interest either to you or to the intended recipient of the Transaction, but in no event shall we be liable to both parties and our payment to either party shall fully discharge any obligation to the other. If we make a Transaction in an amount which exceeds the amount in your instructions, or if we permit an unauthorized Transaction after we have had a reasonable time to act on notice from you of possible unauthorized use, then (unless otherwise required by law) our liability shall be limited to a refund of the amount erroneously paid or transferred, plus interest on that amount from the date of the Transaction to the date of the refund, but in no event to exceed 30 days' interest. If we become liable to you for interest under this Cash Management Agreement or applicable law, such interest shall be calculated based on the lowest interest rate we are then paying on our deposit accounts. In no event shall we be liable for interest compensation unless we are notified of a discrepancy within 30 days from the date of the first periodic statement reflecting the discrepancy. **Unless otherwise required by law, in no event will we be liable to you for special, indirect, or consequential damages, including, without limitation, lost profits or attorneys' fees, even if we are advised in advance of the possibility of such damages.**

**13. Financial Information and Audit Rights.** From time to time, upon our request, you will provide us with current financial and other information about yourself. From time to time, upon our request, you will allow us to audit your electronic banking processes and controls and compliance with the terms of this Agreement and applicable legal requirements, including without limitation, the Rules. We may terminate your Services if you fail to provide such information or if you no longer qualify for Services based on our review of the information you supply or that we review during any audit.

**14. Transaction Notification.** You agree that we will not notify you of any Transaction, except in any periodic statements we provide to you, or except as otherwise provided in any separate terms related to new or additional options added to the Services. If periodic statements are not provided, you agree that we are not obligated to provide you with notice of Transactions. On receipt of any periodic statement, either mailed or electronic, you agree to review it and promptly report to us in no event later than 30 days after the date that you received the statement, any discrepancies, errors or unauthorized transactions.

**15. Changes in Terms.** We reserve the right to amend the terms and conditions applicable to your use of the Services. Unless applicable law requires otherwise, all such amendments will be binding upon you immediately after we give you notice. Such notice may be given at our discretion by mail, by e-mail or by revising the terms and conditions in this Cash Management Agreement and making it available on our website. We also will mail you the most recent version of this Cash Management Agreement upon your written request.



You may change the Authorized Wire Callback Persons listed in your Cash Management Services Application by properly executing a Cash Management Services Application Amendment form and delivering it to us at our notice address listed below in *Section A(16)*. No change to the Authorized Wire Callback Persons listed in your Cash Management Services Application shall be effective until the earlier of 10 days after we receive a revised Cash Management Agreement Application Amendment or our written acknowledgment that the change is effective.

**16. Notices.** Any notice, request or other communication you are required or permitted to give under this Cash Management Agreement must be in writing and sent by certified or registered United States mail, return receipt requested, postage prepaid, to the address indicated below, unless another part of this Cash Management Agreement specifically permits or requires you to give notice another way:

**The Bank of Delmarva, 2245 Northwood Drive, Salisbury, MD 21801**

Your notices will be effective when we receive them and have a reasonable opportunity to act on them.

We will send written notice only to one owner on your Account. Sending written notice to a single address constitutes notice to all owners. Notice may be given at our discretion by mail, by e-mail or by revising this Cash Management Agreement and making it available on our website at [www.bankofdelmarva.com](http://www.bankofdelmarva.com). Any notice that is mailed is considered given 48 hours after we place it in the U.S. mail, postage-paid, for delivery to your address shown on our records. Any notice delivered electronically is considered given 24 hours after it is first transmitted. If a specific notice period or type of notice is required by applicable law, the notice will be made and will be binding in accordance with such law.

**17. Use of E-Mail and Other Electronic Communications.** You agree that we may provide this Cash Management Agreement, amendments and other communications regarding Transactions electronically in a format that allows visual text to be displayed on your personal computer or other electronic equipment. If you send us e-mail, we may not receive or review it immediately. We will have a reasonable time to act upon any e-mail request or notice, and reserve the right to reject any transaction or request received by e-mail. You acknowledge that, even though your e-mail to us may be encrypted, we cannot ensure that it will not be intercepted or affected by the actions or omissions of others, such as third party networks or persons with access to the Internet. We recommend that you not send Account data or other sensitive information to us by e-mail. By providing my mobile and/or home number (including any phone number that you later convert to a mobile phone number), you consent to receive informational calls, text messages (including by auto dialers and/or with pre-recorded messages) by or on behalf of us regarding the processing of your requests and for other transactional purposes. You understand that your consent for non-marketing, informational calls and messages applies to each phone number that you voluntarily provide to us now or in the future.

**18. Limitation of Liability.** Any claim, action or proceeding by you to enforce the terms of this Cash Management Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs. You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with the Services.

**19. Severability.** Any term contained in this Cash Management Agreement which is or becomes invalid or unenforceable under applicable law or regulation, shall not affect the validity or enforcement of the remaining terms.

20. **Assignment.** We may assign or delegate any of our rights or obligations under this Cash Management Agreement to independent contractors or other third-party organizations without affecting the enforceability hereof. Your rights and obligations may not be assigned or transferred without our written consent.

21. **Governing Law.** This Cash Management Agreement and the Services offered shall be governed by and construed in accordance with the internal laws of the State of Maryland (without regard to conflict of law principles) and federal law, as applicable.

22. **Use of Eastern Standard Time.** In this Cash Management Agreement, all references to specific times are deemed to be Eastern Standard Time.

23. **Collection Expenses and Security Interest.** If we have to file a lawsuit to collect what you owe us, you will pay our reasonable expenses, including attorneys' fees. You grant us a security interest in your Accounts to secure the repayment of any overdraft or other obligation that you incur under this Agreement.

24. **Fighting Terrorism.** To help the government fight the funding of terrorism and money laundering, we need to get specified information from you about Transactions you make through the Services. We are required to do this by law and will do it in the least obtrusive way possible. You agree to provide us all information required by the Bank Secrecy Act, the USA Patriot Act, OFAC Rules, or other laws, rules or regulations.

## **B. ACH Services**

The ACH Services use the Automated Clearing House or "ACH" network to transfer funds. You may initiate Credit and Debit Entries (CCD and PPD). The terms in this Section B apply to the ACH Services.

1. We may, but shall not be obligated to, accept and execute transfer instructions delivered by you through the ACH Services. We will execute the transfer instructions through the ACH in accordance with the Rules, the terms of this Cash Management Agreement and our procedures, including our security procedures. You shall provide us with such test files, information, prenotification files and actual payment files for processing as required under the Rules, applicable law and our procedures. Unless otherwise defined in this Agreement, all capitalized terms have the meanings set forth in the Rules. The term "Entries" has the meaning provided in the Rules and also means and includes all data received from you that we use to prepare Entries.

2. The following applies to all Entries we choose to accept and execute:

(a) We shall transmit Entries to the Federal Reserve Bank of Richmond (the "ACH Operator") in time to permit the Receiving Depository Financial Institution to make the Entry available to the Receiver by the opening of business on the Effective Entry Date specified in the Entry provided (i) we receive such Entries from you by 3:30 p.m. at least 1 Business Day prior to the Effective Entry Date shown in such Entries, and (ii) the ACH Operator is open for business on such Business Day. If we receive Entries and payment orders for an amount greater than the amount identified in your Cash Management Services Application (as may be modified by us from time to time), we reserve the right to refuse to process all or part of the Entries. Failure to exercise this right of refusal in any one or more instances shall not preclude the exercise of such right in any future instance or constitute a course of business conduct by us on which you may rely. Entries shall be deemed received by us when your transmission is completed.

(b) If any of the requirements of *Subsection 2(a)* are not met, we shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator, unless we reject the Entry.

(c) In the case of an Entry received for credit to an account maintained with us (an "On-Us Entry"), we shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements of *Subsection 2(a)* are met, unless we reject the Entry. If these requirements are not met, we shall use reasonable efforts to credit the Receiver's account in the amount of such Entry on the next Business Day following such Effective Entry Date.

3. You may originate Entries through the ACH Services and submit the file to us via our Cash Management Services. Each entry shall include the offsetting debit or credit to your Account indicated in your instructions ("ACH Settlement Account"). Pre-notifications must be originated at least 3 days prior to the first live entry.

4. You shall retain data on file adequate to permit remaking of Entries for 7 days following the Effective Entry Date and shall provide such data to us upon our request. In addition to your obligation in the Rules regarding the retention of certain Debit Entry authorization agreements, you agree that you will retain a copy of each such authorization agreement for the period specified in the Rules, will permit us to examine such authorization agreements at such times as we may reasonably request and will furnish to us a copy of any such authorization agreement upon request.

5. You shall pay us the amount of each Credit Entry transmitted by us pursuant to this Cash Management Agreement at such time as we, in our discretion, may determine. At our discretion, we may require you to pay us the amount of Credit Entries or we may place a hold on the funds in the ACH Settlement Account in the amount of the Credit Entries before we accept your transfer instructions. You shall maintain a balance of collected funds in the ACH Settlement Account sufficient to cover your payment obligations, including all Credit Entries transmitted, under this Cash Management Agreement. In the event there are not sufficient collected funds in the ACH Settlement Account to cover your obligations under this Cash Management Agreement, you agree that we may immediately discontinue the ACH Services and that we may debit any account maintained by you with us or any of our affiliates and that we may set off against any amount we owe to you in order to obtain payment of your obligations under this Cash Management Agreement.

6. With respect to Debit Entries you initiate, we will credit the ACH Settlement Account the aggregate amount of such Entries on the Effective Entry Date or the next Business Day following the Effective Entry Date.

7. We may reject any Entry that does not comply with the requirements of this Cash Management Agreement, the Rules, and our procedures. We shall have the right to reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. We have the right to reject any Entry if you have failed to comply with your payment obligations under this Cash Management Agreement. We shall have no liability to you by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein. We shall be permitted to reject any transfer instructions orally, electronically, or in writing, and notice of rejection communicated by any such means shall be effective to prevent acceptance of the transfer instructions at the time we give notice.

8. You have no right to cancel or amend any Entry after we receive it.

9. We shall notify you by phone, mail, telefacsimile, electronic transmission or any combination thereof, of the receipt of a returned Entry from the ACH no later than 2 Business

Days after the Business Day of such receipt. We shall have no obligation to retransmit a returned Entry to the ACH.

10. We shall not be responsible for your acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any Entry received from you) or those of any other person, except our Sending Point, including, without limitation, your agents, service bureau, the ACH Operator, any Federal Reserve Bank, any Receiver or Receiving Depository Financial Institution (including, without limitation, the return of an Entry by such Receiver or Receiving Depository Financial Institution). You shall indemnify us against and hold us harmless from all claims, demands, losses, liabilities or expenses (including attorney's fees and expenses) resulting from or arising out of (a) any claim that we are responsible for any of the foregoing, (b) any breach of this Cash Management Agreement by you, (c) any breach of any of the representations or warranties made by you in this Cash Management Agreement, (d) the improper operation, mechanical failure or failure to properly service or maintain any personal computer(s) by you in connection with this service, (e) any misconduct or negligence of your officers, employees or agents in performing any of your duties or functions hereunder including, but not limited to, explicitly following the security procedures or exceeding the authority granted by you or disclosing or disseminating any proprietary information, (f) your failure to notify us in an accurate and timely manner of authorizations or withdrawal of such authorizations, instructions or other information required from time to time, and (g) the crediting or debiting of the amount of any Entry, including but not limited to any reversing or correcting Entry, to the account of any person or entity in accordance with your instructions. You agree to reimburse us for any fines and/or liabilities imposed against us for a violation of the Rules caused by your action or inaction.

11. You represent to us and warrant and agree that (a) each person shown as the Receiver on an Entry received by us from you has authorized the initiation of such Entry as required by the Rules and the crediting or debiting of his or her or its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal of Entries to us, (c) you only shall originate those types of Entries selected by you in the Cash Management Services Application, (d) you shall perform your obligations under this Cash Management Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC, (e) you shall be bound by and comply with the Rules as in effect from time to time, (f) you specifically acknowledge that you have received notice of the Rules and agree to be bound by them and acknowledge that Entries may not be initiated that violate the laws of the United States, (g) all warranties we are deemed by the Rules to make to any party with respect to Entries originated by you are hereby made by you to us, (h) each Debit Entry is for a sum which, on the settlement date with respect to it, will be owing to you from the party whose account will be debited, is for a sum specified by such party to be paid to you, or is a correction of a previously transmitted erroneous Credit Entry, (i) each Entry is made for your own account and is not made on behalf of another person or entity, and (j) each Debit Entry to a Consumer Account has been authorized in a paper writing, signed by the Receiver, and you have possession of the signed, written paper authorization.

12. Both you and we shall be subject to the Rules' designation that the credit given by a beneficiary's bank to the beneficiary of a Credit Entry is provisional until such bank has received final settlement or payment for such Entry. If such settlement or payment is not received, the beneficiary's bank is entitled to a refund from the beneficiary in the amount credited, and the originator of the Entry shall not be deemed to have paid the beneficiary the amount of such Entry.

### **C. Wire Transfer Services**

The *Wire Transfer Services* permits you to set up and initiate funds transfers from your Accounts with us to deposit accounts with other financial institutions, other than through the automated clearing house or "ACH" network (collectively, "Payment Orders"). The terms in this *Section C* apply to Wire Transfer Services.

1. You authorize us to receive, execute and charge the Account identified in your Transfer Instructions to us for any Payment Order you send us. Upon receipt of a Payment Order, we may, but are not required to, execute such request according to the terms of this Cash Management Agreement and charge the account designated in the Payment Order request for the amount of the Payment Order. If we receive a Payment Order for an amount greater than the amount identified in your Cash Management Application (as it may be modified by us from time to time), we reserve the right to refuse to process the Payment Order.

2. We may execute Payment Orders in any order convenient to us in our sole discretion.

3. You and we agree that we shall authenticate all Payment Orders prior to effecting any Payment Order according to the security procedure described in this Cash Management Agreement. We will provide you with an additional security code to use in connection with Wire Transfer Services. We may further authenticate Payment Orders by telephoning one of the Authorized Wire Callback Persons named in your Cash Management Application, as amended, at the telephone number you provided and receiving your security code and verbal confirmation of the amount of the Payment Order by a person purporting to be such Authorized Wire Callback Person.

4. You may transmit Payment Order requests to us at any time. We will process the Payment Orders between 9:00 a.m. and 2:00 p.m. (12:00 p.m. for international wires) each funds transfer business day. In unusual circumstances, and in our discretion, we may accept Payment Orders before or after these times. Our funds transfer business days include all days except Saturdays, Sundays, and standard holidays that are observed by banks in Maryland.

5. We shall be entitled to rely on any communication, instrument or document we believe in good faith to be genuine and correct and to have been given, signed or sent by you and shall not be liable to you for the consequences of such reliance.

6. Without liability, we may not effect a Payment Order if we are unable to obtain authentication of such Payment Order satisfactory to us, if there is any inconsistency between a Payment Order and information previously supplied to us, if such Payment Order is not initiated in conformity with the terms of this Cash Management Agreement, if the funds transfer requested by the Payment Order is prohibited as a result of court order, garnishment, tax levy or the like, or if we reasonably believe that execution of the Payment Order might result in an unauthorized or erroneous transfer of funds or might otherwise cause us to suffer a loss.

7. If any Payment Order exceeds the balance of collected funds in the Account you designate, we need not make such funds transfer and shall incur no liability to you for such inaction. If we elect to make such transfer, you shall remain liable for all amounts transferred, including funds transferred in excess of the collected balances in the Account.

8. We may charge any Account you maintain with us at any time for payment of the Payment Order and related fees, costs and expenses.

9. You shall request Payment Orders before 2:00 p.m. on the date of the requested transfer. We do not assume any responsibility for execution of a Payment Order on the day requested. We are authorized to use any means and routes that we, in our sole discretion, may consider suitable for the transmission of funds. Fedwire, the funds transfer system owned and operated by the Federal Reserve Banks, may be used to effect your Payment Orders. Regulation J, including Subpart B which has adopted Article 4A of the Uniform Commercial Code, governs all funds transfers through Fedwire.

10. Once accepted, we shall not accept cancellations, revocations and amendments to Payment Orders.

11. We shall reject Payment Orders by verbal communication to you using the telephone, by written communication using the mail, or by electronic transmission. Rejection is effective when mailed if given by mail, when you receive the telephone call or when the electronic transmission is sent. Notice of rejection is sufficient if it indicates that we will not pay the Payment Order or are rejecting the Payment Order.

12. You waive any statutory right you may have to recover your attorneys' fees from us. You will defend, indemnify and hold us harmless from and against any and all claims, demands, costs, expenses (including attorney's fees), loss or damage arising out of our acting or refusing to act upon the Payment Orders in accordance with the terms of this Cash Management Agreement.

13. We are not required to act on any written or oral instructions you give restricting the acceptance or transmission of Payment Orders which are not contained in this Cash Management Agreement.

#### **D. Federal Tax Payment Services**

The *Federal Tax Payment Services* uses the Automated Clearing House or "ACH" network to make your federal tax payments. The terms in this *Section D* apply to the Federal Tax Payment Services.

1. We may, but shall not be obligated to, accept and execute transfer instructions you deliver through the Federal Tax Payment Services. We will execute the transfer instructions through the ACH in accordance with the Rules, the terms of this Cash Management Agreement and our procedures, including our security procedures. You shall provide us with proof of your enrollment in the Federal Government EFTPS program, as well as such test files, information, prenotification files and actual payment files for processing as required under the Rules, applicable law and our procedures. Unless otherwise defined herein, all capitalized terms shall have the meanings set forth in the Rules. The term "Entries" shall have the meaning provided in the Rules and also shall mean and include all data received from you hereunder which we use to prepare Entries.

2. The following applies to all Entries we choose to accept and execute:

(a) We shall transmit Entries to the Federal Reserve Bank of Richmond (the "ACH Operator") in time to permit the Receiving Depository Financial Institution to make the Entry available to the Receiver by the opening of business on the Effective Entry Date specified in the Entry provided (i) we receive such Entries from you by 3:30 p.m. at least 1 Business Day prior to the Effective Entry Date shown in such Entries, and (ii) the ACH Operator is open for business on such Business Day. If we receive Entries and payment orders for an amount greater than the amount identified in the Cash Management Application for Tax Payments (as may be modified by us from time to time), we reserve the right to refuse to process all or part of the Entries. Failure to

exercise this right of refusal in any one or more instances shall not preclude the exercise of such right in any future instance or constitute a course of business conduct by us on which you may rely. Entries shall be deemed received by us when your transmission is completed.

(b) If any of the requirements of *Subsection 2(a)* are not met, we shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator, unless we reject the Entry.

3. You may originate Entries through the Federal Tax Payment Services and submit the file to us via our Cash Management Services. Each file shall include the offsetting debit to your Account indicated in the transfer instructions.

4. You shall retain data on file adequate to permit remaking of Entries for 7 days following the Effective Entry Date and shall provide such data to us upon our request.

5. You shall pay us the amount of each Entry transmitted by us pursuant to this Cash Management Agreement at such time as we, in our discretion, may determine. At our discretion, we may require you to pay us the amount of Entries or we may place a hold on the funds in the ACH Settlement Account in the amount of the Entries before we accept your transfer instructions. You shall maintain a balance of collected funds in the Account indicated sufficient to cover your payment obligations under this Cash Management Agreement. In the event there are not sufficient collected funds in the Account indicated to cover your obligations under this Cash Management Agreement, you agree that we may immediately discontinue this service and that we may debit any account maintained by you with us and that we may set off against any amount we owe to you in order to obtain payment of your obligations.

6. We may reject any Entry that does not comply with the requirements of this Cash Management Agreement, the Rules, and our procedures. We have the right to reject any Entry if you have failed to comply with your payment obligations under this Cash Management Agreement. We shall have no liability to you by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein. We shall be permitted to reject any transfer instructions orally, electronically, or in writing, and notice of rejection communicated by any such means shall be effective to prevent acceptance of the transfer instructions at the time we give notice.

7. You have no right to cancel or amend any Entry after we receive it.

8. We shall notify you by phone, mail, telefacsimile, electronic transmission or any combination thereof, of the receipt of a returned Entry from the ACH no later than 2 Business Days after the Business Day of such receipt. We shall have no obligation to retransmit a returned Entry to the ACH.

9. We shall not be responsible for your acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any Entry received from you) or those of any other person, except our Sending Point, including, without limitation, your agents, service bureau, the ACH Operator, any Federal Reserve Bank, any Receiver or Receiving Depository Financial Institution (including, without limitation, the return of an Entry by such Receiver or Receiving Depository Financial Institution). You shall indemnify us against and hold us harmless from all claims, demands, losses, liabilities or expenses (including attorney's fees and expenses) resulting from or arising out of (a) any claim that we are responsible for any of the foregoing, (b) any breach of this Cash Management Agreement by you, (c) any breach of any of the representations or warranties made by you in this Cash Management Agreement, (d) the improper operation, mechanical failure or failure to properly service or maintain any personal computer(s) by you in connection with this Service, (e) any misconduct or negligence of your

officers, employees or agents in performing any of your duties or functions hereunder including, but not limited to, explicitly following the security procedures or exceeding the authority granted by you or disclosing or disseminating any proprietary information, (f) your failure to notify us in an accurate and timely manner of authorizations or withdrawal of such authorizations, instructions or other information required from time to time, and (g) the crediting or debiting of the amount of any Entry, including but not limited to any reversing or correcting Entry, to the account of any person or entity in accordance with your instructions. You agree to reimburse us for (i) any late fees or other charges assessed by any tax authority and (ii) any fines and/or liabilities imposed against us for a violation of the Rules caused by your action or inaction.

10. You represent to us and warrant and agree that (a) you shall perform your obligations under this Cash Management Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC, (b) you shall be bound by and comply with the Rules as in effect from time to time, (c) you specifically acknowledge that you have received notice of the Rules and agree to be bound by them and acknowledge that Entries may not be initiated that violate the laws of the United States, (d) all warranties we are deemed by the Rules to make to any party with respect to Entries originated by you, are hereby made by you to us, and (e) each Entry is made for your own account and is not made on behalf of another person or entity.

11. Both we and you shall be subject to the Rules' designation that the credit given by a beneficiary's bank to the beneficiary of a Credit Entry is provisional until such bank has received final settlement or payment for such Entry. If such settlement or payment is not received, the beneficiary's bank is entitled to a refund from the beneficiary in the amount credited, and the originator of the Entry shall not be deemed to have paid the beneficiary the amount of such Entry.