

## KEYBANK BUSINESS ONLINE

### PAY WITH ACH SERVICE

#### **Terms and Conditions**

As used in these terms and conditions (herein called “Terms and Conditions”) for the Bank’s “Pay with ACH” online electronic funds transfer service (formerly known as Pay Direct) for commercial customers via the Automated Clearing House (“ACH”) on KeyBank’s Website (the “Service”), “Customer” is defined in the KeyBank Business Online Services Agreement and “Bank” means KeyBank National Association. Other defined terms used herein but not expressly defined herein shall have the meaning ascribed thereto in the KeyBank Business Online Services Agreement.

**Acceptance of Service Agreements.** Each time Customer uses the Service, Customer agrees to be legally bound by, and that each ACH Entry will be subject to, the terms and conditions of the following service agreements, as amended: (a) these Terms and Conditions, (b) the KeyBank User Agreement For Access to World Wide Website, as amended, (herein called “User Agreement”), (c) the KeyBank Business Online Services Agreement (“KBBO Services Agreement”) and (d) any applicable Linking Agreement for Key Business Online Services (“KBO Linking Agreement”). Customer acknowledges and agrees that each ACH Entry is not subject to Bank’s service agreements and disclosures for personal online banking for consumer accounts at Bank. Please read these agreements carefully for applicable terms, including, but not limited to, limitations on liability of Bank. Customer acknowledges receipt of each of the above service agreements or access to these agreements on the Website. For purposes of the KBO Services Agreement and any applicable KBO Linking Agreement, references therein to the term “KBO Service” shall also mean and include the Service under these Terms and Conditions. These Terms and Conditions are considered supplemental to, and shall be incorporated into and made a part of, the KBO Services Agreement, and the KBO Services Agreement shall also apply to the Service hereunder.

**1. Key Business Online Service.** The Service enables Customer to originate online Credit Entries to the accounts of Receivers at Bank (“On-us Entries”) or at a Receiving Depository Financial Institution (“RDFI”) pursuant to these Terms and Conditions and the Rules of the National Automated Clearing House Association (“NACHA”) or other automated clearing house(s) as applicable. (Such rules shall hereinafter be referred collectively as the “Rules”). Bank shall receive from Customer Entries and Entry Data originated in compliance with the formatting, media, deadlines and other requirements provided to Customer by Bank, to enable Bank to process and transmit Entries and Entry Data pursuant to the terms of these Terms and Conditions and the Rules. Undefined terms used in these Terms and Conditions which are used and defined in the Rules shall have the meanings ascribed thereto in the Rules.

**2. Procedures: Restrictions and Limitations.** Please refer to the Business Tools tab on the Website or go to Key.com for instructions and guidance on operating procedures. Bank may impose limitations and restrictions on the number, frequency or dollar amount of ACH Entries by Customer as Bank may determine, at its sole discretion, which Bank may revise from time to time.

**3. Credit Limits and Controls:** Prefunding. Notwithstanding anything set forth in these Terms and Conditions to the contrary, the Customer agrees that all ACH transactions that are handled by the Bank will be handled subject to the following controls:

A. Bank will monitor compliance with the Bank's service limits across multiple processing cycles. If a file of payments that are unacceptable to the Bank is received, the Bank may at its option, suspend processing, and Customer's relationship manager, cash management sales officer or other Bank designee will make a determination on whether the file will be processed, deleted or returned to the Customer.

B. Customer shall irrevocably make available to Bank, in good and collected funds, the total amount of all Credit Entries prior to the time Bank processes the Entries ("Prefund"). In order to Prefund each ACH Entry, Customer shall have sufficient funds in the Account (defined below) one (1) business day prior to the Settlement Date, and Customer authorizes Bank to place a hold on the Account in the amount of Customer's Credit Entries one (1) business day prior to the Settlement Date. If Customer fails to Prefund the full amount of Credit Entries as required, Bank may, in its discretion, refuse to process such Credit Entries.

**4. Customer Account.** Customer shall maintain a designated deposit account (the "Account") with Bank and hereby authorizes Bank to debit or credit such Account, as appropriate, in connection with Entries processed and transmitted by Bank in name of Customer.

**A. Credit Entries.** Customer shall maintain sufficient funds available for withdrawal in the Account on each Settlement Date to cover the aggregate amount of Credit Entries, processed and transmitted by Bank in the name of Customer, to be settled that day. Bank shall debit the Account on each Settlement Date and may do so, at its sole discretion, even though the debit may bring about or increase an overdraft. Any such overdraft shall be immediately due and payable by Customer without notice or demand.

**B. Debit Entries.** Adjustments. Bank shall credit the Account on each Settlement Date in an amount equal to the aggregate amount of Debit Entries or any adjustment to any Entry, processed and transmitted by Bank in the name of Customer, to be settled that day. Bank need not make any deposit to the Account available for withdrawal until Bank has reason to know that the Debit Entries or adjusting Entries have been paid. In the event Bank fails to receive final settlement for whatever reason, Bank may charge back the amount thereof to the Account or claim a refund from Customer.

**5. Entries and Entry Data.** Customer shall create Entries and Entry Data within the time deadlines, as specified by Bank. Bank may refuse or delay processing or transmittal of Entries or Entry Data, including cancellations, reversals, error corrections or adjustments thereof, in the event Entries or Entry Data issued in the name of Customer are not in accordance with mutually agreed security procedures, are unclear or incomplete or are not in compliance with Bank's requirements and procedures, or in the event of any other reasons satisfactory to Bank.

**6. Security Procedures.** Customer and Bank shall comply with mutually agreed security procedures. All Entries and Entry Data issued in the name of Customer are subject to verification by Bank pursuant to the security procedures. Bank may process and transmit Entries and Entry Data in the name of Customer when verified by Bank pursuant to such procedures. Customer shall be responsible for any unauthorized use or disclosure of all security procedure materials entrusted to it. These security procedures are in addition to and not in limitation to the security provisions provided for under Section 4 of the KBO Services Agreement.

**7. Processing and Transmittal of Entries and Entry Data.** In processing and transmitting On-us Entries and Entry Data, Bank shall credit the accounts of Receivers on its books. In processing and transmitting Entries and Entry Data intended for the accounts of Receivers at RDFIs, Bank shall process and transmit such Entries and Entry Data to the ACH Network for processing and ultimate transmittal to RDFIs which have agreed to receive such Entries. The relationship between Bank and Customer with respect to Entries and Entry Data issued in the name of Customer and transmitted by Bank to the ACH Network, except as otherwise provided in these Terms and Conditions, shall be governed by the terms of the applicable Rules. Bank and Customer shall comply with and be bound by the Rules as in effect from time to time applicable to activities of such party contemplated by these Terms and Conditions.

**8. Same Day Entries.** Bank shall offer the same day origination of Credit Entries ("Same Day Origination"). Eligible Entries may not exceed twenty-five thousand dollars (\$25,000.00) and do not include international ACH Entries. Customer may elect to opt-out of Same Day Origination by notifying Bank in writing as set forth in the Notice section of the KBO Services Agreement. If Customer does not notify Bank that it has elected to opt-out of Same Day Origination, Eligible Entries received by the cut-off time on a banking day with an effective date of the same day will be processed and charged to Customer as same day Credit Entries.

**9. Inconsistency of Name and Account Number.** Customer acknowledges and agrees that if an Entry or Entry Data describes the Receiver inconsistently by name and account number, Bank may rely upon the account number, even if it identifies a person different from the named Receiver, and that Customer's obligation to pay the amount of the Entry is not excused in such circumstances. Bank shall have no duty or other obligation to monitor Entries to identify such inconsistencies.

**10. Warranties and Indemnity.** Customer agrees to all warranties determined by the Rules applicable to Customer in its capacity as an "Originator" under the Rules. Without limiting the foregoing, Customer warrants and agrees at the time of origination of each Entry that:

A. Each Entry is accurate, is timely, has been authorized by the party whose account will be credited, and otherwise complies with the Rules. Customer acknowledges that Bank shall not be responsible for Company's acts or omissions or those of any other party, including without limitation any Federal Reserve Bank, ACH Operator or RDFI.

B. Customer has identified itself to the Bank as the originator by use of a commercially reasonable method.

C. Customer is not acting in the capacity of a Third-Party Service Provider, including a Third-Party Sender, with respect to any other person or entity.

D. Customer uses commercially reasonable fraudulent transaction detection systems to

1) establish the identity of users who provide payment instructions in person, via the internet or by telephone and

2) verify the validity of routing-and transit numbers contained within payment instructions. Additionally, Customer warrants that it uses a secure Internet session and commercially reasonable security technology, which provides a level of security that, at a minimum, is equivalent to the applicable NACHA standard at the time these Terms and Conditions are accepted by Customer.

E. Upon request by the Bank, Customer will provide adequate financial information to allow the Bank to monitor the Customer's creditworthiness on an ongoing basis.

F. Customer has complied and will comply with the applicable terms of the federal and state Electronic Fund Transfer Acts, the Uniform Commercial Code Article 4A, and the Rules. Customer shall comply with all applicable laws and regulations and shall perform its obligations under these Terms and Conditions and the KBO Service Agreement and each applicable Linking Agreement in accordance therewith.

G. Customer has adopted, implemented and will maintain at all times commercially reasonable policies and procedures for the secure receipt, storage, transmission and destruction of personal information, including, without limitation, Data for ACH Entries, as required by applicable law, Rules and policies adopted by NACHA. Customer will notify Bank immediately of any data security breach. Customer will cooperate fully with Bank in regard to any Breach, including, without limitation, providing any and all information requested by Bank in connection with such data security breach.

H. Customer shall indemnify Bank and hold it harmless from and against any and all claims, demands, losses, liabilities or expenses (including attorney's fees and costs) resulting directly or indirectly from: (i) a breach of any Customer warranty; (ii) the transmittal by Bank of Entries and Entry Data in accordance with Customer instructions, including cancellations, reversals, error corrections or adjustments; (iii) the delay or failure of an RDFI in crediting a Receiver's account; or (iv) any penalties imposed on Bank by NACHA for violation of the Rules if Bank deems such violation was caused by Company's disregard or violation of the Rules.

**11. Entry Rejection by Bank.** In the event that Bank detects any errors in the Entries or Entry Data delivered by Customer, Bank will give notice to Customer.

**12. ACH Entry Rejection.** In the event that any ACH Entries or Entry Data are rejected by the ACH Operator or any RDFI for any reason whatsoever, it shall be Customer's responsibility to remake such ACH Entries or Entry Data; provided, however, that Bank shall remake such ACH Entries or Entry Data where such rejection was due to mishandling by Bank and correct data is available to Bank to permit it to remake such Entries or Entry Data. Customer shall retain and provide Bank on request all information

necessary to remake any Entries or Entry Data for three banking days after midnight of the Settlement Date.

**13. Reversals and Cancellations.** Any request by Customer to reverse or cancel payment of an Entry shall be binding only if received by Bank within its applicable deadline for such activity, and in the format and media required by Bank. Customer acknowledges that compliance with such a request is within the discretion of Bank and RDFI, and Customer shall indemnify both Bank and RDFI from and against any and all claims, demands, losses, liabilities or expenses (including attorney's fees and costs) resulting directly or indirectly from compliance by Bank and the RDFI with such request. A reversal does not guarantee that any funds will be returned to Customer and Customer acknowledges that Bank will not be liable if a reversal does not take place.

**14. Record Retention.** Customer agrees to keep all written authorizations required by the Rules on file for at least two years after such authorization has been terminated. Authorizations should be available upon request to Bank or RDFI.

**15. OFAC.** Customer acknowledges that it may not transmit entries that violate the laws of the United States, including sanctions enforced by the Office of Foreign Assets Control of the United States Treasury Department ("OFAC"). Customer warrants that it will not violate OFAC-enforced sanctions, and will not act on behalf of, or transmit funds to or from, any party subject to such sanctions. Bank and Customer acknowledge that each is subject to the Rules and the laws of the United States, including OFAC-enforced sanctions in transmitting Entries hereunder.

**16. Audit.** Customer agrees that Bank has the right to audit Customer's ACH processes, controls and activities hereunder at the Bank's discretion.

April 2018