

# KEYBANK BUSINESS ONLINE SERVICES AGREEMENT

This KeyBank Business Online ("KBO") Services Agreement ("**Agreement**") is between KeyBank National Association ("**Bank**") in its capacity as the operator of Bank's Website and Bank's Customers that access and use the KBO Services ("**Company**"). When Company enrolls in this KBO Service on the Website, and clicks on the "Accept" button on the Website to approve this Agreement, such action constitutes Company's electronic signature to and approval of, and intent to be bound by, this Agreement and all service schedules (if any) attached hereto as selected by Company. Bank may, at its sole discretion, require at any time a manual signature by Company on this Agreement or any such service schedule.

## PART I -- WEBSITE ACCESS AND ONLINE FINANCIAL SERVICES

**1. DEFINITIONS.** Unless otherwise defined herein, the terms below shall have the meanings ascribed thereto.

**"Access Code"** collectively means an appropriate User name or identification and related password or code, as selected and modified from time to time by the Company, any Linked Company or User.

**"Account"** collectively means those present and future business deposit and/or credit account(s) maintained with Bank that are domiciled in the United States, which Bank determines are eligible for the KBO Service and which is (a) an Account identified as part of the Customer Profile of the Company or (b) a Linked Account of a Linked Company or its Customer Profile.

**"Account Documentation"** means Bank's account documents for the Accounts, including the terms and conditions governing the operation of Accounts, as such documents may be amended or replaced by Bank.

**"Administrator"** means, with respect to any group of Account(s) of one or more Companies for which the KBO Service is provided, any entity or individual: (i) who has been designated by Company to be, or otherwise has authority to act as, an Authorized Signor to enroll in, accept or use the KBO Service, or (ii) who performs any functions with respect to the administration of any such KBO Service (such as by accepting online banking service agreements on Company's behalf, or designating Users of any such online banking service). The term **"Administrator"** includes, without limitation, any person designated as such on any Corporate Certificate. For the avoidance of doubt, Company may have more than one Administrator, and such term as used herein shall include all such Administrators.

**"Agreement"** collectively means this KeyBank Business Online Services Agreement and all supplemental terms and conditions and agreements, exhibits and service schedules attached or linked hereto.

**"Applications"** collectively means all of Bank's software programs, applications, services and procedures available at any time through Internet online access to KBO Services and, if any software is provided by Bank, shall include any released modifications, updates, and successor and substitute programs as may have been provided by Bank.

**"Application Agreements"** collectively means any agreement, contract, license, sublicense, terms and conditions, or other documentation provided with, or related to, any of Bank's Applications.

**"Authorized Signor"** means, with respect to any Account, a person who is either an authorized signor for that Account or to whom authority has been delegated to act with respect to that Account, including, without limitation, authority delegated to an Administrator by the Company pursuant to a Corporate Certificate.

**"Corporate Certificate"** means any authorization, resolution, certification, addendum to an existing resolution or certificate, or other writing (regardless of the form's title) that may be required by Bank, at its sole discretion, from any Company or Linked Company at any time to evidence or confirm that any person acting as such person's or entity's Administrator is duly authorized to act in such capacity and is an Authorized Signor of such Company.

**"Company"** means any person or entity, regardless of number or gender and whether such party as a business customer of Bank is an individual or any business entity, Public Entity or other organization that now is or hereafter becomes a party to, or otherwise agrees to, this Agreement, or that otherwise uses the KBO Service, and includes, without limitation, (a) the Company, (b) a designated Linked Company, (c) all Customer Profiles of any such person or entity permitted by Bank, including without limitation, for each Customer Profile of the Company and each Linked Company.

**"Customer Profile" or "Profile"** means a group comprised of one or more Accounts of one or more Companies for which the KBO Service is provided and which have the same federal income tax identification or social security number; provided, however, that: (i) Bank may establish more than one Customer Profile for the Account(s) for which such individual is acting as Administrator; and (ii) nothing contained in this Agreement or any other Application Agreement shall obligate Bank to provide or continue to provide online access via Website for the KBO Service for any particular Account or Customer Profile; provided further however, a Customer Profile with respect to a Public Entity shall be limited to those Account(s) that have the same specific title or name for the Account that identifies the owner of such Account, as designated on the Bank's records, and a Public Entity cannot approve a Linked Account or Linked Company.

**"Instruction"** means any written, electronic or telephonic transmission of any financial or nonfinancial instruction to Bank or any of its officers, employees or agents related to any payment order, check, draft, bill of exchange, note or other financial instrument, with respect to any transaction relating to any Account.

**"KBO Service"** collectively means, with respect to any Customer Profile, the Applications and online financial services offered by Bank on the terms and conditions set forth in this Agreement and in the other Application Agreement to Bank's customers, which is titled "KeyBank Business Online," or such other service mark selected by Bank for this purpose, as from time to time amended or replaced by Bank.

**"Linked Account"** means, with respect to any Customer Profile, an Account of a Linked Company maintained with Bank.

**"Linked Company"** means, with respect to any Customer Profile, any commercial customer of Bank which is not the Primary Company but whose Accounts are maintained with Bank and domiciled in the United States, and are included, with Bank's permission (which may be granted or withheld in Bank's sole discretion), in such Customer Profile. A Linked Company shall not include any Public Entity.

**"Personal Account"** collectively means those present and future consumer deposit and/or credit account(s) of an Administrator maintained with Bank that are domiciled in the United States, which Bank determines are eligible to be displayed in the KBO Service.

**"Primary Company"** means, with respect to any Customer Profile, the Company for which any Administrator has enrolled in the KBO Service (by submitting during enrollment the name, address and

tax identification number, of such Company and account number of such Company) or the Company for which the Administrator has obtained the KBO Service.

**"Public Entity"** means any federal, state, county, municipal corporation, township or village, or any political subdivision thereof, or other body corporate and politic responsible for governmental activities, and located in the geographic region known as the United States of America, including without limitation: any general assembly or legislative body, any regional, state or local governing board or council; any court; offices of all elected officials (whether elected or appointed); any department, board, , commission, agency thereof; any state or local school district; any state or county college or university; any public library; and all other agencies and instrumentalities of a government entity; and any retirement system or instrumentality of any governmental entity, political subdivision or other public instrumentality.

**"Security Device(s)"** collectively means those security devices which Bank may require Company to use in connection with the KBO Service, including without limitation, Access Codes, other identification codes, other passwords, authorization, authentication and/or encryption algorithms, security tokens, cookies, digital signatures and private or public keys.

**"Security Procedures"** collectively means the security procedures and requirements which Bank may establish from time to time for Company to use for any Customer Profile in connection with the KBO Service.

**"User"** collectively means, with respect to an Account, the Administrator and all other users authorized by any Administrator, the Company or any Linked Company to use the KBO Service, subject to such restrictions and limitations selected by an Administrator, at any time for any Customer Profile that includes that Account.

**"Website"** means the World Wide Web internet site, <https://www.key.com/business/index.jsp>, or such other successor or alternative website designated by Bank.

## **2. DESCRIPTION OF ONLINE KBO SERVICE**

(a) The KBO Service is access to and use of the Website for Bank's commercial customers, offering a variety of content, products, services, and features, as described from time to time in this Agreement, the Account Documentation, and any Application Agreements, including without limitation the following functions and features:

**Basic Features** (collectively, the **"Basic Services"**) are those features which are automatically available to Company immediately upon enrollment in the KBO Service, and at no additional charge.

- View, print and order checks for a deposit Account;
- View and print Account balances, activities and transactions;
- View and print Account reports;
- Create and print customized Account reports;
- Access information content posted on the Website;
- Internal transfer of funds between Company's deposit Accounts at Bank;
- Loan advances from Company's credit facilities established by Bank;
- Payments to Company's credit facilities established by Bank;
- Download of financial data to a third party;
- Electronic mail ("**Email**") to or from us;

- Service requests for stop payments, check copies, and photo copies for deposit accounts;
- Linked Accounts and Linked Companies; and
- Such other services offered by Bank from time to time.

**Included Features** (collectively, the “**Included Services**”) are comprised of additional functionalities available within the KBO Service upon Company’s election of such features following enrollment.

- Add Linked Accounts and Linked Companies;
- Transfer funds between eligible Accounts at Bank and other financial institutions;
- Key Online Bill Payment services for any Company other than a Public Entity (“**Online Bill Pay**”), including electronic presentment of bills (“**eBills**”) and Expedited Online Bill Pay (“**Expedited Payments**”); and
- View and access applicable Personal Accounts.

**Premium Features** (collectively, the “**Premium Services**”), to the extent offered and implemented for Company, are features Company must elect and sign-up for following enrollment, and may be subject to applicable supplemental terms. Additional charges apply, as specified in the Account Documentation:

- Set up Users on any Account or Customer Profile;
- Monitoring of Accounts and management of unauthorized Account activity;
- Collection of returned checks; and
- Electronic funds transfer services to third parties, such as transfers by wire and/or automated clearing house through such mechanism as is determined by Bank from time to time.

(b) Bank shall have no obligation to activate the KBO Service, in whole or in part, immediately upon the completion of enrollment, in order to provide Bank with an opportunity to complete the set-up process and approve Company's request for the KBO Service, and, if desired by Bank, to confirm information provided by Company. Activation of certain KBO Service features may require submission of additional information or require additional steps for activation.

(c) Access to the KBO Service is available to Company as specified in Part I, Section 15 of this Agreement below. All new online features and functions to the Website added by Bank will be subject to this Agreement. This Agreement supplements and modifies Company’s deposit account agreements with Bank (the “**Deposit Agreements**”) and incorporates by reference Bank’s Rules and Regulations for the KeyBank World Wide Website (the “**User Agreement**”).

### **3. RESTRICTIONS ON USAGE**

The KBO Service may be subject to certain transaction, usage, and other limits, as Bank may prescribe at any time, including, without limitation, certain per transaction, daily limits, and limits on Account access, all of which transaction, usage, and other limits are applied by Bank on the basis of each Customer Profile, except as otherwise expressly provided in this Agreement, any Account Documentation, or any other Application Agreement. All Bank-prescribed transaction, usage, and other limits are for the exclusive benefit of Bank in administering the KBO Service. Bank shall have no duty to Company to enforce any such Bank-prescribed limits. Bank may waive or elect not to enforce any such limits at any time and from time to time without prejudice to Bank's right at any time to elect to enforce any such limits. Within any Bank-prescribed per transaction, usage, or other limits, and subject to the KBO Service

features being revised to include a Company-defined limits feature, Bank may at any time permit any Administrator of any Customer Profile to establish any Company-defined per transaction, usage, or other limits for such Customer Profile; provided, however, that such Company-defined per transaction, usage, or other limits are subject to being reduced to not exceed any revised Bank-defined per transaction, usage, or other limits that may be established for that Customer Profile by Bank.

#### **4. SECURITY PROCEDURES; SECURITY DEVICE**

(a) In order to communicate electronically with Bank, whether via the Internet or otherwise, to access information or effect transactions in connection with the KBO Service, Company shall utilize Security Device(s) to be issued or approved by Bank. Company agrees that any activity and/or use of the KBO Service carried out by using a Security Device shall be deemed to be carried out directly by and duly authorized on behalf of Company. Company agrees to be bound by and adhere at all times to the Security Procedures in effect from time to time, which Security Procedures include, without limitation, the procedures and requirements set out in this Agreement.

(b) The Access Code for each User is selected by such User. Bank may deliver other Security Devices and related documents and correspondence to each Company and its Administrator. In the absence of a valid designation at any time, Bank may direct materials otherwise deliverable to the Company or its Administrator to any User or other Authorized Signor on the Account(s). Except as otherwise set forth in the Security Procedures for an Application, or as otherwise required by Bank in connection with the distribution of any Security Device, Company's issuance and dissemination of Security Devices to employees and other persons shall be under the exclusive control of the Company and its Administrators. Company acknowledges that the Security Procedures for the KBO Service have been designed to place the issuance and dissemination of Security Devices to Users under the control of the Primary Company and its Administrators, except in those instances in which Bank distributes Security Devices directly to Company's Users. The Primary Company or its Administrator will have the responsibility of identifying Users who are to receive Security Devices.

(c) Company agrees to notify Bank immediately of each loss or theft of any Security Device, any unauthorized use of any Security Device, or any other breach of security. Company acknowledges and agrees that after Bank establishes any Security Device or Security Procedure for the Company or its Administrator, Bank may at any time and without notice begin requiring the Company, its Primary Company, Administrator, and other Users to utilize such Security Device as a condition to accessing the KBO Service, and that until such Security Device is so used, Bank may suspend or limit access to the KBO Service.

(d) Company acknowledges that Security Devices may expire if they are not used by Users to access the KBO Service within a period of time determined from time to time by Bank. Bank may dishonor or disable any Security Device at any time and will inform Company of its decision to do so. Bank may also issue additional or replacement Security Device(s) from time to time, and Company and its Administrator and Users shall follow Bank's instructions regarding the distribution, installation, and use thereof. At any time upon Bank's request, each Primary Company and Administrator shall provide promptly to Bank a list of persons having been issued Access Codes or any other Security Device permitting use of the KBO Service or any Application.

#### **5. ADMINISTRATOR(S); USERS; PRIMARY COMPANY**

(a) Any Administrator shall have the authority on behalf of Company (i) to accept this Agreement, the Account Documentation, and the Application Agreements and (ii) to perform all of the functions to

be performed by a Primary Company or Administrator under this Agreement, the Account Documentation, and the Application Agreements. If requested at any time by Bank, Company shall evidence or confirm that any person acting as such Company's Administrator is an Authorized Signor of such Company by submitting a completed Corporate Certificate. If Bank in its sole discretion permits Company to name more than one Administrator for any Customer Profile, such Administrators shall have equal authority and the acts by any one Administrator shall be binding on Company.

(b) If Company is designated as the "Primary Business Entity" or "Primary Company" (or other words with like effect) in any Linking Agreement, then (a) for purposes of this Agreement, the Account Documentation, and all of the Application Agreements, such Company shall be deemed to not only be acting on behalf of itself, but shall also be deemed to be acting as the authorized agent on behalf of each Linked Company, including, without limitation, as the authorized agent of each Linked Company for purposes of providing each Linked Company's agreement to the terms and conditions of this Agreement, the Account Documentation, and the Application Agreements (which agreement of each Linked Company shall be deemed to be effective upon such Linked Company's entering into any Linking Agreement), (b) each Administrator and each authorized User of such Company shall be deemed to be a User of each Linked Company, and (c) all Users of any Company shall be deemed to be a User of each Company.

(c) The Primary Company or any Administrator of a Customer Profile shall be responsible for: (i) setting up, establishing, deleting, modifying, and maintaining current designations of the persons who are the Users and their e-mail address and other contact information, by using the online user-entitlement functions of the KBO Service for such designations or by such other method of designation as Bank may from time to time require, and to ensure that all Users are Authorized Signors and authorized Users at all times; (ii) setting up, establishing, and maintaining current specifications of the functions and other user entitlements of the KBO Service for each User, by using the online user-entitlement functions of the KBO Service for such specifications or by such other method of specification as Bank may from time to time require, (iii) informing Users of the functions and other user entitlements of the KBO Service for which they are authorized and of any applicable restrictions, and controlling and enforcing any restrictions on an User's access to certain KBO Service functions or other user entitlements, (iv) receiving, exchanging and distributing for and on behalf of Company, all materials, notices, documents and correspondence relating to the KBO Service, this Agreement, the Account Documentation, or any of the Application Agreements, (v) setting up, establishing, and maintaining per transaction, usage, or other limits for the use of the KBO Service by that Customer Profile, and (vi) communicating with the Primary Company or Administrators of any other Customer Profile of any Company included within the Customer Profile for which the Primary Company and Administrator(s) are acting in that capacity, and coordinating the actions of all Administrators and other Users for any of such Customer Profiles.

(d) Company agrees and acknowledges that each person designated at any time by any Primary Company or Administrator of any Customer Profile, as a "User" is authorized by Company to use the KBO Service with respect to any of the Accounts included at any time within that Customer Profile. Company agrees to take all action as may be necessary to prevent any User from using any function of the KBO Service for which they are not authorized and to prevent any person or entity from using the KBO Service with any Account not included within the Customer Profile for which they are a User. Company agrees to cause the Administrators to immediately use the online user-entitlement functions of the KBO Service to inform Bank of any change in any User or any User's Contact information, and to take all action as may be necessary to prevent any person who is no longer a User from thereafter using the KBO Service. Any change to any of Company's Users shall be effective as soon as Bank finishes

processing any Administrator's entry via the Website of all required information to make a change in Users. If Company notifies Bank in writing of any change to any of Company's Administrators, such notice shall be effective after Bank has had a reasonable opportunity to act on such written notice.

(e) Company may retain and authorize an agent, service bureau, or other user to use the KBO Service as an authorized User to conduct business on Company's behalf and to use the KBO Service. Bank may rely upon any Instruction that it receives from an agent, service bureau or other User on behalf of Company, provided that such Instructions are verified pursuant to the Security Procedures specified from time to time by Bank. Should Bank accept such Instructions, Company shall be bound by the same. **Bank shall have no duty or other obligation to review or monitor Company's authorization of, and activities by, such agent, service bureau or other user, and Company agrees that Bank shall have no obligation or liability of any kind in connection with any action or omission, negligence or willful misconduct by any such party.**

## **6. RESPONSIBILITY FOR SERVICE TRANSACTIONS**

(a) Company is responsible for all transfers, payments, and transactions that are made by any User or which are made using any Security Device of Company under the KBO Services. If Company fails to prevent any person or entity who is not an authorized User to use the KBO Service or any Security Device of Company, Company shall be responsible for all transfers, payments, and transactions that they make or that are made using any Security Device of Company. Account access through the KBO Service is separate and distinct from Company's signature arrangements for Company's Accounts. Therefore, when Company gives any person or entity the authority or means to access Accounts through the KBO Service, that person or entity may have access to one or more Accounts to which that person or entity would not otherwise have signature access. Company assumes the entire risk for the fraudulent, unauthorized or otherwise improper use of the KBO Service by all Users and by all other persons using any Security Device. Bank shall be entitled to rely on the genuineness and authority of all Instructions received by Bank from any User or when authenticated by any Security Device or Security Procedures, and to act on such Instructions.

(b) Company is responsible for regularly reviewing the Account statements provided by Bank to Company, and for maintaining appropriate internal controls, including segregation of duties and functions of Company's Users, officers, representatives, employees, for identifying any inappropriate or unauthorized use of the KBO Service, and for immediately notifying Bank of any improper or unauthorized use of the KBO Service. In the event of any conflict in the terms or data appearing in any Account report viewed, printed or displayed by Company via the KBO Services and the official Account statements prepared and mailed by Bank, the Bank's mailed official Account statements shall control.

## **7. CUSTOMER PROFILES**

(a) Any Administrator may at any time add Accounts of the Company, for which the Administrators are Authorized Signors, to a Customer Profile for which that person is an Administrator via the Website; provided, however, all Account(s) must have the same specific title or name for the Account that identifies the owner of such Account, as designated on the Bank's records.

(b) Bank shall have no obligation at any time to accept enrollment of any Customer Profile in the KBO Service, or to provide or continue to provide the KBO Service for any Customer Profile. Bank may



also, at any time and from time to time, establish limits on or eligibility criteria for the types or number of Customer Profiles for which the KBO Service is provided.

(c) To the extent that Bank permits or continues to permit Companies to have more than one Customer Profile, Company shall be responsible for all actions and omissions of any Administrator or other User of any Customer Profile, including, without limitation, ensuring communication and coordination among all Administrators and all other Users of all Customer Profiles and for coordinating actions and avoiding any duplicate or conflicting actions.

## **8. LINKED COMPANIES AND LINKED ACCOUNTS**

(a) Customer Profiles enrolled in or using the KBO Service, initially and until changed in

accordance with the terms hereof, include all Accounts of the Primary Company for which the Primary Company or Administrators are Authorized Signors as of the time of enrollment in the KBO Service; provided however, all Account(s) must have the same specific title or name for the Account that identifies the owner of such Account, as designated on the Bank's records; together with (i) any additional Accounts of such Primary Company for which the Administrator has become an Authorized Signor or Administrator, and (ii) any Linked Accounts of any Linked Companies. Notwithstanding any other provision herein to the contrary, a **Public Entity shall not request, establish or access any Linked Company or Linked Account in connection with this Agreement, and all references to any Linked Account or Linked Company herein shall not apply to KBO Services for any Public Entity's Account pursuant to this Agreement.**

(b) Linked Accounts may be added to a Customer Profile by an Administrator via the Website. All Accounts of such Linked Company shall, initially and until changed in accordance with the terms and conditions set forth in this Agreement, the Account Documentation, and the Application Agreements, be added to and included in such Customer Profile. For any additional Account of a Linked Company, Bank may (but shall not be obligated to) add such Account to any Customer Profile for such Administrator.

(c) Bank shall have no obligation to allow any person or entity to become a Linked Company with respect to any Customer Profile, to allow any Account of any person or entity to become a Linked Account with respect to any Customer Profile, or to provide or continue to provide the KBO Service for any Linked Account or for it to continue to be a Linked Account with respect to any Customer Profile. Bank may also, at any time and from time to time, establish limits on or eligibility criteria for the types or number of Linked Companies or Linked Accounts for which the KBO Service is provided with respect to any Customer Profile.

(d) For an Account of a Primary Company enrolled in the KBO Service, Company agrees to immediately notify KBO Customer Service or make the appropriate update via the Website in the event that such Primary Company or Administrator at any time ceases to be an Authorized Signor on that Account, and to cooperate with Bank, including, without limitation, doing any of the following as Bank may require: (i) promptly appointing a replacement Primary Company or Administrator, if required by Bank, for that Account and all Accounts in that Customer Profile (including obtaining the execution of any needed Corporate Certificate or other agreement which may be required by Bank); or (ii) removing that Account from that Customer Profile. Company further agrees that Bank may continue to treat such person as an Administrator with respect to that Account until Bank received such notice in the manner provided in this Agreement, and Company has performed all of the actions related thereto as may be required by Bank.



## **9. PERSONAL ACCOUNTS**

An Administrator may elect to enroll certain eligible Personal Accounts in the KBO Service. A Personal Account is only eligible for enrollment in the KBO Service where the Administrator has previously enrolled the Personal Account in Bank's Online Banking Service pursuant to the terms of the Online Banking Service Agreement and Disclosure ("Online Banking Agreement"). Once a Personal Account is enrolled in the KBO Service, the Administrator will be able to perform limited transactions in the Personal Account through the KBO Service. Transfers from Commercial Credit Accounts, as defined in Part II of this Agreement, to Personal Accounts are prohibited. Additionally, Personal Accounts will not have access to Bank's PayDirect Service. Any payments from a Personal Account to a Payee must be made through Online Bill Pay. Access to a Personal Account through the KBO Service is for convenience purposes only, and the KBO Service is not intended to replace the features or functionality of the Online Banking Service. Usage of the KBO Service for Personal Accounts shall be governed by the terms of this Agreement and the Online Banking Agreement. In the event of a conflict between the terms of this Agreement and the Online Banking Agreement with respect to online access of Personal Accounts, the terms and conditions of the Online Banking Agreement shall control.

## **10. RELATIONSHIP TO ACCOUNT DOCUMENTATION AND OTHER APPLICATION AGREEMENTS**

This Agreement and the Application Agreements are supplemental to the Account Documentation relating to the Accounts, and the Application Agreements are supplemental to this Agreement. In the event of a conflict between the terms and conditions of (i) this Agreement or any of the Application Agreements, and (ii) the Account Documentation, the terms and conditions of the Account Documentation shall control except (1) with respect to the online access to the Accounts via the Website and the KBO Service, in which case the terms and conditions of this Agreement and the Application Agreements shall control, and (2) as may be otherwise expressly provided to the contrary in this Agreement. In the event of a conflict between the terms and conditions of (i) this Agreement, and (ii) any Application Agreement, the terms and conditions of this Agreement shall control except (1) with respect to the specific application or service governed by the Application Agreement, in which case the terms and conditions of the Application Agreement shall control, and (2) as may be otherwise expressly provided to the contrary in this Agreement. If there is any conflict between any term of any Deposit Agreement or User Agreement posted on the Website and this Agreement, this Agreement shall control. Certain defined terms used herein are defined in other agreements referenced herein.

## **11. EFFECTIVE DATE**

Any KBO Service or Application Agreements other than those described in any addenda or schedules to this Agreement that are applicable to any Customer Profile or Account shall be effective with respect to that Customer Profile or Account as of any effective date expressly set forth therein, and if no effective date is expressly set forth therein shall be effective as of the earlier date on which Company enrolled in or began using that KBO Service feature or function.

## **12. THIRD PARTY LINK DISCLOSURE**

It is possible that the KBO Service may offer links to other sites not operated by Bank. The eBill function may provide a link to a Payee's website in order for Company to obtain an eBill from that Payee. Bank cannot attest to the content or accuracy of information provided by these linked sites, and does not provide, endorse, or accept responsibility for the product, service or overall content available on third party websites. Bank does not represent Company or the third party site in any transaction Company may enter into with the third party. The Privacy and Security policies of the third party website to which Company may be linking may differ from those of Bank. Company should review the privacy or security disclosures on each third party site for further information. Third party websites may provide less security than websites operated and maintained by Bank.

### 13. EMAIL

(a) Unencrypted Email is not secure. Company agrees not to rely on Email if Company needs to communicate with Bank immediately; for example, if Company needs to stop payment on a check, to report a lost or stolen card, or an unauthorized transaction. Company should not use Email, or reply to any Email, to send Bank Company's personal or any other confidential information. Bank will not take action based on Company's Email request until Bank actually receives Company's message and has a reasonable opportunity to act. Company agrees to update its Company Email address on Bank's records and to maintain at all times a valid and active Email address at an Internet service provider. If Company uses an online banking function that requires Bank to send Company Email, Bank may charge Company a fee if Bank's electronic communication to Company is returned due to an invalid Email address and Bank resends this communication in writing to Company's postal mail address.

(b) Bank, through the Website, may, at its option, send one or more Email alerts on transactions or other activities pertaining to Company's Account(s) visible through the KBO Service ("**Bank-Initiated Alerts**"). In addition, upon sign on to the application, Company, Administrator, or any User may select specific Email alerts for specific Accounts for delivery to Company's Email address(es) on record with Bank ("**Customer-Initiated Alerts**"). Both Bank- and Customer-Initiated Alerts are Emails covered by this section. This Email alert service shall not modify any right or obligation that Company or Bank may have under applicable law or any agreement with Bank. By using the KBO Service and selecting specific Email alerts, Company acknowledges and agrees Bank shall have no liability if any other person accesses, views, uses or discloses Company's Email notification content, as all Emails are sent via unencrypted means through an unsecured internet. Company understands and agrees that delivery of Email notification is not guaranteed and may be subject to delay or non-receipt due to reasons that are not under Bank's control. Company also agrees that Bank is not responsible for any action not taken by Company due to an alert or transaction triggering an alert. Any fees associated with receipt of these alert notifications that are applied by Company's internet service provider are Company's sole responsibility. Alert notifications will never include full account information, User IDs, or passwords. Some information regarding balances and transactions may be included. Company hereby consents to Bank's delivery of these alerts to the Email address(es) on its records, and Company acknowledges that anyone with access to Company's Email account(s) may be able to access this information. This means that any person able to access Company's Email will be able to see information relating to Company's bank account contained in the alert. This service is provided for informational use only and should not replace Company's normal banking habits or processes. Bank may stop the alert notifications at any time, or may begin to charge a fee as determined.

### 14. COMPANY'S RISK OF LOSS

Company is responsible for all use of the KBO Service and Security Devices. If Company permits other persons to use the KBO Service or Company's Security Device or Access Code, Company is responsible for all access to Company's Accounts and all losses and fraudulent activity in each Account. Company is liable for all access by Company or by any other User, and all resulting losses, even if such User exceeds Company's authority or is not an Authorized Signor on Company's Account. Company must notify Bank immediately if Company believes any of Company's Accounts was accessed without authority or Company's Access Code or other Security Device was used without Company's permission. **Company assumes all risk of loss for unauthorized access and unauthorized use. Company must establish Company's own internal security procedures for employees that Company authorizes to use the KBO Services, and establish all necessary firewalls and security systems to protect Company's internal software programs, systems and related equipment and all other actions to prevent all unauthorized use by other employees or persons.**

#### **15. BANK HOURS OF OPERATION; CUTOFF TIMES**

Bank's business days are Monday through Friday, except holidays. Transaction requests on Saturday and Sunday are considered Monday transactions, except if Monday is a holiday. The KBO Services are available to Company twenty-four (24) hours a day, on a daily basis, except at times of Systems Unavailability, Force Majeure, or as to the Expedited Payments service. Transactions Company conducts after the Cutoff Time will be posted to Bank's official Account statement the next business day. **"Cutoff Time"** means, the times stated below, local time at the Bank branch where Company's Account is maintained, Monday through Friday, except holidays, unless otherwise stated: (1) for Bill Payment: 7:00 p.m. ET; (2) for Transfer Funds: 7:00 p.m. local time; (3) for Wire Transfer: 4:00 p.m. ET; (4) for Stop Payment: 10:00 p.m. local time; (5) for any KeyBank - KeyDirect Account: 7:00 p.m. ET for all activity; and (6) for Loan or Line of Credit Payments paid via the loan payment functionality: 7:00 p.m. ET. The loan payment functionality is only available from 7 a.m. to 7 p.m. ET. The Expedited Payments Service is only available from 4 a.m. to 7 p.m. ET, Monday through Friday. If Company sends a Bill Pay request near the Cutoff Time and such transaction is not completed before the Cutoff Time, the transaction request will be sent the next business day. Bank may change any Cutoff Time without notifying Company.

#### **16. COMPANY MAY INCUR ADDITIONAL COSTS FOR USING THE SERVICE**

Company understands that utilization of the **"Enhanced Funds Transfer"** process, which allows Company to transfer funds to and from accounts outside of Bank and to others within Bank which are not associated with Company's accounts, may incur certain costs associated with ACH (Automated Clearing House) processing or Fedwire transfers requested by Company through the Website. Company agrees to pay all fees and charges in connection with Company's use of such Premium Features.

#### **17. REPORTING UNAUTHORIZED TRANSACTIONS**

If Company believes an unauthorized transaction was made in any Account in connection with any part of the KBO Service, call Bank immediately at 1-888-588-3977 or write to KeyBank, 4910 Tiedeman Road, Mail Code OH-01-51-0321, Brooklyn, Ohio 44144.

#### **18. TAXES**

Company shall be responsible for paying any applicable taxes levied or based upon the KBO Service, but excluding taxes based upon Bank's net income or assets.

## **19. WIRELESS EXPRESS CONSENT**

By providing a telephone number for a cellular telephone, other wireless device or a landline number that was later converted to a wireless device in connection with any Account, including Personal Accounts, Company and/or Administrator expressly consents to receiving communications at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Bank and its affiliates and agents. This express consent applies to each such telephone number provided to Bank now or in the future and permits such calls regardless of their purpose. These calls and messages may incur access fees from the applicable cellular provider.

## **PART II – MONETARY TRANSFERS**

### **1. INTERNAL TRANSFERS**

To use the internal transfer feature within the KBO Services, Company must maintain at least two eligible Accounts at Bank, among which Company may transfer funds up to (1) Company's available balance plus any amount in Company's overdraft protection line of credit at Bank or (2) Company's credit limit under its Credit Facility at Bank. Company authorizes Bank to charge its designated "From Account" for all transfers of funds that Company initiates through this internal transfer feature, and Company agrees to have at all times sufficient funds or available credit in its "From Account" on the transfer date as scheduled. Bank is not obligated to make any transfer requested unless there are sufficient funds available in the "From Account" or credit line, and Bank will not retry the transaction and the requested transfer will be rejected.

### **2. COMMERCIAL LOAN PAYMENTS AND DISBURSEMENTS**

If Company has a commercial loan or other credit facility approved and extended by Bank (a "**Commercial Credit Account**"), Company hereby authorizes Bank to accept Company's Instructions from time to time pursuant to this KBO Service in order to (a) disburse loan advances under Company's Commercial Credit Account as a credit to any Account with Bank designated by Company, its Administrator or any User and (b) transfer funds from Company's designated Account with Bank as a payment on Company's Commercial Credit Account; provided, however, in each such transfer that the Company shall be listed on Bank's records as the owner of or an Authorized Signor on each Account. Company hereby authorizes Bank to transfer amounts as loan payments on the Commercial Credit Account subject to change without prior notification of the new amount to be transferred due to: (i) late charges assessed; (ii) delinquent amounts due; or (iii) any other payment amounts required under the terms of the Commercial Credit Account.

This Commercial Credit Account shall be considered an Account under this Agreement. Company represents and warrants to Bank that Company at the time of each such transfer is authorized to withdraw funds from such Accounts and to take draws from each such Commercial Credit Account. Company agrees that it shall be liable for all sums transferred pursuant to this Section and that all such transfers will also be subject to the terms of the Account Documents evidencing or relating to the Commercial Credit Account(s).

Company hereby agrees that Bank is not obligated to honor Company's Instructions in connection with this authorization if Company fails to maintain adequate funds to cover requested payment transfers,

and Bank shall not be liable for dishonor of checks or other items presented against Bank's deposit Account due to insufficient funds caused by following Company's Instructions hereunder. Company agrees that use of Company's Access Codes delivered by Bank and Bank's Security Procedures represent commercially reasonable security procedures, which Company and Bank agree upon, for purposes of Company's providing Instructions for loan advances and loan payments from and to Company's Commercial Credit Account.

Company agrees that as to any Account, any Authorized Signor or User has been authorized by the appropriate action of the Company to initiate transactions in the Accounts and to act on behalf of the Company, including, without limitation, to enroll in eBills and to accept all agreements, disclosures, terms and conditions of any Payee on behalf of the Company. Bank may rely on this authorization unless otherwise notified by Company that such authorization has been withdrawn.

This Section constitutes Company's authorization to Bank to follow Company's Instructions (the "**Authorization**"). Company hereby releases Bank and agrees to defend and indemnify Bank from any and all claims, costs and damages which may arise out of any actions taken by Bank in relying upon and/or complying, or attempting to comply, with Company's Instructions under this Authorization, in making any transfer of funds pursuant to this Authorization, and taking any action or following any Instructions under this Section.

### **3. ONLINE BILL PAY SERVICE**

Company will be automatically be enrolled in "**Online Bill Pay**", Bank's bill payment service. Online Bill Pay allows Company to make payments in United States Dollars from the selected checking account (a "**Payment Account**"). Company may only make payments to Payees within the United States. A "**Payee**" is a person or business being paid. When using Online Bill Pay, Company must send payment instructions to Bank at least four (4) business days before the Due Date for payments sent by check and two (2) business days before the Due Date for payments sent electronically. The "**Due Date**" is the date specified by the Payee's bill or invoice for payment. It is Company's responsibility to schedule payments in such a manner that payments are delivered on time. Recurring payments must be the same amount each time. Any payment request designated for a weekend or holiday will be made on the next business day. Company may change or cancel any requested payment Company has scheduled in advance in accordance with this Agreement if Company sends change or cancellation instructions via the Website before the Cutoff Time on the Payment Transmittal Date for the applicable payment. Company's changes or cancellations will not be accepted or processed by Bank after the applicable Cutoff Time. Cancellation of a requested payment is not a stop payment order, and there is no service charge for Company's change or cancellation. When Company sends a payment instruction, Company authorizes Bank to charge the Payment Account accordingly. In Bank's discretion, Bank may decide to process the payment as a service to Company even if there are insufficient funds in Company's Payment Account. Normal overdraft fees may apply. Notwithstanding any provision of this Agreement, Bank reserves the right to refuse to honor and pay any payment request. Bank is not responsible for any disputes, claims, or defenses Company may have with any Payee. Bank reserves the right through Online Bill Pay to select the method by which to remit funds on Company's behalf to Company's Payees. Company may make more than one payment a day to a single Payee, but no single payment may exceed \$25,000. Company agrees to notify Bank promptly if Company receives notice from a Payee that a payment request Company made to that Payee through the Service remains unpaid.

Subject to the terms of this Agreement, Bank shall deliver Online Bill Pay payments to Payees in a timely manner according to your properly entered instructions. In the event a Payee updates Company's

account information in its records and Company does not update its Payee account information on the Website, Bank may process the payment in accordance with the information Company provided. Company acknowledges and agrees that the account information as updated by the Payee may appear in the record of Company's payment in the KBO Service and may differ from the Payee information entered by Company. It is Company's sole responsibility to add its Payees and to ensure Payee information is accurate and up to date. Bank is not responsible for any Payee information entered incorrectly.

#### **A. EBILLS**

This feature enables Company to receive bills from Payees electronically through the KBO Service. By activating the eBill feature, Company can receive presentment of electronic bills ("**eBills**") from Payees who offer electronic billing and are set up by Company for eBills in the Service. If Company elects to activate the eBill feature, Company agrees to the following:

Activation. Upon activation of the eBill feature, Company authorizes notification to the Payee of Company's request to receive electronic billing information. The presentment of Company's first eBill may vary from Payee to Payee and may take up to sixty (60) days, depending on the billing cycle of each Payee. Additionally, the ability to receive a paper copy of Company's bills is at the sole discretion of the Payee. While Company's eBill feature is being activated it is Company's responsibility to keep Company's accounts current. Each electronic Payee reserves the right to accept or deny Company's request to receive electronic bills.

Information provided to the Payee. Bank is unable, through the eBill Service, to update or change Company's personal information with the electronic Payee such as, but not limited to, name, address, phone numbers and Email addresses. Any changes will need to be made by Company, by contacting the Payee directly. It is Company's sole responsibility to provide accurate contact information to each of Company's Payees. Additionally it is Company's responsibility to maintain all user IDs and passwords for all electronic Payee sites. Company may be required to provide Company's user ID, password, security questions, or other security procedures for access to a Payee website in order for Company to receive eBills for a particular Payee, and if required, Company authorizes this information to be used in the Service as described in this paragraph. Company also agrees not to use someone else's information to gain unauthorized access to another person's bill. Also as part of the enrollment process, Company may be required to accept the terms and conditions applicable to electronic billing for a particular Payee, either on Company's own behalf, and Company agrees that Company's acceptance of the Payee's terms and conditions, online agreement or other disclosure is authorized and binding on Company as set forth in Paragraph 16 hereto.

Non-Delivery of electronic bills. Company agrees to hold Bank harmless should the Payee fail to deliver Company's bills. It is Company's sole responsibility to contact Company's Payees directly if Company does not receive any bill. Company is responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Payee directly.

Accuracy and dispute of electronic bills. Bank is not responsible for the accuracy of Company's electronic bills. The eBill service will only present the information received from the Payee. Any discrepancies or disputes regarding the accuracy of Company's electronic bill summary or detail must be addressed with the Payee directly.



Notification. Bank will not provide any notice of Company's electronic bills other than such notice as appears within Online Bill Pay. Notification from Payees to KeyBank may vary from Payee to Payee. It is Company's responsibility to periodically logon to Online Banking to check on the delivery of new electronic bills. Company is responsible for ensuring timely payment of all bills.

Cancellation of electronic bill notification. The electronic Payee reserves the right to cancel the presentment of electronic bills at any time. Company may also cancel eBill presentment at any time. The time frame for cancellation of Company's electronic bill presentment may vary from Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. By indicating within the eBill feature that Company wishes to cancel eBills, Company authorizes notification to Company's electronic Payee(s) as to the change in status of Company's account. It is Company's sole responsibility to make arrangements for an alternative form of bill delivery. Bank will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

This Agreement and Company's use of eBills does not alter Company's liability or obligations that currently exist between Company and Company's Payees. Company is solely responsible for paying Company's bills on time regardless of whether Company uses eBills.

## **B. EXPEDITED PAYMENTS**

This feature will allow Company to make expedited payments using the funds in Company's Payment Account to Payees located in the United States for a fee as set forth below ("**Expedited Payments**"). Expedited Payments may be delivered to the Payee electronically or via paper check. Expedited Payments by check will not be delivered to post office box addresses or to locations in Alaska, Hawaii, or any foreign or U.S. territory outside of the contiguous forty-eight States and the District of Columbia. It is Company's sole responsibility to enter and verify any address for Expedited Payment by check to ensure it is correct and is specified as a valid overnight package address by Company's Payee. Expedited Payments are processed when they are received, provided they are scheduled during the hours when the Service is available. Expedited Payments may only be scheduled from 4 a.m. to 7 p.m. ET, Monday through Friday. Expedited paper check payments may be delivered next day but time of delivery may depend on the time of day that the transaction is scheduled by Company. Next day delivery is not guaranteed. The fee charged for the Expedited Payments service is \$9.95.

Company agrees that it will pay all fees and charges in connection with Company's use of the Expedited Payments feature through Online Banking. Company agrees that delivery of Expedited Payments is subject to circumstances outside our control which may delay or make delivery impossible, and that Bank will not be liable for such circumstances.

## **4. ACH TRANSFERS**

If Bank allows Company to transfer funds in United States Dollars via this function by automated clearing house ("ACH") debit entries or ACH credit entries, either as a single payment or regularly recurring payment from time to time outside Bank's Online Bill Pay services, all such ACH entries are subject to Bank's service agreement/schedule for such ACH entries.

## **5. TRANSFERS VIA DOMESTIC WIRE TRANSFER SERVICE AT KEYBANK**



If Bank allows Company to transfer funds in United States Dollars via this function outside Bank's Online Bill Pay services, all such wire transfers are subject to Bank's service agreement/schedule for such wire transfers.

## **6. PRIORITY OF MONETARY TRANSFERS**

Bank shall process payments and transfers scheduled through the KBO Service in accordance with the terms of Funds Availability Policy as stated in the Deposit Agreements. Internal transfers intended to cover pending Online Bill Pay payments must be scheduled for the preceding business day in order for such funds to be applied against the applicable pending Online Bill Pay payments.

## **PART III -- GENERAL PROVISIONS**

### **1. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Company represents, warrants and covenants to Bank that:

- (a) Company and each of its Users will at all times only use the KBO Service for lawful purposes and in accordance with Bank's instructions, rules, policies, specifications, terms and conditions, and operating procedures in effect from time to time, as well as all electronic funds transfer laws and regulations and industry rules in effect from time to time, including but not limited to the operating rules and guidelines of the national clearing house association, if applicable, and will not at any time violate any law of any country or the intellectual property rights of any third party;
- (b) Company and each of its Users will not at any time (i) provide, disclose, divulge or make available to, or permit use of the KBO Service by, any unauthorized third party without Bank's prior written consent, (ii) engage in spamming, mail bombing, spoofing or any other fraudulent, illegal or unauthorized use of the KBO Service, (iii) introduce or transmit, without limitation, through the KBO Service, or otherwise, any virus, worm, spy ware, or other destructive element, (iv) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within the KBO Service;
- (c) Company and each of its Users shall at all times only use the KBO Service in connection with Company's Accounts which are domiciled in the United States;
- (d) Company is duly organized, validly existing and in good standing under the laws of the state in which it is chartered, formed or otherwise organized;
- (e) The execution, delivery and performance of the Agreement by or on behalf of Company (i) are within Company's power and authority; (ii) have been duly authorized by all necessary corporate, legislative, administrative, governmental or other action; and (iii) this Agreement has been duly executed and delivered to Bank by Company, regardless whether such execution is in paper form or in electronic media;
- (f) The individual(s) executing and delivering the Agreement are duly empowered and authorized to do so, and that such individual(s) have the authority and power to perform the obligations and exercise the rights and duties set forth in the this Agreement, including, without limitation, designating

and empowering from time to time one or more other individual(s) to act from time to time as Administrator or an User under and subject to the terms of this Agreement;

(g) The execution, delivery, and performance by Company of the Agreement, and any documentation relating to the Agreement to which it is a party or that it is required to deliver, do not violate, conflict with, or constitute a breach of or default under: (i) any law or regulation applicable to Company; (ii) any provision of Company's charter, constitutional or other organizational documents; (iii) any order or judgment of any court or other agency of government applicable to Company or any of its assets; (iv) any contractual restriction binding on or affecting Company or any of its assets; and (v) any federal, state or local law, ordinance or resolution binding on or adopted by Company;

(h) All governmental and other consents that are required to be obtained by Company with respect to the Agreement (and any other documentation relating to the Agreement to which Company is a party or that it is required to deliver) have been obtained and are in full force and effect, and all conditions of any such consents have been complied with.

(i) This Agreement and the other application agreements are each the legal, valid and binding agreement of Company, enforceable in accordance with its stated terms;

(j) Company will only make payment, transfer and other transaction requests that are each in compliance with the laws and regulations of the United States of America, including without limitation, economic sanctions administered by the United States Treasury Department's Office of Foreign Asset Control ("OFAC") and any other applicable laws and regulations; and

(l) Company is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) or (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be made subject to legal proceeding in any courts and no such immunity may be attributed to such party or its revenues or assets, and Company by its execution of this Agreement intends to waive to the extent permitted by law, any defense of sovereign immunity with respect to any proceeding or other action by Bank to enforce any obligations of Company under this Agreement.

## **2. DISCLAIMER OF WARRANTIES**

Except as otherwise expressly provided in this Agreement or in any other Application Agreement, Company understands and agrees that its use of the KBO Service is at Company's sole risk and that the KBO Service and all information, products, services and other content (including third party information, products, services and content) included in or accessible from the Website, are provided on an "as is" "where-is" and "where available" basis, and are subject to change at any time without notice to Company. Company acknowledges that Bank makes no warranty that the KBO Service will be uninterrupted, timely, secure or error-free unless otherwise stated on the Website and which is applicable to Bank's KBO Service or in this Agreement or in any other Application Agreement. To the fullest extent permitted by law, Bank disclaims all representations, warranties and conditions of any kind (express, implied, statutory or otherwise, including but not limited to the warranties of merchantability and fitness for a particular purpose, title and non-infringement of proprietary rights) as to the KBO Service and all information, products, services and other content (including third party

information, products, services and content) included in or accessible from the Websites. No license to Company is implied in these disclaimers.

### **3. INDEMNIFICATION**

In addition to the indemnities set forth in the Account Documentation and Application Agreements and to the fullest extent permitted by law, Company shall indemnify, defend and hold harmless Bank, its directors, officers, employees and agents (collectively, the "Indemnified Parties") from and against any and all losses, costs, expenses, fees, claims, damages, liabilities and causes of actions (including, but not limited to, reasonable attorney fees and disbursements) in any way resulting or arising from any one or more of the following: (a) any breach by Company, any Administrator or any User of any representation, warranty or covenant made by Company under this Agreement or any other Application Agreement; (b) any failure by Company, any Administrator or any User to abide by or perform any obligation imposed upon Company, any Administrator or any User under this Agreement or under any other Application Agreement; (c) any willful misconduct, fraud, criminal activity, intentional tort or negligence of Company, any Administrator, any User, or any other person or entity (other than Bank) involving the KBO Service or under this Agreement or any other Application Agreement; (d) the issuance, distribution or use of any Security Device or service activation code, including, without limitation, the means by which Bank transmits such Security Device or service activation code to Company, any Administrator, or any other User; (e) any action, omission, commission, or use by Company, any KBO Service Provider or any User of or in any way relating to the KBO Service or under this Agreement or any other Application Agreement, including, without limitation, any claim that use of any Security Device or following any security procedure set forth in this Agreement or any other Application Agreement is not a commercially reasonable means of providing security against unauthorized payments, transfers, or other transactions from any of Company's Accounts; (f) any transmission or instruction, including without limitation, any Instructions to request or obtain cash or loan advances from or make payments on any credit facility at Bank or to send a payment order for any transfer of funds to any person or other entity, whether or not authorized, when acted upon by Bank in good faith and in reliance upon any Security Device; (g) any delay in the execution of any Company instruction to add, delete or modify the access rights of any Administrator or other User until the later of two (2) Business Days after Bank's receipt of such notice, or after Bank has had a commercially reasonable opportunity to act after Bank's receipt thereof; and (h) any claims of a third party relating to any action taken or not taken by any Indemnified Party pursuant to this Agreement or any Application Agreement, unless such action or non-action constitutes gross negligence or willful misconduct by such Indemnified Party.

### **4. LIMITATION OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY AGREES THAT NEITHER BANK NOR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SERVICE PROVIDERS WILL BE LIABLE FOR ANY HARMS, WHICH LAWYERS AND COURTS OFTEN CALL DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM: (a) THE USE OR THE INABILITY TO USE BANK'S WEBSITE OR ANY RELATED SERVICE; (b) THE COST OF GETTING SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM BANK'S WEBSITE OR RELATED SERVICE; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF COMPANY'S TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANYONE ON BANK'S

**WEBSITE OR IN ANY RELATED SERVICE; OR (e) ANY OTHER MATTER RELATING TO BANK'S WEBSITE OR ANY RELATED SERVICE.**

**5. TERMINATION; AVAILABILITY**

(a) Bank may terminate or suspend, at its sole discretion, this Agreement or any other Application Agreement with respect to any Company or Customer Profile, or terminate, suspend or limit access privileges to the KBO Service, in whole or part, at any time for any reason or no reason without prior notice, including but not limited to: (i) Company's failure to use the KBO Service to access any Customer Profile for a period of three (3) months or greater; or (ii) any person acting as the Primary Company or Administrator for any Customer Profile ceasing to be a Primary Company or Administrator for such Customer Profile or any Account thereof, and such person not being replaced promptly with another Primary Company or Administrator satisfactory to Bank. Company may terminate this Agreement for any Customer Profile or for any Account included within any Customer Profile at any time for any or no reason, by giving notice thereof to Bank; provided, however, that such termination shall not be effective until thirty (30) days after Bank's receipt thereof. The obligations and liabilities of the parties hereto incurred prior to termination shall survive the termination of this Agreement and the other Application Agreements for all purposes.

(b) Bank reserves the right to refuse to make any payment, transfer or other transaction requested by Company via the KBO Service at any time and for any reason or no reason without prior notice. Bank may determine at any time that the payee, transferee or other requested recipient, or the country of any such payee, transferee, or other requested recipient is ineligible for any legal, regulatory, or other reason, and upon making such determination, Bank shall have no obligation to make any such requested payment, transfer or other requested transaction, or to provide any notice thereof.

**6. SYSTEMS UNAVAILABILITY; FORCE MAJEURE; RISK OF LOSS**

(a) The KBO Service may be unavailable when systems require maintenance or upgrades or major unforeseen events occur, such as earthquakes, fires, floods, computer failures, interruptions in telephone service, electrical outages, civil unrest or riots, war, or acts or threaten acts of terrorism or other circumstances beyond Bank's control (collectively called "**Systems Unavailability**").

(b) In the event any Party fails to perform its obligations under this Agreement in whole or in part as a consequence of acts of God, fire, explosion, public utility failure, accident, floods, embargoes, war, nuclear disaster or riot, such failure to perform shall not be considered a breach of this Agreement during the period of such event, (collectively called "**Force Majeure**"). In the event of any Force Majeure occurrence as set forth in this Section, the disabled party shall use its best efforts to meet its obligations under this Agreement. The disabled party, if it is unable to perform due to a Force Majeure event, shall notify the other Party of the expected duration of such inability to perform and of any developments (or changes therein) that appear likely to affect the ability of that party to perform any of its obligations hereunder in whole or in part.

(c) Bank shall have no liability for interruptions or delays in KBO Services due to Systems Unavailability or Force Majeure. Company assumes all risk of loss of data during any a computer, telecommunication, internet or system failure or interruption and the responsibility to verify the accuracy and completeness of any transaction(s) so affected through means other than online.

(d) Bank will restrict the availability of the Website and

the KBO Service in any jurisdiction or country where such availability or use of the Website or KBO Service would be contrary to applicable law or regulation, or which is identified as presenting a high risk of fraud. Please call 1-800-KEY2YOU for the current list of countries where transactions are restricted.

## **7. AMENDMENTS**

Except as otherwise required by applicable law, Bank may add, remove, or otherwise modify any of the terms and conditions of this Agreement, its related KBO Services, and applicable fees and charges, at any time and without notice to Company, and such changes will be effective immediately. This Agreement as revised will be posted on Bank's Website, and Bank may, at its discretion, send the Primary Company written notice to the Primary Company's Email or postal address in Bank's files. Company's continued use of any KBO Service (covered hereby) after Bank's sending any notice, or posting such changes to this Agreement on the Website, will constitute each Company's acceptance of and agreement to be bound by such changes to this Agreement. Company agrees that these procedures are acceptable to Company to provide Company with notice of changes to this Agreement. The revised Agreement will supersede the affected terms and conditions of this Agreement and shall apply to any activity or transaction thereafter taken by Company in connection with such KBO Service.

## **8. NOTICES**

(a) Bank may elect to send any notices to Company by ordinary mail, by courier, by facsimile transmission, by electronic transmission, or through the Website(s), or by such other means as Company and Bank agree upon from time to time, at the address of the Company on the books and records of Bank. Also Company agrees that by using the KBO Service, all notices or other communications which Bank may desire or be required to give to Company arising from Bank's obligations under this Agreement, any of the other Application Agreements, or the KBO Service may be sent to Company electronically to any electronic mailbox the Company or any of its Administrators have provided to Bank. Company agrees to promptly notify Bank of any address change, electronic mail address change, and/or any change to Company's telephone number by updating Company's online profile within the Company Service area of Bank's Website. If e-mail notification to Company is undeliverable due to an incorrect e-mail address, Bank has no further obligation to contact Company to correct the issue unless Bank receives a corrected e-mail address.

(b) Except as otherwise expressly provided in this Agreement or any other Application Agreement, all notices which Company desires or is required to send to Bank arising from Company's obligations under this Agreement, any Application Agreement, or the KBO Service shall be sent to Bank by writing to KeyBank, 4910 Tiedeman Road, Mail Code OH-01-51-0321, Brooklyn, OH 44144. Bank shall have the longer of two (2) Business Days after Bank's receipt of such notice, or a commercially reasonable time after Bank's receipt thereof to act on any such notice.

## **9. ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of Company and Bank and their respective successors and assigns. Company may not transfer or assign this Agreement without Bank's prior written approval, and any unauthorized assignment or transfer will be null and void. Bank may assign or transfer this Agreement at any time without notice to any Company.

## **10. GOVERNING LAW; UNLAWFUL ACTIVITIES PROHIBITED**

The Website (excluding Linked sites) is controlled by Bank from its offices in the State of Ohio, United States of America. All matters relating to Company's access to or use of Bank's Website, including without limitation, this Agreement and all Application Agreements shall be governed by the laws of the State of Ohio, and the federal laws of the U.S.A., without regard to any conflicts of law principles. The application of the United Nations Convention of Contracts for the International Sale of Goods, and the model Uniform Computer Information Transactions Act approved by the National Conference of Commissioners on Uniform State Laws (as enacted and/or modified into any state law in the U.S.A.), are hereby expressly excluded and shall not apply to this Agreement and the KBO Services, accessed hereunder. Bank makes no representation that Bank's KBO Services available on the Website are lawful, appropriate or available for use in any location outside Ohio, and Company's accessing them from territories where the same or their content is unlawful or illegal is prohibited. Company is solely responsible for compliance with local laws where Company resides or is located.

#### **11. JURISDICTION AND VENUE**

(a) Except as otherwise provided in paragraph (b) of this Section, Company irrevocably and unconditionally agrees and hereby submits to the exclusive personal jurisdiction and venue of the State courts and federal courts in Cuyahoga County, Ohio, with respect to all matters relating to this Agreement, other Application Agreements, and Company's access to or use of the Website or any KBO Service. Company irrevocably consents to such jurisdiction and venue. Company hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Application Agreements in any court referred to in this Section and (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(b) If Company is a Public Entity, the venue for court proceedings shall be the federal or State courts in the jurisdiction in which such Public Entity is organized and validly existing.

#### **12. WAIVER OF JURY TRIAL**

**EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE KBO SERVICE, THIS AGREEMENT, ANY OTHER APPLICATION AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).**

#### **13. CONSENT TO SERVICE**

Company and Bank each irrevocably consents to service of process in the manner provided for notices in PART III, Section 8 hereof. Nothing in this Agreement or any of the other Application Agreements will affect the right of any party to this Agreement and the other Application Agreements to serve process in any other manner permitted by law.

#### **14. SEVERABILITY**

If any term of this Agreement is declared invalid or unenforceable by any court, the remaining terms of this Agreement will not be affected, and this Agreement will be interpreted as if the invalid terms had

not been in place for this Agreement. Paragraph headings do not limit or define either party's rights or obligations.

**15. NO WAIVER; REMEDIES**

No failure or delay by Bank or Company to exercise any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

**16. ENTIRE AGREEMENT**

This Agreement and the other written instruments specifically referred to herein and therein, embody the entire understanding of the parties and supersede in their entirety all prior communication, correspondence, and instruments, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

**17. NO FIDUCIARY DUTIES**

Notwithstanding any other provision herein to the contrary, the Parties acknowledge and agree this Agreement shall not impose any trust or other fiduciary duties or obligations on either Party hereto.

**18. THIRD-PARTY BENEFICIARIES**

Company and Bank do not intend this Agreement to benefit or create any right or cause of action in or on behalf of any person other than Bank and Company.

Accept

Decline

*November 2017, v. 1.0*