

Contract Number: DE-AC05-76RL01830

Modification M705

**Part III – List of Documents,  
Exhibits, And Other Attachments**

**Section J**

**Appendix B**

**Special Financial Institution Account(s) Agreement  
For Use with the Payments Cleared Financing Arrangement**

Part III, Section J, Appendix B

**SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT  
FOR USE WITH THE PAYMENTS CLEARED FINANCING ARRANGEMENT**

Agreement entered into this, 1<sup>st</sup> day of July, 2010, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and Battelle Memorial Institute, corporation/legal entity existing under the laws of the State of Ohio (hereinafter referred to as "Battelle"), and U.S. Bank, a financial institution corporation existing under the laws of the State of Washington located at Richland, Washington (hereinafter referred to as "U.S. Bank").

**I. RECITALS**

1. On the effective date of December 30, 1964, DOE and Battelle entered into Agreement (s) No. DE-AC05-76RLO1830, or a supplemental agreement thereto, providing for the transfer of Government funds on a payments-cleared basis.
2. DOE requires that amounts transferred to Battelle be deposited in a special demand deposit account(s) at a financial institution covered by the Department of the Treasury – approved Government deposit insurance organizations that are identified in TFM 6-9000. These special demand deposits must be kept separate from Battelle's general or other funds, and the parties are agreeable to so depositing said amounts with U.S. Bank.
3. The special deposit account(s) shall be designated:
  - a. Battelle Memorial Institute, PNW Division – Contract
  - b. Battelle Memorial Institute, PNW Division - Salary
  - c. Battelle Memorial Institute, PNW Division - Controlled Disbursement Contract
  - d. Battelle Memorial Institute, PNW Division - Controlled Disbursement Salary

**II. COVENANTS**

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

1. The government shall have a title to the credit balance in said account(s) to secure the repayment of all funds transferred to Battelle, and said title shall be superior to any lien, title, or claim of U.S. Bank or others with respect to such accounts.

2. U. S. Bank shall be bound by the provisions of said Agreement between DOE and Battelle relating to the transfer of funds into the and withdrawal of funds from the above special demand deposit account(s), which are hereby incorporated into this Agreement by reference, but U.S. Bank shall not be responsible for the application of funds properly withdrawn from said Account(s).

After receipt by U.S. Bank of written directions from the DOE Contracting Officer, or from the duly authorized representative of the DOE Contracting Officer, U.S. Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by U.S. Bank from DOE upon DOE stationery and purporting to be signed by, or signed at the written direction of DOE may, insofar as the rights, duties, and liabilities of U.S. Bank are concerned, shall be considered as having been properly issued and filed with U.S. Bank by DOE.

3. DOE, Battelle, or its authorized representatives, shall have access to financial records maintained by U.S. Bank with respect to such special demand deposit account(s) at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by U.S. Bank for a period of six (6) years after the final payment under the Agreement.
4. In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account(s), the Financial Institution shall promptly notify DOE.

U.S. Department of Energy  
Oak Ridge Financial Service Center  
P.O. Box 2001, FM-71  
Oak Ridge, Tennessee 37831-8771  
Fax: (865) 574-5374

5. DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith there under by Battelle to U.S. Bank for the benefit of the special demand deposit account(s). U.S. Bank agrees to honor upon presentation for payment all payments issued by Battelle and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible.  
  
U.S. Bank agrees to service the account in this manner based on the requirements and specifications contained in RFP 20051031, effective January 3, 2006. U.S. Bank agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges" contained in U. S. Bank's proposal dated March 16, 2006, will remain constant during the term of this Agreement. U.S. Bank shall calculate the monthly fees based on services rendered and invoice Battelle. Battelle shall issue a check or automated clearing house authorization transfer to U.S. Bank in payment thereof.
6. U.S. Bank shall post collateral, acceptable in accordance with 31 CFR 202 with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.
7. This Agreement, with all its provisions and covenants, shall be in effect for a term beginning on the 1<sup>st</sup> day of July 2010, and extending through June 30, 2011, with an option to extend for an additional five, one year option periods, unless earlier terminated as provided in this Agreement.
8. DOE, Battelle, or U.S. Bank may terminate this Agreement at any time within the Agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
9. DOE or Battelle may terminate this Agreement at any time upon 30 days' written notice to U.S. Bank if DOE or Battelle, or both parties, find that U.S. Bank has failed to substantially perform its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.
10. Notwithstanding the provisions of Covenants 8 and 9, in the event that the Contract referenced in Recital 1 between DOE and Battelle is not renewed or is terminated, this Agreement between DOE, Battelle, and U.S. Bank shall be terminated automatically upon the delivery of written notice to U.S. Bank.

11. In the event of termination, U.S. Bank agrees to retain Battelle's special demand deposit account(s) for an additional 90-day period to clear outstanding payment items.

This Agreement shall continue in effect for the 90-day additional period, with the exception of the following:

1. Term Agreement (Covenant 7)
2. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid proposal submitted by U.S. Bank that are not inconsistent with this 90-day additional term shall remain in effect for this period.

U.S. Bank has submitted the forms entitled "Technical Representations and Certifications," and "Schedule of Financial Institution Processing Charges." These forms have been accepted by Battelle and the DOE and are incorporated herein with the document entitled "Attachment 1 - Financial Institution's Information on Payments Cleared Financing Arrangement" as an integral part of this Agreement.

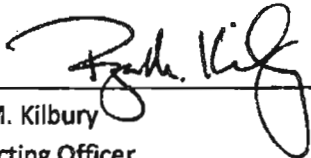
**III. U.S. Bank TREASURY MANAGEMENT TERMS AND CONDITIONS SUPPLEMENT ELECTRONIC DEPOSIT SERVICES, the following processes are included:**

- Begin using the collected balance to calculate daily draws;
- Discontinue the practice of overdrawing the bank account to offset positive balances in an attempt to maintain a lower average daily balance; and
- Discontinue the practice of rounding daily draws to the nearest thousand and begin calculating the exact amount needed to cover disbursements.

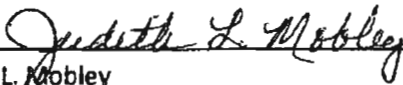
**IV. SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

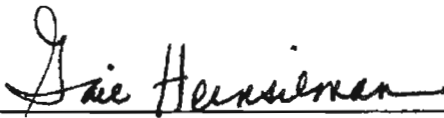
FOR U.S DEPARTMENT OF ENERGY

Signature:   
Name: Ryan M. Kilbury  
Title: Contracting Officer  
Date: 6-21-10

FOR THE CONTRACTOR BATTTELLE MEMORIAL INSTITUTE

Signature:   
Name: Judith L. Mobley  
Title: Assistant Treasurer  
Date: 5-20-10

FOR U.S. BANK N.A.

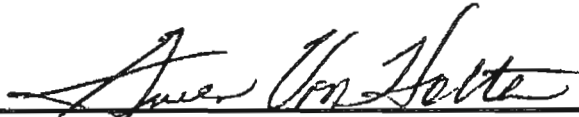
Signature:   
Name: Gail Heinselman  
Title: Vice President, Government Services  
Date: 5-27-2010

NOTE

The contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, Gwen Von Holten, certify that I am the Treasurer of the corporation named herein; that Judith L. Mobley, who signed this Agreement on behalf of Battelle, was then Assistant Treasurer of said corporation; and that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.



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(Corporate Seal) (Signature)

## **Attachment 1**

**Financial Institution's Information on Payments Cleared Financing Arrangement**





Government Banking

**Schedule of Financial Institution Processing Charges**

<b>Service</b>	<b>Contractor's Projected Monthly Quantity</b>	<b>Per Item Cost</b>	<b>Total</b>
Account Maintenance	14 Accounts	@ 8.00	\$112.00
Controlled Disbursement Account Maintenance	6 Accounts	@ 75.00	\$ 450.00
Controlled Disbursement Per Item Charge	4000	@ 0.09	\$ 360.00
Deposited Checks-On Us	150	@ 0.05	\$ 7.50
Deposited Checks-Local	300	@ 0.055	\$ 16.50
Deposited Checks-Regional	425	@ 0.055	\$ 23.37
Deposited Check-Returned (Includes fax)	3	@ 3.25	\$ 9.75
Other Services charges for Checks Deposited or Account Maintenance			
Deposits - Paper		@ 0.20	\$
Deposits - Electronic		@ 0.20	\$
		@	\$
Processing Fee for deposited foreign currency checks	3	@ 0.50	\$ 1.50
Processing Fee for generating Draft in foreign currency	3	@ 15.00	\$ 45.00
Cash Deposited Per \$ 100.00		@ 0.07	\$
Other Services charges for processing cash transactions			
		@	\$
		@	\$
		@	\$
Incoming Federal (Domestic) Wire	80	@ 5.00	\$ 400.00
Incoming International Wire	5	@ 10.00	\$ 50.00
Outgoing Federal (Domestic) Wire Client Initiated Internet	230	@ 7.50	\$ 1,725.00
Outgoing International Wire Client Initiated-Internet	150	@ 15.00	\$ 2,250.00
Outgoing or Incoming Federal Wire Daily Treasury Drawdown	80	@ 7.50	\$ 600.00



Government Banking

<b>Federal or International Wire Investigation of Client Issued Wire</b>	5	@ 25.00	\$ 125.00
<b>Bank Issuance of Amendment for Client Issued International or Federal Wire</b>	2	@ 7.50	\$ 15.00
<b>Other services charges for processing Federal or International Wires</b>			
		@	\$
		@	\$
		@	\$
<b>Book Transfers (bank initiated account to account transfers)</b>	30	@ 1.00	\$ 30.00
<b>Other services charges for processing bank Internal Debit or Credits</b>			
		@	\$
		@	\$
		@	\$
<b>Stop Payments Client Initiated-Internet</b>	15	@ 9.00	\$ 135.00
<b>Per Change Order Charge</b>		@ 2.00	\$
<b>Rolled Coin Ordered Per \$ Roll</b>		@ 0.08	\$
<b>Currency Order Per \$ 100.00</b>		@ 0.08	\$
<b>ACH Monthly Maintenance</b>	3	@ 25.00	\$ 75.00
<b>ACH Originated</b>	38000	@ 0.10	\$ 3,800.00
<b>ACH Originated-Addenda Rec</b>	200	@ 0.02	\$ 4.00
<b>ACH Received Item</b>	110	@ 0.15	\$ 16.50
<b>ACH Transmission Charge</b>	50	@ 5.00	\$ 250.00
<b>ACH Item Adjustment Request</b>	5	@ 3.00	\$ 15.00
<b>ACH Delete Item Request</b>	2	@ 3.00	\$ 6.00
<b>ACH Notice of Change Internet Report Advice/Fax</b>	40	@ 2.50	\$ 100.00
<b>ACH Return Item Internet Report Advice/Fax</b>	20	@ 2.50	\$ 50.00
<b>ACH Block-Mthly Maint Per Acct</b>	4	@ 6.00	\$ 24.00



Other services for processing ACH			
		@	\$
		@	\$
		@	\$
Checks Cleared	3000	@ 0.10	\$ 300.00
Check Sorting	3000	@ 0.02	\$ 60.00
Monthly Maintenance Charge for Imaging - by Account	6	@ 25.00	\$ 150.00
Check Image -CD Rom Per CD	6	@ 5.00	\$ 30.00
Check Image - Per Item	3000	@ 0.07	\$ 210.00
Copy of Check Request	3	@ 0.50	\$ 1.50
Account Reconciliation	per account	@ 75.00	\$
Process Maintenance - Full	Per account		
Full Positive Pay Maintenance	10	@ 45.00	\$ 450.00
Positive Pay Per Item	3000	@ 0.04	\$ 120.00
Positive Pay Exception Report	2	@ no charge	\$ 0.00
Reverse Positive Pay Per Item	3000	@ 0.01	\$ 30.00
<b>Output File - Daily</b>		@ 5.00	\$
Lockbox Monthly Maintenance	2	@ 75.00	\$ 150.00
Lockbox per Item Charge	90	@ 0.25	\$ 22.50
Other Services(charges) Lockbox			
Photocopies		@ 0.10	\$
Exception Items		@ 0.22	\$
Data Key Stroke		@ 0.01	\$
Mail Out - Per Item		@ 0.05	
Previous Day Composite Report	1 per day/acct First	@ 10.00	\$ 10.00
Previous Day Composite Report	1 per day/acct Next	@ 10.00	\$ 130.00
BAI Items	4000	@ 0.05	\$ 200.00
Wire Transfer Detail Report	1 per day per acct	@ no charge	\$

## U.S. BANK TREASURY MANAGEMENT TERMS AND CONDITIONS SUPPLEMENT

### ELECTRONIC DEPOSIT SERVICES

This Supplement amends and forms a part of the U.S. Bank Treasury Management Service Agreement and the U.S. Bank Treasury Management Services Terms and Conditions. U.S. Bank's Electronic Deposit Services provides Customer with the option to make electronic deposits using the ECLD Services or the OSED services, described below. Customer agrees that the Electronic Deposit Services shall be governed by this Supplement and other relevant sections of the U.S. Bank Treasury Management Services Terms and Conditions.

#### 1. Service Options

Customer may select one of the following processing options as part of the Electronic Deposit Services:

- a. Check Image/Substitute Check Collection.** Customer captures checks or check information received from its Payor Customers into Check Images and/or MICR Data, and transmits Check Images and/or MICR Data to Bank for deposit and collection. Bank will seek to collect such Check Images through the check collection system by presenting or exchanging Check Images, and/or using the Check Image and/or MICR Data to create a Substitute Check, a Demand Draft or a PIL for collection.
- b. ACH Processing and Check Image/ Substitute Check Collection.** Customer captures checks or check information received from its Payor Customers into Check Images and/or MICR data and ACH Entry information, and transmits the same to Bank for processing or deposit. Customer checks that are eligible to be used as source documents to originate ARC Entries or POP Entries are processed through the ACH system. The remaining checks are sent for collection as Check Images, Substitute Checks, Demand Drafts or PILs, as described above in the Check Image/Substitute Check Collection service option.
- c. ACH Processing and Paper Check Collection.** Customer captures checks or check information received from its Payor Customers into Check Images and/or MICR Data and ACH Entry information, and transmits the same to Bank for processing. Customer checks that are eligible to be used as source documents are processed as ARC Entries or POP Entries. Customer deposits all other original paper checks with Bank for collection.

#### 2. Definitions

- a. "ACH Entry"** means an ARC or POP debit entry originated to debit funds from a Payor Customer's account at a financial institution in accordance with the Operating Rules of the National Automated Clearing House Association ("NACHA").
- b. "Check Image"** means an electronic image of an original paper check or an electronic image of a Substitute Check that is created by Customer, Bank or another bank or depository institution in the check collection system.
- c. "Customer System"** means the computer hardware and software located at Customer's site that is used by Customer to prepare Electronic Deposits and to access the OSED Services or ECLD services. For OSED Services, the Customer System shall comprise of a scanner and other hardware and software, all of which may be supplied by Bank.
- d. "ECLD System"** means Bank's Electronic Cash Letter Deposit computer systems and databases that Customer may access in order to obtain the ECLD services.

- e. "ECLD services" means the Electronic Cash Letter Deposit services that allow organizations that receive check remittance payments by mail or dropbox to deposit all payments electronically at Bank, as further described in the User Manual.
- f. "Electronic Deposit" means electronic information (including Check Images, MICR Data, dollar amount or ACH Entry information), obtained from capturing information from an original paper check and related remittance documentation, that is transmitted to Bank for deposit, processing and collection.
- g. "Electronic Deposit Services" means the ECLD services or OSED Services as described in this Agreement.
- h. "MICR Data" means information from the Magnetic Ink Character Recognition stylized printing on the bottom of checks comprising of routing, transit, account and check serial numbers.
- i. "OSED System" means Bank's On-Site Electronic Deposit Service computer systems and databases that Customer may access in order to obtain the OSED Services.
- j. "OSED Services" means the On-Site Electronic Deposit Services that allows organizations that receive check remittance payments by mail or in a walk-up or dropbox environment to deposit all payments electronically at Bank, as further described in the User Manual.
- k. "Payor Customers" means clients and/or customers of Customer that submit original paper checks or check information to Customer for payment obligations owed to Customer.
- l. "Photo-In-Lieu Instrument" or "PIL" means a photocopy of an original paper check, other than a Substitute Check, created from a Check Image.
- m. "Remotely-Created Demand Draft" or "Demand Draft" means a paper item, other than a Substitute Check or PIL, that (i) is drawn on a Payor Customer account, (ii) does not bear the signature of the Payor Customer, and (iii) is authorized by the Payor Customer to be issued in the amount for which the item is drawn.
- n. "Substitute Check" means a paper check document that meets the definition of a "substitute check" in the Check Collection for the 21<sup>st</sup> Century Act as implemented by Regulation CC of the Federal Reserve Board.
- o. "Transaction Data" means any information obtained from Payor Customer's checks, Check Images, remittance slips or information entered by Customer into the Customer System, including without limitation MICR Data, check amount, Payor Customer address or check number.

### **3. Customer Authorizations and Notifications**

Customer shall adhere to any and all applicable clearinghouse, local, state, or federal laws, rules or regulations, including but not limited to, obtaining all necessary consents and authorizations from, and/or providing all necessary disclosures and notifications to, its Payor Customers concerning the creation and use of the Payor Customers' checks or any other use of Transaction Data by Customer or Bank, and the conversion of Payor Customers' checks or check information to ACH Entries, Demand Drafts and/or Check Images (including subsequent Substitute Checks or PILs created from such Check Images). Customer is responsible for ascertaining the content, method, and frequency of any required authorizations and notifications.

### **4. Determination of Items Eligible for Electronic Deposit**

a. Only original paper checks that qualify as a source document may be converted to an ARC Entry or POP Entry under NACHA Rules. Customer is responsible for maintaining current information in the OSED System or ECLD System on those Payor Customers that have opted-out of ARC Entry conversion. If Customer has selected a processing option that uses ACH Entries to collect payments from Payor Customers, Bank will apply certain automated internal edits and screens to the MICR Data and/or Check Images submitted by Customer to determine whether the original paper check is a source document that qualifies for conversion to an ACH Entry.

Customer acknowledges and agrees that Customer is the Originator of such ACH Entries under NACHA Rules regardless of whether Customer or Bank initiates the ACH Entry into the payment system. Bank shall have no liability to Customer or any other person in the event that a Payor Customer's check or check information is processed or converted by Bank to an ACH Entry, Check Image, Substitute Check, Demand Draft or PIL, and such check or check information was not eligible for any reason for processing as, or conversion to, such an item.

b. Only a draft, payable on demand, and drawn on or payable through or at an office of a bank, is eligible for deposit as a Check Image. Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Check Images under the Electronic Deposit Services, and Customer must deposit these original paper checks with Bank for collection: (i) checks, including travelers checks, that are drawn on banks located outside of the United States, (ii) checks payable in a medium other than U.S. dollars, (iii) non-cash items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC), (iv) promissory notes and similar obligations, such as savings bonds, and (v) any other class of checks or drafts as identified by Bank to Customer from time to time.

#### **5. Capture of Checks and Check Information**

a. Depending on the parameters and product options selected by Customer, Customer shall be responsible for accurately capturing an image of each paper check, the MICR Data and the correct dollar amount of the check into the Customer System. In the event the condition of a paper check precludes a complete automated read, Customer shall be responsible for visually inspecting the check and repairing the MICR Data, if necessary. Customer shall be responsible for the inspection of all Check Images to ensure the legibility of the Check Image (including without limitation the dollar amount and signature of the drawer), for the repair of any MICR Data, and for ensuring that any and all information on a paper check is accurately captured and legible in the resulting Check Image and/or MICR Data and otherwise complies with any Check Image or MICR Data quality standards Bank may provide to Customer from time to time.

Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks, and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

b. Customer further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image or MICR Data prior to processing an Electronic Deposit. Bank may in its sole discretion alter or amend MICR Data submitted in an Electronic Deposit in accordance with general banking and check collection practices, but Bank shall have no obligation to effect a repair or other alteration to the MICR Data.

c. Bank shall not be liable to Customer for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit, for which Customer has not provided Bank with full and correct MICR Data and dollar amount from the original paper check, for which Customer has not provided an accurate and legible image of the original paper check, or which would violate these Terms and Conditions, the User Manuals or any other agreement between Customer and Bank.

#### **6. Upload of Electronic Deposit to Bank**

a. Customer shall upload the Electronic Deposit transmission (containing one or more Electronic Deposits) to Bank prior to the daily cut-off time established by Bank from time to time. Any Electronic Deposit transmission received by Bank after its daily cut-off time shall be deemed to have been received by Bank at the opening of its next banking day. Performance of the Electronic Deposit Services may be affected by external factors such as communication networks latency. Customer is responsible for the transmission of the Electronic Deposit until the OSED

System or the ECLD System reports a successful acknowledgement of receipt of the transmission.

b. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank in accordance with Section 6a. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including without limitation a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank with respect to any Electronic Deposit contained in that Electronic Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

c. Bank will process Electronic Deposit transmission received from Customer either via ACH Processing, or via Check Image/Substitute Check Collection, according to the parameters and product options selected by Customer.

#### **7. Collection of Check Images and MICR Data**

Bank may in its sole discretion determine the manner in which Bank will seek to collect a Check Image and/or MICR Data deposited by Customer. Without limiting the generality of the preceding sentence, Bank may, at its option: (i) present or transfer the Check Image or MICR Data to the paying bank, a Federal Reserve Bank, image exchange network, or other collecting bank; (ii) create a Substitute Check, a Demand Draft or a PIL from the Check Image and/or MICR Data and collect such item, or (iii) request that Customer provide to Bank the original paper check from which the Check Image and/or MICR Data was created and then collect the original paper check.

#### **8. Returns**

a. Customer agrees that Bank may charge the account of Customer for any and all returned items and ACH Entries, including a returned Check Image, a returned Substitute Check or a returned Demand Draft or PIL that relates to the original paper check.

b. Bank will provide Customer with a report of Check Images, paper items and ACH Entries that are returned. If Bank receives a Check Image as a return, Bank may provide Customer with: (i) a report of returned Check Images, (ii) an image file of returned Check Images, or (iii) Substitute Checks or other copies created from the returned Check Images. Bank is not obligated to produce a Substitute Check from a returned Check Image.

c. If Customer elects to have its returned paper items directed to another financial institution or entity apart from Bank, Bank shall not be liable for any late returned items. Customer shall indemnify and hold Bank harmless from and against, any liability, loss or damage (including attorneys' fees and other costs incurred in connection therewith) relating to or arising out of any late returned item, including those claimed or incurred under Regulation CC of the Board of Governors of the Federal Reserve System ("Regulation CC") or for any breach of warranty claim.

#### **9. Representation of Returned Electronic Deposit**

a. If Customer identifies to Bank a returned ARC Entry as being returned because the original paper check was ineligible as a source document for the ARC Entry, Bank shall use reasonable efforts to collect the check related to the ARC Entry by creating, in Bank's sole discretion, a Substitute Check, a Demand Draft or a PIL from the image of the related original paper check. Customer represents and warrants to Bank that Customer has obtained all necessary and appropriate authorizations from its Payor Customers for Bank to create, and present for payment to Payor Customer's financial institution, any such Substitute Check, Demand Draft or PIL.

b. In the event Bank in its sole discretion determines that it requires the original paper check for representment, in order to collect a returned Check Image, ACH Entry, Substitute Check, Demand Draft or PIL, Customer shall be responsible for providing to Bank the original paper check, or if the original paper check has been destroyed, for obtaining a replacement check from the Payor Customer.

c. If Customer elects to use Bank's ACH staged return process, Customer shall be solely responsible for transactions that are reinitiated based on staged returns and shall comply with all applicable laws, rules and regulations governing such transactions, including but not limited to the NACHA Rules and Regulation E.

#### **10. Storage of Check Images**

Bank shall store Check Images, MICR Data and ACH Entry information on the OSED System or ECLD System, and shall make Check Images, MICR Data or ACH Entry information available to Customer according to the User Manuals and fee schedule. If Customer terminates the Electronic Deposit Services, Customer may purchase CDs or an FTP transmission which includes the Check Images, MICR Data or ACH Entry information processed through the Electronic Deposit Services at the price outlined in the fee schedule.

#### **11. Substitute Check Received for Deposit**

Bank reserves the right to reject the deposit (as an Electronic Deposit or otherwise) of a Substitute Check that was created by another financial institution, Customer, Payor Customers or any other person.

#### **12. No Authorization to Create Substitute Checks**

Customer agrees that Customer and any of its agents may not use the Check Images created by, or stored in, the OSED System or ECLD System to print a Substitute Check for any reason.

#### **13. Retention and Destruction of Original Paper Checks**

Customer shall comply with all requirements under the NACHA rules to destroy original paper checks that are source documents for ACH Entries. For original paper checks that were imaged and were not used as source documents for ACH Entries, Customer may determine how long to hold such original paper checks prior to destruction. At Bank's request, Customer shall provide the original paper check to Bank if the original paper check has not been destroyed by Customer and Bank needs the original paper check to process a payment or resolve a dispute arising from an Electronic Deposit.

#### **14. Remittance Documentation**

For OSED Services, Customer may use Customer System to scan and read remittance documents associated with check payment. Bank disclaims any and all responsibility and/or liability associated with this use of the Customer System.

#### **15. Representations and Warranties**

With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer is deemed to make to Bank any representation or warranty that Bank makes, under



applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates the Electronic Deposit or Check Image, or a Substitute Check, Demand Draft, PIL, or ACH Entry created from that Check Image or MICR Data.

#### **16. Customer Responsibility**

With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer's breach of a representation or warranty as set forth in Section 15, (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, Substitute Check, Demand Draft, PIL or ACH Entry; or (d) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section 16 shall survive termination of the Agreement.

#### **17. Limited Use**

Customer may use the Electronic Deposit Services, the User Manual, and the OSED System or ECLD System for business use for as long as Bank in its sole discretion provides the Electronic Deposit Services to Customer. Customer shall return to Bank any Customer System software upon termination of the OSED Services.

#### **18. Rules Applicable to Collection of Checks**

Customer acknowledges and agrees that a Check Image, Substitute Check, Demand Draft or PIL may in the sole discretion of Bank be collected through one or more check clearinghouses, one or more Federal Reserve Banks, or an agreement with another depository institution. In such cases, the Check Image, Substitute Check, Demand Draft or PIL is subject to the rules of that clearinghouse, Federal Reserve Bank, or depository institution agreement.

#### **19. Accuracy and Timeliness of Electronic Deposit Services**

Bank will use reasonable efforts to provide the Electronic Deposit Services in a prompt fashion, but shall not be liable for temporary failure to provide the Electronic Deposit Services in a timely manner. In such event, Customer shall be responsible for carrying out banking business through alternative channels. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's deposit or payments system prior to being made available pursuant to the Electronic Deposit Services. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.

#### **20. User Manual**

Bank will provide Customer with a user manual ("User Manual") in paper or electronic format that will set forth the OSED Services' or ECLD services' policies and procedures with which Customer agrees to comply. Bank may, without prior notification, make amendments to any User Manual. Bank owns or has obtained all proprietary rights to the User Manual and Customer agrees not to duplicate, distribute or otherwise copy the User Manual without Bank's prior written consent. The User Manual will at all times remain the property of Bank, and Bank reserves the right to request Customer to return all printed copies of the User Manual within thirty (30) days of termination of the Electronic Deposit Services.

## **21. Security Procedures**

Customer shall comply with all security procedures for the Electronic Deposit Services that are established by Bank or set forth in the User Manuals. Customer is solely responsible for (i) maintaining its own internal security procedures, (ii) safeguarding the security and confidentiality of Transaction Data, Check Images and other information that is either stored on the Customer System, OSED System or ECLD System, or downloaded to Customer's other computer/data systems, and (iii) preventing errors or unauthorized access to the Customer System, or the OSED System or ECLD System.