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# TERMS AND CONDITIONS OF

# ACH – WIRES – POSITIVE PAY – REMOTE DEPOSIT CAPTURE

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**PROFINIUM**

*Your Amazing is Possible*

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**Profinium, Inc.**  
**Commercial Cash Management Agreement and Enrollment Form**

**AGREEMENT**

By executing the Enrollment Form and Cash Management (Cash Management refers to Online Banking, Remote Deposit Capture (RDC) , ACH and/or Wire Transfer) Resolution, the Commercial Customer of Profinium, Inc. (referred to as “you” or “yours”) agrees to the following terms and conditions of enrollment in the Internet banking system maintained by Profinium, Inc. (referred to as “Profinium, Inc.” or “the financial institution”): The following services will be available:

- Balance inquiry
- Funds Transfer
- Stop payment initiation
- Remote Deposit Capture
- ACH origination
- Wire Transfer
- Check copy request
- Access to various reports
- Secure messaging to Profinium, Inc.

Other services may be available from time to time in the future. By using these services as they become available, you agree to be bound by the terms and conditions contained in the Agreement. Notification of the availability of these services will be made on Profinium, Inc.’s website: [www.profinium.com](http://www.profinium.com).

You will allow Profinium, Inc. a reasonable time in which to complete your enrollment once you submit the necessary forms, including the Enrollment Form and Cash Management Resolution form. You will allow Profinium, Inc. a reasonable time in which to process any service requests you make through the Cash Management system.

Once you have completed the Enrollment Form and you have selected a password for access to the Cash Management system, you will be solely responsible for the use of the Cash Management by the Company Administrator and all subsequently assigned Users assigned by the Company Administrator. Profinium, Inc. will have no duty to further verify the identity of any Cash Management system user with a valid password. Profinium, Inc. will act on instructions received under your password.

As the appropriate authorized representative of the Commercial Customer of the financial institution, you are solely responsible for maintaining the addition or deletion of any users of the Cash Management system with access to your accounts.

Profinium, Inc. has the right to monitor and review all banking activity conducted on its Cash Management system.

You will be responsible for any service charges accrued in your use, or use by any user assigned by you. These service charges may be deducted from your account. A schedule of Cash Management service charges is included. Profinium, Inc. reserves the right to change the charges, fees or other terms described in this Agreement.

You agree that neither Profinium, Inc. nor any Internet service providers you utilize to access Profinium, Inc.’s Cash Management system shall be responsible for any loss, property damage or bodily injury, whether caused by the equipment, software, Profinium, Inc., or Internet browser or Internet access providers. Nor shall Profinium, Inc. or any service provider be responsible for any direct, indirect, special or consequential, economic or other damages arising out of your use of Profinium, Inc.’s Cash Management system.

You agree that Profinium, Inc. is not responsible for any damage occasioned by instructions Profinium, Inc. receives from a User assigned by you using their correct password. You authorize Profinium, Inc. to act on all instructions received under your password and to deduct any service charges directly from your account balance as accrued. You also agree to be liable for any account shortage resulting from charges or overdrafts, whether caused by you or a User assigned by you. This includes liability for Profinium, Inc.’s costs to collect the deficit including reasonable attorneys’ fees.

## **COMMERCIAL CUSTOMER LIABILITY**

YOU REPRESENT AND WARRANT THAT YOUR AUTHORIZED USERS AND SUB-USERS HAVE THE APPROPRIATE AUTHORITY TO INITIATE TRANSACTIONS THROUGH THE ONLINE BANKING SERVICE. YOU ALSO REPRESENT AND WARRANT THAT YOU MAINTAIN OR REQUIRE CURRENT AND UPDATED ANTI-VIRUS SOFTWARE ON ALL COMPUTERS USED TO ACCESS THE ONLINE BANKING SERVICE BY YOU OR ON YOUR BEHALF.

YOU AUTHORIZE THIS FINANCIAL INSTITUTION AND ITS SERVICE PROVIDERS TO ACT UPON, AND AGREES TO BE BOUND BY, ANY TRANSACTION, WHETHER OR NOT AUTHORIZED, THAT IS INITIATED WITH AN ACCESS ID AND PASSCODE OF ANY AUTHORIZED USER(S).

FURTHERMORE, ANY INSTRUCTIONS, DIRECTIONS, OR OTHER INFORMATION PROVIDED BY YOU, OR ANY OF YOUR AUTHORIZED USERS, WILL BE DEEMED TO HAVE BEEN AUTHORIZED BY THE YOU. THIS FINANCIAL INSTITUTION AND ITS SERVICE PROVIDERS WILL NOT BE RESPONSIBLE FOR VERIFYING THE IDENTITY OR AUTHENTICITY OF ANY PERSON CLAIMING TO BE AN AUTHORIZED USER.

YOU ASSUME ANY AND ALL LIABILITY ARISING FROM THE USE OR MISUSE OF THE ONLINE BANKING SERVICE OR ELIGIBLE ACCOUNTS BY YOUR AUTHORIZED USERS OR AS A RESULT OF A COMPROMISED COMPUTER DUE TO A BREACH OF ANY OF THE FOREGOING WARRANTIES. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS THIS FINANCIAL INSTITUTION AND ITS SERVICE PROVIDERS FOR ANY LIABILITY AND DAMAGES RESULTING FROM OR ACTING UPON ANY TRANSACTION, DIRECTION, INSTRUCTION, OR INFORMATION THAT IS INITIATED WITH AN ACCESS ID AND PASSCODE OF AN AUTHORIZED USER(S) REGARDLESS OF WHETHER SUCH TRANSACTION, DIRECTION OR INSTRUCTION IS MADE BY AN AUTHORIZED USER.

YOU AGREE THAT WE MAY SEND NOTICES AND OTHER COMMUNICATIONS, INCLUDING EMAILS, TO THE CURRENT ADDRESS SHOWN IN OUR RECORDS, WHETHER OR NOT THAT ADDRESS INCLUDES A DESIGNATION FOR DELIVERY TO THE ATTENTION OF ANY PARTICULAR INDIVIDUAL. YOU FURTHER AGREE THAT PROFINIUM AND/OR ITS SERVICE PROVIDERS WILL NOT BE RESPONSIBLE OR LIABLE TO YOU IN ANY WAY IF INFORMATION IS INTERCEPTED BY AN UNAUTHORIZED PERSON, EITHER IN TRANSIT OR AT YOUR PLACE OF BUSINESS. IN ADDITION, YOU AGREE TO:

- REQUIRE ALL AUTHORIZED USERS TO KEEP PASSCODES SECURE AND STRICTLY CONFIDENTIAL;
- IMMEDIATELY NOTIFY US AND SELECT A NEW PASSCODE IF YOU OR YOUR AUTHORIZED USERS BELIEVE YOUR PASSCODES MAY HAVE BECOME KNOWN TO AN UNAUTHORIZED PERSON.

WE MAY DISABLE PASSCODES OF AUTHORIZED USERS EVEN WITHOUT RECEIVING SUCH NOTICE FROM YOU, IF WE SUSPECT PASSCODES ARE BEING USED IN AN UNAUTHORIZED OR FRAUDULENT MANNER.

YOU SHALL BE SOLELY RESPONSIBLE FOR THE DEVELOPMENT AND IMPLEMENTATION OF ALL COMMERCIALLY REASONABLE SECURITY PROCEDURES TO PROTECT THEIR COMPUTER SYSTEMS USED TO ACCESS THE ONLINE BANKING SERVICE.

THIS FINANCIAL INSTITUTION AND ITS SERVICE PROVIDERS SHALL HAVE NO OBLIGATION, LIABILITY OR CONTROL, EITHER DIRECTLY OR INDIRECTLY CONCERNING THE YOUR SELECTION OF SECURITY SYSTEMS OR DEVICES USED TO PROTECT ITS COMPUTER SYSTEM(S). FURTHERMORE, NEITHER THIS INSTITUTION NOR ITS SERVICE PROVIDERS SHALL HAVE CONTROL OVER YOUR DEVELOPMENT OR IMPLEMENTATION OF SAID SECURITY PROCEDURES OR THE FAILURE OF YOU TO MAINTAIN SAID PROCEDURES.

YOU SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL LOSSES AND DAMAGES ARISING FROM ANY AUTHORIZED OR UNAUTHORIZED ACCESS TO THE ONLINE BANKING SERVICE USING A VALID ACCESS ID AND PASSCODE.

## **COMMERCIALLY REASONABLE SECURITY PROCEDURES**

WHEN YOU ACCEPT THIS AGREEMENT AND USE THE SERVICE, YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE INCLUDES SECURITY MEASURES WHICH ARE COMMERCIALLY REASONABLE.

YOU AGREE TO BE BOUND BY OUR SECURITY PROCEDURES AND INSTRUCTIONS, WHICH MAY BE PERIODICALLY UPDATED. YOU AGREE TO REVIEW AND IMPLEMENT ALL SECURITY PROCEDURES AVAILABLE IN CONNECTION WITH THE ONLINE BANKING SERVICE, INCLUDING PROCEDURES TO PROTECT THE CONFIDENTIALITY OF YOUR ACCESS ID AND PASSCODE AND THE SAME FOR YOUR AUTHORIZED USERS. YOU AGREE TO NOTIFY THIS FINANCIAL INSTITUTION IN THE EVENT THAT YOUR USE OF THE ONLINE BANKING SERVICE WOULD NECESSITATE OR BE BETTER SERVED BY A LEVEL OF SECURITY THAT EXCEEDS THAT OFFERED BY THE ONLINE BANKING SERVICE. IF YOU FAIL TO NOTIFY THIS FINANCIAL INSTITUTION, YOU ACKNOWLEDGE AND AGREE THAT THE SECURITY ASPECTS OF THE ONLINE BANKING SERVICE ARE APPROPRIATE FOR YOUR NEEDS AND WILL PROVIDE YOU WITH A COMMERCIALY REASONABLE DEGREE OF SECURITY AGAINST UNAUTHORIZED USE.

Profinium, Inc. reserves the right to discontinue the Cash Management system, or any of the services referenced in paragraph 1, at any time.

During any statement period, you may not make more than six withdrawals or transfers to another financial institution account of yours or to a third party by means of preauthorized or automatic transfer or telephone order or instruction from your Money Market Deposit or savings accounts. If you exceed these transfer limitations, your account will be subject to closure by the financial institution or transferred to a transaction account. There is no limit on the number of transactions you may make in the following manner: (a) transfers to any loan account with Profinium, Inc.; or (b) transfers to another financial institution account of yours or withdrawals when such transfer or withdrawal is initiated in person, by mail, or at an ATM.

This Agreement will be governed by and interpreted in accordance with federal law and regulation, and to the extent no such applicable federal law or regulation exists, by the laws of the State of Minnesota.

Each of your accounts at Profinium, Inc. is also governed by the applicable account disclosure statements. Profinium, Inc. reserves the right to change the charges, fees or other terms or conditions set forth in the Agreement. When changes are made to any fees, charges or other material terms, we will update this Agreement, and send notice to you at the address shown in our records.

## **ENROLLMENT FORM**

The Enrollment Form is part of the Agreement between you and Profinium, Inc. regarding your use of the financial institution's Cash Management system. The terms of the Agreement are incorporated herein by reference.

Authorization to Issue Passwords: At the direction of any person named on your Enrollment form as your Primary Administrator, or at the direction of any person named as your Primary Administrator in the future, you hereby authorize Profinium, Inc. to issue one or more passwords for use with Profinium, Inc.'s Cash Management system, as set forth in the Agreement, which Profinium, Inc. may amend from time to time.

Appointment of Primary Administrators: You hereby appoint, and Profinium, Inc. is hereby authorized to establish and issue a password (which must be changed upon initial access to the financial institution's Cash Management system) to the Primary Administrator who has maintenance authority over your accounts as indicated on your Enrollment form.

Acknowledgment: By signing the enrollment form, you acknowledge receipt of and agree to be bound by the terms of this Agreement, these Terms and Conditions and the Online Banking Agreement.

### **Profinium, Inc. Business Online Banking Resolution**

I, the undersigned of the Enrollment, hereby certify to Profinium, Inc. that I am the designated keeper of the records and minutes of the Commercial Customer identified on the Enrollment Form; I have full authority to make representations set forth in these Resolutions on behalf of the Commercial Customer; and that the following is a true and correct copy of Resolutions duly adopted by the Board of Directors (if a corporation), partners (if a partnership), customers/managers (if a limited liability company), proprietor (if a sole proprietorship) or other governing authority of the Commercial Customer.



Resolved, that the person executing the Enrollment Form is hereby authorized, on behalf of this Commercial Customer and in its name, to execute and deliver said forms, and to thereby bind the Commercial Customer to Profinium, Inc.'s Online Banking Agreement, as amended from time to time, for the purpose of enabling representatives of this Commercial Customer to obtain account information, perform fund transfers between Commercial Customer's account(s), and/or to make payments from Commercial Customer's account(s) through the use of one or more User ID and password.

Resolved, that each person named on the attached Enrollment Form, acting alone, is hereby authorized to act on the Commercial Customer's behalf in all matters relative to Commercial Customer's User ID's and passwords, including but not limited to the right to (i) establish additional User ID and passwords on the Commercial Customer's behalf, (ii) terminate or cancel any/all existing User ID's and passwords; (iii) change the Commercial Customer's account(s) associated with User ID's and passwords, (iv) change the activity level of an account associated with any User ID and password, (v) name additional persons who will have maintenance authority over Commercial Customer's User ID's and passwords, or terminate the authority of any person with maintenance authority over Commercial Customer's User ID and password.

Resolved, that the foregoing Resolutions shall remain in full force and effect and the authority herein given to all of said persons shall remain irrevocable as far as Profinium, Inc. is concerned until three (3) business days after Profinium, Inc. is notified in writing of the revocation of such authority and that receipt of such notice shall not affect any action taken by Profinium, Inc. prior thereto; and

Resolved, that this authorization supersedes any resolution, signature card or other document currently on file with Profinium, Inc. that limits authority over any specific account or over Commercial Customer's accounts with Profinium, Inc. This authorization shall remain in force and effect notwithstanding any subsequent change in such specific or general account resolution, signature card or related documentation. Any notice of a termination or change with respect to the identity of a Primary Administrator or the authority of any person to use a User ID and password must specifically state that it relates to User ID's and passwords and must specifically describe the termination or change requested.

In Witness Whereof, and intending to bind the Commercial Customer, I have hereunto subscribed my name as of the date set forth on the Enrollment Form.

**Profinium, Inc.**  
**Remote Deposit Capture Agreement**

This Agreement is intended to govern the depositing of the Business's checks through the Internet or by creating information to deposit checks through the software provided by Profinium, Inc ("Financial Institution"), based on information submitted by the Business to the Financial Institution. The accepted terms are as follows:

**1. DEFINITIONS.**

**1.1 "Account"** means the Business's designated deposit account at the Financial Institution.

**1.2 "Business Day"** means any calendar day that the Federal Reserve of the United States of America transacts business.

**1.3 "Check"** means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection, including a Substitute Check and a traveler's check; and does not include a non-cash item payable in a medium other than United States dollars.

**1.4 "Customer"** means a debtor obligated on one or more Checks.

**1.5 "Remote Deposit Capture Service"** means all information, Web-based services, technological infrastructure, and installed software on the Business's computers, which allow the Business to submit Checks for deposit through the Internet.

**1.6 "Security Procedures"** means the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, and other security devices, systems, and software used by the Business to communicate through the Internet for the Remote Deposit Capture Service.

**1.7 "Services"** means all duties to be performed by the Financial Institution regarding the Remote Deposit Capture Service.

**1.8 "Substitute Check"** means a paper reproduction of the original check that:

a) contains an image of the front and back of the original check;

- b) bears a MICR line containing all the information on the MICR line of the original check, except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks;
- c) Conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for Substitute Checks; and
- d) is suitable for automated processing in the same manner as the original check.

## **2. DUTIES AND RESPONSIBILITIES OF THE FINANCIAL INSTITUTION.**

**2.1 Use of Service.** Under the terms and conditions of this Agreement, Financial Institution hereby grants to Business a non-exclusive ability to utilize the Remote Deposit Capture Service through the Internet or by creating information to deposit checks through the software provided by the Financial Institution, and to use the Financial Institution's proprietary documentation for the term of this Agreement.

**2.2 Processing.** Financial Institution will process, encode, endorse, and deposit into the Account, Checks submitted by Business through the Remote Deposit Capture Service in accordance with Financial Institution's internal procedures and all state and federal laws during any Business Day, subject to the Cutoff Time as stated in Section 3.4. Financial Institution will not examine Checks to verify any data or dates. Financial Institution will process the Check according to the amount entered by Business, if applicable, or by the numeric amount shown. If the numeric amount is unclear, Financial Institution may process the Check according to the written amount, and Financial Institution may correct the amount entered by the Business. If the Check is ambiguous, Financial Institution will return the check as an exception. Checks made payable to the Business or any reasonable derivation thereof are acceptable for deposit. If a Check does not have the necessary information to be processed by the Financial Institution, then the Financial Institution will treat the Check as an exception. If a Check is treated as an exception, it will be forwarded by the Financial Institution to the Business, and not deposited or otherwise reflected in the Business's account. Financial Institution will disregard any notation on a Check containing "paid in full" or other restrictive notation, whether preprinted or handwritten, and treat any such Check as though such notation did not appear thereon.

**2.3 Reporting.** Financial Institution will make reports regarding the Remote Deposit Capture Service available through a Financial Institution-designated Web page, which the Business may access through the Internet. Specifically, the Financial Institution shall make available from time to time a report stating the total amount deposited to the Account, as well as a listing of individual items deposited, which the Business may access through the Internet.

## **3. DUTIES AND RESPONSIBILITIES OF THE BUSINESS.**

**3.1 Use of Remote Deposit Capture.** The Business shall submit valid Checks payable to Business by using the Remote Deposit Capture Service. In using the Remote Deposit Capture Service, Business shall create an image of the Check or Checks and the associated MICR data using approved hardware as listed on the Terms of Use and Procedures. If applicable, Business agrees to enter in the amount of the Check using the written amount of the Check into the Remote Deposit Capture Service in the data field provided. Business agrees to abide by all Terms of Use and Procedures for using the Remote Deposit Capture Service. The Terms of Use and Procedures are published by the Financial Institution and shall be updated from time to time by the Financial Institution.

**3.2 Software, Internet, and Hardware.** The Business will comply with all software, Internet, and hardware requirements of the Terms of Use and Procedures issued by the Financial Institution and updated from time to time.

**3.3 Fee for Services.** Business shall compensate Financial Institution for the performance of the Service in accordance with the pricing established by Financial Institution. Amounts payable by Business to Financial Institution shall be collected on a monthly basis by Financial Institution. Financial Institution may collect any of the foregoing amounts and any other amounts due by Business to Financial Institution hereunder or in connection with the provision of the Service to Business by debiting any of Business's accounts with Financial Institution, billing Business, and/or setting off against any amounts Financial Institution owes Business, without any obligation to give prior notice thereof to Business. Financial Institution may change pricing from time to time by providing Business with thirty (30) days written notice of a pricing change. If Business does not accept the pricing change, then Business must notify Financial Institution within fifteen (15) days of the effective date of the pricing change. Business shall also pay any sales, use, or similar tax applicable to the Service. If Financial Institution is required to pay any such taxes, Business shall reimburse Financial Institution upon demand. Business shall also pay all attorneys' fees and other costs and expenses Financial Institution may incur in collecting any fees or other sums Business may owe to Financial Institution in connection with the Service. Financial Institution shall also have the right to credit or debit any accounts of Business with Financial Institution to correct any processing irregularity in connection with the Service.

### 3.4 Delivery Schedule

Cutoff Time for Processing is 5:00 p.m. each business day. Remote deposit items received by the Financial Institution after the cutoff time will be processed and credited to the account on the next business day.

## **4. REPRESENTATIONS, WARRANTIES, COVENANTS, AND LIABILITY**

**4.1 Representations and Warranties.** Each party, Business and Financial Institution, represents and warrants to the other, as of the date this Agreement is entered into and at the time the Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and the Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid, and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or the Service used or performed by it has been obtained. Financial Institution makes no representation or warranty, express or implied, and disclaims all warranties as to the merchantability, fitness for a particular purpose, or suitability of the Services for Business, or as to the compatibility of Financial Institution's software, equipment, or communication interfaces with those of Business. The Business represents and warrants that: (a) it is fully authorized to enter into and perform under this Agreement, and that this Agreement constitutes its legal, valid, and binding obligation; (b) the Business is solvent and in good standing in the State of its organization; (c) it is not the present intent of the Business to seek protection under any bankruptcy laws; (d) its Checks are currently and were at the time of their creation, bona fide and existing obligations of Customers of the Business, free and clear of all security interests, liens, and claims whatsoever of third parties and are not now nor have they ever been declared in default; (e) the documentation under which the Checks are payable authorizes the payee to charge and collect the monies owed; and (f) all Checks and all documents and practices related to them comply with all applicable federal and state laws.

**4.2 Covenants.** The Business covenants that: (a) it will allow the Financial Institution to review and inspect during reasonable business hours, and the Business will supply, all financial information, financial records, and documentation of the Business regarding the Checks that the Financial Institution may request; (b) the Checks submitted by Business are valid Checks, and the Business will reimburse and indemnify the Financial Institution for all loss, damage, and expenses, including reasonable attorneys' fees, incurred in defending such transactions as invalid or fraudulent Checks; (c) physical checks will not be presented to any financial institution once these items are presented through the Remote Deposit Capture Service; (d) physical checks will be stored in a secured area and destroyed by shredding or incineration within sixty (60) days of processing; (e) the business will notify the Financial Institution if an acknowledgement sent by the Financial Institution indicating receipt of remote deposit items is not received on the day of processing; and (f) in the event of the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Business, the Business will not oppose or object to any motion by the Financial Institution seeking relief from the automatic stay provisions of such laws.

**4.3 Liability.** Financial Institution will exercise ordinary care in providing the Service and will be responsible for any loss sustained by Business only to the extent such loss is caused by Financial Institution's reckless or willful misconduct. In no event shall clerical errors or mistakes in judgments constitute failure to exercise ordinary care, nor shall Financial Institution have any liability for any indirect, incidental, consequential (including lost profits), special, or punitive damages, whether arising in contract or in tort, and whether or not the possibility of such damages was disclosed to or could have been reasonably foreseen by Financial Institution. Under no circumstances shall Financial Institution be responsible for any liability, loss, or damage resulting from any delay in performance of or failure to perform in connection with the Service which is caused by interruption of telephone, tele-facsimile, or communication facilities; delay in transportation, equipment breakdown, or mechanical malfunction; electrical, power, or computer failure; accidents, fire, flood, explosion, theft, natural disaster, or other catastrophe; acts or failure to act by Business or any third party; strikes or lockouts; emergency conditions; or riots, war, acts of government, or other circumstances which are unavoidable or beyond Financial Institution's control. Financial Institution shall not be liable for failure to perform any of its obligations in connection with the Service if such performance would result in it being in breach of any law, regulation, or requirement of any governmental authority. If Financial Institution fails to credit any of Business's accounts utilized in connection with the Service in accordance with the Service Terms and Conditions applicable thereto as of the date such credit was earned, upon discovery or notification of such error, Financial Institution will properly credit such account, but Financial Institution shall not incur any liability therefore, including any loss resulting from failure by Business to invest the amount of funds not properly credited to the account.



**5. INDEMNIFICATION.** Business shall indemnify and hold harmless Financial Institution and each of its directors, officers, employees, agents, successors, and assigns (“Indemnitees”) from and against all liability, loss, and damage of any kind (including attorneys’ fees and other costs incurred in connection therewith) incurred by or asserted against such Indemnitee in any way relating to or arising out of the Service, by reason of any acts or omissions of Business or any third party or otherwise, except to the extent such liability, loss, or damage is caused by the gross negligence or willful misconduct of such Indemnitee (provided that reliance, without further investigation, on any oral, telephonic, electronic, written, or other request, notice, or instruction believed in good faith to have been given by Business will in no event constitute gross negligence or willful misconduct on the part of such Indemnitee).

**6. SECURITY PROCEDURES AND COMMUNICATIONS.** Certain Security Procedures designed to verify the origination (but not errors in transmission or content) of instructions, orders, and other communications sent by Financial Institution and Business might be used in connection with the Service. Business agrees that any such mutually agreed-upon Security Procedures shall be deemed commercially reasonable. Financial Institution shall not be obligated to act on a communication not transmitted in accordance with the Security Procedures and may refuse to act on any communication where Financial Institution reasonably doubts its authorization, contents, origination, or compliance with the Security Procedures. Financial Institution shall have no duty to discover, and shall not be liable for, errors or omissions by Business. If Financial Institution complies with the Security Procedures in respect of a communication, Financial Institution shall be entitled to act on that communication and shall not be obligated to verify the content of such communication, establish the identity of the person giving it, or await any confirmation thereof, and Financial Institution shall not be liable for acting on, and Business shall be bound by, any communication sent in the name of Business, whether or not authorized. Financial Institution reserves the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time. Whenever the Security Procedures include the assigning to Business of any confidential password, logon identification, identification code, personal or location identification number, repetitive code, or similar security device, Business shall not disclose such security device except to employees or agents authorized to act for Business in connection with the Service. Business shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify Financial Institution if the confidentiality or integrity of any such security device is breached or threatened. Business shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Business’s negligence or deliberate acts or otherwise. Financial Institution shall not be liable for any loss or damage resulting from fraudulent, unauthorized, or otherwise improper use of any security devices.

**7. CONFIDENTIALITY.** All user guides, manuals, data, software, processes, and other information provided to Business in connection with the Service and all fee and pricing information with respect to the Service (“Information”) is the proprietary and confidential property of Financial Institution and/or its relevant licensors or suppliers. Business agrees to use the Information only in the manner specified by Financial Institution and in the ordinary course of Business’s commerce, to return it to Financial Institution upon termination of the relevant Service, and to keep the Information confidential and limit access thereto only to its agents and employees who require access in the normal course of their duties, except to the extent the Information is already in the public domain or Business is required to disclose the Information by law.

**8. INTERMEDIARIES.** Financial Institution may act on any communication and provide the Service using any payment system or intermediary organization it reasonably selects. Financial Institution’s performance of the Service is subject to the rules and regulations of any such system or organization. Financial Institution may engage third parties to provide the Service. Financial Institution shall have no obligation to disclose arrangements with third parties to Business or obtain Business’s consent thereto. Business authorizes the transfer of information relating to Business to agents of Financial Institution or Business for use in connection with the Service or as required by law.

**9. RECORDINGS AND RECORDS.** Either Business or Financial Institution may produce telephonic or electronic recordings or computer records, including email and tele-facsimile transmissions, as evidence in any proceedings brought in connection with the Service. Business agrees to Financial Institution’s telephonic or electronic recording for security and quality of service purposes.

**10. NOTICES.** Any notice or other communication may be sent by Financial Institution to Business at Business’s postal, email, telefacsimile, or other address provided by Business to Financial Institution, and

Financial Institution may assume that any notice or communication sent to Business at any such address has been received by Business, until Business notifies Financial Institution in writing of another address.

**11. ACCOUNTS.** The Service involving Business's accounts at Financial Institution are subject to Financial Institution's terms and conditions of deposit accounts and availability schedules in effect from time to time, provided that in the event of any conflict between this Agreement and Financial Institution's terms and conditions of deposit accounts, this Agreement shall prevail.

**12. DISCREPANCIES.** Business shall promptly notify Financial Institution in writing of any error in connection with the Service and any discrepancies between any records maintained by Business and any notice Business receives from Financial Institution with respect to the Service, and Business shall provide Financial Institution with any information it may reasonably request in connection therewith. Business agrees that fourteen (14) days is a reasonable time for Business to notify Financial Institution of errors or discrepancies, unless any other agreements, laws, rules, or regulations provide for a shorter period. Financial Institution shall have the right to correct the amount in the data field for any Check that has an incorrect amount to be consistent with the image of the Check. Notwithstanding the foregoing, if Financial Institution at any time discovers that the legal amount of the Check is different than the amount that has been credited to Business's Account, Financial Institution will make the necessary adjustment to the Account to correct the discrepancy.

**13. COMPLIANCE.** Business shall comply with all laws, rules, and regulations in connection with the Service. Business agrees to be bound by such rules and agrees that no entries that violate United States law may be initiated. Business shall be responsible for and shall fully indemnify Financial Institution for any and all fines and assessments imposed on Financial Institution as a result of any infraction or violation of such rules caused by or attributable to Business.

**14. CONTINGENCY.** In the event the Remote Deposit Capture Service is not available due to circumstances beyond the control of the Business or the Financial Institution, arrangements will be made to accept the presentment of physical check items by the Business for processing by the Financial Institution.

**15. DISCLOSURE.** Business acknowledges that Financial Institution may have certain legal record keeping and reporting requirements with respect to the Service and consents to Financial Institution's disclosure to governmental authorities of information concerning Business and the Service provided to Business which Financial Institution believes to be appropriate or necessary to fulfill such legal requirements.

**16. FIDUCIARY STATUS.** Nothing contained herein shall be deemed to create fiduciary status on the part of Financial Institution in connection with the provision of the Service. The foregoing notwithstanding, to the extent, if any, that Financial Institution is deemed to be a fiduciary of Business in providing the Service, this Agreement is not intended to, nor shall, relieve Financial Institution of any fiduciary responsibility otherwise imposed on it by law.

**17. TERMINATION.** Either party may terminate the Service by providing sixty (60) days' prior written notice to the other party. Financial Institution may also terminate or suspend the Service without notice to Business if any of the following occurs: (a) Business becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation, or dissolution proceeding of any kind; (b) a material adverse change occurs in Business's business or financial condition; (c) Financial Institution has reason to believe that Business has engaged in fraudulent or illegal activity; (d) Business fails to maintain balances in accounts sufficient to cover overdrafts; (e) Business violates the terms of this Agreement, the Rules, or any financing arrangement with Financial Institution; (f) Business fails to provide financial information reasonably requested by Financial Institution; (g) Financial Institution determines it is impractical or illegal to provide the Service because of changes in laws, regulations, or rules; or (h) Financial Institution, in good faith, is unable to satisfy itself that the Services have been properly authorized by Business. Notwithstanding any termination, the terms of this Agreement shall apply to all transactions, which have been initiated prior to termination.

**18. GOVERNING LAW; SEVERABILITY.** Except to the extent superseded by Federal law, the provision of Services shall be governed by the laws of the state in which the principal office of Financial Institution is located. Business agrees that the courts of such state shall have jurisdiction to hear any dispute arising out of the Service and submits to the jurisdiction of such courts. Any provision of this Agreement that is unenforceable shall be ineffective to the extent of such provision, without invalidating the remaining provisions of this Agreement. If performance of the Services would result in violation of any law, regulation, or

governmental policy, this Agreement shall be deemed amended to the extent necessary to comply therewith.

**19. FINANCIAL ACCOMMODATION.** Business and Financial Institution agree that this Agreement and the Service constitute an agreement to provide a “financial accommodation” as defined in 11 U.S.C. §365.

**20. ARBITRATION.** All disputes, controversies, or differences which may arise between the parties out of or in connection with the Agreement, which cannot be settled by negotiation within thirty (30) days of the matter first being notified in writing to the other by the complaining party, shall be finally settled by binding arbitration in accordance with the commercial arbitration rules. The arbitration of all matters shall be conducted by three (3) arbitrators (“Panel of Three”) with each party selecting one (1) arbitrator, and the third to be selected from the panel of arbitrators, who shall serve as the chair of the Panel of Three. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after receipt of written notice from the other party requesting it to do so, the requesting party may appoint two (2) arbitrators. The place of the arbitration shall be in the same city as the principal office that the Financial Institution is located. The arbitration award shall be final and binding upon the parties. Any judgment upon such award may be enforced in any court having jurisdiction, or application may be made to such court for a judicial confirmation of such award and judgment or order of enforcement, as the case may be. The cost of the arbitration shall be borne equally by the parties unless otherwise provided in the arbitration award. The parties hereto agree that the arbitration award will be the sole and exclusive remedy between them regarding any and all claims, counterclaims, or issues. In order to have arbitration as the sole and exclusive remedy the parties hereto exclude the right of appeal to courts of the United States, or any other courts, in connection with any question of law arising in the course of the reference to arbitration or out of the arbitration award.

**21. WAIVER OF JURY TRIAL.** BUSINESS AND FINANCIAL INSTITUTION WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES USED BY BUSINESS.

**22. GENERAL.** This Agreement manifests the entire agreement between the parties regarding the subject matter hereof and supersedes all prior understandings, writings, proposals, representations, or communications, oral or written, of either party. Neither party relied on any representation or promise by other party that is not set forth in this Agreement. This Agreement may not be assigned by Business without Financial Institution's prior written consent. Financial Institution may assign this Agreement without Business's consent. Neither Business nor Financial Institution shall display any name, trademark, or service mark of the other without the prior written consent of the other. Business shall not advertise or promote the Service without Financial Institution's prior written consent. This Agreement shall bind and benefit the parties and their successors and assigns. None of the terms of this Agreement may be waived except as Financial Institution may consent in writing, and no agreement with or representation made by any employee of Financial Institution that is in conflict with this Agreement will be binding on Financial Institution unless contained in a written modification of this Agreement signed by an authorized officer of Financial Institution. No delay on the part of Financial Institution in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power under this Agreement preclude further exercise thereof or the exercise of any other right or power. The rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies which Financial Institution would otherwise have. Section headings in this Agreement are for convenience of reference only and do not constitute a part thereof. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

**Profinium, Inc.  
Wire Transfer Agreement**

This Wire Transfer Agreement (this “Agreement”) is made between (“Customer”) and Profinium, Inc. This Agreement sets forth the rights, duties and obligations of Customer and Profinium, Inc. with respect to the transfer of funds and includes one or more Attachments and Addenda, which pertain to specific means for affecting such transfers.

Customer and Profinium, Inc., intending to be legally bound, hereby agree as follows:

**Authority.** Profinium, Inc., in accordance with its procedure, as it may from time to time establish, shall transfer funds from a Customer account to any other account, whether such other account is with Profinium,

Inc. or another financial institution, in accordance with instructions received from Customer Representatives, subject to the authority granted to such Customer Representatives or in accordance with Profinium, Inc.'s Cash Management Agreement and Enrollment Form. Profinium, Inc. shall execute such wire transfer instructions in any order convenient to Profinium, Inc. and shall select such means and routes for the transfer of funds, as Profinium, Inc., in its sole discretion, considers appropriate under the circumstances.

**Security Procedures.** Customer acknowledges receipt of Schedule A, and Customer and Profinium, Inc. agree that the Security Procedures are commercially reasonable. Customer further acknowledges that the full scope of the Security Procedures, which Profinium, Inc. offers and strongly recommends for wire transfers, is available only if Customer communicates directly with Profinium, Inc.'s Customer Service Representatives either by telephone or electronic means. If Customer attempts to communicate by any other method or otherwise not in accordance with the Security Procedures, Profinium, Inc. shall not be required to execute such instructions, but if Profinium, Inc. does so, Customer will be deemed to have refused the Security Procedures that Profinium Inc offers and strongly recommends, and Customer will have agreed to be bound by any wire transfer, whether or not authorized, which is issued in Customer's name and accepted by Profinium, Inc. in good faith. Profinium, Inc. will modify the Security Procedures at such time or times and in such manner, as Profinium, Inc. in its absolute discretion, deems appropriate to meet prevailing standards of good practice. By continuing to use Profinium, Inc.'s wire transfer services after receipt of any modification of the Security Procedures, Customer agrees that the Security Procedures, as modified, are likewise commercially reasonable.

**Verification.** If Profinium, Inc. is unable to verify a wire transfer request pursuant to the Security Procedures within a reasonable time, Profinium, Inc. reserves the right to reject said transfer request. Profinium, Inc. will make a reasonable effort to notify Customer by telephone of such inability to verify and/or rejection; provided, however, that Profinium, Inc. shall not be liable for any failure to provide such notice.

**Processing Date.** Profinium, Inc. will act upon all transfer requests on the Business Day received, when received prior to the cut-off deadlines set by Profinium, Inc., as may be modified from time to time by Profinium, Inc. Profinium, Inc. will not guarantee that transfer requests received after the cut-off deadline will be processed on a same-day basis, but, in any event, such transfer requests will be processed no later than the following Business Day on which wire transfers are processed. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, a Sunday, a public holiday, or any other day on which Banking institutions in the city in which Profinium, Inc. has its principal place of business are generally closed and do not conduct general banking business.

**Delivery Location:** Customer will make provision for the timely transmission or deliver Wire Transfer request to Profinium, Inc. at 105 Lake Ave Fairmont, MN in accordance with the processing and delivery schedules as defined below. Profinium, Inc. shall deliver entries to the Correspondent Bank Wire Processor in a timely manner in accordance with processing and delivery schedules as described below.

**Timing of Delivery:** For same Business-day processing, Customer originating the Wire Transfer request must deliver instructions to Profinium, Inc. by 4:00 p.m. Business day is defined as a day on which the Federal Reserve Bank is open for processing.

**Federal Holiday Schedule (Non-Processing/Non-Business Day):**

- |                        |                  |
|------------------------|------------------|
| New Year's Day         | Labor Day        |
| Martin Luther King Day | Columbus Day     |
| Presidents' Day        | Veterans Day     |
| Memorial Day           | Thanksgiving Day |
| Juneteenth             | Christmas Day    |
| Independence Day       |                  |

**Limits:** The total Wire Transfer dollar amount by Customer to Profinium, Inc. on any single day shall not exceed the approved limit as indicated on the Enrollment Form. Customer must request changes to this limit in writing. Such changes must be approved by Profinium, Inc. Profinium, Inc. may review the limit and change the limit by sending written notice of the change.

**Amendment or Cancellation of Transfers.** Customer shall have no right to amend or cancel a transfer

request after it has been received by Profinium, Inc. However, Profinium, Inc. will make a reasonable effort to act on Customer's request for amendment or cancellation of a transfer request prior to the time that Profinium, Inc. executes such transfer request, but shall have no liability if such amendment or cancellation is not effected.

**Beneficiary Information.** If a transfer request describes the intended beneficiary inconsistently by name and account number, then payment by the beneficiary's Financial Institution might be made on the basis of the account number even if it identifies a person different from the named beneficiary. If the Customer is the originator of a transfer request containing an inconsistent name and account number, and the beneficiary's Financial Institution, including Profinium, Inc., without knowledge of the inconsistency, makes payment on the basis of the account number, the Customer is obligated to pay the amount which is directed to the account number given.

**Available Funds.** Profinium, Inc. may, but shall not be obligated to, act upon a transfer request which exceeds the amount of available funds in Customer's account. If Profinium, Inc. elects to make any transfer that exceeds the amount of available funds; Customer shall be liable for any amount transferred in excess thereof.

**Distribution.** Customer shall be solely responsible for controlling Customer's distribution and safekeeping of, and access to, the Security Procedures, Security code/phrase, repetitive transfer request codes, initial passwords, replacement passwords, telephone numbers and any other confidential code Profinium, Inc. may assign. Pursuant to the Security Procedure, any transfer request accompanied by an appropriate Security Code/Phrase will be deemed made by a Customer Representative.

**Additional Information.** Customer will supply any information Profinium, Inc. may reasonably request evidencing any Customer Representative's authority to transfer funds or do any other act contemplated under the Agreement. Profinium, Inc. shall be entitled to rely upon any written, oral or electronic notice of communication believed by it in good faith to be genuine and to have been signed or given by an authorized employee of Customer, and any such communication shall be deemed signed or given by Customer. Except as otherwise expressly provided for herein. Profinium, Inc. shall not be required to act upon any notice or communication received from Customer, or to provide any notice or communication to Customer with respect to any matter.

**Good Faith.** Customer assumes full responsibility for transfer initiated by a Customer Representative and affected by Profinium, Inc. in good faith and in accordance with this Agreement. Profinium, Inc. shall be conclusively deemed to have discharged its duties to act in good faith and to exercise ordinary care in determining the authenticity of transfer request if it has followed the Security Procedures.

**Notification.** Profinium, Inc. shall be relieved of liability for any transaction, including loss of interest thereon, and customer shall be precluded from asserting any discrepancy or unauthorized transfer if Customer does not review periodic account statements or other advice received from Profinium, Inc. with its records and report any such discrepancy or unauthorized transfer to Profinium, Inc. in writing within thirty (30) calendar days from the date the statement or other advice containing such discrepancy or unauthorized transfer is mailed or otherwise made available to Customer by Profinium, Inc.

**Electronic Banking.** If a dispute arises between Customer and Profinium, Inc. with respect to one or more terms of any transfer request initiated, amended, or confirmed by telephonic communication, then any electronic recording of the telephonic communication maintained by Profinium, Inc. in the ordinary course of business shall be conclusive as to the terms of the transfer request in dispute.

**Liabilities; Indemnification.** Profinium, Inc. shall be required to perform only the services expressly provided for in this Agreement and shall be liable only for losses or damages caused by its failure to exercise ordinary care in the performance of said services. Customer and Profinium, Inc. agree that Profinium, Inc.'s liability, in any, for loss of interest on any funds transaction shall be determined in accordance with the Deposit Account Agreement and Disclosure. In any event, Profinium, Inc. shall not be liable for any special, consequential, incidental, or punitive losses, damages, or expenses (including attorneys' fees) in connection with this Agreement or the services performed hereunder, including, without limitation, losses, damages, or expenses from subsequent dishonors resulting from Profinium, Inc.'s acts or omissions, even if Profinium, Inc. has knowledge of the possibility thereof. Customer shall indemnify, defend

and hold Profinium, Inc. harmless from and against any and all claims, actions, losses, damages, suits, expenses (including attorneys' fees), fines and penalties arising from Profinium, Inc.'s performance of the services as authorized in this Agreement or from any breach of this Agreement or any other act or omission of Customer.

**Force Majeure.** Profinium, Inc. shall have no liability and shall be excused from any act, failure to act or delay in acting if such act, failure or delay is caused in whole or in part by orders or restraints of any kind of government of the United State of America or of any state or their respective departments, agencies, political subdivision, or officials, interruption of transmission or communications facilities, equipment failure, ware, emergency conditions, acts of God, fire, labor disputes, power failure, acts or omission of civil authority, civil disturbance, severe weather conditions, compliance with the Federal Reserve System's payment risk reduction and intra-day net funds position rules and regulations or any present or future rules and regulations of any governmental authority, or any similar or dissimilar cause beyond Profinium, Inc.'s control as long as Profinium, Inc. makes a reasonable effort to remove the effects thereof; provided, however, that the settlement of labor disputes shall be in the sole discretion of Profinium, Inc.

**Notices.** All notices permitted or required by this Agreement shall be in writing and shall be deemed to have been duly given if sent by personal delivery, certified mail return receipt requested, telegram, telex, telecopy, or overnight delivery, addressed as indicated on the enrollment form or to such other address or addresses as the party to receive notice may provide in writing to the other party in accordance with the above notice provisions. Any notice given by any other method shall be deemed given upon receipt thereof.

In the case of notice to       Profinium, Inc.  
  Attn: Operations Department  
  PO Box 848  
  Fairmont MN 56031

**Compensation.** Customer shall compensate Profinium, Inc. for services performed by Profinium, Inc. under this Agreement in accordance with Profinium, Inc.'s current schedule of charges as modified from time to time. Charges for necessary communications links and equipment will be at Customer's expense. Customer shall be responsible for any and all applicable federal, state and local taxes related to said compensation and the performance of services including, but not limited to, sales, use, value added and gross receipts taxes, but excluding property and income taxes of Profinium, Inc.

**Assignment.** Customer may not assign this Agreement or any right or obligations hereunder, and any attempted assignment shall be null and void.

**Independent Contractor.** Profinium, Inc. shall be an independent contractor with respect to its performance under this Agreement. This Agreement shall not constitute either party as an employee, agent, partner or joint venture of the other.

**Captions.** Any paragraph or other captions are inserted for convenience only and shall not be considered a part of or affect the interpretation or construction of any of the provisions of this Agreement.

**Termination.** This Agreement shall remain in full force and effect until terminated by either party by written notice to the other party. Notwithstanding the foregoing, this Agreement shall remain in full force and effect with respect to all transactions hereunder that occur prior to the date of termination.

**Entire Agreement; Amendments.** The Agreement contains the entire agreement of the parties with respect to its subject matter and no oral or prior written statements or representations not incorporated herein shall have any force or effect, nor shall any part of this Agreement be amended, supplemented, waived or otherwise modified except in a writing signed by both Customer and Profinium, Inc., unless otherwise provided herein. In the event performance of the services in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Profinium, Inc. is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Profinium, Inc. shall incur no liability to Customer as a result thereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representative, successors and permitted assigns.



**Governing Law.** This Agreement and the rights and obligations of Customer and Profinium, Inc. shall be governed by the laws of the State of Minnesota; provided, however that the State has not enacted Article 4A of the Uniform Commercial Code (UCC-4A”), this Agreement and the rights and obligations of the Customer and Profinium, Inc. shall also be governed by the 1989 Official Text of UCC-4A. All transfer requests; amendments and cancellations issued to Profinium, Inc. in the name of Customer shall also be subject, where applicable, to Subpart B or Regulation J, 12CFR Part 210. Unless the context requires otherwise, any terms not defined in this Agreement shall have the meanings set forth in UCC-4A.

### **Security Procedures:**

The following options are deemed commercially reasonable security methods for delivery of Wire Transfer requests to Profinium, Inc. Profinium, Inc. will not alter requests upon receipt.

Customer has agreed to a specific security method for delivery of Wire Transfer requests to Profinium, Inc. Profinium, Inc. will not alter requests upon receipt.

Information is transmitted by Internet from Customer’s computer to the Cash Management Server. To maintain security the following security features are in place: 128 bit RC4 encrypted URS, SSL protocol, and Certificate Authority. Additional security features include password protection, multi-factor authentication, inactivity timeout, cache security, exit buttons and lockout after three failed login attempts. Upon receipt of a wire transfer request, a Bank employee other than the individual that received the request will contact the initiator of the wire at the Callback Phone Number to receive final verification by requesting the Callback Password and dollar value of the wire transfer request.

**Profinium strongly recommends a Dual Control process which requires the submission of any wire to be approved by a second authorized user.**

If the Customer does not conform to a commercially reasonable security procedure such as stated above, Profinium, Inc. will not be liable if there is a delivery issue with the file. The Customer assumes all liability unless the Customer can prove Profinium, Inc. caused the loss.

The callback telephone number and password as indicated on the Enrollment Form will be used on all Wire Transfer Requests. The information will remain in effect until changed in writing by an authorized representative of the customer. The customer may also call the Wire Authentication Assistant voice mail at 507-235-7608 to provide authentication information.

### **Profinium, Inc. Originator/ODFI ACH Origination Agreement**

If the customer (“Originator”) has requested that Profinium, Inc. (“ODFI”) permit it to initiate entries to accounts maintained at the Bank and other financial institutions by means of the Automated Clearing House (the “ACH”) operated by the National Automated Clearing House Association, Inc (“NACHA”), then Profinium, Inc. has agreed to do so according to the following Terms and Conditions.

The Originator and the ODFI agree as follows:

**1. Definitions.** Unless defined in this Agreement, capitalized terms shall have the meanings provided in the Rules.

“**ACH**” means a funds transfer system governed by the Rules of the National Automated Clearing House Association which provides for the interbank clearing of electronic entries for participating financial institutions.

“**ACH Operator**” a Federal Reserve Bank that performs the following (in part):

- adhere to these rules (except to the extent inconsistent with the policies or practices of the Federal Reserve Banks) and other applicable laws, regulations, and policies;
- (1) provide clearing, delivery, and settlement services for ACH entries, as defined by the rules, between Participating Financial Institutions that have selected that ACH Operator to perform ACH services (intra-ACH Operator services), and (2) exchange transactions with other ACH Operators (inter-ACH Operator exchange);
- process and edit files based on the requirements of these rules;

- evaluate the credit worthiness of and apply risk control measures to their Participating Financial Institutions;
- adhere to any National ACH Operator Performance Standards of the National Association.

**“Effective Entry Date”** means the date included in any Entry as the date upon or after which such Entry is to be effective.

**“Entry”** means an order or request complying with the requirements of the Rules, except that it shall also include an “On-Us Entry” (1) for the transfer of money to the account of a Receiver (a “credit entry”), (2) for the withdrawal of money from the account of a Receiver (a “debit entry”), (3) a zero dollar entry.

**“On-Us Entry”** means a debit or credit Entry to an account maintained at the ODFI.

**“On-Line”** refers to use of the Internet website designated by ODFI used to transmit or receive electronic transactions, instructions, notices or other communication but does not include transmissions by telephone, fax, in person, regular mail, express mail or e-mail.

**“Originating Depository Financial Institution”** or **“ODFI”** A Participating Depository Financial Institution is an ODFI with respect to entries (1) it transmits directly or indirectly to its ACH Operator for transmittal to an RDFI, and (2) on which it is designated as the ODFI in accordance with Appendix Two (ACH Record Format Specifications) of the Rules.

**“Originator”** means a person or entity that has authorized an ODFI to send or transmit, for the account of that person, (i) a credit entry to the account of a Receiver with an RDFI, in order to effect a payment from that person to the Receiver, or (ii) a debit entry to the Receiver’s transaction account with an RDFI, in order to effect a payment from the Receiver to that person.

**“Receiver”** means a person that has authorized an Originator to initiate (1) a credit entry to the Receiver’s account with an RDFI, or (2) a debit entry to the Receiver’s transaction account with an RDFI. With respect to debit entries, the term “Receiver” shall be deemed to mean all persons whose signatures are required to withdraw funds from an account for purposes of the warranty provisions of the Rules.

**“Receiving Depository Financial Institution”** or **“RDFI”** A Participating Depository Financial Institution is an RDFI with respect to entries (1) it receives from its ACH Operator for debit or credit to the accounts of Receivers, and (2) on which it is designated as the RDFI in accordance with the Rules.

**“Rules”** means the rules of the National Automated Clearing House Association and Appendices to the rules of the National Automated Clearing House, as amended from time to time.

## **2. Applicable Agreements.** This Agreement governs Originator’s use of ACH Origination.

Originator’s access to and use of ODFI’s On-Line services shall be governed by the applicable electronic access agreement(s), as amended from time to time, between Originator and ODFI. In the event of conflict between this Agreement and any other Agreement with ODFI, this Agreement shall prevail, unless otherwise provided herein.

## **3. Compliance with the Rules and Applicable Law.** The Originator’s rights and obligations with respect to any Entry are governed by the Rules, this Agreement and applicable law. The current annual copy of the Rules is available for viewing at [www.nachaoperatingrulesonline.org](http://www.nachaoperatingrulesonline.org).

The Originator agrees to comply with and be bound by the Rules. The Originator agrees to comply with applicable state and federal law or regulation and Originator warrants that it will not transmit any Entry that violates the laws of the United States, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC), sanctions or executive orders.

## **4. Transmittal of Entries and Security Procedures.**

- The Originator shall transmit debit or credit Entries to the ODFI in accordance with the Rules, this Agreement, and Attachment 1 to this Agreement. The Originator shall comply with the security procedures described in Attachment 2 to this Agreement. Originator acknowledges that the security procedures are for verification of authenticity and not to detect errors in the Entry.
- The Originator shall prevent and safeguard against unauthorized transmissions, disclosures and access to the following (all of which are referred to herein as “Security-related Items”): information (including but not limited to security procedures, instructions, passwords and user identifications), systems and equipment that interface with, connect to or allow access to the ODFI, its information, systems and equipment. The Originator shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to Security-related Items. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in this Agreement and in the Rules.

- c) The Originator warrants that no individual will be allowed to initiate transfers without proper supervision and safeguards and agrees to take all reasonable steps to maintain confidentiality of the security procedures and any related security features. If Originator knows or believes that an unauthorized individual has transmitted or attempted to transmit one or more Entries or that the security procedures have otherwise been compromised, Originator agrees to immediately notify the ODFI and agrees that any Entry received by ODFI before or within a reasonable time after such notice to the ODFI shall be treated as authorized by Originator.
- d) The Originator hereby authorizes the ODFI to transmit any Entry received by the ODFI from the Originator in accordance with the Rules and the terms of this Agreement and to credit or debit the amount of such Entry to the accounts specified by Originator.
- e) The Originator is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Originator's possession or under Originator's control. The ODFI is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at the Originator's own discretion and risk, and the ODFI is not responsible for any damage to Originator's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise. The Originator is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to the Originator's operating systems, and for protecting, securing, and backing up any data and information stored in or on the Originator's operating systems. The ODFI is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on the Originator's operating systems or accessed through an Internet connection.
- f) The Originator acknowledges and agrees that it is the Originator's responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). The Originator agrees to educate User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. The Originator acknowledges that ODFI will never contact the Originator by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event the Originator receives an e-mail or other electronic communication that the Originator believes, or has reason to believe, is fraudulent, the Originator agrees that neither Originator nor its User(s), agents, and employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. The Originator agrees that the ODFI is not responsible for any losses, injuries, or harm incurred by the Originator as a result of any electronic, e-mail, or Internet fraud.
- g) In the event of a breach of the Security Procedure, the Originator agrees to assist the ODFI in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing the ODFI or the ODFI's agent access to Originator's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. The Originator further agrees to provide to the ODFI any analysis of such equipment, device, or software or any report of such analysis performed by the Originator, the Originator's agents, law enforcement agencies, or any other third party. Failure of the Originator to assist the ODFI shall be an admission by the Originator that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of the Originator or who obtained information facilitating the breach of the Security Procedure from the Originator and not from a source controlled by the ODFI.

**5. Originator's Representations, Warranties and Agreements.** Originator represents and warrants that each Entry provided to the ODFI complies in all respects with the Rules. Originator acknowledges and agrees that, pursuant to the Rules, the ODFI makes certain warranties to the ACH Operator and other RDFIs and that such warranties are made in reliance on: (i) the representations and warranties of the Originator, including but not limited to those contained in this section 4 of this Agreement and (ii) Originator's agreement to be bound by the Rules and applicable law. The Originator shall indemnify the ODFI against any loss, liability or expense (including attorneys' fees and expenses) resulting from, related to or arising out of: (i) any breach of the Originators' warranties or this Agreement; (ii) Originator's failure to exercise ordinary care in connection with its duties hereunder; (iii) any action by the Receiving Depository Financial Institution ("RDFI") upon an unauthorized or erroneous Entry initiated by the Originator; (iv) any

actions by a service provider or agent of the Originator that results in a breach of this Agreement by the Originator; (v) to the extent that it involves the ODFI, any litigation by an ACH Operator, an RDFI or any Company Receivers asserting noncompliance on the Originator's part with the Rules, laws, regulations or regulatory requirements. Without limiting the foregoing, Originator warrants:

Each Entry is authorized pursuant to the Rules and the authorization has not been revoked;

Each credit Entry is timely and accurate;

Each debit Entry is for a sum which, on the Settlement Date will be due and owing to the Originator from the party whose account will be debited, is for a sum specified by such party or is to correct a previously transmitted erroneous credit Entry;

Written authorizations for consumer entries will be retained by Originator for a period of no less than two (2) years after the revocation or cessation of the authorization.

No Entry has been reinitiated in violation of the Rules.

The Originator has used commercially reasonable procedures to verify that all information contained in an Entry, including but not limited to routing numbers, is accurate and valid

This Agreement has been duly and properly authorized by the Originator, the party executing this Agreement is properly authorized on behalf of the Originator to execute this Agreement on its behalf, and this Agreement is enforceable by the ODFI in accordance with its terms.

**6. ODFI Obligations.** Subject to Section 8 of this Agreement, the ODFI shall, in accordance with the Rules, process, transmit, and settle for any authorized Entry. The ODFI shall have no obligation to transmit an Entry if the Originator fails to comply with any terms of this Agreement. The ODFI shall rely on any and all information it receives from an Authorized Representative of the Originator, as set forth in the Agreement, Enrollment Form, schedules and attachments, and any person the ODFI, in good faith, reasonably believes to be acting on behalf of the Originator, whether or not such person was authorized by the Originator.

**7. Originator's Account.** The Originator will maintain a deposit account(s) (the "Account") with the ODFI at all times during the term of this Agreement. The Originator shall at all times maintain a balance of available funds in the Account sufficient to cover Originator's obligations under this Agreement. If collected balances in the Account are insufficient to cover the aggregate amount of Entries, the ODFI shall have no obligation to transmit such Entries. The Originator authorizes the ODFI to debit its Account for any amount it owes the ODFI as a result of this Agreement.

**8. Prefunding.** The ODFI reserves the right to require the Originator to pre-fund an account maintained at the ODFI prior to the Settlement Date of the ACH file. The ODFI shall determine whether pre-funding is required based on criteria established from time to time by the ODFI. The ODFI will communicate directly to the Originator if pre-funding is required and, if requested by the Originator, will provide the Originator with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, the Originator will provide immediately available and collected funds sufficient to pay all Entries initiated by the Originator.

**9. Exposure Limits.** The Originator shall comply with the exposure limits as set forth in **the Enrollment Form**. Such limits may be modified from time to time by ODFI at its sole discretion with notice to the Originator.

**10. Due Diligence.** The Originator will supply the ODFI with due diligence information when requested. This information may include, but is not limited to, financial data, names and other information concerning the principles of the Originator, information about the business in which the Originator participates, information regarding the creditworthiness of the Originator, projected return rates, and payment history. The ODFI may, in its reasonable discretion, conduct a limited review of the Originator's operations to ensure compliance with the provisions of this Agreement. Where the ODFI reasonably believes that Originator's financial condition is impaired or deteriorating, the ODFI may refuse to process any Entries or may require prefunding of all Entries

**11. Cancellation or Amendment of an Entry.** The Originator shall have no right to cancel or amend any Entry after its receipt by the ODFI. However, the ODFI shall use reasonable efforts to act on a request by the Originator to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with the security procedures described on Attachment 2 to this Agreement. The ODFI shall have no liability if it fails to effect the cancellation. Originator shall reimburse,

indemnify and hold harmless the ODFI for any expenses (including attorneys' fees), losses or damages the ODFI incurs in effecting or attempting to effect Originator's request for the cancellation of an Entry.

**12. Rejection of Entries.** The ODFI may reject any Entry, including an On-Ups Entry, which does not comply with the requirements of Attachment 1 or Attachment 2 of this Agreement and may reject any Entry if the Originator is not otherwise in compliance with the terms of this Agreement or the Rules. The ODFI shall notify the Originator in accordance with Attachment 1 of such rejection no later than the business day such Entry would otherwise have been transmitted by the ODFI to the ACH Operator or, in the case of an On-Ups Entry, the day prior to the Effective Entry Date. Notices of rejection shall be effective when given. The ODFI shall have no liability to Originator by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

**13. Provisional Credit Notice.** In the case of a credit Entry, credit given by the RDFI for the Entry is provisional until the RDFI has received final settlement through Federal Reserve Bank or has otherwise received payment. If the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver for credit to the Receiver's account, and Originator will not be considered to have paid the amount of the credit Entry to the Receiver.

**14. Reversals.** If the Originator has mistakenly initiated a duplicate Entry or File or a File contains an Entry or Entries with the types of erroneous data specified in the Rules relating to reversing files, the Originator may reverse the File or Entry pursuant to the Rules. If the Originator reverses an Entry or File, Originator shall indemnify the ODFI against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.

**15. Notice of Returned Entries/Notifications of Change.** The ODFI shall notify the Originator in accordance with Attachment 1 of the receipt of a returned Entry/notification of change from the ACH Operator no later than one business day after the business day of such receipt. The ODFI shall have no obligation to re-transmit a returned Entry if the ODFI complied with the terms of this Agreement with respect to the Entry.

- a. Upon receipt of a Notification of Change (NOC), the correction will be made by the Originator within six (6) banking days or prior to the next live transaction, whichever is later
- b. Upon receipt of a return Debit Entry with a return reason code of R07 (authorization revoked) or R10 (customer advises not authorized), the Originator will cease transmission of said entry until a new authorization has been signed by the customer (R07) or until corrections have been made or an authorization has been obtained (R10).

**16. Entries Returned as Unauthorized.** In the event that an Entry is returned as unauthorized or authorization revoked, the Originator will contact the necessary parties and resolve any dispute. During this process the Originator may ask the ODFI to request from the RDFI a copy of the "Written Statement Under Penalty of Perjury." The ODFI will make its best effort to obtain the form and will deliver it to the Originator when received. The Originator agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer reauthorized the Entry or Entry stream.

**17. Unauthorized Rate.** In the event the rate of unauthorized transactions exceeds 0.5% based on the calculations noted in the Rules the Originator will share the data requested by the ODFI based on the Rules and will immediately begin the process of bringing the rate below 0.5%.

**18. Periodic Statement.** The periodic statement issued by the ODFI for the Originator's account will reflect Entries credited and debited to the account. The Originator agrees to notify the ODFI within a reasonable time not to exceed thirty (30) calendar days after the receipt of said periodic statement of any discrepancy between the Originator's records and the information in the periodic statement. If the Originator fails to notify the ODFI of any such discrepancy within thirty (30) days after receipt of such periodic statement, the Originator shall be precluded from asserting any claim against the ODFI arising from such discrepancy

**19. Fees.** The Originator agrees to pay the ODFI for services provided under this Agreement in accordance with the schedule of charges. The ODFI may change its fees from time to time upon notice to the Originator.

**20. Financial Information and Audit.** The ODFI may from time to time request information from the Originator in order to evaluate a continuation of the service to be provided by the ODFI hereunder and/or

adjustment of any limits set by this agreement. The Originator agrees to provide the requested financial information immediately upon request by the ODFI, in the form required by the ODFI. The Originator authorizes the ODFI to investigate or reinvestigate at any time any information provided by Originator in connection with this agreement or the service. Upon request by the ODFI, the Originator hereby authorizes the ODFI to enter the Originator's business premises for the purpose of ensuring that the Originator is in compliance with this Agreement and Originator specifically authorizes the ODFI to perform an audit of the Originator's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. The Originator hereby acknowledges and agrees that the ODFI shall have the right to mandate specific internal controls at the Originator's location(s) and Originator shall comply with any such mandate. In addition, the Originator hereby agrees to allow the ODFI to review available reports of independent audits performed at the Originator location related to information technology, the service and any associated operational processes. The Originator agrees that if requested by the ODFI, the Originator will complete a self-assessment of Originator's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by ODFI in an audit of Originator. If the Originator refuses to provide the requested financial information, or if ODFI concludes, in its sole discretion, that the risk of the Originator is unacceptable, if the Originator violates this agreement or the rules, or if the Originator refuses to give the ODFI access to Originator's premises, ODFI may terminate the Service and this Agreement according to the provisions hereof.

**21. Liability.** In the performance of the services required by this Agreement, ODFI shall be entitled to rely solely on the information, representations and warranties provided by Originator pursuant to this Agreement, and shall not be responsible for the accuracy or completeness of such information. Except as otherwise specifically provided by law, the ODFI shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only in the event of loss due to its gross negligence or willful misconduct in performing those services. In no event shall the ODFI have any liability for any consequential, special, incidental, punitive or indirect damages which the Originator may incur or suffer in connection with this Agreement whether or not the likelihood of such damages was known or contemplated by the ODFI and regardless of the legal or equitable theory of liability the Originator may assert. Without limiting the foregoing, the ODFI shall not be liable for and shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communications facilities, equipment failure, war, acts of terror, emergency conditions or other conditions beyond the ODFI's control. To the extent allowed by law, the ODFI shall not be liable for and shall be excused from failing to transmit or any delay in transmitting an Entry (i) if such transmittal would result in the ODFI's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines; (ii) if, for any reason, the ACH Operator fails or declines to process an Entry; (iii) if, in the ODFI's sole discretion, processing an Entry would violate or contribute to the violation of any present or future risk control program of the Federal Reserve or any Rule, law, regulation or regulatory requirement; or (iv) if processing an Entry, in the ODFI's sole discretion, would cause it to engage in an unsafe and unsound practice.

**22. Credit and Debit Entries; Record Retention.** The Originator shall obtain an authorization ("Authorization Agreement") as required by the Rules from the person or entity whose account will be debited or credited as the result of a debit or credit Entry initiated by the Originator and the Originator shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Upon request, the Originator shall furnish the original or a copy of the authorization to any affected Participating Depository ODFI, as defined in the Rules.

**23. Rules Enforcement.** In the event that a Report of Possible Rules Violation is filed on the Originator, the Originator will take appropriate steps to correct the problem within the time frames suggested by the ODFI. In the event that a fine is levied against the ODFI for a violation of the Rules, the Originator agrees to make the ODFI whole for the value of the fine.

**24. Inconsistency of Name and Account Number.** The Originator acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person different from the named Receiver, and the Originator's obligation to pay the amount of the Entry to the ODFI is not excused in such circumstances.



**25. ACH Rule Compliance Review.** The Originator agrees to review its compliance with the ACH Rules on a periodic basis. The ODFI has a right to request the details of the review.

**26. Miscellaneous.** The ODFI may amend the terms of this Agreement from time to time upon 30 calendar days written by notice to the Originator. ODFI may terminate this Agreement at any time for any reason, in its sole discretion, without liability. The Originator may terminate this Agreement upon ten (10) days' written notice to the ODFI except that the Originator may terminate the Agreement immediately if the terms of the Agreement are materially breached by the ODFI. Any termination of this Agreement shall not affect any of the ODFI's rights and the Originator's obligations with respect to Entries initiated by the Originator prior to the effective time of such termination, or the payment of obligations of the Originator with respect to services performed by the ODFI prior to the effective time of such termination, or any other obligations that shall survive termination. The provisions of this Agreement that are necessary to give effect to the purposes of this Agreement shall survive its termination. The ODFI may assign this Agreement or any of its rights and duties hereunder without prior notice to or consent by Originator, but the Originator may not assign this Agreement or any of the rights or duties hereunder to any person without the ODFI's prior written consent. This Agreement shall be governed by and construed in accordance with the law of the state of Minnesota. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**27. Recording and Use of Communications.** The Originator and the ODFI agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. The ODFI shall not be obligated to make such recordings.

**28. Entire Agreement.** This Agreement (including the Enrollment Form and Attachments, all of which are incorporated herein by reference) is the complete and exclusive statement of the agreement between the ODFI and the Originator with respect to the subject matter hereof and supersedes any prior agreement(s) between the ODFI and the Originator with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement, or the Attachments or any agreements governing the Account, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the ODFI is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and the ODFI shall incur no liability to the Originator as a result of such violation or amendment. No course of dealing between the ODFI and the Originator will constitute a modification of this Agreement or constitute an agreement between the ODFI and the Originator regardless of whatever practices and procedures the ODFI and the Originator may use.

**29. Delivery of Files. Delivery Location:** Originator will make provision for the timely transmission or delivery of ACH files to the ODFI in accordance with the processing and delivery schedules as defined below. The Company's Authorized User(s) will access the ACH processing system within the Financial Institution's Internet banking service program at [www.profinium.com](http://www.profinium.com). The ODFI shall deliver entries to the Correspondent Bank ACH Processor in a timely manner based on the Effective Date of Entries contained in the Files and in accordance with processing and delivery schedules as described below.

**Format and Content of Entries:** Originator will create files based on the NACHA format. Originator may refer to Appendix Two in the ACH rules book for specific formats.

**Acknowledgement of delivery:** Upon approval of an ACH batch, an Alert email will be transmitted to the Originator. Upon delivery of an ACH file, confirmation of the file status is displayed within Cash Management to the Originator. The status of the file will show as "Initiated". When the settlement is complete, the file will show as "Processed". The status of ACH files is available by viewing ACH History. Detail reports of ACH files can be created and viewed or printed at any stage of the process.

**Timing of Delivery:** The Originator originating the credit/debit ACH file must deliver to The ODFI by 4:00 p.m. one "Business day" (a day on which the Federal Reserve Bank is open for processing) prior to the

requested effective date unless other arrangements have been made.

**Federal Holiday Schedule (Non-Processing/Non-Business Day):**

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
President's Day	Veteran's Day
Memorial Day	Thanksgiving Day
Juneteenth	Christmas Day
Independence Day	

**30. Limits:** The total dollar amount of Entries transmitted by Originator to the ODFI on any single day shall not exceed the amount specified in the Enrollment form. Customer must request changes to this limit in writing. Such changes must be approved by Profinium, Inc. The ODFI may review the limit set forth in the preceding sentence and change the limit by sending written notice of the change.

**31. Notice by ODFI:** If an Entry is rejected or returned, the ODFI shall notify the Originator by sending a secure message through the Cash Management system to the Originator. The ODFI recommends the Originator enable the alert feature to receive notification when a secure message from the ODFI is sent to the online inbox.

**32. ACH Origination Services Offered:** Approved ACH services include:  
PPD-Prearranged Payment and Deposit Entry  
CCD-Corporate Credit and Debit Entry  
**Not Offered** - ARC, BOC, CIE, CTX, IAT, POP, RCK, TEL, WEB

**33. Security Procedures:** Originator has agreed to a specific security method for delivery of Files to the ODFI. The ODFI will not alter files upon receipt.

Information is transmitted by Internet from Customer's computer to the Cash Management Server. To maintain security the following security features are in place: at least 128 bit RC4 encryption or its equivalent, SSL protocol, and Certificate Authority. Additional security features include password protection, multi-factor authentication, inactivity timeout, cache security, exit buttons and lockout after three failed login attempts.

**Profinium strongly recommends a Dual Control process which requires the submission of any ACH file to be approved by a second authorized user.**

### **Positive Pay Agreement**

The Check Reconciliation process (Positive Pay) offers you a simple and convenient way to monitor all checks clearing your accounts.

The Bank and the Customer agree that the positive pay services described below provided by the Bank and used by the Customer shall be subject to the terms and conditions set forth in this Agreement and all other additional agreements between Bank and Customer. In the event of a conflict between this Agreement and any other agreement between the Bank and Customer, this Agreement shall control and supersede the terms of the other agreements you have with the Bank, including, without limitation, any checking account agreement and signature cards for accounts.

You, as Customer, agree to abide by the rules set forth below now in effect or as they may be changed from time to time by the Bank in its discretion. The Bank reserves the right, in its discretion, to change the terms of this Agreement or terminate this Agreement upon written notice to you, the Customer.

**What is Positive Pay?** Positive Pay is an optional cash management tool which you can use to reduce incidents of check fraud on selected accounts at the Bank. The Bank uses a system to review checks presented on your selected account(s) and compares them against a list you supply to the Bank called your "Positive Pay File" (defined below). If a Check is presented that is not on your Positive Pay File, the Bank is not required to endeavor to validate the check.

#### **Definitions.**

**"Account(s)":** means one or more checking accounts at the Bank which you own.

“Authorized Representative” means persons you have authorized us to discuss your Positive Pay file and Positive Pay Exceptions. You must notify us in writing of any change to Authorized Representatives,

“Business Day” means every day between 8:00am and 4:00pm except Saturdays, Sundays, all federal holidays and special Bank holidays which may occur as permitted by the Federal Reserve and our governing regulator.

“Check” means a paper item issued by you on your Account(s) which is signed or otherwise authorized on the paper item by you, and which is business size check, contains a date, check number, payee, face amount for payment, and is in all forms legible. A Check must comply with the Bank’s check printing and MICR specifications, as may be modified from time to time by the Bank. Checks that contain an auxiliary on-us field in the MICR line should be used to prevent a Check from being converted to an ACH debit. An auxiliary on-us field is an optional field of the MICR line of a check/share draft typically found on larger sized Checks and located to the left of the routing number, usually containing the Check serial number.

“Positive Pay File” means a list prepared by you and timely delivered to the Bank which:

- (a) lists all Checks you have issued to date which have not yet been presented to the Bank (updated each Business Day by you), reciting for each Check:
  - (i) the particular Account that the Check will be drawn upon;
  - (ii) the specific Check number for each check;
  - (iii) the date of each Check; and
  - (iv) the face amount of each Check; and
- (b) lists and indicates expressly any voided checks;
- (c) is sent electronically to the Bank via Online Banking.

“Exception” means any of the following:

- a) Checks presented for payment through our in-clearings (deposited items) not matching your Positive Pay File.
- b) Items presented to us for immediate payment (for example cashing a Check at the Bank) not matching your current Positive Pay File.

**Requirements & Procedures, Exceptions.** You, as Customer, must provide to the Bank your Positive Pay File on or before 4:00 pm (Central Standard Time) on the Business Day of the Business Day of a Checks’ issuance. Failure to timely provide your Positive Pay File may result in the Bank being unable to properly process your Positive Pay File. Your delivery of a Positive Pay File must be submitted electronically through the Bank’s secure online Banking system by an Authorized Representative during a Business Day. For Positive Pay to work effectively at its initiation, you must also provide a list of all outstanding Checks on your Account(s) at the time you begin using this Positive Pay service.

The Bank will not be liable for the return of or payment of any Check if we do not receive timely and accurate a Positive Pay File delivered in accordance with this Agreement and as the Bank may directly instruct of you hereafter.

Each Business Day, the Bank will perform an automated review comparing the MICR-encoded information on each Check presented for payment against the Account with the Outstanding File.

Upon timely receipt of a valid Positive Pay File, the Bank will verify and process Checks reviewing them against your Positive Pay File. Any Check presented to us for payment that does not match your Positive Pay File then on record will be an Exception.

You, as the Customer are responsible to review the Reconciliation report each day, research exception items listed, and submit your pay/no pay decisions no later than 10:00 am CST. It is your responsibility to review and make determinations as to the further treatment of your Exceptions by the cut-off time each business day.

**If no decision is made, the Bank shall pay Checks appearing as an Exception to your Positive Pay File. The Bank shall not be liable for damages caused by the payment of any such Check(s).** By signing this Agreement, you waive any and all claims against the Bank with respect to such Check(s) including claims of wrongful dishonor of any such Checks by you or any third party.

You, as Customer, understand, acknowledge and agree that the Bank cannot return Checks that have been cashed over-the-counter prior to the time that you instruct the Bank to return such Checks.

**Software.** The Bank does not currently require that you have any type of accounting software to utilize the

Positive Pay service. However, your Positive Pay Files must be delivered in a format specified by us from time to time.

It is your obligation to provide the Bank with complete and accurate information including checks issued and voided.

**Exceptions Notice.** Each Business Day the Bank will make available to you the information relating to Checks presented for payment against your Account(s) the previous Business Day which (a) have Check numbers that do not match the Check number and information contained in any Check on the Positive Pay File or (b) have check numbers that match check numbers contained on Checks on the Positive Pay File, but have a different dollar amount or other different than such Positive Pay File. The Bank will make the Exceptions Notice available to you electronically via the Bank's Online Banking website and titled Today's Reconciliation Report.

**ACH Entries.** Positive Pay will not stop the payment of Checks that have been converted to ACH entries. ACH Rules prohibit the conversion of business checks as long as they meet the standards published in the ACH Rules. You are responsible for assuring that your Checks meet these standards to utilize our Positive Pay service. You will tell us immediately if you believe or suspect a Check has been improperly converted to an ACH entry.

Businesses that want to prevent their checks from being converted, should issue checks and share drafts that contain an auxiliary on-us field in the MICR line. An auxiliary on-us field is generally used to show the serial number of a check. An auxiliary on-us field is an optional field of the MICR line of a check/share draft typically found on larger sized checks and located to the left of the routing number, usually containing the check serial number. Small consumer-sized checks do not include an auxiliary on us field.

**Quality of Check Documents.** You agree at all times to use high quality Check documents in accordance with the Bank's check printing and MICR specifications. Not using business Checks with high quality MICR ink could result in a large number of Pay Exceptions and errors in the execution of the Positive Pay File notices.

**Notices.**

- a) Except as otherwise expressly provided herein, the Bank shall not be required to act upon any notice or instruction received from you or any other person, or to provide any notice or advice to you or any other person with respect to any matter.
- b) We shall be entitled to rely on any written notice or other written communication believed by us in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. You may add or delete any Authorized Representative by written notice to us signed by at least two (or one, if only one exists) current Authorized Representatives other than that being added or deleted. Such notice shall be effective on the second Business Day following the Business Day of our receipt.
- c) Except as otherwise expressly stated herein, notice from you to the Bank shall be delivered to the Bank in writing to:

Profinium, Inc.  
Attention: Positive Pay Administrator  
PO Box 848  
Fairmont MN 56031

When the Bank is required to give notice to you pursuant to this Agreement, then it shall be sent to you, the Customer, by means of personal, telephonic, electronic email to the address on file for the Customer, or by sending written notice by U.S. Mail or other private delivery service to the Customer at the address set forth next to the Customer's signature below.

Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

**Periodic Statement.** A periodic statement issued by the Bank for your Account will reflect entries credited and debited to your Account(s). You agree to notify us promptly of any discrepancy between your records and the information shown on any such periodic statement. If you fail to notify us within 30 days of receipt of a periodic statement, you agree that we shall not be liable for any other losses resulting from your failure to give such notice. We recommend using our Online Banking to view daily transactions on your account.

**Disclaimer of Warranty.** YOU ACKNOWLEDGE THAT THE POSITIVE PAY FILE MUST BE PROVIDED IN

A READABLE FORMAT TO INTERFACE WITH OUR COMPUTERS AND ELECTRONIC SYSTEMS, AND YOU ASSUME, ACKNOWLEDGE AND ACCEPT THE RISK THAT OUR COMPUTER AND SYSTEMS MIGHT NOT BE OPERATIONAL AT ALL TIMES. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE POSITIVE PAY PROGRAM, OUR COMPUTERS AND ELECTRONIC SYSTEMS OR ITS USE BY YOU AND HEREBY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Liability; Limitations on Liability; Indemnity.**

- a) We, the Bank, shall be responsible only for performing the services expressly provided for in this Agreement during the term of this Agreement, and shall be liable only for our gross negligence in performing those services. In no event and under no circumstances shall maximum damages owed to you by the Bank exceed an amount equal to the fees actually paid by the Customer to the Bank for Positive Pay Services for the then most recent six (6) calendar months. In no event and under no circumstances shall the Bank be liable for actual, indirect or consequential damages. We shall not be responsible for your acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any file received from you) or those of any other person. We are authorized by you to process transactions in accordance with the information that we receive from you including your Positive Pay Files. You shall be solely responsible for the information contained in Positive Pay Files and Exceptions, and any negligence, fraud, malware or other issues arising from your processes and systems, and we shall have no responsibility for erroneous data provided by you. By signing this Agreement, you hereby agree to indemnify and hold us harmless from and against any loss, charge, liability, cost, fee or expense (including attorneys' fees and expenses) we suffer or incur resulting from any lawsuit, claim, arbitration or other action, actual or threatened, arising under or in connection with this Agreement and the services contracted for herein, excluding those lawsuits, claims, arbitrations or other actions arising out of our gross negligence.
- b) In no event shall we be liable for any consequential, special, punitive or indirect loss or damage that you may incur or suffer in connection with this Agreement, including losses or damages from subsequent wrongful dishonor resulting from our acts or omissions pursuant to this Agreement.
- c) We shall be excused from failing to act or a delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, and act of terror, emergency conditions or any other circumstances beyond our control.

**Security.** You are solely responsible for the security of the personal computer and/or wireless device you own and use. Profinium expressly disclaims any responsibility for the security of hardware, software, wireless communication networks or any equipment, facilities or communication channels we do not own or control.

**Amendments.** From time to time, we may amend or terminate any of the terms and conditions contained in this Agreement. Such amendments shall become effective upon receipt of notice by you or such later date as may be stated in our notice to you. If you do not wish to agree to the changes and amendments, you may terminate this Agreement and your participation in the Positive Pay services by delivered written notice to us.

**Termination.** Either we, as the Bank, or you as the Customer may terminate this Agreement at any time. Such termination shall be effective on the second business day following the day of receipt of written notice of such termination or such later date as is specified in that notice. We reserve the right to terminate this Agreement immediately upon providing written notice of such termination to you. Any termination of this Agreement shall not affect any of our rights and your obligations arising prior to such termination, or your payment obligations with respect to services performed by us prior to termination, or any other obligations that survive termination of this Agreement.

**Entire Agreement.** This Agreement, together with the Account Agreement, is the complete and exclusive statement of the agreement between you and us with respect to the subject matter hereof and supersedes any prior agreement(s) between you and us with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which we are subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and we shall incur no liability to you as a result of such violation or amendment. No course of dealing between you and us will constitute a modification of this Agreement or constitute an agreement between you and us, regardless of whatever practices and procedures you and we may use.

**Jury Trial Waiver.** CUSTOMER AND THE BANK EACH ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED, AND THAT THE TIME AND EXPENSE REQUIRED FOR TRIAL BY A JURY MAY EXCEED THE TIME AND EXPENSE REQUIRED FOR TRIAL WITHOUT A JURY. THE PARTIES HERETO, EACH AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH LEGAL COUNSEL OF ITS CHOICE, EACH KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF THE CUSTOMER AND BANK, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR ANY TRANSACTION OR MATTER RELATING TO THIS AGREEMENT OR ANY OF THE OTHER AGREEMENT RELATING TO THE ACCOUNT. THE CUSTOMER REPRESENTS AND WARRANTS TO THE BANK AND AGREES THAT THE CUSTOMER HAS READ ALL OF THIS AGREEMENT AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT.

**Assignment.** You may not assign this Agreement or any of the rights or duties hereunder to any person without our prior written consent. We may assign this Agreement to an affiliate or any successor or assign



## Fee Schedule

Accurate as of May 1, 2024

Cash Management annual fee	\$50.00**
Stop Payment	\$30.00/each
ACH file	\$10.00/each
ACH item	\$0.06/each
Outgoing Wire Transfer	\$30.00/each
Incoming Wire Transfer	\$10.00/each
Positive Pay	\$30.00/month
Remote Deposit Capture Fees	
Monthly service fee	\$35.00
Deposited item fee	\$0.06/each
Scanner Purchase	(price varies)

Service charges may be offset by earnings credit, which is calculated on the average collected balance of the Company Account.

**\*\*Cash Management annual fee cannot be offset by earnings credit**



**FAIRMONT OFFICE**  
105 Lake Avenue  
P.O. Box 848  
Fairmont, MN 56031  
Ph: 507-235-5538  
Fax: 507-235-5501

**OWATONNA OFFICE**  
1080 W Frontage Rd  
Owatonna, MN 55060  
Ph: 507-444-0111  
Fax: 507-444-0112

**TRUMAN OFFICE**  
414 N. 5<sup>th</sup> Avenue E.  
Truman, MN 56088  
Ph: 507-776-2311  
Fax: 507-776-2781

**MANKATO OFFICE**  
100 Warren St. Ste. 100  
Mankato, MN 56001  
Ph: 507-389-8900  
Fax: 507-389-8903