



## ***eCorp Online Banking Access Agreement***

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This Corporate Internet Banking Service Agreement (“Agreement”) is a contract which establishes the rules which cover your electronic access to your accounts at the National Union Bank of Kinderhook ("Bank") through the Internet Banking System ("Premier eCorp"). By using eCorp, you accept all the terms and conditions of this Agreement. Please read it carefully.

The terms and conditions of the deposit agreements and disclosures for each of your Bank accounts as well as your other agreements with the National Union Bank of Kinderhook such as loans, continue to apply notwithstanding anything to the contrary in this Agreement.

This Agreement is also subject to applicable federal laws and the laws of the State of New York (except to the extent this Agreement can and does vary such rules or laws). If any provision of this Agreement is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions. Any waiver (express or implied) by either party of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach. You may not assign this Agreement. This Agreement is binding upon your heirs and The National Union Bank of Kinderhook's successors and assigns. Certain of the obligations of the parties pursuant to this Agreement that by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive termination, cancellation or expiration of this Agreement. This Agreement, together with the Enrollment Form constitutes the entire agreement between you and The National Union Bank of Kinderhook with respect to the subject matter hereof and there are no understandings or agreements relative hereto which are not fully expressed herein.

**Some of the terms set forth in this agreement are governed by the Electronic Funds Transfer Act ("EFT Act") which is only applicable to consumers. Commercial Account holders are not entitled to the rights provided under the EFT Act.**

**Definitions** - As used in this Agreement, the words "we", "our", "us" and "Bank" mean The National Union Bank of Kinderhook. "You" and "your" refer to the “Account Holder” authorized by The National Union Bank of Kinderhook to use eCorp under this Agreement and anyone else authorized by that accountholder to exercise control over the accountholder's funds through eCorp. "Account" or "accounts" means your accounts at The National Union Bank of Kinderhook. "Electronic funds transfers" means ATM withdrawals, preauthorized transactions, point of sale transactions, transfers to and from your Bank accounts using eCorp including bill payments. "eCorp Services" means the services provided pursuant to this Agreement, including the Bill Payment Service. "Business days" means Monday through Friday. Holidays are not included.

**Access** - To use eCorp, you must have at least one account at The National Union Bank of Kinderhook, acquire the computer hardware and software required to access eCorp, access to Internet service, a web browser that provides encryption using a 128-bit key, and an e-mail address. It is your responsibility to maintain and upgrade your computer equipment for your use of eCorp. The National Union Bank of Kinderhook is not responsible for equipment failure or malfunction on your computer, any computer virus that may affect your computer or other problems that may occur, directly or indirectly, from your use of eCorp. eCorp can be used to access only the Bank accounts which you have designated for access by eCorp in your Account Authorization Form. You can add or delete any of your Bank accounts from this Agreement by completing a new Account Authorization Form. Access to your accounts through eCorp will be based upon the identification of users and authority levels specified by you in your Enrollment Form. We

undertake no obligation to monitor transactions through eCorp to determine that they are made on behalf of the accountholder.

**eCorp Services** - You can use eCorp to check the balance of your Bank accounts, view Bank account histories, transfer funds between your Bank accounts, make stop payment requests, view checks, make wire and ACH transfers and pay bills from your Bank accounts (via the optional online bill payment service). **Balance and activity information is available as of the current business day as transactions are posted.**

**Hours of Access** - You can use eCorp seven days a week, twenty-four hours a day, although some or all eCorp services may not be available occasionally due to emergency or scheduled eCorp maintenance.

**Accessing Your Account** - We will provide you with a set of instruction to access your account.

**Security** - You understand the importance of your role in preventing misuse of your accounts through eCorp and you agree to promptly examine your periodic statement for each of your Bank accounts as soon as you receive it. You agree to protect the confidentiality of your account and account number, and your personal identification information, such as your driver's license number and social security number. You understand that personal identification information alone, or together with information related to your account, may allow unauthorized access to your account. Your password and login ID are intended to provide security against unauthorized entry and access to your accounts. Data transferred via eCorp is encrypted in an effort to provide transmission security and eCorp utilizes identification technology to verify that the sender and receiver of eCorp transmissions can be appropriately identified by each other. Notwithstanding our efforts to insure that the eCorp system is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing Premier eCorp, or e-mail transmitted to and from us, will not be monitored or read by others.

**Fees and Charges** – You agree to pay any fees and charges set forth in the Bank's current fee schedule. You agree that all such fees and charges will be deducted from the The National Union Bank of Kinderhook checking account designated as the "Primary Checking Account" on your Enrollment Form. If you close your Primary Checking Account, you must contact us immediately to designate another account as your Primary Checking Account. You agree to pay any additional reasonable charges for services you request which are not covered by this Agreement. You are also responsible for telephone and Internet service fees you incur in connection with your use of eCorp. You agree to pay charged assessed to the Bank for unauthorized entries that you originate.

**Balance Reporting** - The National Union Bank of Kinderhook shall provide you, subject to the terms and conditions contained in the Agreement, with the service(s) that you requested as specified on the **eCorp Enrollment Form** which is made a part of this Agreement. The National Union Bank of Kinderhook shall provide prior day and memo post balance and transaction information on your account(s). The National Union Bank of Kinderhook shall not be responsible for the accuracy and timeliness of the delivery of any information furnished to the eCorp system by other reporting banks.

**Book Transfer** - You agree that given the size, type and frequency of the intra-Bank transfers, which you intend to make, the following procedures are commercially reasonable. You agree that The National Union Bank of Kinderhook may solely rely on these procedures to verify the authenticity of your transfer requests. You agree to be bound by any transfer requested in its name and which is in compliance with such procedures whether actually authorized or not. The procedures are as follows:

**A.** You are responsible for the input and verification of all information onto the eCorp system. The National Union Bank of Kinderhook shall have no responsibility to determine the accuracy of such information. Should there be any conflict between account number and account name, the account number shall prevail. The National Union Bank of Kinderhook shall be entitled to rely upon any book transfer request reasonably believed by The National Union Bank of Kinderhook to have been input by you or your authorized users specified in the Enrollment Form.

**B.** The National Union Bank of Kinderhook cut-off time for book transfer requests is 5:00 p.m. (EST), after which time such requests will be processed the next business day.

**C.** The National Union Bank of Kinderhook may, in its sole discretion, reject any transfer request if there are insufficient Available Collected Funds in your authorized account(s) as specified on your Enrollment Form; or the transfer request (1) is not authenticated to The National Union Bank of Kinderhook's satisfaction or which The National Union Bank of Kinderhook, in good faith, believes may not be authorized by you; (2) contains incorrect, incomplete or ambiguous information; or (3) involves funds subject to a lien, hold, dispute or legal process which prevents their withdrawal. The National Union Bank of Kinderhook shall incur no liability for any loss to you or to any third person occasioned by The National Union Bank of Kinderhook's refusal to make such transfer.

**D.** The National Union Bank of Kinderhook shall not be responsible for any loss or liability arising from: Your negligence or breach of this Agreement; any ambiguity or inaccuracy in any book transfer request or in the information set forth in this Agreement given to The National Union Bank of Kinderhook by you; or from any error, failure or delay in the execution of a book transfer, including without limitation any inoperability of computer or communication facilities, or other circumstances beyond the Bank's reasonable control.

**Limitations** - With a Savings account and Money Market account you may make six (6) transfers from your account each four (4) week or similar period, if by preauthorized or automatic transfer, or telephone (including date transmission) agreement, order or instruction. Three (3) of these transfers may be made by check, draft, debit card or similar order (including POS transactions), made by the depositor and payable to third parties. Transfers and withdrawals made in person, by messenger, by mail or at an ATM are unlimited. If a hold has been placed on deposits made to an account from which you wish to transfer funds, you cannot transfer the portion of the funds being held until the hold expires.

**Posting of Transfers** - Transfers initiated through eCorp before 5:00 p.m. (EST) on a business day are posted to your account the same day. Transfers completed after 5:00 p.m. (EST) on a business day, Saturday, Sunday or banking holiday, will be posted on the next business day. eCorp identifies transfers based upon the login ID of the user who made the electronic transfer. You agree to communicate with any

other persons with authorized access to your accounts concerning any transfers from your accounts in order to avoid overdrafts.

**Overdrafts (Order of Payments, Transfers, and other Withdrawals)** - If your account has insufficient funds to perform all electronic fund transfers you have requested for a given business day, then:

**A.** Electronic funds transfers involving currency disbursements, like ATM withdrawals, will have priority;

**B.** Electronic fund transfers initiated through eCorp which would result in an overdraft of your account may, at our discretion, be canceled;

C. In the event the electronic fund transfers initiated through eCorp which would result in an overdraft of your account are not canceled, overdraft charges may be assessed pursuant to the terms of the deposit agreement for that account.

**Online Bill Payments Service [if applicable]** – When you access Bill Payment(s) Services through eCorp, you will be required to accept the *Terms and Conditions of the Bill Payment Service*.

**Stop-Payment Requests** - eCorp allows you to: (1) place a stop payment order request of up to six (6) months in duration; (2) cancel an existing stop payment order; or (3) determine the paid status of a check. Any stop payment placed on the eCorp six (6) months from date of the placement of the stop payment order by you.

A. You agree to indemnify The National Union Bank of Kinderhook against any loss for the amount of said check and all expenses, costs and consequential damages, if any, incurred by The National Union Bank of Kinderhook because of refusing payment pursuant to your stop payment order. You agree not to hold The National Union Bank of Kinderhook liable on account of payment contrary to your stop payment order if same occurs through inadvertence, accident or oversight, or if by reason of such payment other items drawn by the undersigned are returned insufficient. You agree that any stop payment placed on any check issued on your accounts designated on the Enrollment Form may be relied upon by The National Union Bank of Kinderhook to have been placed by an agent of you duly authorized to place the stop payment, and The National Union Bank of Kinderhook shall have no duty or obligation to verify either the authenticity of the stop payment order request or the authority of the person placing it.

B. Stopping the payment of a check is different from the cancellation of a bill payment. Once the bill payment has been debited from your account, you CANNOT cancel or stop a bill payment which has been paid electronically.

C. You may initiate stop-payment requests online via eCorp only for paper checks you have written (non-electronically) on your The National Union Bank of Kinderhook accounts (not bill payer paper drafts.) **Online stop-payment requests received by 5:00 will be processed the same day. Requests received after 5:00 will be processed on the next business day.** To be effective, this type of stop-payment request must precisely identify the account number, name of the payee, the check number and the amount of the check. The National Union Bank of Kinderhook shall have no responsibility to determine the accuracy of such information. The National Union Bank of Kinderhook shall provide you notice of the actual stop payment of a check by making such information accessible to you online via eCorp.

D. If you make your stop-payment request online or by telephone, we may also require you to put your request in the form of a paper writing and get it to us within 14 days after you call. You will incur stop-payment charges as disclosed in the current fee schedule (contact your local Kinderhook Bank branch for a list of account fees.) for the applicable account.

**Preauthorized Electronic Fund Transfers** - Right to Stop Payment and procedures for doing so. If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how: Call us at (518) 758-7101, or write us at The National Union Bank of Kinderhook, Electronic Banking Dept., One Hudson St. Kinderhook, NY 12106, in time for us to receive your request three (3) business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within fourteen (14) days after you call. See your current fee schedule or contact your branch representative for current stop payment charges.

- Notice of varying amounts: If these regular payments vary in amounts, the person you are going to pay will tell you, ten (10) days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

- Liability for Failure to Stop Payment of Preauthorized Transfer: If you order us to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**Wire Transfer Requests** - If you and your authorized representatives listed on the Enrollment Form desire to originate wire transfer of funds and the Bank is willing to act as your originating and receiving Bank for that purpose, but only with respect to those payment orders of yours which the Bank originates and accepts, then you will need to sign the Wire Transfer Agreement. **(Please contact our Internet Banking Department at (518)758-7101 for a copy of the Wire Transfer Agreement).**

**Automated Clearing House Requests** - If you and your authorized representatives listed on the Enrollment Form desire to originate Automated Clearing House (ACH) transactions (referred to herein as "Entries") through Financial Institution for deposit or withdrawal of funds to and from the accounts of your certain customers and other parties ("Customers") maintained at the Bank and other Participating Institutions ("Accounts"), then you will need to sign the Agreement to Perform Automated Clearing House Services. **(see attached if applicable)**

**Disclosure of Account Information and Transfers** - You understand information about your accounts or the transfers you make may automatically be disclosed to others. For example, tax laws require disclosure to the government of the amount of interest you earn, and some transactions, such as large currency and foreign transactions, must be reported to the government. We may also provide information about your accounts to persons or companies we believe would use the information for reasonable purposes, such as when a prospective creditor seeks to verify information you may have given in a credit application or a merchant calls to verify a check you have written. In addition, we routinely inform credit bureaus when accounts are closed because they were not handled properly. We may also seek information about you from others, such as the credit bureau, in connection with the opening or maintaining of your account or in connection with approving your access to eCorp. You agree and hereby authorize all of these transfers of information.

**Confidentiality** - We will disclose information to third parties about your account or the transfers you make:

- Where it is necessary for completing transfers;
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- In order to comply with government agency or court orders, or
- If you give us your written permission.

**Periodic Statements** - You will not receive a separate eCorp statement. Transfers to and from your accounts using eCorp will appear on the respective periodic paper statements for your The National Union Bank of Kinderhook accounts.

**Unlawful Internet Gambling**

In accordance with the requirements of the **Unlawful Internet Gambling Enforcement Act of 2006**, restricted *transactions* are prohibited from being processed through your account or relationship with Kinderhook Bank. Restricted Transactions are transactions in which a person or company accepts credit, funds, instruments or other proceeds from another person or company in connection with unlawful Internet Gambling. When Kinderhook Bank has "actual knowledge" of customer participating in restricted transactions, Kinderhook Bank may use judgment to deny access to the bill payment feature and/or close your online banking account.

**Change in Terms** - We may change any term of this Agreement at any time. If the change would result in increased fees for any eCorp service, increased liability for you, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amount of transfers, we agree to give you notice at least 30 days before the effective date of any such change, unless an immediate change is necessary to maintain the security of an account or our electronic fund transfer system. We will post any required notice of the change in terms on the National Union Bank of Kinderhook web site or forward it to you by e-mail or by postal mail. If advance notice of the change is not required, and disclosure does not jeopardize the security of the account or our electronic fund transfer system, we will notify you of the change in terms within 30 days after the change becomes effective. Your continued use of any or all of the subject eCorp Services indicates your acceptance of the change in terms. We reserve the right to waive, reduce or reverse

charges or fees in individual situations. You acknowledge and agree that changes to fees applicable to specific accounts are governed by the applicable deposit agreements and disclosures.

**In Case of Errors or Questions about Your Electronic Transfers, including Bill Payments** -Telephone us at (518) 758-7101, or write us at the National Union Bank of Kinderhook, Electronic Banking Department, One Hudson St., Kinderhook, NY 12106 as soon as you can, if you think your paper statement is wrong, or if you need more information about a transfer listed on the statement. We must hear from you no later than sixty (60) days after we sent the FIRST paper statement on which the problem or error appeared. When you contact us:

- A. Tell us your name and account number (if any).
- B. Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error, or why you need more information.
- C. Tell us the dollar amount of the suspected error.
- D. If the suspected error relates to a bill payment made via the eCorp system Bill Payment Service, tell us the account number used to pay the bill, payee name, the date the payment was sent, payment amount, ID number, and the payee account number for the payment in question.

If you contact us orally or by e-mail, we may require that you send us your complaint or question in the form of a paper writing by postal mail or fax within ten (10) business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and WE DO NOT receive it in the form of a paper writing within ten (10) business days, we may not credit your account.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

**Our Liability for Failure to Make a Transfer** - If we do not complete a transfer to or from your account, on time or in the correct amount, according to our agreement with you when you have properly instructed us to do so, we will be liable to you for your losses or damages caused as a result. However, there are some exceptions. We will NOT be liable, for instance:

- A. If, through no fault of ours, you do not have enough money in your account to make a transfer.
- B. If a legal order directs us to prohibit withdrawals from the account.
- C. If your account is closed, or if it has been frozen.
- D. If the transfer would cause your balance to go over the credit limit of an established line of credit or the credit limit for any credit arrangement set up to cover overdrafts.
- E. If you or anyone authorized by you, commits any fraud or violates any law or regulation.
- F. If any electronic terminal, telecommunication device, or any part of the eCorp system electronic fund transfer system is not working properly and you knew about the problem when you started the transfer.
- G. If you have not provided us with complete and correct payment information for the eCorp Bill Payment Service, including, without limitation, the name, address, your payee-assigned account number, payment date, and payment amount for the payee on a bill payment.
- H. If you have not properly followed the on-screen instructions for using eCorp.
- I. If circumstances beyond our control (such as fire, flood, interruption in telephone service or other communication lines) prevent the transfer, despite reasonable precautions that we have taken.

**Your Liability for Unauthorized Transfers** - CONTACT US AT ONCE if you believe your password has been lost, stolen, used without your authorization, or otherwise compromised, or if someone has transferred or may transfer money from your accounts without your permission. An immediate telephone call to us is the best way to reduce any possible losses. You could lose all the money in your accounts (plus your maximum overdraft line of credit, if any). If you contact us within 2 business days after you learn of the loss, theft, compromise, or unauthorized use of your password, you can lose no more than \$50 if someone used your password without your permission.

If you do NOT contact us within 2 business days after you learn of the loss, theft, compromise, or unauthorized use of your password, and we can prove we could have stopped someone from using your password to access your accounts without your permission if you had told us, you could lose as much as \$500.

Also, if your paper statement shows transfers that you did not make, contact us at once. If you do not tell us within 60 days after the paper statement was mailed to you, you may not get back any money you lost through transactions made after the 60 day time period if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from contacting us, we will extend the time periods.

**Disclaimer of Warranty and Limitation of Liability** - We make no warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, in connection with the eCorp system Services provided to you under this Agreement. We do not and cannot warrant that eCorp will operate without errors, or that any or all eCorp Services will be available and operational at all times. Except as specifically provided in this Agreement, or otherwise required by law, you agree that our officers, directors, employees, agents or contractors are not liable for any indirect, incidental, special or consequential damages under or by reason of any services or products provided under this Agreement or by

reason of your use of or access to eCorp, including loss of profits, revenue, data or use by you or any third party, whether in an action in contract or tort or based on a warranty. Further, in no event shall the liability of The National Union Bank of Kinderhook and its affiliates exceed the amounts paid by you for the services provided to you through eCorp.

**Your Right to Terminate** - You may cancel your eCorp service at any time by providing us with written notice by postal mail or fax. Your access to eCorp will be suspended within 3 business days of our receipt of your instructions to cancel the service. You will remain responsible for all outstanding fees and charges incurred prior to the date of cancellation.

**Our Right to Terminate** - You agree that we can terminate or limit your access to eCorp Services for any of the following reasons:

- A. Without prior notice, if you have insufficient funds in any one of your The National Union Bank of Kinderhook accounts. eCorp service may be reinstated, in our sole discretion, once sufficient funds are available to cover any fees, pending transfers, and debits.
- B. Upon 3 business days notice, if you do not contact us to designate a new Primary Checking Account immediately after you close your Primary Checking Account.
- C. Upon reasonable notice, for any other reason in our sole discretion.

**Communications Between The National Union Bank of Kinderhook and You** - Unless this Agreement provides otherwise, you can communicate with us in any one of the following ways:

- A. E-mail - You can contact us by e-mail at [ebank@nubk.com](mailto:ebank@nubk.com) (Please note that Banking transactions through eCorp are not made via e-mail.)
- B. Telephone - You can contact us by telephone at (518) 758-7101
- C. Facsimile - You can contact us by fax at (518) 758-6963
- D. Postal Mail - You can write to us at:

National Union Bank of Kinderhook  
1 Hudson Street  
Kinderhook, New York 12106

- E. In Person - You may visit us in person at any one of our locations. Visit our website at [www.nubk.com](http://www.nubk.com) for a listing of Kinderhook Bank locations and hours.

**Consent to Electronic Delivery of Notices** - You agree that any notice or other type of communication provided to you pursuant to the terms of this Agreement, and any future disclosures required by law, including electronic fund transfer disclosures, may be made electronically by posting the notice on the Bank System web site or by e-mail. You agree to notify us immediately of any change in your e-mail address.





## ACH ORIGINATION AGREEMENT

This agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ is between \_\_\_\_\_ (“Company”) and **The National Union Bank of Kinderhook** (aka Kinderhook Bank) (“Financial Institution”).

### RECITALS

A. Company wishes to initiate credit and debit Entries by means of the Automated Clearing House Network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (the "Rules"), and Financial Institution is willing to act as an Originating Depository Financial Institution with respect to such Entries.

B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data received from Company hereunder from which Financial Institution prepares Entries.

### AGREEMENT

#### 1. Transmittal of Entries by Company

Company shall transmit only PPD (Prearranged Payments & Deposits) and/or CCD (Cash Concentration or Disbursement) credit or debit Entries to Financial Institution to the location(s) and in compliance with the formatting and other requirements set forth in **Schedule A** attached hereto. Financial Institution has the authority to establish and enforce a maximum dollar limit for the dollar amount of transactions originated by the company in any one day.

#### 2. Security Procedure

(a) Company and Financial Institution shall comply with the security procedure requirements described in **Schedule B** attached hereto with respect to Entries transmitted by Company to Financial Institution. Company acknowledges that the purpose of such security procedure is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between the Financial Institution and Company.

(b) Company is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by the Financial Institution in connection with the security procedures described in **Schedule B** for access rights granted in **Schedule A or C**. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify Financial Institution immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Financial Institution prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

#### 3. Compliance With Security Procedure

(a) If an Entry (or a request for cancellation or amendment of an Entry) received by Financial Institution purports to have been transmitted or authorized by Company, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay Financial Institution the amount of such Entry even though the Entry (or request) was not authorized by Company, provided Financial Institution accepted

the Entry in good faith and acted in compliance with the security procedure referred to in **Schedule B** with respect to such entry. If signature comparison is to be used as a part of that security procedure, Financial

Institution shall be deemed to have complied with that part of such procedure if it compares the signature accompanying a file of Entries (or request for cancellation or amendment of an Entry) received with the signature of an authorized

representative of Company (an "Authorized Representative") and, on the basis of such comparison, believes the signature accompanying such file to be that of such authorized representative.

(b) If an Entry (or request for cancellation or amendment of an Entry) received by Financial Institution was transmitted or authorized by Company, Company shall pay Financial Institution the amount of the Entry, whether or not Financial Institution complied with the security procedure referred to in **Schedule B** with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Financial Institution had complied with such procedure.

#### **4. Recording and Use of Communications**

Company and Financial Institution 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.

#### **5. Processing, Transmittal And Settlement By Financial Institution**

(a) Except as provided in Section 7, On-Us Entries and Section 8, Rejection of Entries, Financial Institution shall (i) process Entries received from Company to conform with the file specifications set forth in the Rules, (ii) transmit such Entries as an Originating Depository Financial Institution to (the "ACH") acting as an Automated Clearing House Operator, and (iii) settle for such Entries as provided in the Rules.

(b) Financial Institution shall transmit such Entries to the ACH by the deadline of the ACH set forth in **Schedule C** attached hereto prior to the Effective Entry Date shown in such Entries, provided (I) such Entries are received by Financial Institution's related cut-off time set forth on **Schedule C** on a business day, (II) the Effective Entry Date is at least one day after such business day, and (III) the ACH is open for business on such business day. For purposes of this Agreement a "business day" is a day on which Financial Institution is open to the public for carrying on substantially all of its business [other than a Saturday or Sunday], and Entries shall be deemed received by Financial Institution, in the case of transmittal by tape, when received by Financial Institution at the location set forth in **Schedule A**, and in the case of transmittal by electronic transmission, when the transmission (and compliance with any related security procedure provided for herein) is completed as provided in **Schedule A**.

(c) If any of the requirements of clause (I), (II) or (III) of Section 5(b) is not met, Financial Institution shall use reasonable efforts to transmit such Entries to the ACH by the next deposit deadline of the ACH following that specified in **Schedule C** which is a business day and a day on which the ACH is open for business.

#### **6. Prenotifications**

The Company may at its option send prenotifications at least 3 banking days prior to initiating the first entry to a particular account. If an untimely Notification of Change (NOC) in response to a Prenote is received by the ODFI (after the second banking day deadline), the Originator is required to make the requested correction in the NOC within six banking days or prior to initiating a subsequent Entry to the Receivers account, whichever is later. If the Company has received notice that any such notification has been rejected by a receiving bank, or that a receiving bank will not receive entries without having first received a copy of the authorization signed by its customer, the Company will not initiate any entry to such customers, except after providing the receiving bank with such authorization, within the time limits provided in the Rules.

### **7. On-Us Entries**

Except as provided in Section 8, Rejection of Entries, in the case of an Entry received for credit to an account maintained with Financial Institution (an "On-Us Entry"), Financial Institution shall credit the

Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (I) and (II) of Section 5(b) are met. If either of those requirements is not met, Financial Institution shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.

### **8. Rejection of Entries**

Financial Institution may reject any Entry which does not comply with the requirements of Section 1, Transmittal of Entries By Company, or Section 2, Security Procedure, or which contains an Effective Entry Date more than **five** days after the business day such Entry is received by Financial Institution. Financial Institution may reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. Financial Institution may reject any Entry if Company has failed to comply with its account balance obligations under Section 12, The Account. Financial Institution may reject any entry if Company does not adhere to security procedures as described in **Schedule B**. Financial Institution shall notify Company by either phone, email or electronic transmission of such rejection no later than the business day such Entry would otherwise have been transmitted by Financial Institution to the ACH or, in the case of an On-Us entry, its Effective Entry Date. Notices of rejection shall be effective when given. Financial Institution shall have no liability to Company 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.

### **9. Cancellation or Amendment By Company**

Company shall have no right to cancel or amend any Entry after its receipt by Financial Institution. However, if such request complies with the security procedures described in Schedule B for the cancellation of Data, Financial Institution shall use reasonable efforts to act on a request by Company for cancellation of an Entry prior to transmitting it to the ACH or, in the case of an On-Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. Company shall reimburse Financial Institution for any expenses, losses, or damages Financial Institution may incur in effecting or attempting to affect Company's request for the reversal of an entry.

### **10. Notice of Returned Entries**

Financial Institution shall notify Company by either phone or electronic transmission, (including email) of the receipt of a returned entry from the ACH no later than one business day after the business day of such receipt. Except for an Entry retransmitted by Company in accordance with the requirements of Section 1, Transmittal of Entries By Company, Financial Institution shall have no obligation to retransmit a returned Entry to the ACH if Financial Institution complied with the terms of this Agreement with respect to the original Entry.

### **11. Payment by Company for Entries**

Company shall pay Financial Institution the amount of each Entry transmitted by Financial Institution pursuant to this Agreement at such time on the date of transmittal by Financial Institution of such Entry as Financial Institution, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date of such Entry as Financial Institution, in its discretion, may determine.

### **12. The Account**

Financial Institution may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the account(s) of Company identified in **Schedule D** attached hereto (the "Account"), and shall credit the Account for any amount received by Financial Institution by reason of the return of an Entry transmitted by Financial Institution for which Financial Institution has previously received payment from Company. Such credit shall be made as of the day of such receipt by Financial Institution. Company shall at all times maintain a balance of available funds in the Account sufficient to cover its payment obligations under this Agreement. In the event there are not sufficient available funds in

the Account to cover Company's obligations under this Agreement, Company agrees that Financial Institution may debit any account maintained by Company with Financial Institution or any affiliate of

Financial Institution or that Financial Institution may set off against any amount it owes to Company, in order to obtain payment of Company's obligations under this Agreement.

### **13. Account Reconciliation**

Entries transmitted by Financial Institution or credited to a Receiver's account maintained with Financial Institution will be reflected on Company's periodic statement issued by Financial Institution with respect to the Account pursuant to the agreement between Financial Institution and Company. Company agrees to notify Financial Institution promptly of any discrepancy between Company's records and the information shown on any periodic statement. If Company fails to notify Financial Institution of any discrepancy within **30 days** of receipt of a periodic statement containing such information, Company agrees that Financial Institution shall not be liable for any other losses resulting from Company's failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement. If Company fails to notify Financial Institution of any such discrepancy within 30 days of receipt of such periodic statement, Company shall be precluded from asserting such discrepancy against Financial Institution.

### **14. Company Representations And Agreements; Indemnity**

With respect to each and every Entry initiated by Company, Company represents and warrants to Financial Institution and agrees that:

- (a) each person shown as the Receiver on an Entry received by Financial Institution from Company has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry,
- (b) such authorization is operative at the time of transmittal or crediting by Financial Institution as provided herein,
- (c) Entries transmitted to Financial Institution by Company are limited to those types of Credit Entries set forth in Section 1, Transmittal of Entries By Company,
- (d) Company shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC, and
- (e) Company shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of an Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry.
- (f) Company agrees to provide bank with any and all authorization for debit transactions within 48 hours of request by Bank.

Company specifically acknowledges that it has received notice of the Rules regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry. Company shall indemnify Financial Institution against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

**15. Financial Institution Responsibilities; Liability; Limitations on Liability; Indemnity**

(a) In the performance of the services required by this Agreement, Financial Institution shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this

Agreement, and shall not be responsible for the accuracy or completeness thereof. Financial Institution shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its negligence or willful misconduct in performing those services. Financial Institution shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Company) or those of any other person, including without limitation any Federal Reserve Financial Institution, Automated Clearing House or transmission or communications facility, any Receiver or Receiving Depository Financial Institution (including without limitation the return of an Entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed Financial Institution's agent. Company agrees to indemnify Financial Institution against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that the Financial Institution is responsible for any act or omission of Company or any other person described in this Section 14(a).

(b) Financial Institution shall be liable only for Company's actual damages; in no event shall Financial Institution be liable for any consequential, special, incidental, punitive or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by the Financial Institution and regardless of the legal or equitable theory of liability which Company may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Financial Institution's acts or omissions pursuant to this Agreement.

(c) Without limiting the generality of the foregoing provisions, Financial Institution 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 communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Financial Institution's control. In addition, Financial Institution shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Financial Institution's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Financial Institution's reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

(d) Subject to the foregoing limitations, Financial Institution's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Financial Institution of New York for the period involved. At Financial Institution's option, payment of such interest may be made by crediting the Account resulting from or arising out of any claim of any person that Financial Institution is responsible for any act or omission of Company or any other person described in Section 14(a).

**16. Inconsistency of Name And Account Number**

Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Financial Institution to the Receiving Depository Financial Institution may be made by the Receiving Depository Financial Institution (or by Financial Institution in the case of an On-U's Entry) on the basis of the account number supplied by the Company, even if it identifies a person different from the named Receiver, and that Company's obligation to pay the amount of the Entry to Financial Institution is not excused in such circumstances.

**17. Notifications of Change**

Financial Institution shall notify Company of all notifications of change received by Financial Institution relating to Entries transmitted by Company by either phone or electronic transmission (including email) no

later than three business days after receipt thereof.

### **18. Payment for Services**

Company shall pay Financial Institution the charges for the services provided in connection with this Agreement, as set forth in **Schedule E** attached hereto. All fees and services are subject to change upon ten calendar days prior written notice from Financial Institution to Company. Such charges do not include, and Company shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the agreement between Financial Institution and Company with respect to the Account (the "Account Agreement").

### **19. Fines for NACHA Rules Violations**

In accordance with the rules and guidelines regulating the ACH Network and ACH Origination(s) performed by you (the "Customer"), The National Union Bank of Kinderhook (aka Kinderhook Bank) will adhere to the guidelines governing the excessive return rates for unauthorized debit entries as noted in the ACH Rules book.

Under these guidelines, customers who originate ACH transactions through National Union Bank of Kinderhook and are found to:

- 1) Originate unauthorized debit entries that exceed a threshold of 0.5% (Return codes: R05, R07, R10, R29 and R51) or
- 2) Originate debits returned for Administrative reasons that are equal to or exceed a threshold of 3% (Return codes: R02, R03 and R04) or
- 3) Have an overall return rate equal to or exceeding 15% (All entry types except RCK)

will be subject to administrative review and termination from use of ACH Origination Services at the sole discretion of The National Union Bank of Kinderhook. The Bank may also (at its discretion) provide the customer with a timeline for reducing the return rate of unauthorized debit entries in accordance with the guidelines.

The National Union Bank of Kinderhook reserves the right to impose any fines or penalties assessed by the National Automated Clearing House Association (NACHA) on the Bank onto the Originator if resulting from the originators failure to adhere to guidelines outlined above.

### **20 Audit**

Financial Institution shall have the right to audit the Originator's records and procedures for compliance with this Agreement, the Rules, and the Laws.

### **21. Amendments**

From time to time Financial Institution may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any business day, and any part of Schedules A through E attached hereto. Such amendments shall become effective upon receipt of notice by Company or such later date as may be stated in Financial Institution's notice to Company.

### **22. Notices, Instructions, Etc.**

(a) Except as otherwise expressly provided herein, Financial Institution shall not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter.

(b) Financial Institution shall be entitled to rely on any written notice or other written communication believed by it 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. The names and signatures of Authorized Representatives are set forth in **Schedule F** attached hereto. Company may add or delete any Authorized Representative by written notice to Financial Institution signed by at least two Authorized Representatives other than that being added or deleted. Such notice shall be effective on the [e.g., second business day] following the day of Financial Institution's receipt thereof.

(c) Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States registered or certified mail, postage prepaid, or by express carrier, and, if to Financial Institution, addressed to:

**The National Union Bank of Kinderhook**  
**1 Hudson Street**  
**Kinderhook, NY 12106**  
**Attn: Internet Banking Department**

and, if to Company, addressed to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

unless another address is substituted by notice delivered or sent as provided herein. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

### **23. Data Retention**

Company shall retain data on file adequate to permit remaking of Entries for 5 days following the date of their transmittal by Financial Institution as provided herein, and shall provide such Data to Financial Institution upon its request.

### **24. Tapes and Records**

All magnetic tapes, Entries, security procedures and related records used by Financial Institution for transactions contemplated by this Agreement shall be and remain Financial Institution's property. Financial Institution may, at its sole discretion, make available such information upon Company's request. Any expenses incurred by Financial Institution in making such information available to Company shall be paid by Company.

### **25. Evidence of Authorization**

Company shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two years after they expire. At the Bank's request, company will provide to the bank a copy of any and all consents and authorizations within 48 hours of such request.

### **26. Cooperation in Loss Recovery Efforts**

In the event of any damages for which Financial Institution or Company may be liable to each other or to a third party pursuant to the services provided under this Agreement, Financial Institution and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

### **27. Termination**

Company may terminate this Agreement at any time. Such termination shall be effective on the tenth business day following the day of Financial Institution's receipt of written notice of such termination or such later date as is specified in that notice. Financial Institution reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Financial Institution's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Financial Institution prior to termination, or any other obligations that survive termination of this Agreement.

**28. Entire Agreement**

This Agreement (including the Schedules attached hereto), together with the Account Agreement, is the complete and exclusive statement of the agreement between Financial Institution and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between Financial Institution and

Company 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 Financial Institution 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 Financial Institution shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Financial Institution and Company will constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between the Financial Institution and Company regardless of whatever practices and procedures Financial Institution and Company may use.

**29. Non-Assignment**

Company may not assign this Agreement or any of the rights or duties hereunder to any person without Financial Institution's prior written consent.

**30. Waiver**

Financial Institution may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Financial Institution's rights with respect to any other transaction or modify the terms of this Agreement.

**31. Binding Agreement; Benefit**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Financial Institution or Company hereunder.

**32. Headings**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

**33. Severability**

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.

**34. Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of New York and the NACHA Rules.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**The National Union Bank of Kinderhook**

**Company**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**SCHEDULE A***Transmission Location and Formatting Instructions*

All files presented to The National Union Bank of Kinderhook ("NUBK") will be formatted in the NACHA (National Automated Clearing House Association) format. Transmission specifications will be established by NUBK.

- All PC/Internet Transmissions

Personal computer transmissions will require the Company to have access to the Internet with an approved browser and a valid e-mail address for delivery confirmations and receipts.

The Company will transmit files through: <http://www.nubk.com>

- PC/Internet Transmissions through Business Online Banking

Personal computer transmissions will require the Company to have access to the Internet with an approved browser and enrollment in National Union Bank's Online Banking program.

The Company will transmit files through: the Bank's File Transfer Program via eCorp Online Banking.

- Hand Delivered Files

All hand delivered files will be delivered to the address indicated below\*. Hand delivered files will only be accepted by NUBK if all other electronic methods of transmission have failed.

\* Address: 1 Hudson Street, Kinderhook, New York

**SCHEDULE B**  
*Security Procedures*

**Security Procedures:**

The Financial Institution grants access to the Internet Banking System to perform transactions authorized in **Schedule A**. The Company agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs and Passwords that are assigned to the Company for initiating transactions using this system. Any transaction initiated or authorized using a valid combination of a Login ID and Password will be considered authentic, valid and binding by the Company and Financial Institution. The Financial Institution agrees to provide reasonable assistance to establish Login IDs and Passwords, training (as requested by company), and support to the Company for properly using the services. If files or entries need to be delivered to the Financial Institution, the information must be delivered to the address below. If the Company suspects or believes any such information has been compromised, it shall immediately contact the Financial Institution at the following address:

Contact: **Internet Banking Department**  
Financial Institution: **The National Union Bank of Kinderhook**  
City/St: **Kinderhook, New York**  
Street Address: **1 Hudson St.**  
Fax: **518-758-6963**  
Telephone Number: **518-758-7101**  
Email: [srace@nubk.com](mailto:srace@nubk.com)

In the event the Financial Institution needs to contact the Company, the following contact information shall constitute notice if delivered to:

Emergency Contact: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
City/St: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Email: \_\_\_\_\_

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**SCHEDULE C***ACH Processing Deadlines*

The National Union Bank of Kinderhook (NUBK) has set forth the following processing deadlines:

**Credit Entries**

File Transmission: must be submitted by **2:30 p.m. one (1) business days prior** to the effective date, if using the **File/Fund Transfer feature** of Internet Banking. The file must be in ACH format and sent via the Company's secure Internet banking system. The Company is responsible for planning around Bank holidays.

Along with the file, we require a fax or email from the Company confirming the file dollar amount and number of transactions in the file before it can be sent.

**Debit Entries**

File Transmission: must be submitted by **2:30 p.m. one (1) business days prior** to the effective date, if using the **File/Fund Transfer Feature** of Internet Banking. The file must be in ACH format and sent via the Company's secure Internet banking system. The Company is responsible for planning around Bank holidays.

Along with the file, we require a fax or email from the Company confirming the file dollar amount and number of transactions in the file before it can be sent.

**"Business Day"** is a day NUBK is open to the public for conducting substantially all of its business (other than Saturday, Sunday, or Federal Reserve Bank holidays).

**"Effective Date"** must be a business day or the record will be processed on the first business day following the effective date.



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**SCHEDULE E**  
*Price Schedule*  
ACH Direct Deposit

Monthly Fee for ACH Origination                      \$ 10.00 /month

**SCHEDULE F**

*Company Authorized Representatives*

Name                                      Title      Signature                                      Phone #                                      Fax #                                      E-Mail

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