

**M&T Master Treasury Management Services Agreement**

This M&T Master Treasury Management Services Agreement (this “**Master Agreement**”) is entered into between M&T Bank, a New York State-chartered bank having offices at One M&T Plaza, Buffalo, New York 14203-2399 (“**M&T**”) and \_\_\_\_\_, a \_\_\_\_\_, having its principal offices at \_\_\_\_\_ (“**Client**”).

M&T offers various treasury management services (“**Offered Services**”). Client wishes to engage M&T to provide, and M&T has agreed to provide, certain Offered Services to Client for its Accounts (as defined in Schedule 1 to this Master Agreement) (the “**Services**”) in accordance with the Agreement (as defined in the next paragraph).

The “**Agreement**” between the parties relating to the provision of any Services consists of and incorporates each of the following, as amended from time to time (as defined in this Master Agreement):

- (i) this Master Agreement;
- (ii) the Client Election Forms and, if applicable, any Set-Up Forms;
- (iii) the Product Terms and Conditions;
- (iv) the User Guides;
- (v) the Service Fees;
- (vi) the Client Resolution;
- (vii) M&T’s Commercial Deposit Account Agreement (“**CDA**”); and
- (viii) the Multiple Client Authorization Agreement (if applicable).

By signing below, Client agrees to the Agreement and represents and warrants that (i) Client has received the Agreement, (ii) the person signing on behalf of Client below is duly authorized to sign on behalf of and legally bind Client to the Agreement, and (iii) upon signing this Master Agreement, the Agreement will constitute a legally binding obligation of Client enforceable against Client in accordance with its terms and conditions.

The Agreement shall commence and be effective as of the earlier of the date M&T confirms receipt of the signed and validated Master Agreement or Client uses any Service, or allows another person to do so on its behalf, or makes any payment for any Service (the “**Effective Date**”).

<b>CLIENT:</b>		
_____	_____	_____
Signature of TM Signer	Printed Name	Title
Date: _____		
<u>Optional Additional Signer (if required by Client Resolution):</u>		
_____	_____	_____
Signature of TM Signer	Printed Name	Title
Date: _____		

## **Table of Contents**

1. Definitions .....	3
THE SERVICES .....	3
2. Scope of Services .....	3
3. Set-Up of Services .....	3
4. Authorized Representatives .....	3
5. System Administrators .....	3
6. Information Reporting .....	3
GENERAL SECURITY REQUIREMENTS .....	3
7. Security Protocols .....	3
8. Client's Systems and Internal Security Policies .....	3
PAYMENT ORDERS .....	4
9. Payment Orders .....	4
10. Payment Order Security Procedures .....	4
ELECTRONIC SERVICE MATTERS .....	4
11. M&T's Websites .....	4
12. M&T Property .....	4
13. Electronic Transactions .....	5
14. Electronic Signatures .....	5
SERVICERS, VENDORS, AND THIRD PARTIES .....	5
15. Client's Use of Servicers .....	5
16. Re-Sale of Services .....	5
17. Payment Systems, Correspondents, and Vendors .....	5
OTHER ACCOUNT AND SERVICE MATTERS .....	5
18. Setoff .....	5
19. Other Service Matters .....	5
20. Confidentiality .....	6
SERVICE FEES AND LIABILITY .....	6
21. Service Fees .....	6
LIMITATION OF LIABILITY AND INDEMNIFICATION .....	7
22. Limitation of Liability .....	7
23. Indemnification for Third Party Claims .....	7
24. Other Indemnification Provisions .....	8
TERM AND TERMINATION .....	8
25. Term .....	8
26. Termination .....	8
27. Post Termination .....	8
28. Entire Agreement .....	8
29. Dispute Resolution .....	8
30. Governing Law and Jurisdiction .....	8
31. Waiver of Jury Trial and Sovereign Immunity .....	8
32. Notices; Communication; Consents and Other Satisfaction .....	9
33. Construction of Agreement; Representations .....	9
34. Severability .....	9
35. Waivers .....	9
36. Amendments .....	9
37. Representations and Warranties .....	9
38. Binding Effect .....	10
39. Conflicts .....	10
40. Assignment .....	10
41. Force Majeure .....	10
42. Export Control .....	10
43. Further Assurances .....	10
44. Relationship .....	10
45. Counterparts .....	10
<u>Schedule 1 to Master Treasury Management Services Agreement: Definitions and Terms of Construction .....</u>	<u>11</u>
<u>Schedule 2 to Master Treasury Management Services Agreement: Financial Institution Clients .....</u>	<u>13</u>

## 1. Definitions

Certain capitalized terms used in this Master Agreement are defined in Schedule 1. Other capitalized terms are defined elsewhere in the Agreement.

## THE SERVICES

### 2. Scope of Services

The Agreement applies to all of Client's Services for Accounts. Client may use the Services and Accounts only for its lawful business, and not for any personal, family, or household purpose.

### 3. Set-Up of Services

(a) Client may not use a Service, and no Service will be effective, until: (i) M&T has received all information and Client has completed and executed documents required by M&T, including all Client Election Forms or other Set-Up Forms; and (ii) M&T has approved Client's use of such Service and has had a Reasonable Time to Act to implement such Service.

(b) M&T is entitled to rely on Instructions provided in any form acceptable to M&T.

(c) M&T provides no guarantee or representation with respect to any recommendation or suggestion that M&T or its representatives make to Client relating to the type, scope, or features of any Service.

### 4. Authorized Representatives

(a) Client will provide access to Services and Accounts only to Authorized Representatives. Client's designation, removal, or change in the authority of any Authorized Representative must be made in a manner and form acceptable to M&T. Client represents and warrants that each Authorized Representative is authorized to give Instructions to M&T and to deal in all ways with respect to the Services and Accounts in accordance with his/her designation and authority. Such designation and authority remains in effect until M&T has had a Reasonable Time to Act on a revocation Notice from Client.

(b) Client shall ensure that Authorized Representatives use the Services and Accounts and provide Instructions in compliance with the Agreement and within the limits of their permissions, designations, and authority. Client shall regularly monitor Authorized Representatives' access to and use of the Services and Accounts and Instructions to M&T. Client shall promptly provide Notice to M&T if it becomes aware of or suspects fraud or misconduct by any Authorized Representative.

(c) M&T is not obligated to inquire into the identity or authority of an Authorized Representative or whether such person is, in fact, authorized by Client. Client is bound by all Instructions, acts, and omissions of Authorized Representatives (whether or not such persons are acting within the scope of their authority or Client authorized or knew of such Instructions, acts, or omissions).

### 5. System Administrators

Certain Services and delivery channels require Client to appoint System Administrator(s). A System Administrator has authority on Client's behalf to manage and use the Accounts and delivery channels for such Services. A System Administrator will, among other things, administer other Authorized Representatives' access to and use of the Accounts and Services, including authorizing or restricting access to information and transaction capabilities. M&T recommends that Client (a) ensure System Administrators establish transaction capabilities to require multiple authorization levels (e.g., one person initiates a transaction and another approves it), and (b) use available audit features to determine if Authorized Representatives are acting in accordance with their authorities. For some Services, a System Administrator may be able to appoint other System Administrators.

### 6. Information Reporting

(a) Certain Services may: (i) include Statements, reports, and other information relating to the Agreement, Services, or Accounts ("**Service Information**") that M&T makes available to Client, or (ii) involve transmission of files, reports, or other information between M&T and Client ("**Transmitted Information**"). Service Information reported prior to final posting or settlement is subject to correction. Service Information may be current as of different dates and times (e.g., reported in real-time or for a prior day, updated periodically during the day, etc.).

(b) M&T is not obligated to confirm receipt or non-receipt of, or to re-provide, any Service Information or Transmitted Information. Failure to provide Notice to M&T of non-receipt of Service Information or Transmitted Information within five days of the date it is generally sent or made available constitutes Client's approval of such information.

## GENERAL SECURITY REQUIREMENTS

### 7. Security Protocols

(a) Client shall use all applicable Security Protocols that M&T requires. M&T is not obligated to act on any Instruction that is not transmitted in accordance with the applicable Security Protocols and may refuse to act on any Instruction if M&T doubts its authorization, contents, origination, or compliance with the applicable Security Protocols.

(b) Client shall ensure that no user shares any Security Protocols specific to that user (e.g., IDs, passwords, challenge questions, tokens). Client must ensure that each user's password, ID, or other credentials are changed: (i) upon the user's first logon to the relevant Service; (ii) periodically in accordance with industry standards; (iii) immediately if it suspects such credentials have been compromised; and (iv) upon M&T's request.

(c) The Security Protocols are not designed to detect errors in the transmission or content of any Instruction.

(d) M&T does not guarantee the effectiveness of any Security Protocol and is not obligated to determine whether a Security Protocol has been breached. M&T may rely on any Instruction that is transmitted using the Security Protocols.

(e) M&T may change or add Security Protocols (each, a "**Security Change**"). A Security Change is effective immediately if M&T determines it will not have a material adverse effect on Client's use of the Services, and otherwise on the date indicated in a Notice to Client. By continuing to be enrolled in, using, or paying for the affected Service, Client agrees to and is bound by the Security Change. Notwithstanding anything else in the Agreement, M&T may make Security Changes without prior Notice to Client if required for security reasons or by Law.

### 8. Client's Systems and Internal Security Policies

(a) Client represents and warrants that it has acquired and will update and maintain equipment, Internet browser, hardware, software, systems, and communication devices and facilities required to use the Services and Accounts (collectively, "**Client Systems**"). M&T may change its requirements for Client Systems at any time.

(b) Client must maintain secure Client Systems that meet or exceed industry standards, including utilization of: (i) physical security and access control; (ii) credential security; (iii) user access incorporating controls such as segregation of duties; (iv) workstation security standards; (v) anti-Virus and anti-spyware controls, firewall controls, and restricted use guidelines; (vi) network security standards such as architecture, perimeter protection, firewalls, and intrusion detection; (vii) incident reporting requirements; (viii) secured email communications; and (ix) disaster recovery and business continuity plans and periodic testing of those plans. Client shall update its internal security policies and procedures to address new fraud threats.

(c) Client must: (i) provide all means necessary to access and use the Services, M&T Technology, and M&T Materials; (ii) obtain appropriate training and train its personnel on the Services, M&T Technology, and M&T Materials; (iii) assure that all installations and updates are performed according to applicable vendor or M&T specifications; and (iv) perform testing related to its use of the Services, M&T Technology, or M&T Materials and their impact on Client Systems.

(d) M&T may, but is not obligated to, access Client Systems and Client's facilities to repair, update, or remove any M&T Technology or M&T Materials.

(e) Client shall: (i) monitor its Accounts on a daily basis; (ii) promptly and regularly review Statements, transactions, and confirmations; (iii) implement sound policies and procedures to avoid and detect fraud and unauthorized access to Accounts, Services, and information; and (iv) provide Notice to M&T immediately of any security compromise (or suspected compromise) relating to the Services or Accounts.

## PAYMENT ORDERS

### 9. Payment Orders

Client's Payment Orders must include all information required by M&T for the applicable Service. In executing a Payment Order, M&T and each Correspondent are entitled to rely exclusively on the recipient account number and recipient institution identifier provided in the Payment Order (even if such numbers do not match the name of the recipient or recipient institution). Neither M&T nor any Correspondent is required to: (a) reconcile or match a recipient account number or recipient institution identifier with the recipient account name or recipient institution name; or (b) verify the recipient account number or recipient institution identifier. Once a Payment Order is sent to a Correspondent, M&T no longer has any control over the funds; it is the sole responsibility of the paying bank to transmit the funds to the recipient account number indicated in such Payment Order. IF CLIENT PROVIDES AN INCORRECT RECIPIENT ACCOUNT NUMBER OR RECIPIENT INSTITUTION IDENTIFIER, CLIENT COULD LOSE THE PAYMENT ORDER AMOUNT.

### 10. Payment Order Security Procedures

(a) The authenticity of Payment Orders issued to M&T in Client's name as sender will be verified pursuant to the applicable Payment Order Security Procedures. Client represents that it has elected to use such Payment Order Security Procedures.

(b) Client acknowledges and agrees that, given Client's particular circumstances, including the nature of Client's business, the size, type, and frequency of Client's Payment Orders, transactions, and files, Client's internal procedures and Client Systems, the alternative or additional security procedures (if any) offered by M&T, and the security procedures in general use by other customers and banks similarly situated, the Payment Order Security Procedures are a commercially reasonable method of providing security against unauthorized Payment Orders. If Client chooses to use less robust Payment Order Security Procedures, such procedures are deemed commercially reasonable even if they provide less protection than other Payment Order Security Procedures and options offered by M&T.

(c) Client is bound by any Payment Order, whether or not authorized, issued in Client's name and accepted or acted upon by M&T in accordance with the applicable Payment Order Security Procedures. Client is responsible for any Payment Order and associated Funds Transfer that is authorized by or on behalf of Client or for which Client is otherwise bound under the law of agency, whether or not M&T or Client complied with the Payment Order Security Procedures for that Payment Order.

(d) The Payment Order Security Procedures are intended to verify the authenticity of Instructions regarding Payment Orders and are not designed to, and do not, detect errors in the transmission or content of such Instructions.

## ELECTRONIC SERVICE MATTERS

### 11. M&T's Websites

(a) Client shall comply with this Section and other terms applicable to use of a Website (including Website Terms of Use) (collectively, the "Access Terms"). Client is solely responsible for the security of passwords or other access materials required for use of a Website. Immediately upon termination of the Agreement or at M&T's request, Client shall return to M&T any physical access materials and destroy any copies, and expunge Client Systems, of all passwords and access materials not returned to M&T.

(b) M&T may suspend Client's access to and use of a Website at any time, without Notice: (i) if it believes Client breached any Access Terms; (ii) to prevent interference with or disruption to a Service to other customers; (iii) to protect the integrity of M&T Property; (iv) in connection with an actual or suspected security breach or fraud; or (v) if required by Law.

(c) Client shall not use a Website in any way that would, or would be reasonably likely to: (i) infringe any third party copyright, patent, trademark, trade secret, or publicity, privacy, or other proprietary right; (ii) be fraudulent or involve use of counterfeit or stolen items; (iii) violate any Law; (iv) violate any contract to which Client is bound; (v) be false, misleading, or inaccurate; (vi) create liability for M&T or any vendor or cause M&T to lose any vendor services; (vii) be defamatory, libelous, threatening, or harassing; or (viii) interfere with or disrupt computer networks connected to the networks used by Client or the use by any party of M&T Property or any Services.

(d) Client shall cooperate with M&T regarding Client's access to and use of a Website, including providing technical assistance and information M&T requests.

### 12. M&T Property

(a) Services may involve the use of M&T Property. Certain M&T Property may be subject to third party agreements or licenses (each, a "TP License"). M&T grants to Client a non-exclusive, non-sublicenseable, non-transferable, revocable, U.S.-only license to use M&T Property solely for Client's own internal business purposes as necessary to use the Services and Accounts in accordance with the Agreement and TP Licenses. In the event of conflict between the Agreement and a TP License, the TP License prevails.

(b) M&T Property may only be used in object code format. Client shall not: (i) copy (except for making one copy for back-up purposes) or modify M&T Property; (ii) use M&T Property in connection with any other party's products or services; (iii) grant, assign, transfer, sell, lease, distribute, license, sublicense, or otherwise make available to any other person any right in M&T Property; (iv) reverse engineer, attempt to reverse engineer, decompile, disassemble, or create any derivative works based on M&T Property; (v) use M&T Property as a component or base for products or services prepared for sale, sublicense, lease, access, or distribution; or (vi) obscure, remove, or alter any logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends, or other notices or markings on or in M&T Property. Client shall immediately provide M&T Notice of actual or suspected unauthorized access to M&T Property.

(c) Client shall not directly or indirectly attempt to: (i) probe, scan, or test the vulnerability of M&T Technology or Websites; (ii) breach security or authorization measures; or (iii) interfere with any Security Protocols or Payment Order Security Procedures, or other network and system security measures.

(d) Except for the limited license set forth in Section 12(a) and any TP License, all right, title, and interest (including intellectual property rights) in M&T Property, Services, and any other service M&T may provide through third party providers, and any derivative, modification, or enhancement thereof, at all times remains vested exclusively in M&T or

its third party providers. Further, the licenses referenced in this Section do not extend to, and Client or any other person may not use, any of M&T's or its Affiliate's trade names, marks, or logos.

(e) Any suggestions Client makes to M&T regarding features, concepts, improvements, or other feedback are the exclusive property of M&T, and M&T may incorporate them into Services, M&T Property, or other M&T products/services/technology, without compensating Client.

(f) M&T retains all right, title, and interest in and to transactional and performance data related to any use of the Services, Accounts, and M&T Property that M&T may collect and use for its business purposes (including service changes, marketing, or provision of services to Client or others).

### 13. Electronic Transactions

(a) Certain Services include information reporting and the ability to initiate transactions through electronic methods (collectively, "**Electronic Methods**"), including: (i) the Website; (ii) Direct Transmission; (iii) delivery of media; (iv) secure data transmission; (v) email; and (vi) telephonic means (including text messaging).

(b) To the extent permitted by Law, Client bears the sole risk that an Electronic Method is not successful or completed or is corrupted, monitored, intercepted, delayed, re-routed, modified, copied, or hacked or its confidentiality breached.

### 14. Electronic Signatures

(a) M&T may offer Client and Authorized Representatives the ability to sign agreements, forms, or other documents (for purposes of this Section, "**document**") with an Electronic Signature. The Electronic Signature of Client or an Authorized Representative (each, a "**Signer**") on any document executed in accordance with this Section has the same legal effect, validity, and enforceability as a manual signature. The words "signed" and "signature" (and similar words) include Electronic Signatures. M&T is not obligated to accept or use Electronic Records or Electronic Signatures in any form or format unless agreed to by M&T. M&T may, at any time, change, implement, or require new or additional Electronic Signature procedures.

(b) To sign a document on behalf of Client with an Electronic Signature, Signer must provide M&T with his valid email address. A link will be sent to such email address that will direct Signer to a website where he can view the applicable document. To sign such document with an Electronic Signature, Signer's identity will be verified pursuant to the authentication procedures required by M&T, which may include: (i) use of challenge questions; or (ii) use of a secure code or Personal Identification Number (PIN) that will be generated and sent by text message to Signer's mobile device. Client agrees to receive email or text messages as part of the authentication procedures or otherwise in connection with Electronic Signatures and Electronic Records. M&T is not responsible for text messaging or data charges in connection with M&T's Electronic Signature procedures. Once the Signer's identity is verified, Signer may sign the applicable document with an Electronic Signature. M&T may add a digital representation or image of Signer's signature on such document.

## SERVICERS, VENDORS, AND THIRD PARTIES

### 15. Client's Use of Servicers

(a) Client may designate a vendor or servicer ("**Servicer**") to act on its behalf for certain Services (e.g., use a Service; access Service Information and Transmitted Information; and select and implement Security Protocols and Payment Order Security Procedures) (the "**Servicer Permissions**").

(b) For each Servicer, Client shall: (i) provide any information M&T reasonably requests; and (ii) obtain M&T's approval, which may require Servicer to enter into an agreement with M&T.

(c) Client is solely responsible for: (i) performing all due diligence, monitoring, and management of its Servicers; (ii) payment of Servicer fees, costs, and expenses; and (iii) providing each Servicer with copies of those portions of the Agreement relating to the Servicer Permissions.

(d) Client may only deliver Service Information and Transmitted Information to M&T through a Servicer if Servicer and M&T agree. M&T may provide Service Information or Transmitted Information to Servicer and not directly to Client. However, any legal Notices under the Agreement shall be delivered directly to M&T or Client, as applicable.

(e) If Client's Servicer performs services for other M&T customers, such Servicer may use the same Security Protocols and Payment Order Security Procedures for Client and such other M&T customers ("**Common Use**"). Common Use may increase security risk. Client is solely responsible for determining whether its Servicer engages in Common Use and working with its Servicer to mitigate risk.

(f) Servicer Permissions remain in effect until the later of: (i) when M&T has had a Reasonable Time to Act upon a Notice of termination from Client; or (ii) the date specified in the Notice of termination; provided, that M&T may terminate a Servicer or any Servicer Permissions immediately upon Notice to Servicer and Client. Client is bound by Servicer's actions taken on behalf of Client prior to the effective date of such termination, and termination of a Servicer or its Servicer Permissions does not affect Client's obligations.

### 16. Re-Sale of Services

Except as set forth in the Agreement, Client shall not: (a) re-sell, provide, assign, transfer, or otherwise distribute a Service to any third party or allow any third party to use a Service; or (b) use any Service to assist Client in providing services to a third party. However, if Client is a financial institution, Client may use Services in providing services to Client's Customers in accordance with Schedule 2 to this Master Agreement.

### 17. Payment Systems, Correspondents, and Vendors

(a) M&T may perform any Service (including executing Payment Orders) using any route, payment system, or Correspondent. M&T's performance of certain Services (including executing Payment Orders) is subject to the rules, regulations, and capabilities of such routes, systems, and Correspondents.

(b) M&T may delegate, outsource, or subcontract the performance of any Service or part thereof to any third party, without Notice to or approval of Client. Any authorization provided by Client to M&T will also extend to any such third party. Client authorizes the disclosure of information relating to Client and its Services and Accounts to any such third party in connection with the Agreement, Services, or Accounts or as required by Law.

## OTHER ACCOUNT AND SERVICE MATTERS

### 18. Setoff

M&T has the right to set off against any Account or property of Client held by M&T any amounts owing to M&T or its Affiliates under the Agreement or any other agreement with M&T or its Affiliates. M&T may exercise its right of setoff without demand upon or Notice to Client and such setoff will be considered to have been exercised immediately upon any default by Client without any action by M&T.

### 19. Other Service Matters

(a) Client shall provide M&T with financial and other information about Client, its business, or Client's Customers as M&T may reasonably request. Client authorizes M&T to make inquiries of credit reporting agencies and other information sources regarding Client's financial status and banking history, and to provide Client information to such agencies.

(b) Upon reasonable Notice to Client and at agreed times, M&T or its agents may visit, inspect, or audit Client Systems and Client's premises and information as reasonably requested by M&T.

(c) Client represents to comply with all, and to take no action or make any omission that would cause M&T to fail to comply with any, Laws in connection with the Agreement, Services, and Accounts. Client shall provide to M&T any documents or information as M&T may request to evidence such compliance or as required for M&T to comply with Law.

(d) Client is solely responsible for, and M&T is not obligated to verify, the accuracy and completeness of any transaction, Instruction, or information provided by or on behalf of Client. M&T may rely on any Instruction that was actually transmitted, or that M&T reasonably believes was transmitted, by or on behalf of Client. Client shall promptly (and within times set forth in the CDAA) provide Notice to M&T of any error in connection with a Service or Account, any known or suspected unauthorized, erroneous, or erroneously executed transaction, or of any discrepancy between a record of Client and any communication or Notice provided by M&T to Client with respect to a Service or Account. Client shall promptly provide M&T with information M&T requests in connection therewith.

(e) Any Client change or cancellation of any transaction, Instruction, or information (including any Client Election Form or Set-Up Form, Security Protocols, or Payment Order Security Procedures, or Authorized Representative authority) is not effective unless: (i) it is permitted under the Agreement; (ii) M&T determines that it can be performed; (iii) M&T has accepted all required updated forms, Notices, and information; (iv) M&T has had a Reasonable Time to Act; and (v) M&T has notified Client that the change or cancellation has been approved.

(f) M&T is not required to execute a Payment Order or complete any transaction: (i) against unavailable or insufficient funds in the Account; (ii) that M&T is unable to authenticate to its satisfaction; (iii) that is incomplete or incorrect; (iv) that M&T believes would constitute a violation of any applicable agreement, Law, or M&T requirement; (v) if M&T suspects fraud or illegal activity; (vi) that does not conform to M&T's requirements; (vii) that M&T believes is likely to present risk of Loss or reputational, legal, settlement, or compliance risk; or (viii) if M&T doubts its authorization, content, origination, or compliance with the Security Protocols or Payment Order Security Procedures. M&T may suspend a Payment Order prior to rejecting it. M&T will then reject or process such Payment Order as a result of M&T's further review. M&T will use reasonable efforts to notify Client of any rejection within a reasonable time. Client shall cooperate promptly and fully in connection with any claim asserted by a person in connection with any Payment Order.

(g) M&T's monitoring, screening, and review procedures in connection with certain Services and Accounts, including procedures to determine whether transactions comply with the Bank Secrecy Act, OFAC rules, or similar Laws, does not limit Client's obligations to independently comply with such Laws.

(h) M&T may, but is not obligated to, electronically monitor or record telephone communications with, or data transmissions by, Client or its representatives relating to the Agreement, Services, or Accounts. M&T may retain records of such monitoring and recordings by any reasonable means. If M&T's records are different from those of Client, Servicer, or any other third party, M&T's records will control.

(i) The Website and Services may not be available at all times due to: (i) matters outside of M&T's control, including matters relating to third party support for software and hardware, Internet service providers, Client's vendors, and connectivity and the Internet; and (ii) maintenance and servicing associated with the systems that host and support certain Services.

(j) Without Notice or liability, M&T may change, limit, suspend, terminate, or discontinue any Service (or aspect thereof), provided, if M&T terminates a Service, it must do so in accordance with Section 26. M&T will use reasonable efforts to provide prior Notice of such action.

(k) Client may have the ability to opt in through a Website to receive alerts in connection with its Accounts and Services via text messaging. An Authorized Representative may opt in to have alerts via text message sent to other Authorized Representatives. The frequency of text message alerts will be based on the Account settings selected by Client. Client agrees to receive all alerts for which it has opted in via text messaging. M&T is not responsible for text messaging or data charges that may be incurred by Client in connection with such alerts.

## 20. Confidentiality

(a) In connection with the Agreement, a party ("**Receiving Party**") may receive or have access to Confidential Information of the other party or its Affiliates ("**Disclosing Party**"). Receiving Party shall: (i) treat Disclosing Party's Confidential Information using the same control (but no more than reasonable control) it uses to prevent disclosure of its own confidential information; and (ii) not use or disclose Disclosing Party's Confidential Information except for purposes relating to the Agreement, Services, or Accounts and in compliance with the Agreement. However, Receiving Party may disclose Disclosing Party's Confidential Information as permitted in the Agreement or to Receiving Party's: (A) Affiliates and permitted prospective assigns or other successors; or (B) representatives who need to know such Confidential Information in connection with the Agreement, Services, or Accounts. M&T may also use and share Client's Confidential Information for crime detection, prevention, and prosecution, regulatory, compliance, and audit requirements, marketing activities, product development, and provision of accounts and services to any M&T customers.

(b) Notwithstanding anything else in the Agreement, Receiving Party may disclose Disclosing Party's Confidential Information: (i) pursuant to a requirement or request of a Governmental Authority, court order, or other legal or administrative process; or (ii) if required by Law, in each case only to the extent so requested or required and provided Receiving Party first provides Disclosing Party Notice (unless prohibited by Law) and an opportunity to pursue a protective order or other remedy. Receiving Party may also disclose Disclosing Party's Confidential Information in defense of a claim or cause of action asserted by Disclosing Party.

(c) Each party agrees that a breach of this Section may result in immediate and irreparable harm to the other party. In the event of such breach, the non-breaching party is entitled to specific performance, including the right to seek injunctive relief, in addition to any other remedies at law or in equity. A party seeking relief under this Section will not be required to post a bond.

(d) Upon Agreement termination, each party will return the other party's Confidential Information (or, if requested by the other party, destroy it); provided that Receiving Party: (i) will not be required to return or destroy Confidential Information that is integrated into its internal electronic systems; and (ii) may maintain a copy as necessary for legal, audit, regulatory, or compliance purposes, but, in each case, Confidential Information remains subject to this Section.

(e) If Client receives or can access information relating to another M&T customer, Client shall: (i) immediately provide Notice to M&T; (ii) keep that information confidential and not make it available to any person; and (iii) destroy records and return media containing such information.

## SERVICE FEES AND LIABILITY

### 21. Service Fees

(a) Unless the parties agree otherwise in writing, M&T may debit an Account, without prior Notice, in the amount of all Service Fees and other fees, expenses, and amounts Client owes to M&T (collectively, "**Amounts Due**"). Client must maintain available balances in the

Accounts sufficient to pay all Amounts Due. If Client is eligible for earnings credits on balances in one or more Accounts, M&T will determine on a monthly basis if the collected balances are sufficient to compensate for all Amounts Due in the prior month. If the earnings credits are insufficient to offset all Amounts Due, M&T will debit the Accounts for any shortfall.

(b) Amounts Due do not include taxes (including sales, value-added, and use taxes), duties, or other governmental charges (collectively, "Taxes"). Client shall timely pay all Taxes. M&T may charge interest at the maximum rate permitted by Law on Amounts Due that are not paid when due. Client shall pay upon demand costs incurred by M&T in collecting Amounts Due or enforcing the Agreement, including attorneys' fees and disbursements.

## LIMITATION OF LIABILITY AND INDEMNIFICATION

### 22. Limitation of Liability

(a) M&T is responsible only for performing the Services as expressly described in the Agreement. THE SERVICES ARE PROVIDED ON AN 'AS IS', 'AS AVAILABLE' BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, M&T MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IN LAW OR IN FACT, IN CONNECTION WITH ANY OF THE SERVICES, ACCOUNTS, OR M&T PROPERTY, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR MERCHANTABILITY. NO DESCRIPTIONS OR SPECIFICATIONS CONSTITUTE REPRESENTATIONS OR WARRANTIES OF ANY KIND.

(b) Client releases M&T, its Affiliates, and their representatives from, and M&T, its Affiliates, and their representatives shall have no, liability to Client or any third party, whether in contract, tort (including negligence), or otherwise, for any Loss arising out of: (i) the Agreement, Services, or Accounts (including the delay in the provision of Services or the processing, transmittal or settlement of any transaction, or availability of funds), except to the extent of actual Loss caused directly by M&T's gross negligence or willful misconduct in performing the Agreement; (ii) Client's failure to comply with the Agreement; (iii) Client's selection or non-selection of Services or Service features (including Security Protocols and Payment Order Security Procedures), regardless of suggestions or recommendations made by M&T; (iv) Client's selection, operation, or maintenance of Client Systems; (v) any act or omission M&T takes in accordance with Instructions actually authorized by or on behalf of Client or that M&T reasonably believes to have been so authorized, whether or not transmitted using a Security Protocol or Payment Order Security Procedure; (vi) any transaction made using a Security Protocol or Payment Order Security Procedure, whether or not actually authorized, except to the extent M&T is held liable for an unauthorized Payment Order under UCC-4A; (vii) the acceptance, rejection, suspension, or change of a Payment Order; (viii) Client's cancellation or change of any Instructions or the provision of incorrect or incomplete Instructions, data, or information; (ix) failure, delay, or error of any Electronic Method; (x) acts or omissions of third parties, including Authorized Representatives and Client's Customers; (xi) any Virus; and (xii) good faith errors resulting from a reasonable misunderstanding of any Instruction. M&T shall only be liable for any Loss arising out of the Agreement, Services, or Accounts to the extent a final non-appealable judicial determination is made that M&T is liable for such Loss.

(c) If Client declines or fails to take precautions within its control or to use the Services and features designed to detect or deter fraud that M&T makes available, Client may be precluded from asserting claims against M&T for unauthorized, altered, counterfeit, or other fraudulent transactions that such precautions, Services, or features were designed to detect or deter.

(d) Any action, proceeding, or claim against M&T for any Loss arising out of the Agreement, Services, or Accounts must be commenced in writing within one year after the action accrued; provided that this

provision shall not extend any shorter period of time otherwise provided by Law, the CDAA, or other agreement with Client.

(e) IN NO EVENT WILL M&T'S LIABILITY FOR ANY INDIVIDUAL CLAIM (EACH, AN "INDIVIDUAL CLAIM") ARISING OUT OF THE AGREEMENT, SERVICES, OR ACCOUNTS, EXCEED THE LESSER OF: (I) THE TOTAL AMOUNTS CHARGEABLE FOR THE PARTICULAR SERVICE(S) THAT GAVE RISE TO SUCH INDIVIDUAL CLAIM FOR THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH INDIVIDUAL CLAIM; OR (II) THE AMOUNT OF ACTUAL DIRECT DAMAGES DOCUMENTED BY CLIENT TO M&T'S REASONABLE SATISFACTION. FURTHER, IN NO EVENT WILL M&T'S AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE AGREEMENT, SERVICES, OR ACCOUNTS, EXCEED THE AGGREGATE CAP. THE "AGGREGATE CAP" IS DETERMINED AS OF THE DATE OF THE FIRST INDIVIDUAL CLAIM AND MEANS THE TOTAL AMOUNTS CHARGEABLE FOR ALL SERVICES FOR THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INDIVIDUAL CLAIM.

(f) NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT OR OTHERWISE, IN NO EVENT WILL M&T BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OF ANY KIND, HOWEVER CAUSED, INCLUDING FAULT OR NEGLIGENCE, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT M&T KNEW OR HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, INCLUDING LOSS OF PROFITS, GOODWILL, AND BUSINESS INTERRUPTION.

### 23. Indemnification for Third Party Claims

(a) Client shall indemnify, defend, and hold harmless M&T and its Affiliates (and their representatives) from and against all Losses that directly or indirectly arise out of a third party claim, action, demand, suit, or proceeding (each, a "Third Party Claim") alleging any of the following (each, an "Indemnifiable Event"):

- (i) Client's or an Authorized Representative's: (A) breach of any term, condition, warranty, representation, or obligation in the Agreement; (B) violation of Law; (C) negligence, fraud, or intentional misconduct; (D) provision of incorrect or incomplete Instructions, data, or information; (E) use of the Services or Accounts not in compliance with the Agreement; or (F) infringement of a third party's patent, trademark, copyright, trade secret, publicity, privacy, or other proprietary right;
- (ii) any act or omission (including acceptance, processing, change, suspension, or rejection of Payment Orders) M&T takes in accordance with Instructions actually authorized by or on behalf of Client or that M&T reasonably believes to have been so authorized, whether or not transmitted using a Security Protocol or Payment Order Security Procedure;
- (iii) M&T honoring, or refusing to honor, any signature, Instruction, or action of an Authorized Representative;
- (iv) an act or omission of Client, an Authorized Representative, or Client's Customer;
- (v) any Virus, data, or code transmitted from Client Systems or an Authorized Representative's systems to M&T's systems;
- (vi) Common Use; and
- (vii) use of the Services directly or indirectly affecting Client's Customers or other third parties.

(b) If M&T seeks defense, indemnification, or to be held harmless for a Third Party Claim:

- (i) M&T will give Notice to Client of the Third Party Claim; however, failure to do so does not relieve Client of its obligations hereunder, except to the extent such failure materially prejudices Client's defense.
- (ii) M&T is entitled to control the defense of such Third Party Claim and appoint lead counsel of its choosing for its defense. Client must pay the fees and expenses of such counsel. If M&T is controlling the defense, Client may participate in (but not control) the defense at its

expense using counsel of its choosing. Client will cooperate and provide assistance as M&T reasonably requests for M&T's defense. M&T will regularly inform Client of the status of the Third Party Claim.

(iii) If M&T elects not to control the defense of the Third Party Claim, Client, using counsel of its choosing and at its expense, shall defend, contest, and otherwise protect M&T against such Third Party Claim. Client must provide M&T with evidence it has adequate resources to defend the Third Party Claim and fulfill its indemnity obligations hereunder. If Client is controlling the defense, M&T may participate in the defense at its expense using counsel of its choosing. M&T will cooperate and provide assistance as Client reasonably requests for Client's defense and will be entitled to recover from Client its costs of doing so. Client will regularly inform M&T of the status of the Third Party Claim.

(iv) Client will not, without M&T's prior written consent, compromise or settle any Third Party Claim if such compromise or settlement (A) imposes equitable relief upon M&T, its Affiliates, or their representatives, or (B) does not include (in writing) an express and unconditional release of M&T, its Affiliates, and their representatives from all liability relating to the Third Party Claim.

(v) If Client fails to timely defend, contest, or protect against a Third Party Claim, or M&T provides Notice to Client of its belief that Client does not have adequate resources to fulfill its defense obligations, M&T may defend, contest, or protect against the Third Party Claim (and make any compromise or settlement), and M&T's costs arising out of such actions, including legal fees and expenses for enforcing such obligations, are Losses subject to indemnification by Client.

#### 24. Other Indemnification Provisions

(a) **Indemnification for Direct Claims.** Client shall indemnify M&T and its Affiliates (and their representatives) from and against all Losses that arise out of an Indemnifiable Event.

(b) **Enforcement.** Client's obligation to defend, indemnify, and hold harmless M&T and its Affiliates (and their representatives) under the Agreement may be enforced exclusively by M&T or its Affiliates. Nothing in this Section limits or prejudices any other rights or remedies available to M&T at law or in equity.

#### TERM AND TERMINATION

##### 25. Term

The Agreement commences as of the Effective Date and continues until terminated according to the Agreement.

##### 26. Termination

(a) Client may terminate the Agreement or any Service only by providing thirty calendar days' prior written Notice to M&T.

(b) M&T may terminate the Agreement or any Service: (i) by providing thirty calendar days' prior written Notice to Client; or (ii) immediately if:

- (A) required by Law or regulator;
- (B) Client breaches any term, condition, warranty, representation, or obligation in the Agreement or any other agreement with M&T and fails to cure the breach within 15 days of receipt of Notice from M&T (provided, if the breach is not curable, termination is effective on the date specified in the Notice);
- (C) M&T reasonably believes fraudulent, illegal, dishonest, or unauthorized activity has occurred or is likely to occur with respect to a Service or Account;
- (D) Client fails to maintain sufficient available funds in an Account maintained for a Service or closes an Account receiving a Service;
- (E) Client no longer receives Services for an Account;

(F) Client makes an assignment for the benefit of a creditor; is unable, or admits its inability to, pay its obligations as they become due; enters a compromise agreement with its creditor; files for bankruptcy; or has an involuntary bankruptcy petition filed against it; or

(G) M&T determines that Client's financial status is materially impaired or believes that provision of any Service to Client creates risk of financial or reputational harm or unacceptable credit or fraud risk for M&T.

(c) M&T shall use reasonable efforts to provide Client prompt Notice of such termination, but failure to do so does not invalidate the termination.

(d) Termination of the Agreement terminates all Services provided under the Agreement.

#### 27. Post Termination

(a) If the Agreement or a Service is terminated: (i) all Amounts Due with respect to terminated Services are immediately due and payable; and (ii) Client will (A) immediately stop using terminated Services, and (B) promptly return or destroy (or in the case of software, erase or delete) all M&T Property provided to Client relating to the terminated Services.

(b) The provision of any Service to Client after termination of the Agreement shall not be construed as a renewal or extension, or waiver of termination, of the Agreement. In the absence of a separate written agreement between the parties relating to the provision of such Service, the terms and conditions of the Agreement shall apply after termination of the Agreement.

(c) The following provisions of this Master Agreement survive termination of the Agreement or any Service: Sections 20 to 24 and 27 to 44, along with any other Agreement provision necessary to give effect to those provisions (including definitions). Any other provision of the Agreement that: (i) the parties have agreed in writing will survive termination; (ii) remains to be performed or by its nature is intended to apply after termination; (iii) is a confidentiality obligation or limit on M&T's liability; or (iv) is an indemnity, defense, or hold harmless obligation of Client, survives termination.

#### GENERAL PROVISIONS

##### 28. Entire Agreement

The Agreement constitutes the entire agreement between the parties relating to the Services and supersedes any prior or other written or oral agreement, understanding, arrangement, communication, or representation with respect to the subject matter of the Agreement. Any additional or conflicting term in any document from Client, request for proposal, sales or marketing material, or course of dealing or usage of trade is not part of the Agreement. No course of dealing or conduct between the parties constitutes a change to the Agreement or an agreement between the parties.

##### 29. Dispute Resolution

Notwithstanding any Agreement provisions requiring arbitration, any dispute or controversy arising out of this Master Agreement is not subject to such arbitration provisions.

##### 30. Governing Law and Jurisdiction

The Agreement will be governed by and interpreted according to (a) U.S. federal law and (b) subject to any rules of preemption, the laws of the State of New York, without regard to its conflicts of law principles. Any action, proceeding, or claim asserted under the Agreement must be brought and maintained in a court of competent jurisdiction in Buffalo, New York.

##### 31. Waiver of Jury Trial and Sovereign Immunity

(a) THE PARTIES KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR CLAIM ARISING OUT OF THE AGREEMENT, ANY DOCUMENT EXECUTED



BY THE PARTIES IN CONNECTION WITH THE AGREEMENT, OR ANY TRANSACTION CONDUCTED HEREUNDER.

(b) CLIENT REPRESENTS AND WARRANTS THAT IT HAS EXPRESSLY INFORMED M&T, PRIOR TO THE EFFECTIVE DATE, IF IT IS AN ENTITY THAT HAS OR MAY HAVE A RIGHT OF SOVEREIGN IMMUNITY OR SIMILAR RIGHT. WITH RESPECT TO ANY DISPUTE OR CONTROVERSY RELATING TO THE AGREEMENT, SERVICES, OR ACCOUNTS, CLIENT HEREBY WAIVES ANY RIGHT OF SOVEREIGN IMMUNITY OR SIMILAR RIGHT AS TO IT OR ITS PROPERTY WITH RESPECT TO M&T'S ENFORCEMENT OF THE AGREEMENT AND ANY OTHER RIGHTS OR REMEDIES M&T MIGHT HAVE AGAINST CLIENT OR ITS PROPERTY RELATING TO THE AGREEMENT, SERVICES, OR ACCOUNTS. IF THIS PROVISION DOES NOT EFFECTIVELY WAIVE SUCH IMMUNITY OR RIGHT, CLIENT SHALL PROMPTLY DELIVER TO M&T SUCH DOCUMENT(S) AS IS NECESSARY TO EFFECTIVELY WAIVE SUCH IMMUNITY OR RIGHT.

### 32. Notices; Communication; Consents and Other Satisfaction

(a) All notices, demands, claims, consents, approvals, waivers, disclosures, statements, and other communications required or permitted under the Agreement or in connection with the Services or Accounts (collectively, "Notices") must be in writing, unless the Agreement provides otherwise. Notices to M&T must be sent to M&T Bank, Commercial Service Team, P.O. Box 4607, Buffalo, NY 14240, unless otherwise provided in the applicable Product Terms and Conditions or User Guides. Each party may rely on the other party's current mailing or email address for Notices until it has had a Reasonable Time to Act on a Notice changing such address.

(b) Unless otherwise specified in the Agreement, Notices may be given to either party by personal delivery, First Class U.S. Mail, email, or delivery by a nationally recognized courier service. Notice is deemed effective:

(i) If delivered personally or by courier, on (A) the day of delivery, if delivered on a Business Day before 5:00 p.m. local time in the place of delivery, or (B) the Business Day immediately following such day, if delivered after such time;

(ii) If mailed by First Class U.S. Mail, on the earlier of (A) (1) the day the recipient actually receives the Notice, if received on a Business Day before 5:00 p.m. local time in the place of receipt or (2) the Business Day immediately following such day, if received after such time; or (B) three Business Days after mailing, as evidenced by the postmark; or

(iii) If delivered by email, on (A) the Business Day the sender sends the email message, if sent before 5:00 p.m. local time in the place of receipt, or (B) the Business Day immediately following such day, if sent after such time; provided that if Client is the sender, it must confirm the email by delivering a copy by mail or courier in accordance with this Section within two Business Days after transmission.

(c) Notwithstanding any other timeframes in the Agreement, M&T shall have a Reasonable Time to Act upon any Notice or Instruction it receives from or on behalf of Client. If the parties agree in writing that Client may give a Notice or Instruction orally, Client shall confirm such oral Notice or Instruction by Notice in accordance with this Section. M&T may rely on any oral Notice or Instruction from Client, whether or not Client confirms it, and M&T's records of the oral Notice or Instruction control.

(d) M&T may provide Notices to Client as Electronic Records by: (i) email; (ii) posting to a Website; (iii) displaying to Client or Authorized Representatives during sessions on a Website or otherwise; or (iv) any other electronic means. Communications with Client regarding operational, product-related, procedural, and technical matters relating to the Services and Accounts may be provided orally and not subject to the Notice requirements of this Section.

(e) A Notice to Client will be effective if M&T sends such Notice to any mail or email address of an Authorized Representative. M&T shall be deemed to have sent, and Client shall be deemed to have received, any email sent to the email address that Client provides to M&T, regardless of whether Client actually receives, views, or prints such email and even if M&T has notice that the email was undeliverable.

(f) Whenever M&T's consent, authorization, approval, or acknowledgment is required under the Agreement, it may be granted or withheld in M&T's sole and absolute discretion, unless the Agreement provides otherwise.

### 33. Construction of Agreement; Representations

(a) Neither the Agreement nor any ambiguity in it shall be construed more strongly against one party solely because it was the primary drafter. If any provision in M&T's standard form of the Agreement has been omitted or modified as a result of negotiation, in any proceeding such omission or modification shall not be: (i) construed to imply the negative of such omitted or modified provision; (ii) permitted to be used as parole evidence; (iii) used to demonstrate ambiguity in any other provision; or (iv) admissible as evidence.

(b) Each representation and warranty of Client in the Agreement is deemed made to M&T as of the Effective Date and each time Client enrolls in, uses, or pays for a Service.

### 34. Severability

If a provision of the Agreement is held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect, impair, or invalidate any other provisions, which will remain in full force and effect, and the Agreement shall be deemed modified to the extent necessary to render enforceable the remaining provisions to the maximum extent permitted by Law. Additionally, to the extent any provision of the Agreement conflicts with Law and cannot be varied by agreement, the Law controls, but the remaining provisions of the Agreement continue to apply.

### 35. Waivers

Unless otherwise expressly provided in the Agreement, the rights and remedies under the Agreement shall be cumulative and not exclusive of any rights or remedies provided by Law. No failure or delay by M&T in exercising any right, power, or privilege under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. A provision of the Agreement may only be waived by M&T in a signed writing.

### 36. Amendments

The Agreement may not be amended orally or by course of conduct. M&T may propose changes to any of the documents comprising the Agreement (e.g., Service Fees, User Guides, the Master Agreement, and the Product Terms and Conditions) as M&T deems appropriate (a "Proposed Change"). A Proposed Change is effective immediately if M&T reasonably determines it will not have a material adverse effect on Client's use of the Services, and otherwise is effective on the date indicated in a Notice to Client. Such Notice may be provided or made available in paper or electronically, including on the Website. By continuing to be enrolled in, using, or paying for the affected Service after such Proposed Change is effective, Client agrees to and is bound by such change. Notwithstanding anything else in the Agreement, M&T may make any Proposed Change without prior Notice to Client if required for security reasons or by Law. The Agreement may not otherwise be amended without the consent of both parties.

### 37. Representations and Warranties

Client represents and warrants that: (i) it is duly organized or formed, validly existing, and in good standing; (ii) the individual(s) signing this Master Agreement (or any part of the Agreement) are duly authorized to do so and to engage in each transaction directed by such person; and (iii)

its execution, delivery, and performance of the Agreement is duly authorized and does not, and will not, violate any Laws, Client's organizational or governing documents, or any contract with a third party. Client shall promptly provide evidence of compliance with this Section upon request and Notice to M&T if any of its representations or warranties ceases to be accurate.

#### **38. Binding Effect**

The Agreement is entered solely by and between, and may only be enforced by, Client and M&T (and their permitted successors and assigns) and, except to the extent provided herein, is not intended to confer on any other person any right, remedy, obligation, or liability.

#### **39. Conflicts**

In the event of a conflict between any provisions in the documents forming part of the Agreement, the order of precedence is as follows (unless the particular document provides otherwise):

- (a) Master Agreement;
- (b) Product Terms and Conditions; User Guide; and
- (c) all other documents forming part of the Agreement.

#### **40. Assignment**

Neither the Agreement, nor any rights, interests, or obligations under it, may be assigned by either party without the prior written consent of the other party; provided Client's prior consent will not be required for: (a) M&T's delegation, outsourcing, or subcontracting of all or part of the performance of any Service to an Affiliate or other party; or (b) an assignment by M&T (i) to an Affiliate, (ii) by merger, consolidation, or operation of Law, or (iii) as part of a sale or transfer of all or substantially all of M&T's business or assets relating to the Services. Subject to this Section, the Agreement is binding on, inures to the benefit of, and is enforceable by the parties and their respective successors and permitted assigns. Any purported assignment in violation of this Section is void.

#### **41. Force Majeure**

Neither party will be liable for any delay or failure in performance of any part of the Agreement or deemed in breach of its obligations hereunder, if such failure, delay, or breach is due to any cause beyond its reasonable

control. This Section shall not relieve Client of its obligation to pay M&T for Services provided.

#### **42. Export Control**

The Website and Services may contain software and other technology subject to U.S. export controls. No software or other technology from the Website or Services may be downloaded, accessed, or otherwise exported: (i) into, or to a national or resident of, a country to which the U.S. has embargoed goods, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Client represents and warrants that it is not located in, under the control of, or a national or resident of, any such country or on any such list.

#### **43. Further Assurances**

Client shall execute, deliver, and perform all other agreements required by vendors or other parties necessary for the provision of the Services and Accounts (including any sublicense agreements or postal authorizations) or as required or requested by M&T.

#### **44. Relationship**

The relationship of the parties under the Agreement is that of independent contractors. Nothing in the Agreement creates a partnership, joint venture, or similar relationship between the parties, and neither M&T nor Client shall be deemed an agent of the other. M&T is not in a fiduciary or similar relationship with, nor does it have fiduciary duties or obligations to, Client or its Servicer.

#### **45. Counterparts**

The Agreement may be signed in any number of counterparts, each of which shall be deemed an original. M&T may prepare or maintain an Electronic Record that contains an image or other copy of the original Agreement signed by Client, its Authorized Representative, or M&T using actual or Electronic Signatures. All true and correct copies of such Electronic Records will be deemed "originals" for all purposes under Law, whether or not M&T retains the original Agreement.

## **Schedule 1 to Master Treasury Management Services Agreement: Definitions and Terms of Construction**

The following capitalized terms, when used in the Agreement, have the meanings below:

**“Account”** means any existing or future account of Client, or over which Client has authority, with M&T.

**“ACH”** means the Automated Clearing House.

**“ACH Rules”** means the ACH Operating Rules and Guidelines published by NACHA.

**“Affiliate”** means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with a party (where **“control”** means the power to direct the management of the entity’s affairs, and **“ownership”** means the beneficial ownership of a majority of the entity’s voting rights).

**“Authorized Representative”** means any person who or that: (a) has been designated or authorized by Client to act on its behalf in any capacity with respect to the Agreement, Services, or Accounts; (b) Client directly or indirectly gives access to or allows to use the Services or Accounts, or any information relating thereto; or (c) M&T reasonably believes is an authorized representative of Client based on course of conduct. Authorized Representatives include any TM Signer, System Administrator, Account signer, designated ‘user’ of a Website, Transmitter, Wire Telephone Transmitter, Wire Security Contact, FX Wire Contact, Servicer, Servicer Representative, and any representative of M&T (or its Affiliates) appointed by Client as an Authorized Representative for purposes of the Agreement, Services, or Accounts.

**“Business Day”** means Monday through Friday, excluding federal holidays and other days M&T is legally permitted to be closed.

**“Client’s Customers”** means Client’s own customers, clients, or members.

**“Client Election Form”** means the M&T Client Election and System Administration Form(s) submitted by Client to M&T that set forth Client’s elections and Instructions with respect to the Services or Accounts.

**“Client Resolution”** means the M&T Client Resolution (Certificate of Treasury Management and Other Resolution) submitted by Client to M&T (or other document accepted by M&T) to authorize, among other things, entry into the Agreement and designation of the TM Signers.

**“Commercial Deposit Account Agreement” or “CDA”** means the M&T Commercial Deposit Account Agreement that sets forth the terms and conditions applicable to M&T’s non-consumer deposit accounts and other M&T fees and disclosures relating to such accounts.

**“Confidential Information”** means a party’s or its Affiliate’s proprietary or confidential information, including any technology, know-how, processes, software, databases, manuals, trade secrets, contracts, historical, current, and projected financial information, business strategies, operating data, organizational and cost structures, product descriptions, pricing information, whether received before or after the Effective Date, whether oral, written, electronic, or otherwise, and regardless of the form in which it is provided or maintained by such party. Confidential Information of M&T includes the Agreement, Security Protocols, Payment Order Security Procedures, M&T Technology, and M&T Materials. Confidential Information does not include information publicly available to the Receiving Party (without violation of any confidentiality obligation).

**“Correspondent”** means any: (a) intermediary or recipient institution (and any agent or sub-agent thereof); (b) payment system or network; or (c) other third party, in each case involved in the provision of a Service, including the transmission or receipt of a Payment Order.

**“Direct Transmission”** means the submission of a file, Instruction, or other information directly from Client to M&T (or vice versa) via M&T’s designated transmission platform.

**“Electronic Record”** means information that is created, generated, sent, communicated, received, or stored by electronic means and is retrievable in perceivable form.

**“Electronic Signature”** means an electronic symbol or process, attached to or logically associated with an agreement, form, or other document (whether or not in the form of an Electronic Record) and executed or adopted by a person with the intent to sign the agreement, form, or document.

**“ET”** means Eastern Time.

**“Funds Transfer”** means any electronic funds transfer from an Account, including through a wire transfer or ACH network.

**“Governmental Authority”** means any transnational, domestic, or foreign, federal, state, or local governmental authority, department, court, agency, or official, including any political subdivision thereof, or a country’s central bank.

**“Instruction”** means any communication, message, or other instruction by or on behalf of Client, whether in oral, written, electronic, or other form, including a Payment Order.

**“Law”** means any foreign, federal, state, or local law (statutory, common, or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, guideline, policy, order, injunction, judgment, decree, ruling, or other similar requirement or directive enacted, adopted, promulgated, or applied by a Governmental Authority that is binding upon or applicable to a party, and letters or guidelines issued by regulatory authorities. Law includes any regulations, rules, and policies of applicable payment, card, or other associations used in connection with the Services or Accounts.

**“Loss”** means any and all losses, damages, liabilities, claims, causes of action, demands, suits, proceedings, injuries, costs, expenses (including court costs, disbursements, reasonable legal and professional advisor fees and expenses, and reasonable expenses of investigation), judgments, penalties, charges, fines, and other damages of any nature.

**“M&T Technology”** means all firmware, equipment, hardware, software, data compilations, programs, applets, scripts, macros, databases and servers, and related technology ideas and know-how, whether owned or licensed by M&T, and used in connection with any Service or Account, including all modifications, updates, new releases, and replacements thereof. M&T Technology does not include any “open source” firmware, software, or data compilations, and such “open source” items are subject to the terms and conditions of the relevant “open source” license.

**“M&T Materials”** means any documents, materials, or information that M&T provides or makes available to Client relating to the Agreement, Services, or Accounts, including User Guides, manuals, data, and any security access materials (such as user IDs, passwords, codes, keys, test keys, embedded algorithms, digital signatures and certificates, tokens, and security devices).

**“M&T Property”** means, collectively, the Website, M&T Technology, and M&T Materials.

**“Multiple Client Authorization Agreement”** means the M&T Multiple Client Authorization Agreement entered into between M&T and a group of Clients to authorize one Client (the **“Primary Client”**) to act as agent for each other Client with respect to the Services and Accounts.

**"NACHA"** means the National Automated Clearing House Association.

**"OFAC"** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**"Payment Order"** means an Instruction to initiate a Funds Transfer.

**"Payment Order Security Procedures"** means the subset of Security Protocols described in the Product Terms and Conditions Booklet and agreed to by Client in the Client Election Form (or another form acceptable to M&T) and used to verify the authenticity of a Payment Order.

**"Product Terms and Conditions"** means the terms and conditions for a particular Service.

**"Product Terms and Conditions Booklet"** means the booklet issued by M&T that includes the Product Terms and Conditions for the Offered Services.

**"Reasonable Time to Act"** means a reasonable time for a party to act, but not less than two Business Days after the Business Day of receipt of the applicable information or Instruction.

**"Security Protocols"** means the applicable security procedures made available by M&T: (a) for verifying that an Instruction is that of Client; (b) for encrypting or otherwise helping to restrict access to information, the Accounts, or Services, which may include user IDs, passwords, algorithms, or other codes, identifying words or numbers, check stock, tokens, challenge questions, and encryption; or (c) otherwise intended to mitigate fraud risk (e.g., dual authorization).

**"Service Fees"** means the fees, charges, and expenses set by M&T for the provision of the Services or Accounts.

**"Servicer Representative"** means any person that: (a) has been designated or authorized by Servicer to act on its behalf in any capacity with respect to the Agreement, Services, or Accounts; (b) Servicer directly or indirectly gives access to or allows to use the Services or Accounts, or any information relating thereto; (c) M&T reasonably believes is an authorized representative of Servicer based on course of conduct; or (d) is otherwise engaged by Servicer to act on its behalf.

**"Set-Up Form"** means an M&T set-up form or questionnaire that Client submits to M&T for, or for which Client provides information for the set-up of, a Service.

**"Statements"** means any periodic account statements or account analysis statements for an Account.

**"System Administrator"** means each individual designated by or on behalf of Client as its "System Administrator" in a Client Election Form (or other document or means acceptable to M&T).

**"TM Signer"** means each individual designated by Client in a Client Resolution as its "TM Signer."

**"UCC-4A"** means, with respect to any jurisdiction, Uniform Commercial Code Article 4A - Funds Transfers.

**"User Guides"** means the user guides, information, computer help screens, and documents made available to Client by or on behalf of M&T that establish the guidelines, rules, protocols, procedures, and terms and conditions applicable to the Accounts, Services, Security Protocols, Payment Order Security Procedures, or information transmission.

**"Virus"** means any code, program, or other internal components that restrict, or may restrict, use or access to, or do or may damage, destroy, or alter any system, computer, network, program, data, or other information or data processing device, including any computer virus, malware, adware, spyware, tracking cookie, computer worm, computer time bomb, trojan horse, back door, or similar component.

**"Website"** means any Internet website, mobile, or access channel that M&T makes available to Client to access any Service. Each Website is part of the Service.

The following terms of construction apply to the Agreement: (a) headings are included for convenience of reference only; (b) words importing the singular shall include the plural, and vice versa; (c) words importing the masculine gender shall include the feminine and neutral genders; (d) "including," "includes," and comparable terms mean "including without limitation"; (e) "or," as in "A or B," means "A or B or both"; (f) "hereunder," "hereto," "hereof," and "herein," unless the context clearly indicates otherwise, refer to the whole Agreement and not to a particular section; (g) "written," "writing," and comparable terms mean any intentional reduction of information to tangible form by any means as M&T may agree to use or accept, including an Electronic Record; (h) "person" means an individual, corporation, partnership, limited liability company, association, trust, or other entity or organization, including any Governmental Authority; (i) "M&T" includes any M&T Affiliates that provide Services to Client; (j) "representative" includes a party's Affiliates, directors, officers, employees, agents, permitted assigns, and other representatives (including, with respect to Client, Client's Authorized Representatives); (k) reference to a Law means such Law as it has been amended through the date the particular portion of the Agreement is to take effect, any successor Law, and any then applicable rules or regulations promulgated thereunder; (l) references to any agreement, form, or other document are to that document as periodically amended, modified, or supplemented in accordance with the terms thereof; (m) any agreement, form, or other document that may be entered into between the parties or submitted by Client may be entered into or submitted in paper form or electronically, as agreed by the parties; (n) "arising out of" (and words of similar import) means arising out of, in connection with, or resulting from; and (o) "U.S." means the United States.

## Schedule 2 to Master Treasury Management Services Agreement: Financial Institution Clients

### General Provisions for Financial Institution Clients

(a) If Client is a financial institution, Client may use any Service to assist it in providing services to Client's Customers with whom Client has a financial, fiduciary, or business relationship, upon M&T's approval. For example, Client may wish to use M&T's Funds Transfer (Wire) Service to help Client process payment orders submitted to Client from Client's Customers. Client shall not conduct transactions for or on behalf of undisclosed or anonymous third parties through its Accounts or Services.

(b) Client must enter into and maintain a written agreement with each of Client's Customers ("Client Customer Agreement") that contains the following provisions: (i) an acknowledgment that Client may use M&T (or other third party vendors) to assist Client in performing services for Client's Customers and that M&T (and such third party vendors) are third party beneficiaries of the Client Customer Agreement; (ii) nothing in the Client Customer Agreement, the parties' course of dealing, or otherwise may be construed to impose any liability or responsibility on M&T for any Losses with respect to any Services to Client's Customers or the performance of the Client Customer Agreement; (iii) limitations and exclusions on liability and remedies substantially the same as those under the Agreement with respect to any service provided by Client to Client's Customers through the Services; and (iv) an authorization to disclose Client's Customer's information to M&T, as required for Client to provide services to Client's Customer.

(c) With respect to any service provided by Client to Client's Customers through the Services, Client will not make any representations, warranties, or agreements that are inconsistent with the terms and conditions in the Agreement.

(d) Any failure of Client's Customer to discharge any obligations of Client under the Agreement is a failure by Client to discharge such obligations. Client's Customers are not third party beneficiaries of the Agreement.

(e) Anti-Money Laundering; Know Your Customer.

(i) Within reasonable timeframes required by M&T, Client shall comply with any requests by M&T regarding M&T's fulfillment of its "know your customer" responsibilities, including: (A) providing information about the use of any Account or Service, including transactions requested for Client's Customers and the parties to those transactions; and (B) making changes to the activity in its Account or the use of Services, including ceasing use of an Account or Service for particular types of transactions or for transactions involving particular parties. Client must immediately notify M&T of any Account or Service activity that is unusual, suspicious, or high risk.

(ii) Client must not use an Account or Service to send or receive payments on behalf of Client's Customers that: (A) appear to relate to illegal activity, including money laundering, terrorist financing, human trafficking, and political corruption; (B) do not appear to have a legitimate purpose, including payments lacking transparency regarding the originator or beneficiary; (C) involve the use of an Informal Value Transfer System (as defined in FinCEN Advisory FIN-2010-A011); (D) are subject to U.S. or other applicable international sanctions; (E) appear to circumvent currency controls; (F) involve unlawful Internet gaming/gambling; or (G) involve accounts of "nested" shell banks and foreign financial institutions (as defined in the USA Patriot Act). Client must maintain transaction monitoring controls to assure that its Accounts and Services will not be used for payments in the above categories, and M&T may reject Payment Orders for such payments.

(iii) Client must have sufficient "know your customer," anti-money laundering, and transaction monitoring policies, procedures, and controls to ensure that payments will not violate Law or present unacceptable compliance, operational, reputational, fraud, or credit risk.

(iv) Client must not omit, delete, or alter information in payment messages or orders from Client's Customers for the purpose of avoiding detection of that information by M&T or any other financial institution in the payment process. With respect to any transmittal order that Client transmits to M&T for processing, Client must include all information required for Client's compliance with the Travel Rule under 31 C.F.R. 1010.410(f).

(f) This "Financial Institution Clients" Schedule does not apply to a Client that is a Third Party Sender (as defined in the ACH Rules) for M&T's ACH Origination Service. The Product Terms and Conditions for the ACH Origination Service set forth requirements for any Client that is a Third Party Sender that wishes to use such service.

### Dodd-Frank Consumer Payment Service

(a) Service. The Dodd-Frank Consumer Payment Service offers Clients that are financial institutions assistance with providing Remittance Transfer services to Client's Customers. Under this Service, M&T will provide to Client: (i) certain information, data, and forms (collectively, "Information") that Client may use to prepare and provide Disclosures to Client's Customers who initiate Remittance Transfers; and (ii) support in investigating Errors asserted by Client's Customers in connection with the Information.

(b) Definitions. The following terms are defined in the Remittance Transfer Laws: (i) Remittance Transfer (i.e., an electronic transfer of funds requested by consumers for payment to recipients outside of the U.S.); (ii) Remittance Transfer Provider; (iii) Sender; (iv) Error; and (v) Preauthorized Remittance Transfer. Other terms not defined below are defined in the Funds Transfer (Wire) Service T&C.

(i) "Disclosure" means any prepayment, receipt, or combined disclosure, proof of payment, or other disclosure that may be required under the Remittance Transfer Laws.

(ii) "Remittance Transfer Laws" means the Electronic Fund Transfer Act as amended by Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Bureau of Consumer Financial Protection Regulation E (Subpart B – Remittance Transfers).

(c) Funds Transfer (Wire) Service. To use this Service, Client must have elected the Funds Transfer (Wire) Service for the Account, and the Funds Transfer (Wire) Service T&C apply with respect to Payment Orders in connection with its use of this Service.

(d) Telephone Call to M&T. To request that M&T process and execute a Remittance Transfer for Client's Customer, Client must use M&T's "Telephone to Wire Room" transmission method, which requires that an Authorized Representative call the number provided by M&T (each, a "Call") and:

(i) utilize the M&T provided token device;

(ii) provide the Payment Order details required by M&T for such Remittance Transfer; and

- (iii) inform the M&T representative that the Payment Order is a “consumer foreign Remittance Transfer” (or such other wording as M&T may advise Client to use) and that Client requires M&T to provide the Remittance Transfer Information set forth in Section (e) below.
- (e) Provision of Information to Client. After a Call, M&T will send to Client via email or other means determined by M&T, Information with respect to the requested Remittance Transfer, including the amount of any fees charged by M&T and the following Information as provided to M&T by its intermediary bank:
- (i) the amount of any fees charged by M&T’s intermediary bank;
  - (ii) the FX rate and foreign currency amount; and
  - (iii) the date that payment of the Remittance Transfer will be made available to the recipient.
- (f) Processing Remittance Transfers.
- (i) After Client has received the Information described in Section (e) above, Client may use M&T’s “Telephone to Wire Room” transmission method to call back M&T and instruct M&T to initiate the Remittance Transfer; provided that Client may not instruct M&T to initiate the Remittance Transfer until:
    - (1) Client has provided to Client’s Customer all Disclosures required by the Remittance Transfer Laws to be provided prior to processing the Remittance Transfer;
    - (2) Client has obtained Client’s Customer’s express authorization to proceed with the Remittance Transfer; and
    - (3) At least that amount of time within which a Sender has the right to cancel a Remittance Transfer has elapsed (i.e., currently 30 minutes) between (A) the time that Client’s Customer makes payment for the Remittance Transfer, and (B) the time Client calls back M&T to instruct M&T to initiate the Remittance Transfer. Client is solely responsible for refunding to Sender the full amount of the Remittance Transfer (and all related fees, taxes, and amounts required by the Remittance Transfer Laws) if Client cancels the Remittance Transfer.
  - (ii) Once Client instructs M&T to initiate the Remittance Transfer, such Remittance Transfer may not be cancelled or amended without M&T’s consent.
  - (iii) The authenticity of Remittance Transfer Instructions issued by Client to M&T will be verified pursuant to the security procedures set forth in the Funds Transfer (Wire) Service T&C for the “Telephone to Wire Room” transmission method.
- (g) Investigation Support Services. Upon Client’s request, M&T will provide reasonable investigation support services in connection with Remittance Transfer Instructions for which M&T provides this Service. All requests for investigation support must: (a) be provided in writing no later than 180 days after the disclosed date of availability of the Remittance Transfer; (b) include sufficient information to enable M&T to identify the Remittance Transfer that is the subject of investigation; and (c) indicate the reason for such investigation. M&T will provide a written report to Client detailing the results of M&T’s investigation no later than 90 days after receipt of Client’s request.
- (h) Scope of Service.
- (i) Client may only use the Information to generate Disclosures for Remittance Transfers initiated by Client’s Customers and effectuated by Client through Funds Transfers made from its Account(s).
  - (ii) The Information: (A) may not contain all information required by the Remittance Transfer Laws; or (B) may contain inaccuracies and is in a constant state of maintenance, correction, and update that will result in periodic changes. Without notice to Client, M&T may modify, add, remove, or otherwise make unavailable certain Information (and may remove or add currencies for which Information is available).
  - (iii) Any information or data that is provided by Client to M&T for purposes of Client generating a Disclosure for a particular Remittance Transfer must be consistent with the information and data in the related Remittance Transfer Instruction that is subsequently transmitted by M&T for processing, and Client is solely responsible for any inconsistencies between such information and data.
  - (iv) As between M&T and Client, UCC-4A applies to all Funds Transfers executed under the Agreement (including Remittance Transfers), except to the extent that the provisions of UCC-4A conflict with the Remittance Transfer Laws, in which case the Remittance Transfer Laws control. If any provisions of the Agreement conflict with the Remittance Transfer Laws, the Remittance Transfer Laws control, but the remaining provisions of the Agreement continue to apply. When the provisions of the Agreement vary the terms of UCC-4A, the Agreement controls as long as the variance is permitted by UCC-4A; otherwise, UCC-4A controls, but the remaining provisions of the Agreement continue to apply.
  - (v) If Client does not use this Service, but uses M&T’s Funds Transfer (Wire) Service to transmit Remittance Transfer Instructions (provided to Client by Client’s Customers who are Senders) to M&T for processing, M&T will process such Instructions as if they are Funds Transfers that are not Remittance Transfers, and, accordingly, will not provide Client with this Service.
- (i) Client is Remittance Transfer Provider.
- (i) With respect to any Remittance Transfer Instruction that Client transmits to M&T, Client is the Remittance Transfer Provider. By virtue of providing this Service to Client, M&T: (A) is not, and has no obligations of, a Remittance Transfer Provider (including any obligation to provide any Disclosures to Client’s Customers or to investigate or remediate Errors); and (B) is not assuming any responsibility for Client’s compliance with or liability under the Remittance Transfer Laws.
  - (ii) Client is solely responsible for complying with, and shall comply with, all Remittance Transfer Laws (including providing Disclosures to Client’s Customers and investigating and remediating Errors). M&T has no obligation to assist Client in complying, or determining whether Client has complied, with the Remittance Transfer Laws. While the Service is designed to assist Client with its obligations under the Remittance Transfer Laws, M&T does not represent or guarantee that this Service will ensure that Client is in compliance with such Laws. Client is solely responsible for any unauthorized Remittance Transfer that is processed for Client’s Customer.

(iii) M&T is not responsible for determining whether any Funds Transfers M&T processes for Client are Remittance Transfers.

(iv) M&T is providing this Service solely to Client and not to any of Client's Customers, and no relationship, contractual or otherwise, is intended to be or is created between M&T and any of Client's Customers.

(j) No Preauthorized Remittance Transfers. Preauthorized Remittance Transfers cannot be processed through this Service.

(k) Safe Harbor Rule. Client is solely responsible for determining whether it is a Remittance Transfer Provider or whether it is eligible to rely on the safe harbor rule under 12 C.F.R. Part 1005-31(f) for low volume Remittance Transfer Providers (i.e., providers of 100 or fewer Remittance Transfers in the previous calendar year and 100 or fewer Remittance Transfers in the current calendar year).