



REMOTE MERCHANT CAPTURE SERVICES AGREEMENT

This document contains the terms and conditions that are applicable to all business clients of Provident Bank or any of its divisions, including PBNY Bank (a division of Provident Bank, New York) ((collectively referred to as the "Bank"). By signing a Provident Bank Remote Merchant Capture Services Application and Setup Form (the "Application"), the business Client requesting this service (the "Client") agrees to be bound by this Remote Merchant Capture Services Agreement (the "Agreement").

The Client receives payments by paper check from its customers (the "Indirect Customers"); and the Client has requested the Bank to provide certain electronic capture services ("Provident Remote Merchant Capture Services" or "PRMCS") to the Client as described in this Agreement; and

1. General. The PRMCS consists of a check scanning device provided to Client directly by a third-party vendor (the "Scanner") and a browser-based software program sublicensed to the Client by the Bank (together with all related materials and documentation, the "Program"), and permits the Client to conduct certain check related activities with the Bank electronically. PRMCS activities include the ability to capture electronic images of (and associated information regarding) paper checks (such electronic images and associated information are collectively referred to as "Images") and to electronically transmit those Images to Select Payment, a Jack Henry & Associates, Inc. Company and the Bank's third-party processor ("SP"). Once SP receives the Images, it uses them to initiate one of three types of payments: (a) an electronic debit made through the Automated Clearing House (ACH) network (an "ACH Transaction" or "ACH Transfer"), (b) an electronic item under Regulation J and/or an agreement for electronic presentment with the Drawee Bank (an "Electronic Item") or (c) a substitute check under the Check for the 21st Century Act (a "Substitute Check Transaction") (collectively, the "Services"). The Services are provided by the Bank and its vendors for access and use by Client. Other terms and conditions are included in the Remote Merchant Capture Confirmation of Terms document signed by the Client which is incorporated herein by reference.

2. Laws, Rules and Regulations. The Client agrees to comply with all existing and future operating procedures used by the Bank for processing of transactions. The Client further agrees to comply with all applicable state or federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, including but not limited to rules and procedural guidelines established by the Board of Governors of the Federal Reserve System, the Federal Trade Commission (FTC) and the National Automated Clearing House Association (NACHA) and/or all regional payment alliances associated with NACHA. The Expedited Funds Availability

Act and Regulation CC govern the collection and return of checks and the definition of the term "check" as used herein has the meaning as defined in this law and regulation. These laws, procedures, rules, regulations and definitions (collectively the "Rules") are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control the interpretation of this Agreement. The NACHA rules as amended from time to time are available at http://www.achrulesonline.org/

3. Use of Scanner and Program by Client. The Scanner and Program allow the Client to capture Images and to then transmit those Images to SP electronically for the purpose of having SP initiate ACH Transfers, present Electronic Items or create and present Substitute Checks. The Client agrees that it will endorse each original check "for deposit ONLY" to the Account (as defined below) before capturing an Image of it. Checks with no endorsement are deemed to be endorsed "Credit to within Named Payee." The Client also agrees that it will not (a) capture more than one Image of any original check (b) negotiate, deposit or otherwise transfer any original check to the Bank or to any other person or entity after it has captured an Image of that original check (c) transmit an Image of any original check to the Bank more than once, (d) transmit an Image of any original check to the Bank that has previously been transmitted to any other person or entity, (e) transmit an Image of any original check to any other person or entity after transmitting it to the Bank; (f) transmit an Image of any original check if that check has been used as a source document for the initiation of an ACH transfer or other electronic debit; and (g) use any original check as a source document for the initiation of an ACH or other electronic debit after transmitting an Image of that check to the Bank. The Client agrees to use reasonable security procedures to safeguard the original checks and Images. The Indirect Customers' accounts may be debited through such ACH Transactions, rather than the check clearing system. As such, the Indirect Customers may not receive their original cancelled paper checks through the check clearing system. These paper checks will be stamped "ELECTRONICALLY PROCESSED" by the Client or the Scanner and will be retained by the Client for a period according to the Rules, but no more than sixty (60) days from scanning of the check,

before being destroyed. Client agrees to use a secure paper shredding and document destruction system for purposes of destroying the checks. The Images will be maintained by SP for a period of seven years. Should Client or Indirect Customers need a check researched, SP will provide the Image from its archive during the record retention period; however, it may take a few days to retrieve the Image from the archive. The Client is responsible for any fees and charges incurred for this retrieval service provided by SP.

The Client also agrees to properly maintain and clean the scanner

- 4. <u>Client's Obligations to Indirect Customers.</u> As the Client will be receiving the Indirect Customers' paper checks, and creating Images from these checks to process as ACH Debits, Electronic Items or Substitute Checks, and as the Client will be retaining and then destroying the Indirect Customers' paper checks, the Client must comply with the following responsibilities:
 - (a) Provide Notification to the Indirect Customer for ACH Transactions. The Client must provide notice to the Indirect Customer that the paper checks may be converted to Images, and that the transaction may be completed as an ACH Transaction, when applicable. A sample format of this notice is attached to this Agreement as Exhibit "A".

For checks received through the U.S. Mail or a drop box this notice may be included on an invoice sent by the Client and must state that unless the Indirect Customer notifies Client *not* to process Indirect Customer's checks using the Services, those items may be converted to Images and processed using the Services. If the Indirect Customer gives the Client such a notice, the Client may not process any checks received from the Indirect Customer with the Service.

For checks received in person, the notice must be posted in a prominent and conspicuous location and a copy of the notice must be given to the Indirect Customer at the time of the transaction. If the Indirect Customer notifies the Client at the time of the transaction not to process a particular check with the Service, the Client may not process that particular check with the Service.

- (b) Retain Paper Checks after Converting to Images. Paper checks will be handled and retained as stated in Section 3 above.
- (c) Compliance with Rules; No-Disclosure and Confidentiality. Client agrees both (i) to comply with and (ii) cooperate and assist the Bank and its vendors in complying in a complete and timely manner with the Rules. Client agrees to execute and deliver to the Bank all such instruments as the Bank may from time to time reasonably deem necessary. Client shall not disclose to any third party other than the Bank, or any agent of Client for the purpose of assisting Client in completing a

transaction, or as specifically required by law, any account information or other personal information. Client, in an area limited to select personnel, and prior to discarding, shall destroy in a manner rendering data unreadable all material containing account information after it has been retained for a period specified by the Rules.

- 5. Right to Use Program/Limited Sublicense. The Bank has entered into a software license agreement with SP regarding the Program (the "Software License Agreement"). The Bank hereby grants to the Client a non-transferable and nonexclusive sublicense for use of the Program, subject to the terms and conditions set forth in this Agreement and the Software License Agreement. The Client acknowledges and agrees that the Program is valuable, confidential and proprietary property of SP and agrees not to transfer, distribute, copy, reverse compile, modify or alter the Program. In addition to any other disclaimers or limits on the Bank's liability in this Agreement, the Bank makes no guarantees and has no responsibility with respect to the Client's use of the Program being uninterrupted, error free, free from program limitations or free of viruses, disabling devices or other harmful components. The Bank will deliver the Program to the Client and will provide instruction and consultation to assist the Client in the initial installation and setup of the Program.
- 6. The Scanner. The Scanner must be a model that the Bank has approved for use with the Service. The Client must purchase the Scanner directly from a third-party vendor and agrees that (a) in no event will the Bank be responsible for the performance, use or maintenance of the Scanner and (b) all warranty obligations and maintenance issues or contracts must be handled directly with the third-party vendor. The Client is responsible for arranging for delivery, installation and configuration of the Scanner.
- 7. Maintenance. After delivery and installation of the Program and until the termination of this Agreement pursuant to Section 8, the Bank will assist the Client in obtaining from SP technical support and other information for the operation and use of the Scanner and Program, and will notify the Client of any modifications, refinements and enhancements to the Scanner or Program which SP may hereafter implement and which the Bank has received notification from SP.
- 8. Term. This Agreement is effective from the date the Scanner and the Program have been installed and shall remain in force until termination. This Agreement may be terminated (i) upon thirty (30) days prior written notice by either party to the other at the then current address of record, (ii) upon termination of the account relationship between the parties, (iii) upon failure of the Client to comply with the terms and conditions of this Agreement, (iv) upon termination of the Software License Agreement, or (v) upon the occurrence of any other event which causes SP to be unable to provide the Program to the Bank or the Client. The Client agrees to return all written and/or electronic documentation related to the Scanner and/or Program to the Bank, together with all copies

thereof, upon termination. The provisions of this Agreement protecting the proprietary rights of SP and the Bank will continue in force after termination.

- 9. Fees. Client agrees to pay the fees for access to and use of the Program at the rates specified by the Bank's Fee Schedule, as may be amended from time to time, and which is available upon request. The Bank may deduct all fees due from any account of the Client at the Bank.
- 10. Account. The Client will maintain with the Bank at least one demand deposit or commercial checking account (the "Account(s)") for the purpose of providing available funds and for deposit of funds received in connection with the use of the Services. In addition to the terms of this Agreement, the Account will be subject to a separate Deposit Account Agreement. In the event of a conflict between the terms of this Agreement and the Deposit Account Agreement, the terms of this Agreement will control. Unless the Bank otherwise requires the Client to maintain collected funds, the Client agrees to maintain sufficient available funds in the Account(s) to support any transaction initiated under the Services and to cover any fees the Client is obligated to pay under this Agreement. If at any time there are not sufficient collected funds in the Account to cover all outstanding transactions and other payment obligations of the Client under this Agreement, Client agrees to immediately pay the Bank, on demand, the amount of any deficiency in such outstanding transactions and obligations. The Bank may, without prior notice or demand, obtain payment from Client for any of its obligations under this Agreement by debiting any account of the Client at the
- 11. <u>Settlement Reserve</u>. The Client may be required to maintain a reserve (the "Settlement Reserve") of an amount to be solely determined by the Bank. The Client hereby acknowledges and agrees that any Settlement Reserve will be deposited in an account at the Bank for exclusive use by the Bank for purposes of offsetting any of the Client's obligations under this Agreement. If the Client's Settlement Reserve falls below the required amount, the Client authorizes the Bank to immediately replenish the Settlement Reserve to an amount to be determined by the Bank via an ACH debit to the Client's Account or by a direct deposit to the Settlement Reserve. No interest will be paid on the Settlement Reserve. The Client grants the Bank a security interest in any Settlement Reserve so that the Bank may enforce any obligation owed by the Client under this Agreement without notice or demand to the Client. The Client's obligation to maintain a Settlement Reserve shall survive the termination of this Agreement for the duration of the Termination Period during which time the Bank's security interest shall continue.
- 12. <u>Right of Setoff.</u> The Client hereby acknowledges and agrees that the Bank shall have a right of setoff against any and all fees owed the Bank by the Client under this Agreement.
- 13. <u>Authorization</u>. The Client will provide to the Bank

- properly executed authorizations from the Client (which may be designated by resolution executed in conjunction to the establishment of the Client's deposit account), in form acceptable to the Bank identifying by name and title the officers of the Client who are authorized to sign this Agreement and perform the obligations of the Client under this Agreement. In the absence of such authorizations, the Client agrees that individuals authorized to sign on the Client's deposit account are authorized to sign this Agreement and perform the obligations of the Client under this Agreement. From time to time hereafter, the Client may identify other persons who are authorized to provide instructions or directions to the Bank, to sign any document or instruction on behalf of the Client relating to this Agreement, and to take any action on behalf of the Client; provided, however, that the Bank may rely upon, as authentic and duly authorized, any written or other communication from any person purporting to be an officer of the Client or other representative of the Client regardless of whether the Client shall have provided to the Bank any evidence of such person's authority.
- 14. <u>Account Reconciliation</u>. All transactions which result in a debit or credit to the Account initiated by the Client using the Services will be reflected on the Client's monthly account statements. The Client will notify the Bank, within twenty-one (21) days after the mailing of the account statements by the Bank of any discrepancies between the account statements and the Client's records of transactions initiated through the Services. Failure of the Client to notify the Bank within that time period of any such discrepancies will preclude the Client from asserting any claims for damages or other liabilities against the Bank by reason of such discrepancies.
- 15. **ACH Transfers.** The Client acknowledges that once the paper checks are processed with the Scanner (and become Images) the transactions may be processed by the Bank and entered into the ACH network if appropriate. The transaction described on the Image (the "Entry" or "Entries") will be completed as an ACH Transaction if legally permissible. Otherwise the transaction will be completed as an Electronic Item or as a Substitute Check. If the Bank elects to process an Image as an Electronic Item, the Bank will process the Image for deposit to the Client's Account and forward it for presentment to the financial institution on which the original check was drawn or through or at which it was payable (that institution is referred to as the "Drawee Bank") through the electronic presentment channels that the Bank would otherwise use to present an electronic item to the drawee bank. If the Bank elects to process an Image as a Substitute Check, the Bank will process that Substitute check for deposit to the Client's Account and forward it for presentment to the Drawee Bank through the check collection channels that the Bank would otherwise use to present a check to the Drawee Bank. In either event, the transaction will be subject to the terms of any agreement we have with financial institutions relating to the presentment of electronic items or substitute checks. The Bank will make funds for each Image processed for deposit to the Client's Account available under the same schedule that

would have applied if the Client had deposited the original check to the Client's Account by an in-person deposit at our main office on the business day that SP received the Image. Without limitation of any other provision of this Agreement, the Rules shall govern the acceptance and liability for all ACH Transfer requests initiated in connection with the Services. This Agreement shall only govern those ACH Transfer requests initiated through the Services. Any Non-Services initiated request shall be governed by a separate ACH agreement between the Bank and the Client. In addition to the Rules and this Agreement, all ACH Transfer requests initiated through the Services are subject to the Bank's Cash Management Services Terms and Conditions as in effect from time to time

- 16. Entries and Eligible Deposits. Client shall be responsible for the accuracy and propriety of all Entries submitted to the Bank or SP for processing, as well as responsible for obtaining all required approvals for the processing of the Entry from the Indirect Customer. Client shall be liable for each Entry and warrants that it complies with the Rules.
- 17. <u>Discrepancies</u>. In the event of any conflicts in the instructions received by the Bank regarding the Client or any Entries relating to them, the Bank may at its option and with or without notice, hold or interplead, comply with the legal process or other order, or otherwise limit access by the Client or by the Bank to the funds, Entries or proceeds thereof.
- 18. Processing Deadline, Delays and Unavailability. The Bank has specific processing deadlines. Files received by 4:00 p.m. Monday to Friday (the "Deadline") will be transmitted that day to the Federal Reserve Bank for settlement on the effective entry day. Files received after the Deadline will be processed the next business day. This means that files received on Saturdays, Sundays or holidays will be processed the next business day. The Bank is not responsible for any delays or errors in transmission of the Images. If the Service is not available for any reason, the Client must deposit checks by another method, such as by an in-person deposit at one of the Bank's branches or a deposit by mail.
- 19. Notice of Provisional Credit. In the case of any Credit Entry subject to Article 4A of the Uniform Commercial Code, credit given by the RFDI to the Receiver (as defined in the NACHA rules) with respect to such an Entry is provisional until the RFDI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided in NY UCC Section 4A-403(a). If such settlement or payment is not received, the RFDI shall be entitled to a refund from the Receiver of the amount credited, and the Client shall not be deemed to have paid the Receiver the amount of the Entry.
- 20. Stop Payment of ACH Entries. Neither the Client nor the Bank will have the right to adjust or stop payment of any Entry after it has been received by SP. If either the Client or the Bank asserts that an Entry has been erroneously initiated, a Reversal or Adjustment Entry may be initiated by the Client or

the Bank as set forth in the Rules. In addition, either the Client or the Bank may make an oral or written request to the RDFI to stop payment of, or to adjust, an Entry which has been or is asserted by the Client or the Bank to have been erroneously initiated, and the RDFI may elect whether to honor such request. The Bank will have no obligation to the Client with respect to any such request which is not honored.

- 21. <u>Debits Not As Authorized</u>. If an unauthorized Debit Entry is confirmed in writing by the Receiver, the Receiver will have the right, unless waived in accordance with the Rules, to have the amount of such Debit Entry immediately credited to the Receiver's account by the RDFI as set forth in the Rules. The Client's Account will be debited for the amount thereof.
- 22. <u>Reversing Entries.</u> If the Client discovers that any Entry it has initiated was in error, the Client will notify the Bank immediately. The Bank will then notify the Client as to whether the transmission of the File or the Entry to the ACH Transaction, Electronic Item or Substitute Check has been initiated. The Client shall then have the sole right and responsibility to initiate a Reversal of the Entry in accordance with the Rules.
- 23. Re-makes of Rejected Entries or Files. If an Entry or File is rejected due to improper processing or unexcused delays by the Bank, the Bank will Remake such Entry or File and re-send it. If such Entry or File was rejected as a result of improper processing or the supplying of incomplete information by the Client, the Client will Remake the Entry or File, or supply the Bank with complete information for remaking the Entry or File, at the Client's expense, and the Bank will send such Entry.
- 24. <u>Unauthorized Access; Security Procedures.</u> Client shall be solely responsible for protecting against unauthorized access to the Scanner, the Program and the checks and any and all losses and damages arising from any unauthorized access to the Scanner and the Program. The Client shall establish physical security, passwords and other security procedures necessary to ensure the confidentiality of access features. The Client shall make such procedures and security features known only to those authorized representatives of the Clients who will use the Scanner and the Program. The Bank shall have no obligation, liability or control, either directly or indirectly over said procedures or the failure of Client to maintain said procedures. The Client shall be solely responsible for designating its authorized representatives and disclosing the identity of representatives, and all changes thereof, to the Bank, provided, however, the Bank shall not be responsible for verifying the authenticity of any person claiming to be a representative of the Client or the authenticity of any instruction, direction or information provided to any said person. Any instructions, directions or other information provided by the Client, or any representative of the Client, under the Services shall be deemed to have been authorized by the Client, and the Bank shall be indemnified and held harmless by the Client for acting upon any such direction, instruction or information.

- (a) The Bank will provide the Client with an Administrative and Gateway User Name and Password. The Client may appoint an individual (the "Administrator") with the authority to: (i) determine who will be authorized to use the Services; (ii) establish separate passwords for each user; and (iii) establish limits on each user's authority to access information and conduct transactions. The Client is responsible for the actions of its Administrator, the authority the Administrator gives others to act on its behalf, and the actions of the persons designated by the Administrator to use the Services. The Client agrees to: (i) take reasonable steps to safeguard the confidentiality of all Passwords; (ii) limit access to its passwords to persons who have a need to know such information (iii) closely and regularly monitor the activities of employees who access the Services (iv) prohibit its employees and agents from initiating Entries without proper supervision and adequate controls; and (v) remove users they deem no longer authorized to use the Services.
- (b) The Client understands that the use of passwords and the Services' instructions is confidential and agrees to assume all risks of accidental disclosure or inadvertent use by any party whatsoever, whether such disclosure of use are on account of the Client's negligence or are deliberate acts. The Client acknowledges that no person from the Bank will ever ask for any passwords and that the Bank's employees do not need and should not ask for passwords.
- (c) The Client shall change its passwords periodically and whenever anyone who has had access to a password is no longer employed or authorized by it to use the Services. The Bank may require the Client to change its passwords at any time. The Bank may deny access to the Services without prior notice if it is unable to confirm (to its satisfaction) any person's authority to access the Services or if the Bank believes such action is necessary for security reasons.
- (d) The Client will use the PRMCS and the services to process Images of checks drawn on U.S. and Canadian banks only in U.S. Dollars (no foreign checks).
- (e) The Client will not process Images of Client Checks drawn on another bank.
- 25. Client Representations and Warranties. With respect to each and every check that the Client scans into an Image using the PRMCS system, the Client represents and warrants to the Bank that: (a) each Indirect Customer shown as the drawer on an Image received by the Bank from the Client was an Indirect Customer who was properly notified that the check might be converted to an ACH entry and did not opt out of the program, (b) the Client assumes responsibility and liability for the quality of the Images and the upkeep of the Scanners in order to assure Image quality and readability, (c) the Client shall be bound by and comply with all procedures and operating guidelines established by the Bank, contained herein

or subsequently created, (d) the Client assumes responsibility for any Image or check that is transmitted and which for any reason is not paid and (e) the Client agrees to destroy all original checks as described in Section 3. Client further agrees to provide original checks and related documents to the Bank when needed to facilitate investigations related to unusual transactions or poor quality transmissions, or to resolve disputes.

The Client makes all of the representations and warranties to the Bank with respect to each Image that it transmits to the Bank that the Client would have made if it had deposited the original check into its account. In addition, the Client represents and warrants to the Bank with respect to each Image that it transmits to the Bank that (a) the Image (i) accurately represents all of the information on the front and back of the original check at the time the Image was captured and (ii) is otherwise sufficient for the Bank to satisfy its obligations as the truncating and reconverting bank and (b) no person or entity will receive a transfer, presentment or return of, or otherwise be charged for, (i) the original check, (ii) an Electronic Item or Substitute Check that the Bank creates from the Image, or (iii) a paper or electronic representation of the original check or of a Substitute Check that the Bank creates from the Image, such that the person or entity will be asked to make a payment based on a check that it has already paid.

26. Indemnification.

- (a) All disputes between the Client and any Indirect Customer relating to any debit/credit transaction shall be settled between the Client and the Indirect Customer. The Client agrees to indemnify and hold the Bank and its processors harmless from any claim, liability, loss or expenditure relating to any such transaction or from the Client's breach of any of its obligations under this Agreement. The Bank retains the right to offset the Client's account for amounts the Bank is damaged by the Client's actions.
- (b) The Client will defend, indemnify and hold harmless the Bank and its processors against and in respect to any and all losses, liabilities, expenses and damages, including, but not limited to, consequential, special and punitive damages, directly or indirectly resulting from: (i) the processing of any request received by the Bank under the PDBS system; (ii) any breach of the provisions of this Agreement or the Rules; (iii) any dispute between the Client and any third party in connection with the use of the PRMCS system; (iv) any breach of the Client's representations for any transaction submitted by the Client described in this Agreement; (v) any loss or expenditure which results from any transaction submitted by the Client caused by the Indirect Customer's inability to fund the transaction; and (vi) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including attorney's fees) incident to the foregoing. The terms of this Section shall survive termination of this Agreement.

- (c) In addition to any other obligation the Client has to indemnify the Bank, it agrees to defend, indemnify, protect and hold the Bank harmless from and against any and all liabilities, claims, damages, losses, demands, fines (including those imposed by any Federal Reserve Bank, clearing house or funds transfer system), judgments, disputes, costs, charges and expenses (including litigation expenses, other costs of investigation or defense and reasonable attorneys' fees) which relate in any way to the receipt by any person or entity of (i) an Electronic Item, (ii) a Substitute Check or (iii) a paper or electronic representation of the original check or the Substitute Check that the Bank creates from an Image that the Client transmits to the Bank, instead of the original check.
- 27. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL THE BANK BE LIABLE TO THE CLIENT FOR ANY DAMAGES, INCLUDING LOST PROFITS, LOST DIRECT, **SAVINGS** OR OTHER INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PROGRAM AND DOCUMENTATION, OR FOR ANY CLAIM BY ANOTHER PARTY. THE BANK'S DUTIES AND RESPONSIBILITIES IN CONNECTION WITH ACH TRANSFERS, ELECTRONIC ITEMS AND SUBSTITUTE CHECKS ARE LIMITED TO THOSE DESCRIBED IN THIS AGREEMENT. THE BANK WILL BE DEEMED TO HAVE EXERCISED ORDINARY CARE AND TO HAVE ACTED REASONABLY IF IT HAS ACTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND WILL BE LIABLE FOR LOSS SUSTAINED BY THE CLIENT ONLY TO THE EXTENT SUCH LOSS IS CAUSED BY THE BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE BANK WILL NOT BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF ITS ACT OR OMISSION. THE BANK WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE: (A) RELATED TO THE DISHONESTY OF THE CLIENT'S EMPLOYEES, OFFICERS OR AGENTS; (B) RESULTING FROM ANY RECEIVING BANK'S FAILURE TO ACCEPT ANY ACH TRANSFER, ELECTRONIC ITEM OR SUBSTITUTE CHECK; OR (C) RESULTING FROM ANY DELAY IN THE PERFORMANCE OF THIS AGREEMENT, WHICH IS CAUSED BY AN ACT OF GOD, FIRE OR OTHER CASUALTY, ELECTRICAL OR COMPUTER FAILURE, DELAYS OR FAILURE TO ACT BY ANY CARRIER, MEDIUM OR AGENT OPERATING BETWEEN THE BANK AND THE CLIENT OR BETWEEN THE BANK AND THIRD PARTIES OR ANY OTHER CONDITION OUTSIDE THE BANK'S CONTROL. NO THIRD PARTY WILL HAVE RIGHTS OR CLAIMS AGAINST THE BANK UNDER THIS AGREEMENT. THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.
- 28. **DISCLAIMER OF WARRANTY.** NO WARRANTIES

- WITH RESPECT TO THE SCANNER AND THE PROGRAM ARE MADE BY THE BANK NOR DOES THE BANK WARRANT THAT THE SCANNER AND THE PROGRAM WILL MEET SPECIFIC REQUIREMENTS OF THE CLIENT. NEITHER DOES THE BANK MAKE ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SCANNER AND/OR THE PROGRAM. THE BANK DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 29. Equipment. The Bank is not responsible for any loss, damage or injury resulting from (i) an interruption in Client's electrical power or telephone service; (ii) the disconnecting of Client's telephone line by Client's local telephone company or from deficiencies in Client's line quality; or (iii) any defect or malfunction of the Scanner or telephone line.
- 30. Entire Agreement; Severability. This Agreement together with all exhibits, schedules and attachments hereto, the Deposit Account Agreement, the Cash Management Services Agreement, the Confirmation of Remote Merchant Capture Terms, and the Rules (as incorporated herein) represent the entire agreement and understanding of the parties for the Services. If any portion of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect. In the event of any inconsistency or conflict between the terms of this Agreement and any present or future statute, regulation or governmental policy to which the Bank is subject and which governs of affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and the Bank shall incur no liability to the Client as a result of such violation or amendment.
- 31. Amendments and Change in Terms. The Bank may from time to time amend the terms of this Agreement to the extent allowed by applicable federal and state law. The Bank will post notice of any changes and effective date of the changes on the Account Log-On Page for PRMCS at https://ssl.selectpayment.com/mp/providentbanking/login/page.aspx. The Client's continued use of the PRMCS after the effective date of the change will indicate the Client's agreement to the change notice.
- 32. <u>Assignment; Sublicense.</u> The Client agrees not to assign, transfer or dispose of its rights and obligations under this Agreement and not to further sublicense, assign or transfer the Program, except as expressly provided in this Agreement.
- 33. Governing Law. This Agreement is governed by the laws of the State of New York (except to the extent Federal law governs the copyrights and trademarks of SP and its successors or assigns) and the Rules.

EXHIBIT A

Sample ARC Notification

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. If you have any questions, or choose not to have your check converted into an electronic item, contact [Merchant Name] at [Merchant Phone #s]. If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee of \$[25].