

Gotham Bank of New York

Customer Account Agreement for Remote Deposit Capture

This Agreement for Payment Services is entered into as of _____, 200__ by and among Gotham Bank of New York, a New York banking organization with its principal place of business at 1412 Broadway, New York, NY _____, and _____, a _____ with its principal place of business at _____. In consideration of the mutual promises set forth below, Bank and Customer agree as follows:

1. **Definitions.** The following terms shall have the meanings set forth in this Section. Any terms not defined in this Section shall have the meanings set forth in the Check 21 Act and if not defined therein, in the Uniform Commercial Code.

- a. **Bank** shall mean Gotham Bank of New York.
- b. **Business Day** shall mean any day on which the principal office of the Bank is open for the acceptance of deposits made in person other than a Saturday, a Sunday or a legal holiday.
- c. **Check 21 Act** shall mean the Check Clearing for the 21st Century Act, US Public Law 108-100, as amended from time to time.
- d. **Customer** shall mean _____.
- e. **EIC** shall mean the scanned electronic image of a check payable to the order of Customer that satisfies all the requirements of this Agreement. When the context otherwise requires, the term EIC shall include a paper representation of the related check that is created from the EIC.
- f. **Equipment** shall mean an electronic scanning device capable of scanning paper checks, converting them into EICs, and then creating an image Batch to send to Bank for processing.
- g. **Batch** shall mean an electronic data file created by the Equipment which includes the EICs that Customer desires to deposit into its account at Bank.
- h. **Non-cash item** means a check or other instrument for the payment of money that is classified as a non-cash item under the regulations of the Federal Reserve Board.
- i. **Rules** shall mean the Bank's Rules and Regulations for the operation of the Services as the same may be amended from time to time.
- j. **Services** shall have the meaning set forth in Section 2.
- k. **Uniform Commercial Code** shall mean the Uniform Commercial Code of the State of New York and, if applicable to a particular check by virtue of where it is drawn, delivered or payable, the Uniform Commercial Code of any other State or the District of Columbia that applies to that particular check under the laws with respect to conflicts of laws, as any of the same may be amended from time to time.

1. **United States** shall mean any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.
2. **The Services.** Bank provides check clearing services known as remote deposit capture. For the purposes of this Agreement, the term “Services” means:
 - a. the Bank’s receipt of Batches that the Customer desires to deposit into its account at Bank;
 - b. the processing of those Batches for electronic collection by sending them through the normal check clearing process so that the EICs therein, or paper representations thereof, are presented to the drawee bank for payment;
 - c. the crediting of the proceeds of the EICs to Customer’s accounts at Bank; and
 - d. all related functions customarily performed by the Bank in the processing and collection of checks that are processed in paper form including, without limitation, the receipt of returns of unpaid items and charging the amount of unpaid items against Customer’s accounts at Bank.
3. **Provision of Services.** Subject to the terms and conditions of this Agreement, Bank agrees to make the Services available for Customer. Deposits made by Customer using the Services shall be deemed to be made at the principal office of Bank for all purposes including, without limitation, the determination of whether a check is a local or non-local check for funds availability purposes. The EICs in a Batch will be deemed to have been deposited only when the Batch is actually received and accepted for processing by Bank. Batches received by Bank prior to 5:00 pm on a Business Day shall be deemed to have been deposited on that day and Batches received at any other time shall be deemed to be deposited on the next Business Day after receipt. Subject to the satisfaction of the conditions contained in this Agreement and in the Rules, the proceeds of EICs in a Batch that are not returned unpaid shall be available for withdrawal no later than the date set forth in the Bank’s funds availability policy for the deposit of comparable paper checks. Any credit that Bank gives to Customer on account of EICs in a Batch shall be provisional and Bank may reverse that credit to the extent of any EIC contained in such Batch that is not paid. Bank may establish per Batch or daily deposit amount limits and may otherwise impose such limits on the use of the Services as Bank may determine in its discretion to be appropriate in order to maintain the security and integrity of the Services.
4. **Submitting EICs to Bank.** (a) *Generally.* Customer shall, from time to time, cause checks received by it in the course of its business to be scanned by the Equipment and converted into a Batch. Customer shall then electronically transmit such Batch through the Internet to Bank for deposit. Customer shall create and transmit Batches to Bank in accordance with the Rules. Bank will process Batches satisfying the requirements of this agreement and the Rules and will send the EICs through its check clearing network in order to collect the checks from the drawee bank.

(b) *Rejection of Batches.* Customer will cooperate with Bank in the event Bank needs assistance in the balancing of Batches. If any Batch is out of balance (i.e., the aggregate amount of the EICs included in the Batch does not match the dollar amount of the purported deposit as shown when the Batch is transmitted to Bank), or is otherwise not in compliance with this Agreement and the Rules, the EICs therein will not be submitted for collection but will instead be held by Bank

pending resolution. Bank may also reject any Batch if the quality of any image contained therein is inadequate, in the discretion of Bank, for accurate and prompt processing.

(c) *User names and Passwords.* Bank will provide Customer with a “User Name” and password (sometimes known as a PIN) to access the Services. Customer will keep the User name and password confidential and will not disclose it to anyone except for individuals who are authorized to conduct deposit business for Customer with Bank. Customer is full responsible for all transactions conducted using the password, regardless of whether Customer authorized the transaction. All transactions initiated with the User Name and Password will be subject to and governed by this Agreement.

5. **Returns.** If an EIC is returned to Bank unpaid, then Customer shall be liable to Bank for the amount of the EIC, regardless of whether the proceeds of the EIC were previously made available to Customer. Bank may debit Customer’s account for the amount thereof. If Bank is unable to recover the full amount of the return by debiting Customer’s account, Customer shall pay any shortfall on demand.

6. **Ineligible Items.** Customer may not submit to Bank as EICs:

- a. Checks not payable directly to Customer as the first named payee;
- b. Checks not payable in United States dollars;
- c. Checks drawn on banks outside of or otherwise payable outside of the United States;
or
- d. Non-cash items.

7. **No Duplicate Deposits.** (a) No check transmitted to Bank as an EIC shall be deposited into any depository, either in paper form, in scanned form, or as converted into an ACH debit, other than the single deposit of such check in Bank pursuant to this Agreement, except with the Bank’s prior consent in the event necessary to remedy a problem with the initial processing of that EIC. Customer shall take no action which would cause the funds represented by an EIC submitted to Bank for processing pursuant to this Agreement to be debited twice from the account of the maker of the check. Customer shall be responsible for all direct, indirect and consequential damages resulting from lack of proper controls over paper checks that have been or are to be processed under this Agreement. Customer must implement appropriate document management procedures to ensure the safety and integrity of deposited items from the time of receipt until the time of destruction or other voiding.

(b) The Customer may elect to destroy checks submitted as EICs. Bank recommends that the Customer retain such checks for at least 90 days after they are submitted electronically, and it may be advisable for Customer to retain the paper checks for longer. The Customer will be responsible for any adverse consequences caused by Customer’s decision to destroy any paper checks.

(c) The Equipment shall stamp on each paper check after it is scanned to become an EIC a statement that the check has been processed electronically. Customer will notify Bank immediately if any check is not so stamped when it is scanned and shall follow Bank’s directions with respect to that check.

8. **Confirmation of Deposits.** The Internet portal that Customer will use to submit Batches for processing will also allow Customer to verify that previously submitted Batches have been

received by Bank and are being processed. Customer shall verify on the next business day after a Batch has been submitted that Bank has received the Batch. Customer shall promptly report any discrepancies discovered in the course of such verification.

9. **Rejection of Batches.** Bank shall have an absolute right to refuse to process any Batch without any liability to Customer whatsoever if:

- a. Bank receives actual notice or has reason to believe that Customer has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
- b. Bank has reasonable doubt as to the ownership of funds involving any EIC or the right of Customer to deposit the check represented by the EIC;
- c. Bank believes that a breach of the security procedures it establishes for implementation of the Services may have occurred;
- d. Bank believes that the Customer account may have been used for illegal or fraudulent purposes or that any EIC contained in a Batch is derived from or relates to criminal activity; or
- e. Bank believes that any transactions that Customer seeks to process using the Services is prohibited by federal law or regulation, or by this Agreement.

10. **Substitute Checks.** When necessary, Bank or any other institution involved in the collection of the EICs, may prepare "Substitute Checks" (as defined in the Check 21 Act) to facilitate the collection process.

11. **The Equipment and Its Use.** Bank shall provide the Equipment to Customer, at no charge. Customer agrees to familiarize itself with the operation of the Equipment and agrees not to use the Equipment for any purpose other than to create Batches to be sent to Bank. Customer agrees to return the Equipment to Bank at the termination of this Agreement or upon demand by Bank, in the same condition that it was in when provided by Bank, reasonable wear and tear excepted. The Equipment shall remain the property of Bank for all purposes. Bank shall either arrange and pay for a maintenance and service contract for the Equipment or replace equipment that malfunctions. Customer shall call for service under any maintenance contract when required in order to maintain the Equipment in good working order. Bank shall have no liability to Customer if the Equipment is unable, for any reason, to create a Batch to transmit the Batch to Bank, or if Bank does not receive a Batch for any reason, it being understood that Customer's remedy is to deposit the related checks at the Bank in person.

12. **Internet Access.** Batches containing EICs are submitted via the Internet. Customer is responsible for having broad band Internet access in order to use the Services. Dial-up Internet access is not acceptable. Customer shall pay all costs to establish and maintain the Internet access and will be responsible for providing computer hardware connected to the Internet, and to which computer the Equipment will be connected, in order that Batches can be transmitted to Bank. Customer shall establish contingency plans in the event Customer is unable, for any reason, to create a Batch or transmit a Batch to Bank.

13. **Modifications to Services and Security Procedures.** Bank reserves the right to modify the Services from time to time without prior notice to Customer. Bank will give Customer at least 30 days notice prior to making any modifications to the Services that would materially alter their functionality, provided, however, that Bank may change the Services without prior notice if

necessary to comply with legal requirements or to maintain the security of the Services. Bank may establish secret security procedures that are not disclosed to Customer for the purpose of protecting against the wrongful use of the Services.

14. **Service Fees.** There are currently no fees for the Services other than the fees that the Bank charges for comparable in-person deposits of paper checks. The Bank shall have the right, upon 60 days written notice to Customer, to impose or change the fees for the Services.

15. **Confidential Information.** Customer acknowledges that the Services, any database, and any proprietary data, processes, methods, information, or documentation disclosed or made available as part of the Services (other than those which are or become part of the public domain), are the exclusive and confidential property of Bank. Upon termination of this Agreement for any reason, Customer shall return to Bank all copies of such confidential information that are in its possession or control.

16. **Representations and Warranties by Customer.** Customer represents and warrants to Bank, which representations and warranties are deemed restated automatically each time Customer transmits a Batch to Bank for processing, that:

- a. Customer is engaged solely in lawful activities and that it will not use the Services in furtherance of any unlawful activity;
- b. The submission of each EIC by Customer to Bank is not prohibited by any applicable law, regulation, rule, order, or judgment;
- c. Neither Customer nor any of its employees are a national of a designated blocked country or a “Specially Designated National,” “Blocked Entity,” “Specially Designated Terrorist,” “Specially Designated Narcotics Trafficker,” or “Foreign Terrorist Organization,” as defined by the United States Office of Foreign Assets Control; and
- d. All EICs included in all Batches submitted by Customer to Bank are payable to the order of Customer; all signatures on those EICs are authentic and authorized; each such EIC accurately reflects the original check represented thereby according to its original tenor, without alteration; and the check represented by such EIC has not been previously submitted, either in paper form or electronically, to the drawee bank for payment.

17. **Customer’s Duty to Discover and Report Errors.** Customer shall review all statements and reports that it receives from Bank that reflect transactions using the Services within ten days of receipt of those statements. Customer shall notify Bank in writing of any errors or alleged errors shown on any such statement within 20 days of receipt of such statement. Notwithstanding the foregoing, Customer shall advise an officer of Bank telephonically no later than 3:00 PM on the next Business Day after Customer submits a Batch to Bank if the verification performed pursuant to Section 8 above reveals any discrepancy between the dollar amount of the EICs that Customer believes are contained in any Batch and the dollar amount reported by Bank. Customer shall also notify Bank of any other errors, omissions, or interruptions in, or delay or unavailability of, the Services as promptly as practicable, and in any event within one Business Day after the earlier of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care. Failure of Customer to notify Bank of any error, omission, or other discrepancy within the period set forth in this Section shall relieve Bank of any liability for such

error, omission, or discrepancy. Bank will not be liable if Customer fails to report timely any error or discrepancy reflected in a Statement prepared by Bank, or if Customer fails to report a breach of a security procedure.

18. Bank's Performance. Bank shall not be liable for any damages or loss of any kind resulting from any error or omission by Bank in performing the Services except for Bank's gross negligence or willful misconduct. Customer agrees to defend, indemnify, and hold Bank harmless from and against all liability, damage, and loss arising out of any claims, suits, or demands brought by third parties arising out of any breach of any representation, warranty or covenant of Customer under the Check 21 Act, the Uniform Commercial Code or this Agreement.

19. Limitation on Bank Liability. Bank's liability, if any, for damages, losses, and other compensation owing to Customer shall in all events be limited to actual direct damages. Actual direct damages for any EIC the processing of which is delayed but which is ultimately collected shall equal interest at the judgment interest rate on the amount of the EIC for the period of the delay. Bank shall have no liability to Customer with respect to any EIC that would not have been paid had Bank performed the Services without gross negligence or willful misconduct. Bank shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond its control. In no event will Bank be liable for any indirect, consequential, punitive, exemplary or special damages. Bank will also be excused from failing to transmit or delay in transmitting an EIC if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

20. Compliance With Laws and Rules. Customer agrees to abide by all federal and state laws, and rules and regulations applicable to the transactions contemplated by this Agreement, including those of the National Automated Clearing House Association.

21. Effect of Other Account Agreements. The rules, regulations, bylaws and account agreements of the Bank that apply to the account or accounts into which EICs are deposited shall continue to apply to the relationship between Bank and Customer except to the extent that they are expressly modified by this Agreement.

22. Termination and Amendment. Either party may terminate this Agreement at any time upon 5 Business Days written notice to the other party. Bank may amend this Agreement at any time upon 30 days written notice to Customer. Such termination or amendment shall not affect the obligations or liabilities of the parties with respect to Batches and the EICs contained therein that Bank received and accepted prior to such termination or amendment being effective including, without limitation, any liability for such EICs that are returned unpaid.

23. Entire Agreement; Modification and Waiver. This Agreement, together with the agreements referenced in Section 21, contain the entire Agreement between Bank and Customer concerning Services. If any provision of this Agreement is deemed unenforceable, the remaining provisions will still be enforceable. No modification or waiver of this Agreement shall be effective or enforceable unless in writing and signed by the parties thereto.

24. **Notices.** Except to the extent that this Agreement provides for a different method of notice, notices given hereunder shall be in writing and given by hand delivery or by regular mail or recognized overnight delivery service such as Federal Express. Notices shall be effective when hand delivered, one Business Day after delivery to an overnight delivery service or three Business Days after mailing. Notices shall be delivered at, or addressed to, the party at its address as set forth at the beginning of this Agreement or at such other address as they provide to the other party by notice.

25. **Governing Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of the State of New York. Customer hereby irrevocably consents to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York to resolve any dispute arising out of or related to this Agreement or the Services. The obligations and liabilities of the parties shall continue to be governed by the Check 21 Act and the Uniform Commercial Code except as expressly modified by this Agreement.

Dated: _____

Gotham Bank of New York _____, Customer

By: _____ By: _____