

## POSITIVE PAY SERVICES AGREEMENT

This Positive Pay Services Agreement (“Agreement”) is between **Midwest Regional Bank (“Bank”)** and

\_\_\_\_\_ (“**Customer**”). The Bank and the Customer agree that the provision by the Bank and the use by the Customer of the Positive Pay services described below shall be subject to the terms and conditions set forth in the Agreement. In the event of inconsistency between a provision of this Agreement and the Oregon (OR) or California (CA) Commercial Code, the provisions of this Agreement shall prevail.

### 1. **DEFINITIONS**

- 1.1 Statutory Definitions.** Unless otherwise defined in this Agreement, words or phrases shall have the meanings set forth in OR Commercial Code Chapter 73/CA Commercial Code Division 3 – “Negotiable Instruments” and OR Commercial Code Chapter 74/CA Commercial Code Division 4 – “Bank Deposits and Collections.”
- 1.2 Definitions.**
- 1.2.1 Agreement** means this Positive Pay Services Agreement, including Schedules A through F, as it may be amended from time to time.
- 1.2.2 Authorized Account** means the account(s) of the Customer, maintained at the Bank to which the Positive Pay services rendered by the Bank will apply.
- 1.2.3 Available Funds** means funds on deposit in an Authorized Account and available for withdrawal pursuant to Federal Reserve Regulation CC (12 CFR 229 et seq.) and the Bank’s applicable funds availability schedule and policies as described in the current Deposit Account Agreement and Disclosure.
- 1.2.4 Business Day** means a calendar day other than Saturdays, Sundays and Federal Reserve holidays.
- 1.2.5 Exception Check** means a Presented Check that does not match a check included in an Issued Check File.
- 1.2.6 Exception Check Report** means a record describing Exception Checks which is provided by the Bank to the Customer under Section 2.2.2.
- 1.2.7 Issued Check File** means a record describing checks written by the Customer on an Authorized Account provided by the Customer to the Bank under Section 2.1.
- 1.2.8 Pay Request** means the instructions of the Customer to the Bank requesting the Bank to pay an Exception Check.
- 1.2.9 Presented Check** means a check drawn on an Authorized Account and presented to the Bank for payment through the check collection system.
- 1.2.10 Return Request** means the instructions of the Customer to the Bank instructing the Bank not to pay an Exception Check.

### 2. **POSITIVE PAY SERVICES**

- 2.1 Issued Check File.** The Customer shall submit an Issued Check File to the Bank.
- 2.1.1** The Issued Check File shall accurately state the check number, date and the exact dollar amount of each check drawn on an Authorized Account since the last Issued Check File was submitted. Each Authorized Account shall require an Issued Check File for all checks issued.
- 2.1.2** The Customer shall send the Issued Check File to the Bank in the format and medium as specified by the Bank and agreed to by the Customer.
- 2.1.3** In the event of system failure, either that of the Customer’s or of the Bank’s, and the Issued Check File cannot be received by the Bank or the Bank cannot process the file, the file shall be considered as not received, even if the Bank has possession of the file.
- 2.2 Payment of Presented Checks and Reporting of Exception Checks.** The Bank shall compare each Presented Check by check number and amount against each Issued Check File received by the Bank for each Authorized Account. On each business day, the Bank:
- 2.2.1** May pay and charge to the Authorized Account each Presented Check that matched by check number and amount a check listed on any Issued Check file.
- 2.2.2** Shall provide the Customer with electronic notification of exception checks presented for payment that do not exactly match to the Issued Check File items and in a form and time as is outlined in Schedule C titled “Exception Check Report”

- 2.3 Pay Request/Return Request.** The customer shall review the Exception Check Report and electronically communicate Pay Requests and Return Requests for all exceptions as is outlined in Schedule D titled "Pay Requests and Return Requests." Checks that are marked as return during the morning scrub by the customer must also have a Stop Payment form filled out and submitted to the Operations Department for processing by 11:00 am. ACH items that are marked as return during the morning scrub by customer must also have a Written Statement of Unauthorized Debit form filled out and submitted to the Operations Department by 11:00 am. PLEASE COMPLY WITH SCHEDULE D (see attached)
- 2.4 Pay Default.** If the Customer misses the deadline as outlined in Schedule D, the Bank will make final payment of the check(s) and charge the account the checks are drawn against.
- 2.5 Not Covered.** This Agreement does not cover a check if the Bank has cashed the check or is committed to honor or pay the item under applicable laws, regulations or rules governing checks.
- 2.6 Customer and Bank Communications.** The Customer or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Agreement. The revised communication must, (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent, (ii) identify the original communication, and (iii) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.
- 2.6.1** The Bank shall use only Issued Check Files that comply with Section 2.1 and have not been revoked in accordance with Section 2.5 in the preparation of Exception Check Reports under this Agreement.
- 2.6.2** The Customer shall use only Exception Check Reports that comply with Section 2.2 and have not been revoked in accordance with Section 2.5 in the preparation of Pay Requests and Return Requests. The Bank shall not be obligated to comply with any Pay Request or Return Request received in a non-standard format or medium, after a deadline, or at a place not permitted under this Agreement but may instead treat such a Pay Request or Return Request as though it had not been received.
- 2.6.3** The Bank is not responsible for detecting any Customer error contained in any Issued Check File or Pay Request or Return Request sent by the Customer to the Bank.
- 3. LIABILITY OF THE BANK; LIMITATIONS ON LIABILITY**
- 3.1 Commercial Code Liability.** To the extent applicable, the liability provisions of OR Commercial Code Chapter 73 and 74/CA Commercial Code Division 3 and 4 shall govern this Agreement, except as modified below.
- 3.2 Performance of the Bank.** The Bank shall be responsible only for performing the service it expressly agrees to perform in this Agreement and shall be liable only for direct damages, not to exceed the value of any checks negligently handled, caused by its negligence in performing those services. The Bank shall not be responsible for any acts or omissions of the Customer, including without limitation the amount, accuracy, timeliness of delivery or Customer authorization of any item or instruction received from the Customer, or any act or omission of any other person, including without limitation any transmission or communications facility, and data processor of the Customer, and no such person shall be deemed the Bank's agent.
- 3.3 Limit on Damages.** In no event shall the Bank be liable for any consequential, special, punitive, or indirect loss or damage which the Customer may incur or suffer in connection with this Agreement, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from the Bank's acts or omissions in performing its services under this Agreement.
- 3.3.1** It shall constitute wrongful dishonor by the Bank if the Bank dishonors an Exception Check and the Bank has been ordered by the Customer to pay pursuant to a Pay Request sent to the Bank by the deadline of 11:00 a.m. (Pacific Standard Time).
- 3.3.2** It shall constitute wrongful honor by the Bank if the Bank pays an Exception Check listed in a timely Exception Check Report and the Customer notifies the Bank by the deadline of 11:00 a.m. (Pacific Standard Time) of its desire to return the item(s).
- 3.3.3** Notwithstanding Section 3.3.1, the Bank shall have no liability to the Customer for wrongful dishonor when the Bank, acting in good faith, returns an Exception Check:
- (a) that is reasonably believed was not properly payable; or
  - (b) if there are insufficient Available Funds on deposit in the Authorized Account; or
  - (c) if required to do so by the service of legal process of the Bank or the instructions of regulatory or government authorities or courts; or
  - (d) if the Customer fails to provide proper and timely notice to pay said item.
- 3.4 Force Majeure.** The Bank shall not be responsible for any failure to act or delay in acting if such failure is caused by legal constraint, the interruption of transmission or communication facilities, computer malfunction or equipment failure, war, emergency conditions, or other circumstances beyond the Bank's reasonable control. In addition, the Bank shall be excused

from failing to transmit or delay in transmitting a transaction if such transmittal would result in the Bank's having violated any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other governmental regulatory authority.

- 3.5 Interest.** Subject to the foregoing provisions of this Section 3, any liability which the Bank may have for loss of interest for an error or delay in performing its services hereunder shall be calculated by using a rate equal to the Bank's prevailing money market rate for the period involved, less any applicable reserve requirements.

#### **4. GOVERNING LAW**

This Agreement and all claims or disputes arising on account of or related in any way to the Customer's use of Positive Pay shall be governed (without regard to conflicts of law) by applicable State and Federal law. All proceedings shall be heard or enforced by the Federal and State courts residing in Jefferson County, Missouri

#### **5. GENERAL PROVISIONS**

- 5.1 Fees.** Positive Pay fees are as outlined Schedule F.

- 5.2 Payment for Services.** The Bank shall, on a monthly basis, debit an authorized Customer account maintained at the Bank for payment of charges due, unless the Customer arranges another payment procedure acceptable to the Bank.

- 5.3 Indemnification.** The Customer shall defend, indemnify and hold harmless the Bank, and its officers, directors, agents and employees, from and against any and all actions, costs, claims losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of (i) any breach of any of the agreements, representations, or warranties of the Customer contained in this Agreement, or (ii) any act or omission of the Customer or any other party acting on the Customer's behalf, including but not limited to parties described in Section 3.2 above.

- 5.4 Confidentiality.** The Customer acknowledges that it will have access to certain confidential information regarding the Bank's execution of service(s) contemplated by this Agreement. The Customer shall not disclose any such confidential information of the Bank and shall use such confidential information only in connection with the transactions contemplated by the Agreement.

- 5.5 Electronic Media.** All electronic data or media and records used by the Bank for service(s) contemplated by this Agreement shall be and remain the Bank's property. The Bank may, in its sole discretion, make available such information upon the Customer's request. Any expenses incurred by the Bank in making any such information available to the Customer shall be paid for by the Customer at prevailing Bank rates.

- 5.5.1** The Customer is responsible for providing accurate electronic addresses for communication in connection with the transactions contemplated in this Agreement.

- 5.5.2** The Bank shall not be liable for any loss or damage on account of the Customer's internet service, browser or e-mail provider blocking (whether on account of "firewall", system failure, or otherwise) or preventing the Bank's e-mails from reaching the Customer.

- 5.5.3** The Bank utilizes identification technology to verify that the sender and receiver of electronic transmissions can be appropriately identified by each other. Notwithstanding our efforts to ensure that transmissions are secure, the Customer acknowledges that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. The Bank cannot and does not warrant that all data transfers or e-mail transmitted to and from the Bank will not be monitored or read by others.

- 5.6 Severability.** If any court or tribunal of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

- 5.7 Amendments.** The provisions of the Agreement may be amended only by agreement executed by both parties.

- 5.8 Assignment.** Subject to 5.9, neither party may assign or transfer any of its rights or obligations under this Agreement, but the provisions of this Agreement shall be binding upon and benefit any legal successor to the Bank or to the Customer, whether by merger, consolidation or otherwise.

- 5.9 Termination.** The Bank may terminate this Agreement immediately by notice to the Customer, or without notice if the Customer breaches any of its obligations under this Agreement. The Customer may terminate this Agreement at any time upon thirty (30) business day's prior notice to the Bank. Termination shall not affect any of the Bank's rights or the Customer's

obligations under this Agreement prior to such termination. Upon termination, if requested by the Customer, the Bank will provide the Customer (or its representative) with an outstanding check report.

- 5.10 Waiver.** The waiver by a party to this Agreement of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by the other party.
- 5.11 Entire Agreement.** This Agreement, including attached Schedules A through F, is the entire agreement and understanding between the parties related to the subject matter of this Agreement as of the date hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter of the Agreement. This Agreement does not change the terms of any other agreement, including the Deposit Account Agreement, except as it relates to Positive Pay.
- 5.12 Headings.** Headings to sections of this Agreement or any Schedules are included for ease of reference and shall not be deemed to create rights, remedies, claims or defenses arising under this Agreement.
- 5.13 Beneficiaries.** This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

The parties hereto have entered into this Agreement as of the date first written below:

\_\_\_\_\_  
(Business Name)

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Mailing Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Midwest Regional Bank  
363 Festus Centre Drive  
Festus, MO 63028  
636-937-5351

By \_\_\_\_\_

Title \_\_\_\_\_

**SCHEDULE A**  
**Authorized Accounts**

The Customer designates the following accounts as "Authorized Accounts":

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

## **SCHEDULE B**

### **Issued Check File**

The Issued Check File received by the Bank from the Customer must be submitted electronically in the mutually agreed upon format no later than 5:00 p.m. (Central Standard Time) for next business day processing. The Customer shall provide each weekday, except Federal Reserve holidays, an electronic Issued Check File to the Bank that accurately states the account number, check number, date and exact dollar amount of each check issued.

## **SCHEDULE C**

### **Exception Check Report**

The Bank shall electronically make available Exception Check information by 9:00 a.m. (Central Standard Time) each business day allowing the Customer sufficient time to review such exceptions and process, if necessary, by the deadline in Schedule D. In the event of system problems and the Bank cannot send the Exception Check information in sufficient time for the Customer to respond by the deadline, the deadline will be extended accordingly. The extended deadline will be communicated to the Customer via e-mail.

## SCHEDULE D

### Pay Requests and Return Requests

The Customer shall review and electronically communicate Pay Requests and Return Requests for all exceptions to the Bank by 11:00 a.m. (Central Standard Time). The Bank may, at its sole discretion, extend the deadline. Any such extension of the deadline will be communicated to the Customer by e-mail.

#### **Check Returns:**

Check's that are marked as returns during the morning scrub by the customer must notify the operations department by phone number at 636-937-5351 or email to [operations@mwregionalbank.com](mailto:operations@mwregionalbank.com) by 11:00 ( Central Standard Time) and also complete a stop payment for provided by the bank.

#### **ACH Returns:**

ACH transactions that are marked as returns during the morning scrub by the customer must notify the operations department by phone number at 636-937-5351 or email to [operations@mwregionalbank.com](mailto:operations@mwregionalbank.com) by 11:00 ( Central Standard Time) and also complete a stop payment for provided by the bank.

### **Note: If this step is not completed your transaction will be paid.**

For further questions on the procedure, please contact us by email at [operations@mwregionalbank.com](mailto:operations@mwregionalbank.com) or phone at 636-937-5351 and ask for the operations department.



## SCHEDULE E

### Authorized Users

The Customer authorizes the following persons to perform the following functions:

Name:	<b>Select all that apply</b>
Title:	<input type="checkbox"/> Submit Check Files
E-mail Address:	<input type="checkbox"/> View Accounts/Reports
Phone Number:	<input type="checkbox"/> Process Exceptions

Name:	<b>Select all that apply</b>
Title:	<input type="checkbox"/> Submit Check Files
E-mail Address:	<input type="checkbox"/> View Accounts/Reports
Phone Number:	<input type="checkbox"/> Process Exceptions

Name:	<b>Select all that apply</b>
Title:	<input type="checkbox"/> Submit Check Files
E-mail Address:	<input type="checkbox"/> View Accounts/Reports
Phone Number:	<input type="checkbox"/> Process Exceptions

Name:	<b>Select all that apply</b>
Title:	<input type="checkbox"/> Submit Check Files
E-mail Address:	<input type="checkbox"/> View Accounts/Reports
Phone Number:	<input type="checkbox"/> Process Exceptions

Name:	<b>Select all that apply</b>
Title:	<input type="checkbox"/> Submit Check Files
E-mail Address:	<input type="checkbox"/> View Accounts/Reports
Phone Number:	<input type="checkbox"/> Process Exceptions

**SCHEDULE F****Fee Schedule**

**Fees are imposed monthly, and the fee is *per account*.**

	<b>Set Up</b>	<b>Per Month</b>	<b>Per Item</b>	<b>Per Sent File</b>
<b>Fees</b>	<b>\$0.00</b>	<b>\$50.00</b>	<b>\$0.00</b>	<b>\$0.00</b>