



**THIS POSITIVE PAY SERVICE APPENDIX** (hereinafter, this "**Appendix**") is made by and between ANDROSCOGGIN BANK ("Bank") and the above-named Customer and is incorporated by reference into the parties' Business & Government Services Master Agreement (hereinafter, the "**Master Agreement**"). This Appendix governs the Positive Pay Service (the "Service") made available by the Bank to Customer. The Service is used in conjunction with the Bank's Business Online Banking Service, and this Appendix shall be construed consistently with the terms applicable to the Business Online Banking Service. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Master Agreement or the terms applicable to the Business Online Banking Service (including the Account Agreement), this Appendix (as amended from time to time) shall control, but only to the extent necessary to resolve such conflict. In the event of inconsistency between a provision of this Appendix and the Uniform Commercial Code ("UCC," as further defined below), the parties intend to modify the effect of the applicable UCC provisions to the maximum extent permitted by law. This Appendix shall be effective when signed by both parties, and such date shall be as reflected above.

## **TERMS AND CONDITIONS**

### **1. Definitions.**

1.1 Statutory Definitions. Unless otherwise defined in this Appendix, words or phrases shall have the meanings set forth in the UCC in effect from time to time under the laws of the State specified in the governing law provision of the parties' Master Agreement.

#### 1.2 Definitions.

"Authorized Account" means the Account(s) of Customer, maintained at the Bank, to which the Service described herein and rendered by the Bank will apply.

"Check Issue File" means a record describing checks drawn by Customer on an Authorized Account and provided by Customer to Bank in accordance with Section 2.2.

"Exception Check" means a Presented Check that does not match data included in a Check Issue File.

"Exception Check Report" means a record describing Exception Checks, which is provided by the Bank to Customer in accordance with Section 2.3.

"Pay Decision(s)" means the instructions of Customer to Bank instructing the Bank to pay an Exception Check.

"Presented Check" means a check, substitute check, or electronically-presented check drawn on an Authorized Account and presented to the Bank for payment through the check collection system or over-the-counter at one of Bank's branch teller stations.

"Return Decision(s)" means the instructions of Customer to Bank instructing Bank not to pay an Exception Check.

"UCC" means the Uniform Commercial Code as in effect under the laws of the State specified in the parties' Master Agreement, as it may be amended from time to time.

### **2. Service.**

2.1 Description. The Positive Pay Service described in this Appendix will provide Customer with a means to either affirmatively approve the payment of a particular check upon presentment or to object to its payment. Customer acknowledges that the Positive Pay Service is a service that has been identified by the Bank as reducing the risk of fraudulent items being paid against Customer's Account(s) when such Service is adopted and properly utilized by Customer. By conforming to the terms and conditions of this Appendix, Customer agrees and acknowledges that it may significantly reduce the chance that fraudulent items will post to Customer's Account(s).

#### 2.2 Check Issue File.

2.2.1 Customer shall submit a Check Issue File to the Bank. The Check Issue File shall accurately state the check number and the exact amount of each check drawn on each Authorized Account since the last Check Issue File was submitted. Additionally, the payee name is required

#### **Bank Use Only**

By: \_\_\_\_\_ Misc. Information: \_\_\_\_\_  
Scan: \_\_\_\_\_

by the Service's payee verification feature ("Payee Match"), as applicable and as further described below. Each Check Issue File shall also identify any checks that have been cancelled by Customer prior to issuance.

2.2.2 Payee Match requires the payee name to match against Customer's Check Issue File at a minimum threshold or matching score. The payee name in the Check Issue File will be electronically compared to the payee name on Presented Checks. Other information related to the payee name may also be electronically compared as part of the automated verification process to establish a matching score. Such comparisons that result in a minimum threshold or matching score will be deemed to be a matching check. Customer is responsible for complying with Payee Match's check specifications as specified by the Bank from time to time in order to ensure the highest level of performance from Payee Match. If Customer is unable, unwilling or otherwise elects not to comply with Payee Match's check specifications as specified by the Bank, the Bank may, in its sole and exclusive discretion, terminate or suspend Customer's use of the Service as provided in the Master Agreement, or take such other action, as the Bank deems necessary in its sole and exclusive discretion. The Bank may also require Customer to complete an opt-out or similar waiver form to evidence Customer's election not to utilize Payee Match.

2.2.3 Customer, through its Authorized User(s) identified in the User Role Setup Form, shall send the Check Issue File to Bank via the Bank provided transmittal service, by the processing deadline(s) specified in the attached Schedule A.

2.3 Payment of Presented Checks and Reporting of Exception Checks. The Bank shall compare each Presented Check by check number, check amount and payee name as part of Payee Match against each Check Issue File received by the Bank. The Bank may satisfy its obligation hereunder by comparing check number, amount and payee name set forth in Substitute Checks, checks presented over-the-counter at one of Bank's teller stations and/or electronic presentation of checks. On each Business Day, Bank:

(a) may pay and charge to the Authorized Account each Presented Check that matches, by check number, amount and payee name, a check shown in any Check Issue File;

(b) shall provide to Customer, through its Authorized User(s) identified in the User Role Setup Form, an Exception Check Report via the Bank provided transmittal service that indicates whether Bank has received any Exception Checks by the processing deadline and as otherwise set forth in Schedule A. Customer must provide check payment approval or return instructions to Bank via the Bank provided transmittal service on each Exception Check reported by the processing deadline set forth in the attached Schedule A ("Pay or Return Decisions");

(c) will, in accordance with Customer's enrollment, send a notification or alert to Customer via the Bank provided transmittal service. The notification or alert will be available when Customer logs into the Business Online Banking Service. The notification or alert will either indicate that an Exception Check Report has been presented for Customer's review or that there is no Exception Check Report for review on that Business Day; and

(d) will send, in accordance with Customer's enrollment, an email notification to Customer that indicates either that an Exception Check Report has been presented for Customer's review, or that there is no Exception Check Report for review on that Business Day.

2.4 Payment and Dishonor of Exception Checks. Except as provided in Section 2.4.4 below, Bank will pay or return Exception Checks in accordance with Customer's Pay or Return Decisions.

2.4.1 Pay Decisions. The Bank shall finally pay and charge to the Authorized Account, to the extent there are sufficient Available Funds in the Authorized Account, any Exception Check that Customer directs Bank to pay.

2.4.2 Return Requests. The Bank shall return to the depositary bank any Exception Check drawn on an Authorized Account that Customer directs Bank to return.

2.4.3 Automatic Return Default. If Customer fails to provide Pay or Return Decisions to the Bank in accordance with these requirements, the Bank will return any Exception Check drawn on an Authorized Account to the depositary bank.

2.4.4 Checks Presented for Payment at Bank Teller Stations. Notwithstanding anything in this Appendix to the contrary, the Bank may, in its sole and absolute discretion, return to the person presenting a check drawn on an Authorized Account for payment over-the-counter at one of Bank's teller stations any such check that does not appear on a Check Issue File. Customer acknowledges and agrees that the Bank shall have no obligation to inform Customer that any such check has been presented for payment at a Bank teller station. The Bank shall have no liability to Customer for wrongful dishonor with respect to any such check.

## 2.5 Customer and Bank Communications.

2.5.1 Customer shall check the Business Online Banking Service daily for Exception Check Reports. In addition, the Bank will send notifications or alerts to Customer or its Authorized Users via the Bank provided transmittal service, as well as email notifications, as described above, regarding the availability of Exception Check Reports.

2.5.2 Bank shall use only Check Issue Files that comply with Section 2.2 in the preparation of Exception Check Reports under this Appendix.

2.5.3 Customer shall use only Exception Check Reports that comply with Section 2.3 in the preparation of Pay Decisions and Return Decisions. The Bank shall not be obligated to comply with any Pay Decision or Return Decision received in a format, after a processing deadline, or in a manner not permitted under this Appendix and Schedule A, but may instead treat such a Pay Decision or Return Decision in accordance with the automatic return default described above.

2.5.4 The Bank is not responsible for detecting any Customer error contained in any Check Issue File, Pay Decision or Return Decision sent by Customer to the Bank.

2.5.5 Notwithstanding any other provision of this Appendix or operation of the Business Online Banking Service, Customer may not change or revoke its Pay or Return Decision after the processing deadline set forth in Schedule A or otherwise after the Bank has processed the applicable Exception Check in accordance with Customer's original instruction, and any attempt by Customer to do so shall be ineffective and have no effect on Bank's obligations or liability under this Appendix.

2.6 Submission of Data Prior to Implementation of Service. The Bank may request that Customer submit to the Bank a current, reconciled list of all outstanding checks issued on each Authorized Account prior to the implementation of the Service hereunder. Depending on the frequency with which Customer issues checks, the Bank reserves the right to require Customer to submit one or more additional such lists so that all outstanding, unpaid checks issued on any Authorized Account have been reported to the Bank prior to the implementation of the Service.

### 3. Remedies.

3.1 UCC Liability. To the extent applicable, the liability provisions of UCC Articles 3 and 4 shall govern this Appendix, except as modified below. To the extent permitted by UCC Articles 3 and 4, the liability of the Bank under this Appendix shall in all cases be subject to the provisions of the parties' Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from the Bank.

3.2 Wrongful Honor. It shall constitute wrongful honor by the Bank if the Bank pays an Exception Check listed in a timely Exception Check Report unless Customer issued a Pay Decision by the processing deadline set forth in Schedule A. In the event that there is wrongful honor, the following shall apply:

3.2.1 Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid Exception Check or Customer's actual damages resulting from Bank's payment of the Exception Check.

3.2.2 Bank expressly waives any right it may have to assert that Customer is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under UCC Section 4-401.

3.2.3 Bank retains the right to assert Customer's failure to exercise reasonable care under UCC Sections 3-406 and 4-406.

3.2.4 Bank retains the right to assert the defense that Customer has sustained no actual damages because the Bank's honor of the Exception Check discharged for value an indebtedness of Customer.

3.3 Wrongful Dishonor. Except as provided below, it shall constitute wrongful dishonor by the Bank if the Bank dishonors an Exception Check that the Bank has been ordered to pay pursuant to a Pay Decision from Customer by the processing deadline set forth in Schedule A.

3.3.1 Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under UCC Articles 3 and 4.

3.3.2 Notwithstanding Section 3.3.1, Bank shall have no liability to Customer for wrongful dishonor when the Bank, acting in good faith, returns an Exception Check:

- (a) that it 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 on the Bank or the instructions of regulatory or government authorities or courts; or
- (d) if Customer changed its Pay or Return Decision after the processing deadline set forth in Schedule A, as described about in Section 2.5.5.

3.4 Rightful Payment and Dishonor. Except as provided in Section 3.5, the following shall apply:

3.4.1 If the Bank honors an Exception Check in accordance with a Pay Decision issued by Customer, such honor shall be rightful, and Customer waives any right it may have to assert that the Exception Check was not properly payable under UCC § 4-401.

3.4.2 If the Bank dishonors an Exception Check in accordance with the automatic return default or in accordance with a Return Decision issued by Customer, the dishonor shall be rightful, and Customer waives any right it may have to assert that the dishonor was wrongful under the UCC § 4-402.

3.4.3 Customer agrees that the Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of this Appendix.

3.5 Faulty Information. Subject to the terms and conditions of the Master Agreement, the Bank shall be liable for losses, other than incidental or consequential damages, proximately caused by its honor of a check that was not properly payable, or its dishonor of a check that was properly payable, if the honor or dishonor occurred because the Bank, in accordance with the provisions of Section 2 of this Appendix:

(a) should have shown the check on an Exception Check Report but failed to do so; or

(b) showed the check on an Exception Check Report but referenced the wrong check number, unless the Bank provided Customer with timely information that disclosed the error.

3.6 Assignment. To the extent that Customer suffers a loss under this Appendix, the Bank assigns to Customer any claim that the Bank would have against a depository or collecting bank to recover the loss, including any claim of breach of warranty under UCC §§ 4-207, 4-208, and 4-209.

4. **Customer Liability**. Utilizing Positive Pay on all Accounts is part of the Bank's Security Procedures. If Customer declines to enroll all Accounts, at fees set forth in the Bank's Fee Schedule, Customer accepts any and all liability for any fraudulent, unauthorized, altered, counterfeit or other fraudulent items paid that may have been prevented had Customer enrolled said Account in the Service.

5. **Fees and Charges**. Customer agrees to pay the fees and charges that may apply to this Service as set forth in the Bank's Fee Schedule.

6. **Governing Law**. Except where expressly required by contrary provisions of the UCC, any claim, controversy or dispute arising under or related to this Appendix shall be governed by and interpreted in accordance with the governing law provision of the parties' Master Agreement.

7. **Termination**. The parties may terminate this Appendix in accordance with the terms and conditions of the parties' Master Agreement. This Appendix will automatically and immediately terminate if the parties' Master Agreement or Business Online Banking Appendix terminates, or if the Authorized Account(s) are closed. The provisions of this Appendix that are necessary to give effect to the purposes of this Appendix shall survive its termination.

8. **Effectiveness**. Customer agrees to all the terms and conditions of this Appendix. The liability of the Bank under this Appendix shall in all cases be subject to the provisions of the Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from the Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Service and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by the Bank or the Master Agreement is terminated.

**File Transmission Requirements**

All files will be electronically transmitted by Customer to Bank via the Bank's transmittal service.

In the event that files are unable to be transmitted electronically, due to interruption of transmission, communication failure, or equipment failure, Customer may contact the Bank by calling 1-800-966-9172 on a Business Day for further assistance.

Without limiting the generality of the foregoing provisions, the Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond the Bank's reasonable control.

**Security Procedures**

The Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Administrator, and any such communication shall be deemed to have been signed by such person.

**Business Online Banking Service - File Transmission**

As further set forth in the Master Agreement and Business Online Banking Service Appendix, certain security procedures are **required** for all Business Online Banking Service customers, including the use of User IDs and passwords, as well as Enhanced Log-In Security.

**Recommended Optional Security Procedure: Dual Control.** As an additional security procedure, Customer may elect to ensure that one authorized individual or authorized representative creates and uploads a Check Issue File and a different authorized individual or authorized representative reviews and decisions any Exception Checks.

IF CUSTOMER ELECTS TO WAIVE THE USE OF RECOMMENDED, OPTIONAL ADDITIONAL SECURITY PROCEDURES, CUSTOMER AGREES THAT SUCH WAIVER IS AT CUSTOMER'S SOLE RISK, AND CUSTOMER SHALL BE RESPONSIBLE FOR ANY LOSS RESULTING IN WHOLE OR IN PART FROM SUCH WAIVER. CUSTOMER FURTHER AGREES: (i) THAT THE BANK HAS OFFERED A COMMERCIALY REASONABLE MEANS OF SECURITY AS DESCRIBED IN THIS ADDITIONAL SECURITY PROCEDURE THAT CUSTOMER HAS WAIVED THE RIGHT TO USE; AND (ii) THAT POSITIVE PAY FILES OR PAY OR RETURN DECISIONS TRANSMITTED BY CUSTOMER BY WAIVING THE SECURITY PROCEDURE SHALL BE TREATED AS AUTHORIZED.

**Processing Deadlines**

- Customer shall submit a Check Issue File to Bank via the Bank provided transmittal service by 5:00 PM on a Business Day.
- Exception Check Reports will generally be made available to Customer via the Bank provided transmittal service by 8:00 AM on the Business Day after Bank's receipt of Customer's Check Issue File.
- Customer must review Exception Check Reports and provide Bank with Customer's Pay or Return Decisions by 10:30 AM on the same Business Day on which such Reports are made available via the Bank provided transmittal service.

**Customer Responsibilities**

- Customer is responsible for checking the Business Online Banking Service daily for Exception Check Reports.
- Customer is responsible for reviewing Exception Check Reports and providing the Bank with Customer's Pay or Return Decisions by 10:30 AM on the same Business Day on which such Reports are made available via the Bank provided transmittal service.
- Customer is solely responsible for the accurate creation, modification, and deletion of the account information maintained on Customer's personal computer and used in connection with the Service. Customer agrees to comply with written procedures provided by the Bank in connection with the Service.
- Customer is solely responsible for access by its employees of the data files maintained on Customer's computer.
- Customer is responsible for operator security procedures.