Business Online Banking Services Agreement

1. Introduction

1.1 This Business Online Banking Services Agreement (as amended from time to time, this "**Agreement**") governs your use of the Business Online Banking Services (individually sometimes referred to in this Agreement as a "**Service**" and collectively referred to in this Agreement as the "**Services**") that have been made available to you by or through First Niagara Bank, National Association (sometimes referred to in this Agreement as the "**Bank**," "**First Niagara**," "**we**," "**us**" or "**our**") for your eligible enrolled deposit accounts (individually sometimes referred to in this Agreement as an "**Account**" and collectively referred to in this Agreement as the "**Accounts**" – see also Section 1.2 below) held at the Bank. In this Agreement, "**Customer**," "**you**" and "**your**" refer to the business organization(s) and/or natural person(s) named in the Bank's records as the owner(s) of the Accounts enrolled in the Services. Unless the context requires otherwise, capitalized terms that are not otherwise defined in this Agreement have the meanings given to them on the Bank's Services-related Internet site (Services-related web pages) and/or the Application and any applicable Supplements (see Section 1.3 below).

1.2 Certain additional defined terms used in this Agreement are set out below:

Accounts - All eligible enrolled deposit accounts of the Customer that are linked in a portfolio accessible through Business Online Banking. Customers having different taxpayer identification numbers (TINs) but the same Administrator(s) (see Section 1.5 below) may request to have their eligible enrolled business deposit accounts linked through a single Business Online Banking portfolio (subject to meeting the Bank's applicable requirements). The linking of Accounts with different TINs is subject to certain conditions and approval of the Bank (which may be withheld by the Bank in the Bank's discretion). Each Customer having one or more Accounts linked in a single Business Online Banking portfolio must agree to be bound by the terms of this Agreement and the Guides, as each may be amended from time to time by the Bank. **If an Account accessible through Business Online Banking requires two or more authorized signatures on checks, drafts, or negotiable orders of withdrawal written against such Account, such Account shall not be eligible for the Bill Pay or Wire Transfer Services, and funds transfers from such Account using the Internal Transfer Service will not be permitted. In addition, NOW Accounts are not eligible for the Bill Pay Service.**

ACH Rules - All applicable rules or regulations issued by NACHA (National Automated Clearing House Association), the Electronic Payments Network, and The Clearing House Payments Company.

Business Day - Monday through Friday, excluding federal and New York State holidays and any other weekday on which the Bank is not open for business.

Business Online Banking Guides (or **Guides) -** The welcome notification (which may be an e-mail from the Bank), the Business Online Banking Reference Guide, the Security Information document, and all other related Business Online Banking guides, help or support text or similar documents (whether in hard copy or in electronic format, including without limitation Portable Document Format (PDF)) issued by us to you from time to time for use with the Services, including without limitation the terms or instructions that appear on a web page when you use a Service (as

such terms or instructions may be amended from time to time). You must have access to Adobe® Acrobat® Reader (version 9.0 or higher) to access, print, and/or download certain of the Guides. (See also Section 6.3 below.)

["**Adobe**" and "**Acrobat**" are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.]

Cash Management Service Center (or **Service Center) -** Business Online Banking telephone support is available through the Cash Management Service Center on Business Days between the hours of 8:00 a.m. Eastern Time and 6:00 p.m. Eastern Time (ET), by calling: 1-800-516-0625, or by e-mail at: cashmanagement@fnfg.com (or at such other telephone number or location as we may advise from time to time). You and your Delegates may use the Service Center to give certain Instructions and obtain help or certain information on Accounts by telephone. The Guides explain the Security Procedures that must be followed when speaking with the Service Center.

Dual Authorization - Approval by two (2) Delegates (Administrator(s) and/or additional Users) that is required in order to release transactions initiated or requested using the ACH Service, the Wire Transfer Service, and (in the Bank's discretion) the Bill Pay Service and the Internal Transfer Service (see Section 2 below), to the Bank for processing. Dual Authorization requires that all Accounts linked through a single Business Online Banking portfolio share the same Administrator and also share at least one additional Delegate.

Funds Transfer Agents - Correspondents, agents, sub-agents, funds transfer and communications systems we use to process a funds transfer requested using the ACH, Bill Pay, or Wire Transfer Services.

Instruction - Any request or instruction that is received by us through Business Online Banking in accordance with the agreed Security Procedures.

Password - Any confidential password, phrase, code and/or number, or any other identification whether issued to the Customer or any Delegate by the Bank or adopted by the Customer or any Delegate (including any Business Online Banking ID/User ID) which may be used to access the Website and/or Business Online Banking and/or the Services and/or to effect Instructions under the agreed Security Procedures.

Process Date and **Value Date -** The requested processing date (which must be a Business Day) for a funds transfer initiated from an eligible Account using the Bill Pay or Wire Transfer Service (as indicated in the Instructions received by the Bank for the transaction). (The Bill Pay Service uses the term "**Process Date**" and the Wire Transfer Service uses the term "**Value Date**" to refer to the requested Business Day on which funds for a specific, requested Bill Pay or Wire Transfer transaction are to be debited from the applicable Account by the Bank.)

Security Procedures - The combination of Customer controls over which Account(s) and Services are accessible through Business Online Banking, Customer controls over which individuals are authorized Administrators, Customer controls over authorization requirements for Account access, Administrator controls over additional authorized Users, and Password, Token, and other authentication requirements set forth in this Agreement, the Guides, and on the Website (as such requirements may change from time to time).

Settlement Date - The requested payment date (which must be a Business Day) for a funds transfer initiated using the ACH Service (as indicated in the Instructions received by the Bank for the transaction).

Token - A fob or similar hardware device issued by us to a Delegate for use together with a personal computer in order to initiate funds transfers using the ACH Service and/or the Wire Transfer Service.

Users and **Delegates -** The Administrator(s) you designate pursuant to Section 1.5 below may designate additional Users of a Service in accordance with the procedures set out in the Business Online Banking Guides. (Such Users and Administrator(s) are sometimes referred to as "**Delegates**" in this Agreement.) An individual User's authorities and limits must be established by your Administrator(s). All Delegates must be specifically identified and authorized natural persons (individuals).

Website - www.FirstNiagara.com and any other Services-related web pages of the Bank.

1.3 By completing and submitting the Bank's Application for Business Online Banking Services ("**Application**") and/or any Supplement to the Application for Business Online Banking Services ("**Supplement**"), and/or by using the Bank's Online Enrollment process or by logging into and using a Service, you (a) agree to be bound by the Guides and by the terms of this Agreement as amended from time to time pursuant to Section 17 below, and (b) represent to the Bank that you are authorized by appropriate resolution or consent of the owner(s) of the Account(s) (or, if applicable, as the owner or authorized representative or agent of the owner of the Account(s)) to accept the terms of this Agreement for all applicable Services.

1.4 Your authorized Delegate(s) (your Administrator(s) and any additional authorized User(s) as designated by you from time to time on the Application, any applicable Supplements, and on any other applicable Services-related forms and Services-related web pages pursuant to which the Bank has specifically agreed to accept Administrator and/or User authorizations) may access applicable Services online through the Website.

1.5 You will designate the Administrator(s) on the Application and/or Supplement, or as the Bank may otherwise agree from time to time, in the Bank's sole discretion, pursuant to applicable Security Procedures. The Application or (if applicable) the Bank's Online Enrollment process must be executed or approved by one or more authorized owners or principals of your business or one or more individuals who are authorized (based on the Bank's records, including without limitation any applicable copies of business resolutions or authorizations you provide to the Bank from time to time, which must be in form and content acceptable to the Bank) to withdraw funds from the Account and to close the Account. The Administrator(s) you designate will register for applicable Services online and may establish additional Users and their authorities and limits. (See also Section 1.7 below.)

An Administrator or other specifically authorized User will be able to view, print, and download electronic Account statements and certain Account transaction information on your behalf by electronic means using the Bank's Electronic Statement Delivery and Account Transaction Information Services. (See also Sections 2.1(f), 2.1(g), and 6 below.)You authorize the Bank to execute all Instructions received by the Bank from any of your Delegates under the Security Procedures contained in the Business Online Banking Guides. (See also Sections 1.7 and 2.2 below.)

1.6 Unless otherwise specifically agreed to by the Bank in writing (in the exercise of the Bank's discretion), Dual Authorization will be established for your Accounts in connection with your use of the ACH Service and/or the Wire Transfer Service. Dual Authorization will not apply to the number of signatures required on checks, drafts, or negotiable orders of withdrawal written against your checking account(s) (regardless of whether your checking account(s) are enrolled in any Service). Notwithstanding the foregoing, the Bank reserves the right, in the Bank's discretion, to require Dual Authorization as a condition of using the ACH, Wire Transfer, Bill Pay and/or Internal Transfer Services, and as a condition for using any other Business Online Banking Service**.**

1.7 You acknowledge and agree that limitations on Account access can only be controlled by you and the Administrator(s), not the Bank. The Bank will not be liable to you or any third party for any loss, damage, or expense

arising from access to an Account by any Delegate under the Security Procedures contained in the Business Online Banking Guides. **You agree to indemnify and keep the Bank harmless against all actions, claims or demands arising from or relating to any action of a Delegate under the Security Procedures. Your obligations under this Section 1.7 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service). (See also Sections 3.1 and 14 below.)**

2. The Services

2.1 Business Online Banking includes the following Services (certain Services, such as the ACH, Bill Pay, and Wire Transfer Services, may require that you apply separately and/or be approved by the Bank for the Service):

(a) **ACH** Service (transferring funds from Accounts to eligible payees located within the United States pursuant to automated clearing house rules; see also Section 8 below).

(b) **Bill Pay** Service (transferring funds from Accounts to eligible payees located within the United States; see also Section 7 below).

(c) **Internal Transfer** Service: Includes the ability to transfer funds between eligible Accounts and certain specifically approved and enrolled Loan accounts with the Bank, as described more fully below and in Section 11. You can authorize one-time or recurring transfers between your eligible Accounts (see Section 1.2) and/or certain of your specifically approved and enrolled Loan accounts with the Bank.

(d) **Wire Transfer** Service (transferring funds in United States dollars from Accounts to eligible payees located within or outside the United States using wire transfer services available through the Federal Reserve Banks (e.g., Fedwire Funds Service) or The Clearing House Payments Company or another wire transfer service(s) selected or agreed-to by the Bank; see also Section 9 below).

(e) **Secure Messaging** Service (accessed through Business Online Banking, allowing secure electronic messages to be sent by you to the Bank and by the Bank to you (in response to a Secure Message received by the Bank from you) concerning the Services and/or your deposit accounts or loan accounts with the Bank). There are certain risks associated with the transmission of electronic messages through the Secure Messaging Service, including but not limited to unauthorized access, system outages, delays, disruption in telecommunications services and the Internet. Electronic messages sent through the Secure Messaging Service are contained within the service. (See also Section 6.2 below.)

(f) **Electronic Statement Delivery** Service (allows an Administrator or any specifically authorized User to view, download and print Portable Document Format (PDF) copies of the last twenty-four (24) Account statements made available by the Bank; see also Section 6.3 below). We may send you any notification (by e-mail or otherwise) after we make a new monthly Account statement available for viewing, downloading and printing through the Electronic Statement Delivery Service. You agree to maintain access to Business Online Banking in a manner that gives you continuous ability to access, review and download or print your electronic Account statements. Provisions in this Agreement concerning the Electronic Statement Delivery Service supersede any conflicting provisions in any prior Electronic Statement Delivery Enrollment Agreement that may have been entered into between you and the Bank concerning any Account enrolled now or in the future in Business Online Banking.

(g) **Account Transaction Information** Service (allows an Administrator or any specifically authorized User to view, download and print certain Account-related transaction information). The Account Transaction Information Service includes the following features:

- View, download and print Account balance and Account transaction information for the last ninety (90) days;
- View, download and print check images using Java™ software (developed by Oracle Corporation) or compatible software;
- View, download and print certain summary information (such as available balance information) for Accounts; and
- View, download and print certain summary information for certain specifically approved and enrolled Loan accounts.

Account balance, transaction, and summary information may not reflect then-pending or in-process transactions (including then-pending or in-process debits and credits). We will not send you any notification (by e-mail or otherwise) after we make Account transaction information available for viewing, downloading and printing through the Account Transaction Information Service. You agree to maintain access to Business Online Banking in a manner that gives you continuous ability to access, review and download or print your Account transaction information. (See also Section 6.3 below.)

2.2 **An Administrator** may be permitted to take the following actions using the Services (to the extent a Customer has qualified for a specific Service):

(a) Setup and/or Change Users and define which Accounts and Services Users may access and the daily and/or other transaction limits (if applicable) within which Users may initiate and authorize funds transfers using the Bill Pay, ACH, Wire Transfer and/or other Services. These limits can be amended by the Administrator(s) up to the maximum limits established by the Bank. The Administrator(s) and User(s) (to the extent authorized by the Administrator(s)) will be able to view and access each Account and each applicable Service in any manner and for any purpose available through Business Online Banking (whether now available or available at some time in the future), subject to the limitations and restrictions of this Agreement. All daily and transaction limits (whether per Customer, per Account, per User, or per Administrator) are subject to approval and limits established by the Bank, and the Bank reserves the right to modify all such daily and transaction limits from time to time at the Bank's discretion, without advance notice.

(b) Authorize changes initiated by another Delegate under applicable Dual Authorization rules.

(c) View and change the permissions of the Users created.

(d) Download transaction information to certain spreadsheet-compatible formats for use in connection with certain commercially available third-party accounting software.

(e) Create and Change Beneficiary, Payee and/or Participant Lists for Bill Pay, ACH and Wire Transfers.

(f) Access information about additional Bank products and services that may be of interest to you.

(g) Obtain an audit trail of confirmed actions taken by Delegates. (See Section 4.6 below.)

2.3 Credit Information. We may investigate your credit record and obtain any credit report we consider necessary or appropriate in connection with any aspect of our dealings with you and your Account(s) with respect to Business Online Banking (including, but not limited to, considering whether to cancel or suspend your right to use Business Online Banking and investigating any dispute concerning any funds transfer requested through Business Online Banking). We may furnish information concerning any aspect of our dealings with you and your Account(s) with respect to Business Online Banking to other financial institutions and credit reporting agencies, before or after termination of this Agreement and before or after termination of your participation in Business Online Banking (or any applicable Service).

3. Accounts

3.1 Accounts Held Under Different Tax Identification Numbers.

(a) Where Accounts held under different taxpayer identification numbers (TINs) are included on one Business Online Banking profile, the Customer acknowledges that an employee/individual User of one business may be given authority by an Administrator to transfer funds or conduct other transactions on Accounts of other businesses included in the Business Online Banking profile. Customer acknowledges that limitations on such access can only be controlled by the Customer and the Administrator(s), not the Bank. **The Bank will not be liable to the Customer or any business entity or individual for any loss, damage, or expense arising from access to an Account by any Delegate and the Customer hereby agrees to indemnify and keep the Bank harmless against all actions, claims or demands arising from actions of any Delegate.** (See also Section 1.7 above.)

(b) Customer's Representation and Warranty. You represent and warrant to the Bank that if Accounts held under different TINs are included in your Business Online Banking portfolio, each signer for the business entities using such TINs is authorized to designate the multiple TINs included on the Application or Online Enrollment for Business Online Banking and that no Account included for common access through one Business Online Banking profile is restricted from such common access by applicable law or regulation or by the organizational documents of the applicable business entity(ies). In addition, if your Business Online Banking portfolio includes Accounts held under different TINs, you agree that you and the other business entity(ies) using such TINs are solely responsible for complying with all applicable tax rules and regulations. You also warrant and represent that if the activities conducted through Business Online Banking result in pooling of cash among different legal entities, the owners of the Accounts are engaged in an authorized cash management arrangement.

(c) Your indemnity obligation and your representations and warranties in this Section 3.1 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

3.2 Each of your Accounts at the Bank will continue to be subject to all other agreements otherwise governing them, except where it is specifically noted to the contrary in this Agreement or any Guides. Additionally, your Accounts and the Services will be subject to the Bank's rules, procedures and policies applicable to your Accounts, and the rules and regulations of any Funds Transfer Agents used by the Bank in connection with the Services, and applicable state and federal laws and regulations.

3.3 You may ask the Bank to add new eligible deposit accounts or remove existing Accounts from applicable Services by calling the Cash Management Service Center at 1-800-516-0625 on Business Days between the hours of 8:00 a.m. ET and 6:00 p.m. ET, or by contacting your Relationship Manager.

4. Security Procedures and Instructions

4.1 Your designated Administrator will receive written notice from the Bank (in either hard copy or electronic form, at the Bank's discretion) with password and log-in information and (where applicable) confirmation of successful completion of set-up. The Administrator may then designate additional Users for the applicable Services. All Administrators are required to set up usernames and new Passwords for each Delegate before accessing Business Online Banking at the Website. If you have requested and been approved for the ACH Service and/or the Wire Transfer Service, the Bank will also send your designated Administrator and each applicable additional User a Token and set-up instructions for the Token.

4.2 You authorize the Bank to act on Instructions received under your Password through Business Online Banking. For security purposes it is recommended that you and all Delegates memorize your Password and do not write it down. You are responsible for keeping your Password and Account information confidential. Details of Security Procedures and techniques you may use to protect your confidential information are given in the Guides.

4.3 You and each of your Delegates agree to comply with the terms of this Agreement, the Guides, and any other reasonable instructions or recommendations we may issue to you regarding Business Online Banking security including, without limitation, the security recommendations contained in the Guides. You agree that it is your sole responsibility to set up, maintain and regularly review security arrangements concerning access to, and use of, the Services, and information stored on your computing and communications systems, and your and any of your Delegates' control of Passwords, Tokens, other security devices and access to Business Online Banking.

4.4 You confirm that you have assessed the Security Procedures for Business Online Banking and have determined that these features, in combination with your own security measures, are adequate for your Account(s). You acknowledge that the primary purpose of the Security Procedures for Business Online Banking is to verify the authenticity of Instructions we receive through or in connection with the Services, and whether such Instructions are submitted by your Delegates or otherwise on your behalf. The Security Procedures do **not** detect and are not intended to detect errors in the content of any Instructions, and you acknowledge that no procedure for the detection of errors in the content of Instructions has been agreed upon by you or us. You acknowledge that you are solely responsible for the content, accuracy, and completeness of all Instructions. (See also Section 4.9 below.)

4.5 You must ensure that your Delegates keep their Username and Password secure and secret at all times and take steps to prevent unauthorized use of their Username, Password, any applicable Token, and any other security device provided to them. Your Username, Password and Token credential act as your signature. You may change your Password at any time by following instructions in the Guides. You must notify us immediately if you (including any Delegate) know of or suspect any loss or theft of a Token, or any use or attempted use of a Token by an unauthorized person. You agree to pay us our standard charges (as they may change from time to time) for the issuance of replacement Tokens. (See also Section 12.1 below.)

4.6 You agree to regularly obtain and review the audit trail of confirmed actions taken by Delegates (see Section 2.2(g) above) and to regularly review all Account transactions that have been requested using the Services. Such regular reviews must occur at least once every seven (7) calendar days. You must notify us immediately if you (including any Delegate) know of or suspect any unauthorized access to Business Online Banking, the Website or the Service Center, or any unauthorized transaction or Instruction. You also agree to cooperate with us in connection

with our review or investigation of any claim of an unauthorized or erroneous funds transfer initiated using Business Online Banking, and you agree that we may review your records in connection with any such review or investigation, and in connection with any security-related audit or review of your compliance with the requirements of this Agreement.

Your obligations under this Section 4.6 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

4.7 The Services are accessed through the Internet, which is a public system over which we have no control. It is therefore your duty to make sure that any computer or other device, which you use to access the Services, is free from and adequately protected against acquiring computer viruses and other destructive or disruptive components.

4.8 You agree that you are solely responsible for the performance and protection of any browser used in connection with Business Online Banking including the prompt adoption by you of all security patches and other security measures issued or recommended from time to time by the suppliers of such browsers.

4.9 If any Instruction identifies an intermediary bank, or the beneficiary's or payee's bank, or the beneficiary or payee, by name and an account or other identifying number, we and our Funds Transfer Agents may act solely on the basis of that number (even if that number identifies a different bank, beneficiary or payee). We and our Funds Transfer Agents have no duty to detect any inconsistencies between names and identifying numbers contained in any Instructions. If an Instruction does not designate an intermediary bank where appropriate, we may select an intermediary bank and you agree that we shall have no liability with respect to such selection. We are not responsible for any error or delay on the part of any intermediary bank or any beneficiary's or payee's bank in accepting, processing and/or transmitting your Instructions, unless the error or delay is the direct result of our own gross negligence or willful wrongdoing. In addition, if you specify an intermediary bank (whether by name or identifying number), you agree that you shall bear all risk of loss if that intermediary bank fails to properly process and transmit your Instructions.

4.10 Instructions requesting cancellation or amendment of an already-transmitted Instruction must be transmitted to us using the same level of Security Procedure as used for the original Instruction. If you ask us to cancel or modify any already-transmitted Instruction, we will make all reasonable efforts to comply with your request. However, except to the extent specifically provided in this Agreement (see, e.g., Section 7.9 below), we have no obligation to cancel or amend a requested funds transfer after Instructions for such transfer have been transmitted to us for processing. In no event will we be liable for any failure to cancel or modify an Instruction if such a request is not received at a time or under circumstances that give us a reasonable opportunity to act on your request (including, for example, any request received after we have already started processing the Instruction).

4.11 We will not be obligated to execute any Instruction if:

(a) it is not in accordance with any term or condition applicable to the Account or the Services;

(b) we believe it may not be authorized by you;

(c) it involves funds subject to a hold, dispute, restriction or legal process we believe prevents their withdrawal;

(d) it would exceed your collected and available balance in the Account on the day the transfer is scheduled to be made or on the day we begin processing the requested transfer or Instruction;

(e) it would result in exceeding any limit established by us or by you;

(f) it would violate any applicable provision of any risk control program of any federal or state law or regulatory authority;

(g) it is not in accordance with our applicable policies, procedures or practices (including without limitation the Guides);

(h) we have reasonable cause not to honor for our or your protection; or

(i) this Agreement or the applicable Service for the applicable Account has been terminated by you or by us.

We shall have no liability to you for the rejection of any funds transfer requested using Business Online Banking.

4.12 Transactions may not be executed by us immediately when an Instruction is received. Some transactions may take time to process and certain Instructions may only be processed during normal banking hours on Business Days even though Business Online Banking is on-line and may be accessible outside such hours. We are not responsible for delays in processing caused by circumstances beyond our control, including but not limited to errors you cause through your inputting and/or releasing of funds transfers requested using Business Online Banking, or errors caused by machine or transmission facility malfunctions, or the action or inaction of any network, financial institution, or other third party (including without limitation any Funds Transfer Agents). To the fullest extent permitted by law, our Funds Transfer Agents shall be deemed to be your agents and we shall not be under any liability for any errors, negligence, suspension or default of any of them, all such risks being borne by you.

4.13 If we do not act on (reject) or delay acting on an Instruction, we shall attempt to notify you of this as soon as is reasonably possible after we have received the Instruction for processing, to the extent permitted by law. Unless otherwise provided in this Agreement, we may in our sole discretion choose to notify you by telephone, first-class mail, or electronic message (through the Secure Messaging Service or directed to any e-mail address we have on file for your participation in Business Online Banking - see also Section 6.2 below). We may direct such notices to any of your Administrators, in our sole discretion. We shall have no liability to you for the fact that a notice is not given to you by us, or is given by us at a later or earlier time than that provided for herein. If we reject an Instruction because of insufficient available funds in your Account, we will generally notify you no later than the requested Value Date or Settlement Date for such requested funds transfer (as applicable).

4.14 As part of our processing of funds transfer Instructions we receive from you or any Delegate pursuant to this Agreement, we may in our sole discretion place an administrative hold on, and set-off against, funds in your Account(s) sufficient to cover any and all funds transfers requested through Business Online Banking by you or any Delegate, and any and all fees associated therewith, whether or not then due. Such administrative hold and set-off shall be effective at the time the Bank opts therefor even though evidence thereof is not entered in the records of the Bank until later.

4.15 Notwithstanding Section 4.14 above, you agree that we may choose in our sole discretion to withdraw funds from your Account(s) sufficient to cover any and all funds transfers requested using the ACH Service on the Business Day immediately preceding the requested Settlement Date, to facilitate the pre-funding of your requested ACH funds transfers.

4.16 You agree that funds transfer Instructions submitted using the ACH or Bill Pay Service may be transmitted through the automated clearing house (ACH) network and that payment to a payee relating to such Instructions is

provisional until the payee's financial institution has received final settlement with respect thereto through a Federal Reserve Bank or otherwise has received payment with respect thereto as provided for in Section 4A-403(1) of Article 4A of the Uniform Commercial Code. If the payee's financial institution does not receive such final settlement or other payment, the payee's financial institution shall be entitled to a refund from the payee in the amount of such provisional payment, and you will not be considered to have paid the payee in such a case.

4.17 You agree that if a funds transfer you request is rejected by any intermediary or receiving financial institution (for example, because of erroneous or incomplete information in your Instructions, or for any other reason) we have no obligation to attempt to correct or re-initiate your funds transfer Instructions, or to notify you of the intermediary or receiving financial institution's rejection.

4.18 Unless otherwise instructed, we will credit the applicable Account for any funds transfer requested using Business Online Banking that is rejected or returned.

4.19 **Monitoring Communications.** In the regular course of business of the Bank or any agent of the Bank (including without limitation any Funds Transfer Agent), we or our agent may, for security and quality control purposes, monitor and record telephone, electronic messages or other communications to or between any of the employees and other agents of the Bank or our agent and you (including your Delegates and anyone else requesting or purporting to make a request on your behalf), including, but not limited to, any Instruction to the Bank. **This Section 4.19 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).**

5. Service Interruptions

5.1 **Service Center.** At certain times the Services may not be available due to system maintenance or circumstances beyond our control. During such times, or if for any other reason you are not able to access the Services online, you may call the Cash Management Service Center at 1-800-516-0625 on Business Days between the hours of 8:00 a.m. ET and 6:00 p.m. ET for assistance with Services.

5.2 **Force majeure.** Neither party will be liable for delay in performing or failure to perform any of its obligations under this Agreement which is caused by circumstances beyond its reasonable control, including, but not limited to, the failure, malfunction or unavailability of telecommunications, data communications and computer systems and services, war, act of terrorism, civil unrest, government action, strikes, lock-outs or other industrial action or trade disputes (whether involving either party's employees or those of a third party). Any delay or failure of this kind will not be deemed to be a breach of the Agreement and the time for performance of the affected obligation will be extended by a period, which is reasonable in the circumstances.

6. e-Account Statements; other Account transaction information; Hardware and Software Requirements

6.1 **Paper copies of electronic Account statements.** At your request, we will send you a paper copy of an electronic Account statement previously made available through the Electronic Statement Delivery Service. Our standard fee then in effect and charged for paper delivery of copies of Account statements will apply. Paper copies of electronic Account statements can be requested by contacting the Cash Management Service Center at 1-800-516-0625 on Business Days between the hours of 8 a.m. ET and 6 p.m. ET. A paper copy of electronic Account

statements can be obtained until the copy is no longer required to be maintained by the Bank as a record for the designated Account under applicable law or regulation.

6.2 Your e-mail address. You agree that you have and will have access at all times to a valid e-mail address, for as long as you have any Account enrolled in any Service. It is your sole responsibility to advise us immediately of any changes or updates to your designated e-mail address by contacting the Service Center or your Relationship Manager. Any and all notices we send to the e-mail address we have on file for your participation in Business Online Banking shall be deemed to have been delivered to you personally, whether actually received or not.

6.3 Hardware and Software Requirements

(a) General requirements. You agree that you have and will continue to have access at all times to a personal computer capable of supporting at your cost: a 128-bit or higher browser encryption, Internet access, and Business Online Banking, for as long as you have any Account enrolled in any Service.

(b) Additional Requirements for certain Guides and the Electronic Statement Delivery Service. You must also have access to Adobe® Acrobat® Reader (version 9.0 or higher) to access, print, and/or download the Guides and the electronic Account statements that are available through the Electronic Statement Delivery Service in Portable Document Format (PDF) file format.

If our method of electronic delivery of Account statements changes so as to require additional software, upgrades, plug-ins or additional security features in your hardware or software, we will notify you of such change (by posting notice of such change on the Website or by other means) and ask you to confirm to us that your hardware and software have been upgraded to the required standards.

You understand that accessing electronic Account statements through Business Online Banking and receiving e-mail notices from us may cause you to incur certain costs associated with e-mail, electronic access, downloading, online time and subscription costs associated with Internet and telecommunications service providers, paper and printing costs, and equipment or software upgrades if necessary. You agree that you will pay all such costs and expenses in connection with your use of the Electronic Statement Delivery Service. (See also Section 12.3 below.)

7. Bill Pay Service

7.1 Ineligible Accounts. The Bill Pay Service is not available to any Customer that is a governmental entity, and also is not available to any NOW Account or to any Account that requires two or more authorized signatures on checks, drafts, or negotiable orders of withdrawal written against such Account. (See Section 1.2 above.)

7.2 Other Restrictions. The Bill Pay Service may be used to pay a bill or to make payments to a business or other payee. You agree not to use the Bill Pay Service to make any tax payment, any court-ordered or court-directed payments, or any payment to a payee that has a mailing address outside the U.S. and you agree that if you attempt such payments, the Bank and its agents (including without limitation any Funds Transfer Agent) will not be responsible for that payment. We also reserve the right to limit the frequency and dollar amount of Bill Pay transactions from your designated eligible Accounts.

7.3 We may impose limits on the dollar amount of an individual Bill Pay transaction and on the total dollar amount of all Bill Pay transactions to be processed on any given Business Day from your designated eligible Account,

and we may change these limits from time to time without advance notice. Your Administrator may also impose limits on the total dollar amount of Bill Pay transactions that may be initiated on any given Business Day by an individual User. In addition, if the designated Account does not have sufficient available funds to cover a requested Bill Pay transaction on the scheduled or actual processing date, the transaction will not be processed.

7.4 By using the Bill Pay Service, you authorize us to follow the Instructions provided by your Administrator(s) and/or User(s) using Business Online Banking. You will enter into Business Online Banking the names, addresses, phone numbers and account information of those persons or entities to whom you wish to send funds using the Bill Pay Service. When you initiate a Bill Pay transaction, you authorize us to charge your designated eligible Account and to remit funds to the designated payee on your behalf electronically, provided electronic payments are permitted and accepted by the payee. If the payee does not permit and accept electronic payments, or if we have difficulties generating an electronic payment to a payee, then those funds will be remitted to the payee through the use of a paper check issued by us (or by our Funds Transfer Agent) on your behalf and payable to the payee. Such paper check will state that it represents a payment from you and will indicate your account number with the payee (as entered by you into Business Online Banking).

7.5 Bill Pay transactions that are scheduled for processing before 1:00 p.m. ET on a Business Day will generally be processed on that Business Day (or, if later, on the requested Process Date). Payments that are scheduled for processing after 1:00 p.m. ET on a Business Day, and payments scheduled on a day that is not a Business Day, will generally be processed on the next Business Day (or, if later, on the requested Process Date).

7.6 Bill Pay transactions can be sent to payees electronically or by check, in our sole discretion. Electronic payments are sent whenever possible and your designated Account is debited on the Business Day the payment is processed. If we send a payee a check (see Section 7.4 above), your designated Account is debited for the payment amount on the Business Day we issue the check.

7.7 While it is anticipated that most Bill Pay transactions will be processed and completed on the Business Day you selected as your Process Date (provided that the transactions are scheduled before 1:00 p.m. ET on that Business Day), you acknowledge that due to circumstances beyond our control, such as delays by the payee and the payee's bank or agent in handling and posting Bill Pay transactions, some Bill Pay transactions may take longer to be posted to your account at the payee. For this reason, we recommend that you select a Process Date which is at least five Business Days before the actual due date of the payment. You agree that we will not be responsible for any Bill Pay transaction that is received or posted by the payee after the payment due date or after any applicable grace period, which could result in a late charge or penalty being assessed by the payee. In such event, you agree that you shall have the sole risk of incurring and the sole responsibility for paying any and all charges or penalties assessed by the payee.

7.8 You may use the Bill Pay Service to authorize automatic recurring payments of recurring bills. These payments must be for the same amount each month and they will be paid on the same calendar day of each month, or on the next Business Day if the regular payment day falls on a weekend, holiday or any other day we are not open for business.

7.9 Canceling (Stopping) a Bill Pay Transaction.

(a) You can cancel or stop a single nonrecurring Bill Pay transaction before 1:00 p.m. ET on the Process Date for that transaction through the use of Business Online Banking, or, alternatively by calling the Service Center on Business Days between 8:00 a.m. ET and 6:00 p.m. ET and following our instructions.

(b) If the Bill Pay transaction is a recurring payment set up on the Bill Pay Service, then you can cancel one or all future scheduled recurring Bill Pay transactions through the use of Business Online Banking as long as the request is received at least one (1) Business Day before the Process Date for the next scheduled recurring Bill Pay transaction.

8. Automated Clearing House (ACH) Service

8.1 We offer an ACH payment service through Business Online Banking to eligible Customers. An eligible Account is required and you must also meet our credit and other eligibility requirements for the ACH Service. (See also Section 1.2 above.)

8.2 We may impose limits on the dollar amount of an individual ACH transaction and on the total dollar amount of all ACH transactions to be processed on any given Business Day from your eligible Accounts, and we may change these limits from time to time without advance notice. Your Administrator may also impose limits on the total dollar amount of ACH transactions that may be initiated on any given Business Day by an individual User. We may reject any requested ACH funds transfer from the designated eligible Account if that Account does not have sufficient available funds to cover the requested ACH funds transfer one (1) Business Day before the requested Settlement Date or on the Settlement Date. (See also Section 4.15 above.)

8.3 The ACH Service enables you to initiate domestic (U.S.) credits only (payments from the designated Account to other specified accounts), for settlement through the ACH Service in Business Online Banking. Instructions for ACH payments will be set-up by you online and will be processed electronically by us through the ACH. You warrant to us that each ACH payment Instruction has been properly authorized by you and any other applicable party, is properly payable from the designated Account, and that all applicable authorizations remain operative at the time of creating and processing this Instruction and on the scheduled Settlement Date.

8.4 By using the ACH Service to request funds transfers, you agree to be bound by and comply with applicable U.S. laws and regulations, including those promulgated by the Office of Foreign Assets Control and the U.S. Department of Treasury's Financial Crimes and Enforcement Network, and all applicable ACH Rules. You acknowledge and agree that you shall not use the ACH Service to create or request any transfer that would meet NACHA's definition of an International ACH Transaction (IAT).

8.5 You agree to submit ACH payment Instructions by 7:00 p.m. ET two (2) Business Days before the requested Settlement Date. ACH Instructions received after 7:00 p.m. ET on a Business Day, or received at any time on a day that is not a Business Day, will be considered received on the next Business Day. ACH Instructions can be entered up to nine (9) Business Days before the requested Settlement Date.

8.6 We will process all ACH Instructions received through the ACH Service in a timely manner in accordance with ACH Rules.

8.7 We may reject any requested ACH funds transfer that does not comply with our requirements, this Agreement, the Guides, the ACH Rules, or applicable law.

9. Wire (Funds) Transfers

9.1 You may use the Business Online Banking Wire Transfer Service to create, view, modify and delete U.S. Dollar Wire Transfer transactions within your approved limits and designated eligible Accounts. An eligible First Niagara checking or NOW Account is required. The Wire Transfer Service is not available to any Account that requires two or more authorized signatures on checks, drafts, or negotiable orders of withdrawal written against such Account. (See Section 1.2 above.) We may impose limits on the dollar amount of an individual Wire transaction and on the total dollar amount of all Wire transactions to be processed on any given Business Day from your eligible Account, and we may change these limits from time to time without advance notice. Your Administrator may also impose limits on the total dollar amount of Wire transactions that may be initiated on any given Business Day by an individual User. Wire transactions also may not exceed the amount of the collected balance available in the designated eligible Account at the time of initiation of the Wire transaction. (See also Section 9.3 below.)

You may not use the Wire Transfer Service for any foreign currency (non-U.S. Dollar) Wire transactions.

9.2 U.S. Dollar Wire transactions can be entered up to 45 days before the Value Date. The designated eligible Account will be debited on the Value Date. Forward dated transactions will be validated for available balance at 7:00 a.m. ET on the Value Date.

9.3 We may reject any requested Wire transaction if you have insufficient available funds in the Account on the Value Date (see Section 9.2 above) or for any other reason. If we reject a Wire transaction, we shall use reasonable efforts to notify you as soon as is reasonably possible on or after the Business Day on which such Wire transaction would otherwise have been executed by us. (See Section 4.13 above.)

9.4 All Wire transactions submitted before 5:30 p.m. ET on a Business Day through the Wire Transfer Service will be processed on that Business Day (or, if later, on the requested Value Date). Wire transactions submitted after 5:30 p.m. ET on a Business Day, or on a day that is not a Business Day, will be processed on the next Business Day (or, if later, on the requested Value Date).

10. Limitations on Frequency of Transfers and Dollar Amounts

10.1 You may view certain summary account information about an enrolled Loan account of yours at the Bank (see Section 2.1(g) above), and authorize payments to the enrolled Loan account from an eligible Account (see Sections 1.2 and 2.1(c) above) using Business Online Banking. Payments on closed-end (non-revolving) enrolled Loan accounts may only be made using Business Online Banking within ten (10) calendar days before or after the scheduled payment due date for the Loan. You may not use Business Online Banking to request a loan advance from a Loan account at the Bank; all loan advance requests should be made by contacting your Relationship Manager. All payments and transfers to (or from) an enrolled Loan account at the Bank are subject to the terms of the applicable agreement governing the Loan account. For example, the processing of a loan advance request may be delayed pending credit approval (and may be refused in accordance with the terms of the agreement governing the Loan account).

10.2 If you make Business Online Banking transfers from your savings or money market Account at the Bank to another of your deposit accounts at the Bank (or to any other recipient's account, whether at the Bank or at another financial institution, including without limitation transfers initiated using the ACH, Bill Pay, Internal Transfer, and/or

Wire Transfer Services from your savings or money market Account), those transfers are added to your other automatic, pre-authorized, check, telephone, and/or data transmission transfers made from such savings or money market Account, and all such transfers are limited to a maximum of six for each monthly statement cycle in accordance with your savings or money market Account agreement with the Bank. If you exceed the transfer limitation, we may impose fees and/or close your savings or money market Account (as applicable) and/or terminate the transfer and check-writing features of the Account and/or transfer the Account balance to a checking account at the Bank.

11. Internal Transfer Service

The processing times applicable to funds transfers between and among Accounts and approved and enrolled First Niagara Loan accounts that are requested using the Internal Transfer Service (see Section 2.1(c) above) are shown below. These processing times may be amended at our discretion from time to time without advance notice. Please see the online version of this Agreement on the Website for the most current processing times:

Date of Immediate Transfer Request	**Date Immediate Transfer will be made:**
On a Business Day before Approximately 7:30 p.m. ET:	Same Business Day the transfer is requested
On a Business Day after Approximately 7:30 p.m. ET:	Next Business Day after the transfer is requested
On a day other than a Business Day:	Next Business Day after the transfer is requested
Date of Scheduled Transfer Request	**Date Scheduled Transfer will be set up:**
On a Business Day before Approximately 7:00 a.m. ET:	Same Business Day the transfer is requested
On a Business Day after Approximately 7:00 a.m. ET:	Next Business Day after the transfer is requested
On a day other than a Business Day:	Next Business Day after the transfer is requested

12. Fees

12.1 You agree to pay the fees (if any) charged by us for the Services as disclosed to you from time to time. We may make changes to (and add new) fees from time to time. We will give you thirty (30) days prior notice of any new or increased fees. These fees are in addition to any charges for particular banking or other services we might provide for your Accounts under the other agreements that apply to your Accounts.

12.2 You may designate an Account on the Application or Online Enrollment from which we may debit fees (if any) for the Services. If you do not designate such an Account, we may debit Business Online Banking fees you owe us from any Account(s) to or from which transactions associated with Business Online Banking have occurred. (See also Section 4.14 above.) In addition, notwithstanding the foregoing and regardless of whether you designate an Account from which we may debit fees, you agree that we may debit any fees and other amounts you owe us from any funds belonging to you in our possession or control (regardless of whether such funds are or have been deposited into an Account).

12.3 You understand and agree that fees may be billed to you separately by your Internet and/or telephone service providers, your equipment, hardware and software providers, and other third parties with whom you have separately and independently contracted to provide you with computer, Internet, e-mail, and other services.

12.4 Costs and Expenses. You agree to pay each cost and expense (including, but not limited to, if we, or any of our employees, officers, correspondents, or Funds Transfer Agents, hire an attorney for advice, litigation or any other purpose, reasonable attorneys' fees and disbursements) incurred by, imposed on or asserted against us in enforcing any of your obligations under this Agreement.

12.5 The provisions of this Section 12 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

13. Our Liability to You

13.1 Our liability to you is explained in the agreements, notices and disclosures provided to you from time to time for your Accounts. This section applies only to the extent not otherwise provided for. Under no circumstances will we have any liability to you for failing to provide you access to your Accounts through the Services. We will only be liable for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct in providing and performing the Services.

13.2 To the fullest extent allowed by law, our liability to you for erroneously executing any funds transfer Instruction will be limited to returning any improperly transferred funds to the applicable Account and directing to the proper recipient any payment or transfer that was previously misdirected or not completed. IN NO EVENT WILL WE BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHETHER OR NOT ANY CLAIM FOR SUCH DAMAGES IS BASED ON TORT OR CONTRACT OR WE KNEW OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES.

13.3 You agree that we shall have no liability whatsoever for any loss or liability due to (a) any equipment, software or associated user documentation which any party other than us produces at any time for use in connection with Business Online Banking or the Services (including without limitation equipment, software and associated user documentation produced by third parties assisting us in providing the Services) or (b) any services through which you access Business Online Banking or the Services which are not controlled by us.

13.4 Disclaimer of Warranties. THE SERVICES ARE PROVIDED BY THE BANK "AS IS," "AS AVAILABLE" AND, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, WITHOUT ANY WARRANTY OF ANY KIND. WITHOUT LIMITING THE PRECEDING SENTENCE, THE BANK DOES NOT MAKE, EXCEPT TO THE MINIMUM EXTENT REQUIRED BY APPLICABLE LAW TO THE EXTENT THAT THE REQUIREMENT IS NOT MODIFIED BY THIS AGREEMENT, AND THE BANK EXPRESSLY DISCLAIMS, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, ANY EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTY OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) CONCERNING THE SERVICES.

13.5 Any interest for which the Bank is liable under applicable law (to the extent applicable law does not permit such liability to be disclaimed under this Agreement) as a direct or indirect result of any action taken or not taken by the Bank with respect to any Instruction transmitted to the Bank by you or any Delegate shall be calculated by using a rate equal to the average federal funds rate at the Federal Reserve Bank of New York for the period for which the Bank is liable under applicable law for such interest.

13.6 The provisions of this Section 13 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

14. Indemnity

14.1 You agree to indemnify and hold us harmless from all losses, liability, claims, demands, judgments and expenses arising out of or in any way connected with any Account, any enrolled Loan account, or any Service. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or on your behalf (including by any Delegate).

14.2 You agree to keep us indemnified against all actions, proceedings, costs, loss and damage of any kind which we, or any of our employees, officers, correspondents, agents, sub-agents, or independent contractors may suffer as a result of our or their acting on Instructions in accordance with this Agreement, or as a result of your failure to comply with your duties under this Agreement.

14.3 The provisions of this Section 14 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

15. Termination

15.1 Unless otherwise required by applicable law, we may terminate this Agreement and/or your access to any or all of the Services as to any or all of your Accounts and as to any or all of your enrolled Loan accounts, in whole or in part, at any time without advance notice. Access to Business Online Banking may be reinstated by us, at our sole discretion, at any time. If reinstated, the then-current terms of this Agreement will apply. You may request reinstatement of Services by calling the Cash Management Service Center at 1-800-516-0625 on Business Days between 8:00 a.m. ET and 6:00 p.m. ET.

15.2 If you do not access any of your Accounts for any six (6) consecutive calendar months (or consecutive monthly statement periods), we may terminate any or all of your Services as to any or all of your Accounts, without advance notice.

15.3 If you wish to cancel any of your Services, call the Service Center at 1-800-516-0625 on Business Days between 8:00 a.m. ET and 6:00 p.m. ET.

15.4 Termination of your participation in Business Online Banking (or any applicable Service) will not affect any other agreement affecting your Accounts or Loans with us, or any of your or our rights or obligations under this Agreement as of the effective date of termination, and also will not affect any Business Online Banking Instruction that both (a) has been submitted to and received by us for processing, and (b) is in process as of the effective date of termination. Termination of the Electronic Statement Delivery Service by you or by us does not affect the validity or legal effect of any electronic Account statement previously made available to you through Business Online Banking, and also does not affect your obligations under Section 4.6 above. Termination of any one Service by you or by us will not terminate the other Services for which you are enrolled, unless you or we specifically indicate otherwise.

16. Miscellaneous

16.1 Subject to the applicable laws of evidence, each party agrees not to object to the admission of the records (including computer records) of the other as evidence in legal proceedings on the basis that the evidence is maintained in electronic format.

16.2 Copyright in the pages, screens, information (other than information about your Accounts and financial affairs) and all material in their arrangement included in the Services and in the Website (together the "**Information**") is owned by or licensed to us unless otherwise noted. You may imprint, copy, download, or temporarily store extracts from the Information for your own information or when you use the Services. You may not alter or otherwise make any changes to any Information that you print or download including, without limitation, removing any identifying marks or legends from such Information. Any other use is prohibited unless you first request and obtain our written permission.

16.3 Where product demonstrations, calculator tools and other similar facilities ("**Tools**") are provided to Delegates in connection with the Website, such Tools are not provided as part of the Services and are provided subject to the terms and conditions, exclusions and disclaimers relevant to such Tools as provided.

16.4 In this Agreement, unless the context specifically requires otherwise, the plural includes the singular, the singular includes the plural, and headings and captions are for convenience of reference only and have no substantive effect.

16.5 Any notice required to be provided to you in writing in connection with any of the Services or any of your Accounts may be sent to you electronically through the Secure Messaging Service or to your e-mail address we have on file for your participation in Business Online Banking (as selected and confirmed and validated by you upon enrollment – see also Section 6.2 above), or by any other means permitted by applicable law or this Agreement (including, where applicable, by posting on the Website), at our option.

16.6 The provisions of this Section 16 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

17. Changes to the Terms of this Agreement

Except as otherwise required by law, rule, regulation or specific provisions of this Agreement, we may change the terms of this Agreement without prior notice to you from time to time and at any time. When changes are made, we will update this Agreement at the Website. The Website will be updated on or before the effective date, unless an immediate change is necessary for security reasons or a change in a law, rule or regulation requires the change. In that case, this Agreement will be updated as soon as possible after the change. You agree that any required notice of a change to the terms of this Agreement may be posted to the Website (including without limitation in the form of a "banner" message), or by any other means permitted by applicable law (including without limitation by electronic message), at our option. You agree to be bound by the terms of this Agreement and the Guides, as amended from time to time and posted on the Website.

18. Assignment

We may assign our rights under this Agreement without notice to a third party now or in the future. You agree that we may also assign or delegate certain of our rights and responsibilities under this Agreement without notice to independent third parties (including without limitation Funds Transfer Agents). You agree that you may not assign any of your rights or responsibilities under this Agreement to any third party without obtaining our prior written consent (which may be withheld in our sole discretion).

19. Applicable Law; Jury Trial Waiver

19.1 This Agreement is governed by applicable federal law (including without limitation the National Bank Act) and the applicable laws of the State of New York without regard to the law of any other jurisdiction. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any such provision shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

You consent to the exclusive jurisdiction and venue in the federal and state courts located in the State of New York.

19.2 WAIVER OF TRIAL BY JURY. YOU (ON YOUR BEHALF AND ON BEHALF OF EACH OF YOUR DELEGATES) AND WE EACH KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE EACH RIGHT YOU (INCLUDING YOUR DELEGATES) AND WE HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR OTHERWISE RELATING TO (a) THIS AGREEMENT OR ANY SERVICE, INSTRUCTION OR REQUEST TRANSMITTED TO US BY YOU (INCLUDING YOUR DELEGATES) OR ON YOUR BEHALF, (b) ANY TRANSACTION ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT OR ANY SUCH SERVICE, INSTRUCTION, OR REQUEST OR (c) ANY NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT.

19.3 The provisions of this Section 19 shall survive termination of this Agreement and termination of your participation in Business Online Banking (or any applicable Service).

(Rev. 05/2012)