

# Watertown Savings Bank

## REMOTE DEPOSIT CAPTURE MERCHANT AGREEMENT

Taylor-aye; Peterson-aye; Cantwell III-aye; Matthews-aye; Zovistoski-aye.

This REMOTE DEPOSIT CAPTURE SERVICES AGREEMENT is made and entered into this 1st day of January, 2016 by Watertown Savings Bank (herein the "Financial Institution"), and Town of Clayton (herein the "Customer").

### WITNESSETH:

WHEREAS, the Customer has authorized the Financial Institution to provide certain electronic capture services to the Customer as herein described;

WHEREAS, the Customer receives payments by paper checks from its customers (the "Indirect Customers"); and

WHEREAS, the Financial Institution has agreed to provide such services to the Customer on the terms and conditions herein described.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

**"Check"** means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection, including a Substitute Check and a traveler's check; and does not include a non-cash item payable in a medium other than United States dollars.

**"Substitute Check"** means a paper reproduction of the original Check that:

(a) contains an image of the front and back of the original Check;

(b) bears a MICR line containing all the information on the MICR line of the original Check, except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks;

(c) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for Substitute Checks; and

(d) is suitable for automated processing in the same manner as the original Check.

1. **General.** The Remote Deposit Capture Service to be provided by the Financial Institution to the Customer, consisting of a check scanning device (the "Scanner"), access to a browser based software program, and all related materials and documentation (collectively herein the "Program"), permits the Customer to conduct certain check related activities with the Financial Institution electronically. The Financial Institution's current schedule of fees for such checks (the "Images") are electronically transmitted to a third party processor, ProfitStars, whose services are available to the Financial Institution, and for ProfitStars to use electronic information, including images, captured from these checks to process transactions through the Automated Clearing House (ACH) network (an "ACH Transaction" or "ACH Transfer") or as Image Replacement Documents (IRDs) as permitted under the Check for the 21st Century Act ("Check 21

b) **Retain Paper Checks after Converting to Images.** Paper checks will be stamped "ELECTRONICALLY PRESENTED" by the Scanner and will remain with the Customer for a period of at least 14 days before being destroyed. Checks must be secured in a commercially reasonable fashion during the retention period and must be shredded properly. The Financial Institution shall have no liability to the Customer for any loss, cost or damage related to or arising out of or from the Customer's retention of paper checks, the method of securing such paper checks, the destruction of such paper checks or the method of destruction of such paper checks chosen by the Customer.

c) **Compliance with Rules; No-Disclosure and Confidentiality.** The Customer agrees both (i) to comply with and (ii) cooperate and assist the Financial Institution and its vendors in complying in a complete and timely manner with the Rules. The Customer agrees to execute and deliver to the Financial Institution all such instruments, as the Financial Institution may from time to time reasonably deem necessary. The Customer shall not disclose to any third party other than the Financial Institution, or any agent of the Customer for the purpose of assisting the Customer in completing a transaction, or as specifically required by law, any account information or other personal information. The Customer, in an area limited to select personnel, and prior to discarding, shall destroy in a manner rendering data unreadable all material containing account information after it has been retained for a period specified by the Rules. The Financial Institution and the Customer each agree that it will be in compliance with the current rules and regulations of the National Automated Clearing House Association ("NACHA") and/or all regional payment alliances associated with NACHA (the "NACHA Rules") applicable to it at all times during the terms of this Agreement.

6. **Right to Use Program/Limited Sublicense.** The Financial Institution hereby grants to the Customer a non-transferable and non-exclusive sublicense for use of the Program, subject to the terms and conditions set forth in this Agreement. The Customer acknowledges and agrees that the Program is valuable, confidential and proprietary property of ProfitStars and agrees not to transfer, distribute, copy, reverse compile, modify or alter the Program.
7. **Delivery and Installation.** The Financial Institution shall deliver to the Customer a Scanner and access to the Program. The Financial Institution agrees to further provide instruction and consultation to assist the Customer in its initial installation of the Scanner and setup of the Program.
8. **Maintenance and Supplies.** After delivery and installation of the Scanner and Program and until the termination of this Agreement pursuant to Section 10, the Financial Institution will assist the Customer in obtaining from ProfitStars technical support and other information for the operation and use of the Scanner and Program, and will provide to the Customer any modifications, refinements and enhancements to the Scanner or Program which ProfitStars may hereafter implement and which the Financial Institution has received notification from ProfitStars.

The Customer will be responsible for cleaning the scanner and completing simple maintenance on a regular basis. If assistance is needed with this process the Customer will contact the Financial Institution. It will remain the Customer's responsibility to purchase supplies needed to maintain proper upkeep of the scanner.

9. **Review and Audit.** On reasonable notice to the Customer, the Financial Institution shall have the right to inspect, during the Customer's regular business hours and during non-peak times, the Customer's document scanning and document retention facilities and methodologies, in addition to the Customer's information technology infrastructure and security policies, procedures, and controls for the purpose of validating the Customer's ability to carry out its duties under this

15. **Authorization.** The Customer will provide to the Financial Institution properly executed authorizations from the Customer (which may be designated by resolution executed in conjunction to the establishment of the Customer's deposit account), in form acceptable to the Financial Institution identifying by name and title the officers of the Customer who are authorized to sign this Agreement and perform the obligations of the Customer under this Agreement. In the absence of such authorizations, the Customer agrees that individuals authorized to sign on the Customer's deposit account are authorized to sign this Agreement and perform the obligations of the Customer under this Agreement. From time to time hereafter, the Customer may identify other persons who are authorized to provide instructions or directions to the Financial Institution, to sign any document or instruction on behalf of the Customer relating to this Agreement, and to take any action on behalf of the Corporation, provided, however, that the Financial Institution may rely upon, as authentic and duly authorized, any written or other communication from any person purporting to be an officer of the Corporation or other representative of the Corporation regardless of whether the Corporation shall have provided to the Financial Institution any evidence of such person's authority.
16. **Account Reconciliation.** All transactions which result in a debit or credit to the Account initiated by the Customer using the Services will be reflected on the Customer's monthly account statements. The Customer will notify the Financial Institution, within sixty (60) days after the mailing of the account statement(s) by the Financial Institution of any discrepancies between the account statement(s) and the Customer's records of transactions initiated through the Services. Failure of the Customer to notify the Financial Institution within said time period of any such discrepancies will preclude the Customer from asserting any claims for damages or other liabilities against the Financial Institution by reason of such discrepancies. The Customer will promptly provide any retained check (or, if the check is no longer in existence, a sufficient copy of front and back of the check) to the Financial Institution as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any check.
17. **ACH Transfers.** The Customer acknowledges that once the paper checks are processed with the Scanner (and become Images), the transactions may be processed by the Financial Institution and entered into the ACH network if appropriate. The transaction described on the Image (the "Entry" or "Entries") will be completed as an ACH Transaction. Without limitation of any other provision of this Agreement, the Rules shall govern the acceptance and liability for all ACH Transfer requests initiated in connection with the Services. This Agreement shall only govern those ACH Transfer Requests initiated through the Services. Any non-Services initiated request shall be governed by a separate ACH agreement between the Financial Institution and the Customer.
18. **Entries, Endorsements & Check Retention.** The Customer shall be responsible for the accuracy and propriety of all Entries submitted to the Financial Institution for processing, as well as being responsible for obtaining all required approvals for the processing of the Entry from the Indirect Customer. The Customer is required to make sure that all checks are properly and completely endorsed before processing them for deposit. The Customer shall be liable for each Entry and warrants that it complies with the Rules. Once processing has been completed the Financial Institution recommends that the Customer shred all checks within 60 days.
19. **Discrepancies.** In the event of any conflicts in the instructions received by the Financial Institution regarding the Customer or any Entries relating to them, the Financial Institution may at its option and with or without notice, hold or interplead, comply with the legal process or other order, or otherwise limit access by the Customer or by the Financial Institution to the funds, Entries or proceeds thereof.
20. **Processing Deadline.** The Financial Institution has specific processing deadlines. Files received by the deadline will be transmitted that day to the Federal Reserve Financial Institution

Program. The Financial Institution shall have no obligation, liability or control, either directly or indirectly over said procedures or the failure of the Customer to maintain said procedures. The Customer shall be solely responsible for designating its authorized representatives and disclosing the identity of said representatives, and all changes thereof, to the Financial Institution, provided, however, the Financial Institution shall not be responsible for verifying the authenticity of any person claiming to be a representative of the Customer or the authenticity of any instruction, direction or information provided to any said person. Any instructions, directions or other information provided by the Customer, or any representative of the Customer, under the Services shall be deemed to have been authorized by the Customer, and the Financial Institution shall be indemnified and held harmless by the Customer for acting upon any such direction, instruction or information.

a) The Financial Institution will maintain the Administrative User Name and Password. The Administrative User will have the following authority: (a) determine who will be authorized to use the Services; (b) establish separate passwords for each user; (c) establish limits on each user's authority to access information and conduct transactions; and (d) remove users they deem no longer authorized to use the Services. The Customer agrees to: (a) take reasonable steps to safeguard the confidentiality of all Passwords; (b) limit access to its passwords to persons who have a need to know such information (c) closely and regularly monitor the activities of employees who access the Financial Institution service; and (d) prohibit its employees and agents from initiating Entries without proper supervision and adequate controls.

b) The Customer understands that the use of Passwords and the Financial Institution service instructions is confidential and agrees to assume all risks of accidental disclosure or inadvertent use by any party whatsoever, whether such disclosure of use are on account of the Customer's negligence or are deliberate acts. The Customer acknowledges that no person from the Financial Institution will ever ask for any Passwords and that the Financial Institution employees do not need and should not ask for passwords.

c) The Customer shall change its passwords periodically and whenever anyone who has had access to a password is no longer employed or authorized by it to use the Financial Institution service. The Financial Institution may require the Customer to change its passwords at any time. The Financial Institution may deny access to the Financial Institution service without prior notice if it is unable to confirm (to its satisfaction) any person's authority to access the service or if the Financial Institution believes such action is necessary for security reasons.

d) The Customer will immediately report to the Financial Institution any security incidents.

e) The Financial Institution utilizes Tokens for our Multifactor Authentication to establish a User's identity. Multifactor Authentication is an authentication protocol which requires two independent ways to establish identity and privileges. Each Customer's User will receive an access ID and a small device called a "token". A token is a small non-connecting device that generates one-time random passwords, which is used in conjunction with a User's login ID and password when accessing the Online Banking Program. All Users accept responsibility for the confidentiality and security of their sign-on and token.

27. **Business Continuity.** If circumstances occur where deposits cannot be made through RDC technology, the Customer will physically bring checks to the bank for deposit. It is the customer's responsibility to back up any data stored on the system.

PERFORMANCE OF THIS AGREEMENT, WHICH IS CAUSED BY AN ACT OF GOD, FIRE OR OTHER CASUALTY, ELECTRICAL OR COMPUTER FAILURE, DELAYS OR FAILURE TO ACT BY ANY CARRIER, MEDIUM OR AGENT OPERATING BETWEEN THE FINANCIAL INSTITUTION AND THE CUSTOMER OR BETWEEN THE FINANCIAL INSTITUTION AND THIRD PARTIES OR ANY OTHER CONDITION OUTSIDE THE FINANCIAL INSTITUTION'S CONTROL. NO THIRD PARTY WILL HAVE RIGHTS OR CLAIMS AGAINST THE FINANCIAL INSTITUTION UNDER THIS AGREEMENT. THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

31. **DISCLAIMER OF WARRANTY.** NO WARRANTIES WITH RESPECT TO THE SCANNER AND THE PROGRAM ARE MADE BY THE FINANCIAL INSTITUTION NOR DOES THE FINANCIAL INSTITUTION WARRANT THAT THE SCANNER AND THE PROGRAM WILL MEET SPECIFIC REQUIREMENTS OF THE CUSTOMER. THE FINANCIAL INSTITUTION MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SCANNER AND/OR THE PROGRAM. THE FINANCIAL INSTITUTION DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF THE CUSTOMER'S ABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
32. **Equipment.** The Financial Institution is not responsible for any loss, damage or injury resulting from (i) an interruption in the Customer's electrical power or telephone service; (ii) the disconnecting of the Customer's telephone line by the Customer's local telephone company or from deficiencies in the Customer's line quality; or (iii) any defect or malfunction of the Scanner or telephone line.
33. **The Financial Institution's Liability for Failure to Complete Transactions.** The Financial Institution will process and complete all transfers (to and from eligible accounts) properly initiated through the Remote Deposit Capture system in accordance with the terms on the Image and the terms of this Agreement. If the Financial Institution or its processors do not complete an ACH Transaction or Check 21 Transaction on time or in the correct amount in accordance with terms on the Image and under the terms of this Agreement, the Financial Institution's liability for the Customer's losses and damages will be limited to those directly and proximately caused by the Financial Institution's failure, not to include indirect, consequential, special or exemplary damages. Further, the Financial Institution will not be liable if:
- a) Through no fault of the Financial Institution, the Indirect Customer does not have enough money in his or her account to make the transfer or payment.
  - b) The Scanner or the Program is not working properly, and the Customer knew about the malfunction when the Customer initiated use of the Services.
  - c) The Indirect Customer's depository institution mishandles or delays handling ACH Transactions or Check 21 Transactions initiated by the Financial Institution.
  - d) There is an error on the Indirect Customer's paper check.
  - e) Circumstances beyond the Financial Institution's control (such as fire, flood, or delay in the U.S. Mail) prevent the proper completion of the transaction despite reasonable precautions by the Financial Institution to avoid these circumstances.
34. **Entire Agreement; Severability.** This Agreement together with all exhibits, schedules and attachments hereto, the Account Agreement and the Rules (as incorporated herein) represent the entire agreement and understanding of the parties. If any portion of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect. In the event of any inconsistency or conflict between the terms of this Agreement and any present or future statute, regulation or governmental policy to which the Financial Institution is subject and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and the

## Schedule A

### **Remote Deposit Capture Package Selected, Pricing and Fees**

The following fees will be assessed by the Financial Institution to the Customer. Fees are charged in one lump sum, on a monthly basis, and will be posted on the monthly bank statement. You will pay us the fees designated in this Agreement, even if we reject your entries as permitted by this Agreement. We can change the fees you are required to pay under this Agreement and the amounts thereof by giving you 30 days written notice.

**Lost or replacement tokens will be subject to a replacement fee of \$20.00 each.  
Up to 4 tokens included at no charge. Additional tokens \$20.00 each.**

#### **Security Administration Fee**

(This fee is waived upon completion of the Annual Security Training.)  
Annual Fee \$250.00

#### **Returned Check Fee**

\$10.00

#### **Selected Package**

Remote Deposit Complete (Bulk Feed Environment)

#### **Package Pricing**

\$40.00 Monthly RDC Cost

\$0.05 per item charge for the first 500 items scanned

\$0.10 per item charge for additional items scanned after the first 500

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. Generally funds will be available no later than the seventh business day after the day of your deposit.

### **Special Rules for New Accounts**

If you are a new customer, the following special rules may apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller, traveler's, and federal, state and local government checks will be available on the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the seventh business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the seventh business day after the day of your deposit.

### **Understanding Our Check Payment Policy**

New York State-Chartered financial institutions are required to disclose the order in which items are paid against depositors' accounts. For purposes of this disclosure "items" represent checks, orders, and electronic transactions.

The following information is intended to assist you in managing your account with us.

It is our policy to pay items against your account in the following order:

- Checks presented over the teller line.
- Electronic transactions (for example: pre-authorized debits, debit card purchases, ATM withdrawals, etc.).
- All other checks drawn against your account are paid daily in check number order. If sufficient funds are not available to pay the first check, that check is rejected. Subsequent checks are examined and paid, provided sufficient funds exist.

If an item is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item, creating an overdraft privilege (*Bounce Protection*), or return the item, creating a non-sufficient funds (NSF) fee. Overdraft privilege (*Bounce Protection*) and NSF fees are disclosed elsewhere.

We encourage you to keep careful records and practice good account management.

If you have any questions, please let us know. We want to make sure you understand how this policy affects you.

above). A copy of the tape-recorded authorization or written notice must be retained for two years from the date of the authorization.

- 2) Retention - The signed or similarly authenticated authorization must be retained by the Customer for a period of two (2) years following the termination or revocation of the authorization. In the case of a paper authorization that has been signed by the consumer, the Customer must retain either the original or a copy of the signed authorization. This authorization may be obtained in an electronic format that (1) accurately reflects the information in the record, and (2) is capable of being accurately reproduced for later reference, whether by transmission, or printed or otherwise.
- 3) Re-initiation of returned entries:
  - a. If entries are returned for the reasons of authorization revoked by customer, payment stopped, or customer advises that the entry was not authorized, they cannot be re-initiated until the originator has obtained authorization again from the account holder.
  - b. **If entries are returned for insufficient funds or uncollected funds, the entry cannot be re-initiated more than two times.** Re-initiation must take place within one hundred eighty (180) days after the Settlement Date of the original Entry.
  - c. If the entry returned for one of these two reasons is a Re-presented Check Entry (RCK), the RCK cannot be re-initiated unless the item to which the RCK entry relates has been presented no more than one time as a check and no more than one time as an RCK entry.
- 4) Changes requested in a notification of change must be made within six (6) banking days prior to the origination of the next entry.
- 5) Notice of change in amount or change in debiting date for a recurring debit. When the debit amount varies the Originator must notify the account holder/receiver within ten (10) calendar days before the scheduled transfer date. If an Originator changes the date in which it debits the account holder/receiver, it must notify the account holder/receiver in writing of the new date of the entry at least seven (7) days before the first entry to be affected by the change is scheduled to be debited to the Receiver's account.
- 6) Reversing files or reversing entries must be transmitted in time to be available to the receiving financial institution within five (5) banking days following the settlement date of the erroneous file or entry. The account holder/receiver must be notified of the reversing entry and the reason for the reversing entry no later than the Settlement Date of the reversing entry.
- 7) Companies acting as a Third Party Sender are required to have an annual audit completed by December 31<sup>st</sup> every year in compliance with Appendix Eight of the NACHA rules. Confirmation of this audit must be provided to the Bank by December 31<sup>st</sup> every year. Confirmation of the audit must include a list of transactions that are originated for their customers and the purpose of their business.
- 8) The Unauthorized Entry Return rate on items returned as Unauthorized Debit to Consumer, Authorization Revoked, Customer Advices Not Authorized, Corporate Customer Advices Not Authorized, Item is Ineligible or RCK Entry is Improper must not exceed 1.0%. If the return rate on the above transactions exceeds 1.0%, NACHA has the right to begin an existing risk investigation and possible enforcement proceedings process.