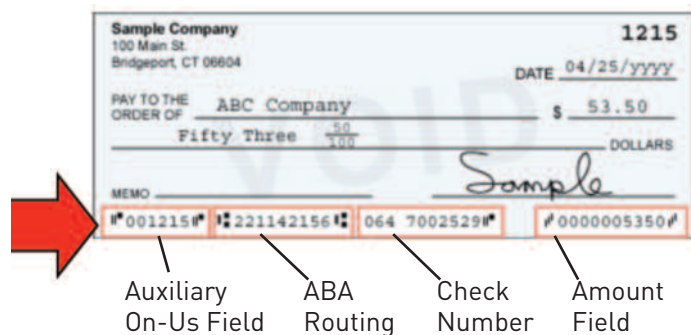


# Click Deposit™ Service Application Instructions

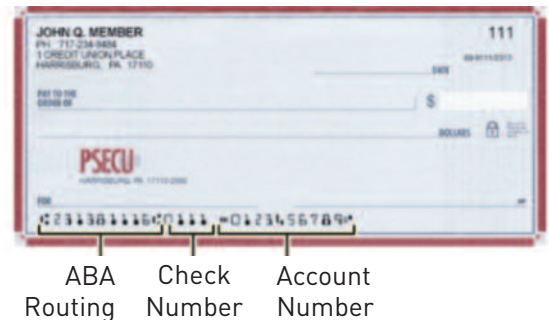
**You may type directly into this PDF.** Simply place your cursor over the area where you wish to type and fill in your information.

**Please be sure to fill out all information,** especially your Tax ID# requested on the Application. To help you fill out your Account number and ABA routing number, we've shown two standard check formats below.

## Check Size A (Larger)



## Check Size B (Smaller)



**You must provide a copy of a voided check** from the account(s) you will be using to deposit checks and to pay for the service. And please remember to circle those accounts on your Application as per the form instructions.

When done, save this PDF, print it, **sign Pg. 2 of the Application** and then fax it along with your voided check to 1-203-617-3557.





# Click Deposit™ Service Lease Terms & Conditions

## 1. DEFINITIONS

As used in this Agreement, the following terms mean:

"Agreement" - the Order, the Lease Terms and Conditions, and the Panini Warranty and Direct Maintenance Plan attached hereto as Exhibit "A."

"Equipment" - the equipment listed on the Order.

"Lease" - the Order and these Lease Terms and Conditions.

"Order" - the cover page to this Agreement.

"PBGFS," "We," "Our," or "Us" - Pitney Bowes Global Financial Services LLC and its affiliates.

"Panini" - Panini North America, Inc.

"You," "Your," or "Customer" - the person identified on the Order who is leasing Equipment or purchasing services.

## 2. AGREEMENT

- 2.1 You agree to lease the Equipment listed on the Order.
- 2.2 This Agreement incorporates all of the terms agreed by both parties and can only be changed by written agreement.
- 2.3 YOU MAY NOT CANCEL THIS LEASE FOR ANY REASON AND ALL PAYMENT OBLIGATIONS ARE UNCONDITIONAL. PAYMENTS ARE NOT SUBJECT TO SETOFF OR REDUCTION.

## 3. PAYMENT TERMS AND OBLIGATIONS

- 3.1 We may require you to make your first Monthly Payment (defined below) when you sign this Lease.
- 3.2 You agree to make each Monthly Payment within thirty (30) days of the date of our invoice. Invoices will be provided to you by email.
- 3.3 We will invoice you monthly and in advance for the Monthly Payment set forth in the Order (the "Monthly Payment").
- 3.4 (a) If you do not make any payment on or before its due date, we will charge you an administrative fee.  
(b) You agree to pay interest on any late payment from its due date until paid in full at the lesser of 18% per year or the maximum rate allowed by law.  
(c) You agree to pay us a return payment fee of \$25 for each returned item.
- 3.5 To the extent that number of scans utilizing the Equipment in any month exceeds 150, if your subscription for processing services is Level 1 or Level 2, 250, if your subscription for processing services is Level 3, 500, if your subscription for processing services is Level 4, and 1000, if your subscription for processing services is Level 5, you will be required to pay \$0.14 for each additional scan.
- 3.6 We may charge, and you agree to pay, the following fees: (i) \$0.30 for each scanned item which is returned unpaid; (ii) \$0.12 for each scanned item which requires MICR repair (the coding on the check was damaged and did not read correctly); and (iii) \$0.12 for each scanned item which requires a deposit adjustment. (the deposit entered was incorrect compared to the amount on the checks.)

- 3.7 By executing the Order, you hereby authorize us to originate debit entries via the Automated Clearing House ("ACH") system to your account at the Depository Financial Institution named on the Order for the purpose of making payments under this Lease. This authorization shall remain in effect until written notification of termination from you has been received by us.

## 4. OWNERSHIP AND UCC

- 4.1 We own the Equipment.
- 4.2 This is a commercial lease and not a "consumer" lease under article 2A of the Uniform Commercial Code.
- 4.3 You agree to keep the Equipment free from any liens or encumbrances.
- 4.4 You grant to us a purchase money security interest in the Equipment to secure payment.

## 5. ASSIGNMENT AND SUBLETTING

- 5.1 YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS LEASE WITHOUT OUR PRIOR WRITTEN CONSENT.
- 5.2 We may sell, assign, or transfer all or any part of this Lease or the Equipment.

## 6. LEASE TERM AND INTERIM USAGE PERIOD

- 6.1 The Lease term is 36 months.

## 7. END OF LEASE OPTIONS

- 7.1 During the ninety (90) days prior to the end of your Lease, you may, if not in default, select one of the following options:
  - (a) enter into a new lease with us; or
  - (b) return the Equipment in its original condition, reasonable wear and tear excepted. If you return the Equipment, you must properly pack the Equipment, and insure the Equipment for its full replacement value. You also agree to deliver the Equipment aboard a common carrier, freight prepaid, to a destination within the United States that we may specify.
- 7.2 If you do not select one of the options in section 7.1, you are deemed to have entered into successive month-to-month extensions of this Agreement. During any of such month-to-month extensions of this Agreement, either you or we may terminate your Lease upon 30 days written notice, in which event you shall return the Equipment upon the date of which your Lease terminates.

## 8. TAXES

You are responsible for paying any taxes on the Equipment and services, including sales and use tax. We charge a small fee for tax billing and tracking.

# Click Deposit™ Service Lease Terms & Conditions

## 9. WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY

- 9.1 WE (PBGFS) MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INFRINGEMENT.
- 9.2 Panini provides a Warranty and Direct Maintenance Plan.
- 9.3 WE LEASE THE EQUIPMENT TO YOU "AS IS," "WHERE IS" AND "WITH ALL FAULTS".
- 9.4 YOU AGREE THAT WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT. WE ASSIGN TO YOU THE WARRANTY RIGHTS WE HAVE OBTAINED FROM PANINI.

## 10. INDEMNIFICATION

You agree to indemnify us against any costs, damages, or liability arising out of the use of the Equipment, including attorneys' fees, but excluding those arising from our gross negligence or willful misconduct.

## 11. DEFAULT AND REMEDIES

- 11.1 Default. You are in immediate default if you do not make any payment when due, you breach any other obligation under this Agreement, you breach any of your obligations under the Enterprise Payment Solutions Merchant Processing Services Agreement attached to this Lease, you become insolvent or file for bankruptcy, or are in default under any agreement related to the Equipment.
- 11.2 Remedies. Upon your default, we may:
- (a) cancel this Agreement and any other agreements we have with you;
  - (b) require immediate payment, as liquidated damages, of all payments due under this Lease or other agreements, whether accrued or due in the future;
  - (c) require you to return the Equipment;
  - (d) if you do not return the Equipment, require you to make immediate payment of an amount equal to the remaining value of the Equipment at the end of the Lease Term, as determined by us; and
  - (e) pursue any other remedy, including repossessing the Equipment without notice to you. By repossessing the Equipment, we are not waiving our right to collect the balance due.
- 11.3 Enforcing Our Rights. You agree to pay all our costs, including attorneys' fees, in enforcing our rights.

## 12. USE OF THE EQUIPMENT

- 12.1 You agree to use the Equipment only:
- (a) for business or commercial purposes, and not for family or personal use; and

- (b) in the manner specified in the Equipment user guide provided with the Equipment.

## 13. EQUIPMENT OBLIGATIONS

- 13.1 Condition and Repairs. You are required, at your expense, to keep the Equipment in good repair, condition, and working order.
- 13.2 Inspection. You agree that we may inspect the Equipment and any related maintenance records.
- 13.3 Location. You may not move the Equipment from the location specified on the Order without our written consent.

## 14. RISK OF LOSS

- 14.1 Risk of Loss
- (a) You agree to bear the entire risk of loss to the Equipment regardless of cause other than from ordinary wear and tear ("Loss") from the date of shipment by Panini and for the entire term of the Lease.
  - (b) No Loss will relieve you of any of your obligations under this Lease. You must immediately notify us in writing of the occurrence of any Loss.
  - (c) You will, at your expense, keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement satisfactory to us ("Insurance"). YOU MUST CALL US AT 1-800-243-9506 AND PROVIDE US WITH EVIDENCE OF INSURANCE.

## 15. CUSTOMER WAIVERS

- 15.1 You waive any rights you now or later may have which require us to sell, lease or otherwise use any Equipment to reduce our damages.
- 15.2 The rights and remedies under UCC Article 2A (Sections 508-522) do not apply to this Lease.
- 15.3 ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS LEASE.

## 16. SURVIVABILITY

Your obligations under Section 8 (taxes), Section 9 (warranty disclaimers and limitation of liability), Section 10 (indemnification), and Section 11 (default and remedies) survive termination of this Lease.

## 17. MISCELLANEOUS

- 17.1 If more than one lessee is named in this Lease, liability is joint and several.
- 17.2 You, and any principal, owner, officer or guarantor signing the Order or any documents executed in connection with this Lease, agree to furnish us financial information and you authorize us to obtain credit reports on you and them now and in the future.

# Click Deposit™ Service Enterprise Payment Solutions Merchant Processing Services Agreement

This Enterprise Payment Solutions Processing Services Agreement ("Agreement") is made by and between **Jack Henry & Associates, Inc.**, acting through its ProfitStars Division, with its principal place of business located at 663 West Highway 60, Monett, Missouri 65708 ("JHA"), and the lessee specified on the Application to which this Agreement is attached ("Merchant") as of the date that JHA provides an email confirmation to Merchant that Merchant has been set up for the receipt of services hereunder (the "Effective Date").

JHA provides enterprise payment solutions relating to electronic transaction processing services for organizations who receive payments from customers by paper checks. With respect to ACH transactions, JHA is the ACH processor through which debit and credit transactions are submitted to the ACH Network in conjunction with ACH check processing origination and settlement services. With respect to transactions involving substitute check images permitted under the Check for the 21st Century ("Check 21") Act, JHA provides capture services which facilitates the processing of the substitute check images with financial institutions in the Federal Reserve System.

Merchant is lawfully engaged in the business of selling goods and/or services to third parties from whom it will receive paper checks and with whom it will initiate and process ACH and Check 21 transactions in the U.S. Federal Reserve Bank System, using JHA's enterprise payment solutions.

Therefore, the parties agree as follows:

1. JHA agrees to provide to Merchant the enterprise payment solutions described in this Agreement on the Standard Terms and Conditions appended to and incorporated as a part of this Agreement. Merchant agrees to use the JHA enterprise payment solutions in accordance with such Standard Terms and Conditions.
2. This Agreement shall become effective once it has been signed by an authorized representative of the Merchant and JHA has provided an email confirmation to Merchant that Merchant has been set up for the receipt of services hereunder. This Agreement may be terminated by either party as provided in the Termination section of the Standard Terms and Conditions.

## Processing Terms & Conditions

### 1. DEFINITIONS:

The following terms used in this Agreement shall have the meanings specified below:

- (a) "**ACH Operator**": The ACH operator processes entries between an originator and receiver. There are currently two ACH operators — the Federal Reserve Bank and EPN (Electronic Payments Network).
- (b) "**ACH Transaction**": An electronic payment transaction originated by Merchant and processed through the ACH Network in the Federal Reserve System.
- (c) "**Administrator**": The Merchant's employee who has been designated as Merchant's primary contact with JHA for the Services and has been appointed by Merchant to manage the administration of Services access, including passwords, and communicate authorizations to JHA.
- (d) "**Bank of First Deposit**": In a Check 21 Transaction, the financial institution which receives the Entry from JHA and transmits the Entry through the Federal Reserve Bank system for transmittal to the Customer's financial Institution for debit or credit to the Customer's account.
- (e) "**Check 21**": The Check for the 21st Century (Check 21) Act and all regulations pertaining to the Check 21 Act.
- (f) "**Check 21 Transaction**": An electronic payment transaction utilizing a Substitute Check image permitted by Check 21.
- (g) "**Confidential Information**": The Software programs and documentation used by JHA to provide the Services to Merchant and passwords and other information or materials of a confidential and proprietary nature that JHA provides to Merchant under this Agreement.
- (h) "**Customer**": Merchant's customer who submits a payment to Merchant by means of a paper check or ACH transfer.

# Click Deposit™ Service

## Processing Terms & Conditions

- (i) "Entry": A transaction submitted by Merchant to JHA for processing by the Services and further defined in the NACHA Rules.
- (j) "Image": The image that results from an electronic scan of a paper check by Merchant.
- (k) "Lease Agreement": The lease terms and conditions attached to the Application to which this Agreement is also attached.
- (l) "NACHA Rules": The then-current rules, regulations and procedural guidelines published by the National Automated Clearing House Association ("NACHA") and/or all regional payment alliances associated with NACHA.
- (m) "Originating Depository Financial Institution" or "ODFI": In an ACH Transaction, the financial institution which receives the Entry from JHA and transmits the Entry to its ACH Operator for transmittal to a Receiving Depository Financial Institution for debit or credit to the Customer's account, as these terms are further defined in the NACHA Rules.
- (n) "Pitney Bowes": Pitney Bowes Global Financial Services LLC or any affiliate thereof.
- (o) "Services": The ACH processing services and the Check 21 processing services provided by JHA to Merchant under this Agreement.
- (p) "Software": Software programs and associated documentation and materials that JHA provides to Merchant for use with the Services.
- (q) "Substitute Check": The electronic Image of a paper check, as defined in Check 21.

### 2. SET-UP AND DELIVERY OF SERVICES:

- 2.1 JHA, shall provide the Services selected by Merchant. Merchant shall utilize and access the Services in accordance with the terms of this Agreement and the practices and procedures established by JHA for the Services which have been communicated in writing to Merchant. As part of the Merchant set-up and boarding process:
- JHA will provide Merchant with an administrative and gateway user name and password ("Password") to access the Services which are hosted on JHA's processing system. Merchant will designate an Administrator who shall be the sole individual vested with the authority to determine who will be authorized to use the Services; establish separate passwords for each user; and establish limits on each user's authority to access information and conduct transactions. Merchant is responsible for the actions of its Administrator, the authority the Administrator gives others to act on Merchant's behalf, and the actions of the persons designated by the Administrator to use the Services. Merchant shall take reasonable security procedures and practices to safeguard the confidentiality of the passwords; limit access to its passwords solely to persons who have a need to know such information; closely and regularly monitor the activities of

employees who access the Services; and prohibit its employees and agents from initiating entries in the Services without proper authorization and supervision and adequate security controls.

- 2.2 JHA will provide to Merchant processing Services for the Entry types indicated in the Merchant set-up and boarding documentation which Merchant wishes to utilize. To the extent reasonably possible, JHA will first attempt to process an Entry in the Services as an ACH Transaction, unless the Entry has clearly been designated to be processed as a Check 21 Transaction, provided that the Entry fully qualifies to be processed as an ACH Transaction according to applicable NACHA Rules and JHA has received all of the required information from the Image or paper check necessary to process the transaction as an ACH Transaction. If the Entry cannot be processed as an ACH Transaction for any reason, then JHA will process the Entry in the Services as a Check 21 Transaction.
- 2.3 Prior to submitting an Entry to JHA for processing, Merchant shall secure all authorizations and approvals from its Customer and deliver any notifications pertaining to that Entry which are required by the NACHA Rules and/or applicable laws and regulations. Merchant shall be responsible for the accuracy and propriety of all Entries submitted to JHA for processing.
- 2.4 Merchant acknowledges that JHA has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and by the Bank of First Deposit for Check 21 Transactions. Files received by the deadline will be transmitted that day to the Federal Reserve Bank for settlement on the effective entry day. Files received after the deadline will be processed the next Banking Day as defined in the NACHA Rules.
- 2.5 For Check 21 Transactions, JHA will not be responsible for printing any Substitute Checks which may be required by a financial institution in order to receive and process the Entry.
- 2.6 In the event of any conflicts in the instructions received by JHA regarding Merchant or any Entries relating to them, JHA 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 Merchant or by JHA to the funds.
- 2.7 JHA shall make available to Merchant end-user training to assist Merchant in understanding and using the Services and the JHA processing system.

### 3. AVAILABILITY OF FUNDS; RIGHT OF SETOFF:

- 3.1 JHA reserves the right to delay the availability of funds for deposit without prior written notices to Merchant if in its sole discretion JHA deems itself at financial or relative risk for any and all Services performed under this Agreement.
- 3.2 Merchant hereby acknowledges and agrees that JHA shall have a right of setoff against any and all fees, returns and refunds owed JHA by Merchant under this Agreement.

# Click Deposit™ Service Processing Terms & Conditions

## 4. USE OF SERVICES:

The following terms shall apply to Services:

- (a) All checks deposited electronically by Merchant through use of the Services shall be subject to the following requirements:
  - (1) The original paper check will not be deposited through the Services more than once;
  - (2) All checks will conform to the requirements of Merchant's deposit agreement with its financial institution; and
  - (3) Merchant shall review and validate the accuracy and completeness of the check data being captured including but not limited to the amount of the check and the legibility of the check Image generated from use of the Services;
- (b) JHA shall not be responsible for the selection, use and operation of the scanner equipment used to capture the Image using the Services, including the quality of the Image results generated from the scanner. Any lease of scanners by Customer from Pitney Bowes for its use shall be transacted between Merchant and Pitney Bowes under the Lease Agreement.
- (c) Merchant shall be solely liable and responsible for all damages, losses, expenses and claims arising from any of the following:
  - (1) Duplication of Images transmitted by Merchant to JHA through the Services;
  - (2) Alteration of scanned Images not caused by JHA's Services or Software;
  - (3) Deposit of checks on accounts with insufficient funds, counterfeit checks, fraudulent checks, or checks bearing unauthorized or forged endorsements;
  - (4) Acts of fraud, negligence or willful misconduct committed by employees of Merchant in depositing checks using the Services;
  - (5) Hardware failure not caused by JHA's Services or Software; or
  - (6) Merchant's failure to properly store original checks once the scanned Image has been captured.

## 5. PRICING AND PAYMENT:

- 5.1 Merchant shall pay Pitney Bowes the fees, penalties and charges for the Services shown in the Lease Agreement between Merchant and Pitney Bowes. All amounts are stated and due and payable in U.S. dollars, and are exclusive of any taxes or other charges which may be imposed by a government entity on the Services, except for taxes due on JHA's or on Pitney Bowes' income.

## 6. NACHA RULES AND JHA GUIDELINES:

Each party shall comply with the then-current NACHA Rules which apply to ACH Transactions processed under this Agreement. In addition, JHA may publish to Merchant its own standard operating and implementation guidelines for the Services with respect to specific NACHA Rules which will govern and apply to this Agreement as if set forth herein. Upon request by Merchant, JHA will provide training as to the NACHA Rules which apply to Services.

## 7. CONFIDENTIAL INFORMATION AND SECURITY PROCEDURES:

- 7.1 Merchant shall protect and maintain the confidentiality of all Confidential Information disclosed by JHA to Merchant under this Agreement and comply with the security procedures described in this Agreement and in any JHA policies and procedures communicated in writing to Merchant. Merchant acknowledges that the purpose of these security procedures is for verification of authenticity of an Entry and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between JHA and Merchant. Merchant is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions.
- 7.2 Merchant understands that the password and Services access and use instructions provided by JHA are confidential and agrees to assume all risks of accidental disclosure or inadvertent or wrongful use by any party whatsoever except for JHA, whether such disclosure of use are on account of Merchant's negligence or are deliberate acts. Merchant acknowledges that no person from JHA will ever ask for any password and that JHA employees do not need and should not ask for Merchant's password.
- 7.3 Merchant shall change its password periodically and whenever anyone who has had access to a password is no longer employed or authorized by Merchant to use the Services. JHA may require Merchant to change its password at any time. JHA may deny access to the Services without prior notice if it is unable to confirm to its satisfaction any person's authority to access the Services or if JHA believes such action is necessary for security reasons.
- 7.4 Merchant acknowledges that the Services and Software provided by JHA under this Agreement incorporates trade secrets of JHA and its licensors, and as such is protected by civil and criminal law. Merchant shall notify JHA immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge. JHA shall have, in addition to any other remedies available to it at law or equity, the right to seek injunctive relief enjoining any wrongful use or possession of the trade secrets contained in the Services or Software by any party. Merchant acknowledges that irreparable harm will occur to JHA in the event of such wrongful use or possession of the trade secrets contained in the Services or Software and that other remedies are inadequate.

## 8. DATA PRIVACY AND SECURITY BY JHA:

- 8.1 In accordance with data privacy laws and regulations applicable to this Agreement, which may include but not be limited to the Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA"), JHA shall not disclose or permit access to or use of the non-public personal information of Merchant or its Customers made available by

# Click Deposit™ Service Processing Terms & Conditions

Merchant to JHA for any purposes other than those specifically required to fulfill JHA's contractual obligations with Merchant. JHA shall not sell the information regarding Merchant or its Customers for any reason. In connection with providing services to Merchant, JHA shall take all commercially reasonable steps to ensure the privacy and security of the information of Merchant and its Customers in JHA's possession and protect against anticipated threats and hazards to the security of such information. JHA shall take all commercially reasonable steps to prevent unauthorized access to or use of such information that could result in substantial harm or inconvenience to Merchant or its Customers. In the event any court or regulatory agency seeks to compel disclosure of the information, JHA shall, if legally permissible, promptly notify Merchant of the disclosure requirement and will cooperate so that Merchant may at its expense seek to legally prevent this disclosure of the information.

8.2 JHA has separately published its data privacy and security compliance commitment to its customers, which corresponds at a minimum to the provisions of this Section 8 as of the effective date of this Agreement. To the extent that additional commitments by JHA are reflected in future published versions of this policy, these additional commitments shall be incorporated as part of this Agreement without further actions by the parties. In no event shall a future published data privacy and security compliance statement issued by JHA lessen or eliminate any of the commitments by JHA stated in this Section 8.

8.3 If a breach of security results in an unauthorized intrusion into JHA's systems which directly and materially affects Merchant or its Customers, JHA will take appropriate measures to stop the intrusion; report on the intrusion to Merchant within a reasonable time after discovery of the intrusion; subsequently report the corrective action taken by JHA in response to the intrusion; and provide reasonable assistance to Merchant to support any mandatory disclosures about the intrusion by Merchant to its Customers required by law. If JHA has notified law enforcement agencies about the intrusion, JHA may delay its notification of the intrusion to Merchant until authorized to do so by the law enforcement agencies.

## 9 WARRANTIES:

9.1 JHA warrants to Merchant that its Services will be performed in a professional and timely manner consistent with ACH and Check 21 transaction processing industry standards and in accordance with the NACHA Rules and applicable laws and regulations and any written JHA policies and procedures communicated by JHA to Merchant. In the event that Merchant discovers an error in the Services or Software which has been caused by JHA, Merchant shall immediately notify JHA of the existence and details of the error. JHA shall apply commercially reasonable efforts to correct the error within a reasonable time after JHA's receipt of notification of the error from Merchant. EXCEPT FOR THE

FOREGOING WARRANTY, JHA MAKES NO OTHER WARRANTIES FOR THE SERVICES PROVIDED BY JHA AND JHA DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. JHA does not guarantee the completeness or accuracy of the information provided from a third-party database. JHA shall have no liability to Merchant for any invalid Customer information provided by Merchant or Entries returned unpaid to Merchant.

9.2 Merchant warrants to JHA, the ODFI and the Bank of First Deposit that (a) all Entries submitted to JHA for processing will comply with applicable laws and regulations and the NACHA Rules pertaining to the Entries; and (b) Merchant will comply with all laws, regulations and the NACHA Rules applicable to Merchant's activities covered by this Agreement.

9.3 With regard to Check 21 Transactions, the party who prints a Substitute Check shall be wholly liable for all Check 21 warranties and applicable indemnifications associated with the printed Substitute Check. JHA shall not be liable for the duplicative presentment warranty or any Substitute Check indemnity as they may arise under Check 21. JHA shall only be responsible for the legal equivalence warranty under this Agreement if JHA is the party who does the initial conversion of Merchant's Entries to a Substitute Check, and in no event shall JHA be liable for any subsequent degradation to the Substitute Check which may occur due to the handling of the Substitute Check by any third party.

## 10 INDEMNIFICATION:

10.1 JHA shall indemnify, defend and hold Merchant harmless from and against all claims, actions, losses and expenses, including reasonable attorney's fees and legal costs, incurred by Merchant arising out of a third party claim that the Services or Software owned and provided by JHA under this Agreement infringe the valid intellectual property rights of the third party, provided that JHA is promptly notified by Merchant of its receipt of notice of such claim, is given control of the defense or settlement of such claim, and is given reasonable assistance requested by JHA at JHA's cost with regard to such claim.

10.2 Merchant shall indemnify, defend and hold JHA, Pitney Bowes, the ODFI and the Bank of First Deposit harmless from and against all claims, actions, losses and expenses, including reasonable attorney's fees and legal costs, incurred by JHA, the ODFI and/or the Bank of First Deposit arising out of (a) Merchant's breach of this Agreement, the NACHA Rules or applicable laws and regulations; (b) return of an Entry due to incorrect or incomplete data or information provided by Merchant in the submission of the Entry to JHA, a closed Customer account, or insufficient funds in the Customer account, and/or (c) fraudulent activity, wrongful or unauthorized use of the Services, or submission of fraudulent or

# Click Deposit™ Service Processing Terms & Conditions

illegal Entries by Merchant or a third party who has gained access to the Services through the use of Merchant's password.

## 11 LIMITATIONS OF LIABILITY:

IN NO EVENT SHALL JHA, PITNEY BOWES, THE ODFI OR THE BANK OF FIRST DEPOSIT BE LIABLE TO MERCHANT OR ANY OTHER PARTY FOR ANY LOSS OF PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES WAS FORESEEABLE. Except for JHA's indemnification liability stated in Section 10.1 above and damages arising from any action or omission of action which constitutes the fraud, criminal act, gross negligence or willful misconduct of JHA, JHA's aggregate, cumulative liability to the Merchant for all claims of actual direct damages relating to the Services, this Agreement, or the relationship between JHA and Merchant, including any cause of action in contract, negligence, tort, strict liability or otherwise, shall not exceed an amount equal to the total amount of all fees paid by the Merchant to JHA or to Pitney Bowes (as the case may be) for Services delivered under this Agreement during the three (3) month period preceding the origination of the claim giving rise to liability.

## 12 TERM AND TERMINATION:

- 12.1 **Term:** This Agreement shall have an initial term of thirty-six months from and after the Effective Date. Upon expiration of the initial term, this Agreement shall automatically renew so that it remains in effect at all times during the period that the Lease Agreement is in effect.
- 12.2 **Termination:** This Agreement may be terminated by either party for cause upon giving the other party written notice of the breach of this Agreement committed by the other party and giving the other party a reasonable time to cure the breach. For the purpose of this Agreement, a reasonable time to cure the breach specified in the written notice shall be deemed to be:
- (1) For any breach of Sections 2.1, 5, 7 or 9.2 above: Ten (10) business days from receipt of written notice.
  - (2) For all other types of breach of this Agreement, except as provided below: Thirty (30) calendar days from receipt of written notice.
- Notwithstanding the foregoing, in the event either party materially breaches any provision of this Agreement by fraud, act of intent to defraud, failure to notify the other party of a material change in party's financial structure or a material change in the information originally provided to induce the other party to enter into the Agreement, the non-breaching party may immediately terminate this Agreement in writing without giving the breaching party an opportunity to cure the breach.
- 12.3 **Survival of Obligations:** The provisions of Sections 7, 8, 9, 10 and 12 of this Agreement and any other provisions of the other Sections of this Agreement which by their nature should reasonably be expected to continue to apply after termination of this Agreement shall survive the termination of this Agreement. (changed from last version)

## 13 GENERAL PROVISIONS:

- 13.1 **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to its conflicts of laws principles.
- 13.2 **Notice:** Any notice required or permitted hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight express mail, with proof of delivery retained, and addressed to the respective parties at the address set forth above. Notice of breach or termination of this Agreement sent to JHA shall be directed to the same address, attention Legal Department.
- 13.3 **Assignment:** Upon an assignment of the Lease Agreement with the consent of Pitney Bowes, this Agreement shall be assigned or delegated by Merchant to the person to which the Lease Agreement has been assigned.
- 13.4 **Legal Fees:** In the event of any dispute arising out of or related to the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery.
- 13.5 **Force Majeure:** If performance by JHA, the ODFI, the Bank of First Deposit, or any of their respective affiliates, of any Services or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of acts or events beyond their reasonable control, including but not limited to labor disputes and strikes; acts of nature, fire, floods, lightning, hurricanes, earthquakes or severe weather; utility or communications failures; failures of the ODFI, ACH or Federal Reserve Bank system network; computer-associated outages or delay in receiving electronic data; war, civil commotion or acts of terrorism; or the introduction of any new law, order or regulation which prohibits or restricts performance of this Agreement, then JHA, the ODFI, the Bank of First Deposit and their respective affiliates affected by the occurrence of such acts or events shall be excused from their performance hereunder to the extent of the prevention, restriction, delay or interference.
- 13.6 **Amendment:** This Agreement may be amended only by a written document signed by authorized representatives of both parties.
- 13.7 **Entire Agreement:** This Agreement contains the entire agreement between Merchant and JHA relating to the subject matter addressed herein, and supersedes any prior or contemporaneous understandings or agreements, whether oral or written, between the parties regarding the subject matter of this Agreement.
- 13.8 **Form and Delivery of Signed Agreement:** This Agreement may be executed by the parties by applying manual or electronic signatures of its authorized representatives to original documents or facsimile, scanned or other electronic copies of original documents and transmitted by physical or electronic means for this purpose. For legal evidentiary purposes, a facsimile, scanned or other electronic copy of this Agreement bearing the signatures of the authorized representatives of both parties shall be accepted as an equivalent to a signed original copy of this Agreement.