

Business Online Banking Service Agreement



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AGREEMENT made this ___ day of _____, 20___ by and between Blue Grass Federal (“BGF”) and _____ “Company”).

WHEREAS, BGF provides its customers certain Internet-based electronic account management and information services, and

WHEREAS, Company wishes to obtain the right to use such services upon the following terms and conditions.

NOW, THEREFORE, the parties hereto agree as follows:

1. Services. Subject to the terms and conditions of this Agreement, BGF hereby grants Company and Company hereby accepts a non-exclusive, non-transferable license to access and use each of the “Services” (collectively, the “Services”) set out in Schedule A (BGF Business Online Banking Service Application). Company may at any time, and from time to time, request additional Services by obtaining appropriate documents from and delivering them to BGF. Such requests are subject to BGF’s acceptance. Company agrees that the Services may be modified from time to time to upgrade or improve functionality.

2. Company Account. Company, for itself and its affiliated companies, hereby requests that each of its accounts with BGF listed on the Accounts Schedule attached as Schedule A (BGF Business Online Banking Service Application) be made available to access through the appropriate Service.

3. BGF’s Obligation. BGF agrees to transmit all the financial data under its control required to utilize the Services. The Company understands and agrees that the Services may be provided by BGF or its designated assignee.

Company understands that Services availability is at all times conditioned upon availability of the Services. BGF shall not be liable for any loss or damage thereby incurred or suffered by Company in the event of any failure or interruption of such services or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within the control of BGF.

BGF shall exercise commercially reasonable care in seeking both to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the Services by unauthorized persons (and in this connection it is understood and agreed that implementation by BGF of its normal procedures for maintaining the confidentiality of information relating to its customers, and where practicable the obtaining by BGF from any third parties engaged in the installation, maintenance and operation of the system of similar undertakings, shall constitute fulfillment of its obligation so to exercise commercially reasonable care; but shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Company by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the Services). Company assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the Services or disclosure of any confidential information or instructions of Company by Company’s employees, agents, or other third parties.

4. Company Obligation. As it relates to BGF’s provision of Services via the Internet (“Internet Services”), Company agrees to the following:

Company will facilitate timely cooperation between any necessary third parties in order for BGF to provide Internet Services.

Company is, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds, associated with accessing Internet Services. BGF shall not be liable in any manner for such risk unless (i) Company follows the procedures described in materials for use of Internet Services; and (ii) Company is assessed a penalty or late fee due to BGF’s wrongful act or omission. In no event shall BGF’s responsibilities for such penalties or late fees exceed \$100.00.

Company will use Internet Services in accordance with such reasonable rules as may be established by BGF from time to time as set forth in any materials furnished by BGF to Company.

Company assumes exclusive responsibility for the consequences of any instructions it may give to BGF, for Company’s failures to access Internet Services properly in a manner prescribed by BGF, and for Company’s failure to supply accurate input information, including, without limitation, any information contained in an application.

Company will designate a bank settlement account to be used for the purposes of settling, in aggregate, the financial transactions requested via Internet Services. BGF shall provide Company with details of the specific transactions, reported similarly as other transactions may be done, that were a result of access to Internet Services. Company shall be responsible for auditing and balancing of any settlement accounts.

Company will verify and reconcile any out-of-balance condition, and promptly notify BGF of any errors in the foregoing within 30 business days (exclusive of weekends and applicable holidays) after receipt of the applicable detail report(s) from BGF. If notified within such period, BGF shall correct and resubmit all erroneous files, reports, and other dates at BGF’s then standard charges, or at no charge, if the erroneous report or other date directly resulted from BGF’s error.

Company is solely responsible for purchasing, obtaining, installing and operating any and all necessary equipment or software needed to

access Internet Services from BGF or BGF-approved alternative, and shall be responsible for maintaining such equipment or software in an operating condition, including any mandatory maintenance service programs prescribed by BGF. BGF will provide minimum specifications for all such equipment or software.

Company will be responsible for the payment of all telecommunications expenses associated with Internet Services.

Company acknowledges and understands its responsibility and liability as they relate to Company's access to the Internet. BGF assumes no liability or control over the Internet access of its on-site systems and remote employee or affiliate access.

5. Use of Services. Company will use the Services only for its own internal business use in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Company agrees not to make the Services available or allow use of the Services in a computer bureau service business, timesharing, or otherwise disclose or allow use of the Services by or for the benefit of any third party.

6. Administrative Rules. This Agreement shall be subject to such administrative rules as BGF may establish and disseminate from time to time governing the services it will provide in connection with the Services.

7. Charges, Taxes. Company agrees to pay to BGF promptly all fees listed in the Fee Schedule set forth in Schedule A. Such fees may be changed by BGF from time to time upon 30 days' notice to Company. In addition to said fees, Company agrees to pay all sales, use, or other taxes applicable to the Services, excluding, however, taxes based upon BGF's net income.

8. Internet Security.

(a) The Services or functionality of the Services will be provided through the Internet. The term "Internet" means the global, publicly accessible, network of interconnected computer networks that transmit data using the standard internet protocol. Company agrees to establish and maintain appropriate security software, security procedures, and security training for Internet use and safeguarding Confidential Information, including, without limitation, a proxy server and/or firewalls to control and protect Internet access, and prevent unauthorized use of access codes and unauthorized transactions.

(b) In no event will BGF have any liability in connection with and shall not be responsible for, and Company hereby assumes all responsibility and liability for: inability to connect to or use any Service via the Internet or inability to communicate with BGF via the Internet or any Website resulting from a problem with the Internet service provider or online provider of failure of Company's computer hardware, software, systems or otherwise; unknown hazards of Internet use, unauthorized intrusions to Company's data files, or unauthorized use of any authorization code including, but not limited to interception of any information relating to Company or its transactions, unauthorized intrusion to use data relating to Company's named payees or beneficiaries, any application errors in or security breaches of any Internet browser; or any data that is lost or destroyed in connection with the use of the Internet.

(c) Company represents and warrants and covenants that it uses commercially reasonable fraudulent transaction detection systems to: establish the identity of the users who provide payment instructions in person, via the Internet or by telephone; and verify the routing and transit numbers contained within the payment instructions. In addition, the Company warrants that it uses a secure Internet session and commercially reasonable security technology.

9. Company's Information Security.

(a) Company will maintain a Security Policy document that will be made available to BGF upon BGF's request. Company will advise BGF of changes to security policy and make available to BGF these revisions upon request. Company will create its firewall rules based on the principle of least access needed. This means that the firewall(s) will only pass traffic necessary for the products to function to the backend server, and any unnecessary traffic will be blocked. Company will segregate the Internet environment used to provide such service to its clients from the Internet environment used by internal Company personnel.

(b) The authorization of Authorized Users will follow industry standard best practices, adhering to the concepts of least privilege access, business need to know, and individual accountability, while utilizing and maintaining a strong authentication mechanism.

(c) Company will use commercially reasonable efforts to maintain at all times a current industry standard intrusion detection monitoring system that protects its infrastructure against system risk from outside users and vendors. Company will actively monitor the intrusion monitoring system and develop escalation procedures to notify BGF personnel in the event of a security breach. The escalation procedures will be mutually agreed upon between the Company and BGF.

(d) To prevent data leakage that can occur when data is migrated intentionally or inadvertently across technologies, Company must use a standard practice of strong encryption methods on any transportable devices that stores or processes any information. This standard applies regardless of whether BGF's information is intended to be on the device or not. This standard applies to any transportable devices, such as, but not limited to laptop computer, desktop computer, CD, DVD, or other portable or stationary storage media. For purposes of this Section, "strong encryption" means accepted industry standard solutions that are commercially reasonable and

commercially available from industry recognized vendors, with preference given to a current minimum of AES and a minimum key length of 128 bits. Company shall periodically review the encryption standard that is being used to ensure compliance with this Section. Company shall not use any PDA, USB Drive flash memory card and/or floppy drive for storage to processing of information relating to any wire transfer transaction.

10. Confidentiality. Each party understands and acknowledges that the other party may gain access to certain information, material or data of a confidential nature, including, without limitation, trade secrets relating to such party or its businesses or operations and Confidential Information. Each party agrees to keep all such information, material, or data confidential. Each party acknowledges that the other party shall have the right to take all reasonable steps to protect its interest in keeping the forgoing confidential, including, but not limited to, injunctive relief and any other remedies that may be available at law or in equity.

“Confidential Information” means all information that is not generally known to the public and in which either party has rights, which information is marked confidential, restricted, or proprietary by the party having rights in the same, or which under all circumstances ought reasonably to be treated as confidential or proprietary, including this Agreement. Notwithstanding the forgoing, Confidential Information does not include information that: is, as of the time of its disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; was known to the receiving party as of the time of its disclosure and acquired in a lawful manner; is independently developed by the receiving party without reference to the Confidential Information; is subsequently learned from a third party (i.e., not Company, BGF, or any respective employees or agents) not subject to an obligation of confidentiality with respect to the information disclosed; or required to be disclosed in a judicial, regulatory, or administrative proceeding.

In the event Company knows or reasonably believes that there has been any unauthorized acquisition of or access to data that compromises the security, confidentiality, or integrity of “personal information” maintained by or Company (a “Breach”), Company shall take the following actions: immediately notify BGF of such Breach; identify to BGF what specific data, by customer and/or account number has or may have been Breached; monitor any affected accounts for unusual activity(if appropriate); take measures to contain and control the incident to prevent further unauthorized access; remedy the circumstances that permitted such Breach to occur; cooperate with BGF as necessary to facilitate BGF’s compliance with any applicable federal or state law regarding unauthorized access of personal information of BGF’s customers. The term “personal information” shall include any one of the following: a person’s name, Social Security number, telephone number, driver’s license or state ID number, account number, credit/debit card account number, access code, password, identification number, or security code.

11. Compliance with Applicable Law; OFAC. Company shall comply with all Applicable Law now in effect or hereafter promulgated by any properly constituted governmental authority having jurisdiction over Company and BGF. The term “Applicable Law” means all federal and state laws, rules and regulations governing or related to this Agreement or the Services included, without limitation, the rules of the Fedwire payment system or any other similar funds transfer system, the rules administered by the Office of Foreign Assets Control of the U.S Department (“OFAC”) and the Uniform Commercial Code. Company warrants that it will not violate OFAC-enforced sanctions, and will not act on behalf of, or transmit funds to or from, any party subject to such sanctions.

12. Duty of Care. Except to the extent required by Applicable Law, BGF will exercise reasonable care in providing the Services herein. BGF’S reasonable care is to be evaluated based on reasonable commercial banking standards prevailing for banks providing these Services at the same location for similarly situated commercial banks.

13. Warranties; Disclaimer of Warranties.

(a) COMPANY ACKNOWLEDGES THAT THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS.

(b) BGF MAKES NO AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BGF DISCLAIMS ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICES (INCLUDING, WITHOUT LIMITATION, THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE). COMPANY FURTHER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND/OR TELECOMMUNICATION LINES OR CIRCUITS. COMPANY HEREBY ASSUMES ALL RISKS RELATING TO THE FOREGOING.

14. The Bank’s Liabilities. BGF’s duties and liabilities will be limited to those set forth herein. BGF’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY COMPANY AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF BGF’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF BGF RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES PAID BY COMPANY FOR THE SERVICE RESULTING IN SUCH LIABILITY IN THE SIX [6] MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED. IN NO EVENT SHALL BGF BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT BGF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. BGF’S LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO COMPANY IN CONNECTION WITH ANY MATTER.

15. Force Majeure. BGF shall not be responsible for liability, loss, or damage of any kind resulting from any delay in the performance of or failure to perform its responsibilities hereunder due to causes beyond BGF's reasonable control.

16. Term; Termination. The term of this Agreement shall begin on the date upon which BGF executes this Agreement and shall continue [until terminated as provided in this Section 11]. (Either party may terminate this Agreement upon not less than ten (10) days' prior written notice to the other party.) Notwithstanding any such notice of termination, this Agreement shall remain effective in respect of any transaction occurring prior to such termination. Upon any termination of this Agreement, (i) Company will immediately cease using the Services, (ii) Company shall promptly remit all unpaid monies due under this Agreement and (iii) all rights and obligations of the parties shall terminate except that the rights and obligations of the parties under Sections 5, 7, 8, 10, 11, 12, 13, 14, 15, and 16 shall survive. ***(BGF may suspend Company's access to the Services immediately in the event that BGF reasonably determines such suspension is necessary to prevent violation of federal laws or regulations or for breach of Company's obligations under this agreement.)***

17. Indemnification. Company agrees to indemnify, defend and hold harmless BGF and its directors, officers, employees, and agents (the "Indemnified Parties") from and against any and all losses, costs, expenses, fees, claims, damages, liabilities and causes of actions (including, but not limited to, reasonable attorney fees and disbursements) of third parties resulting or arising from: (a) Company's failure to abide by or perform any obligation imposed upon Company under this Agreement; (b) the willful misconduct, fraud, criminal activity, intentional tort or negligence of Company or any of its representatives involving use of the Services; (c) the actions, omissions or commissions of Company, its employees, consultants and/or agents relating to the Services; and (d) any transmission or instruction, whether or not authorized, acted upon by BGF in good faith. Company shall be provided with prompt notice of any claims and given full authority and assistance (at Company's expense) for the defense of any such claims, provided that BGF may participate in such defense and settlement with counsel of BGF's own choosing at BGF's own expense; provided, further, however, Company shall have no authority to settle any claim against any Indemnified Party without the prior written consent of such Indemnified Party (which consent shall not be unreasonably withheld).

18. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

19. Complete Agreement. The parties hereto acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement and any modifications made pursuant to it constitute the complete and exclusive expression of the terms of this Agreement between the parties, and supersedes all other proposals, whether oral or written, understandings, representations, conditions, warranties, covenants, and all other communications between the parties relating to the subject matter of this Agreement. The parties further agree that this Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the parties or by any prior performance between the parties pursuant to this Agreement or otherwise.

20. Amendment; Counterparts; Miscellaneous. No amendment or supplement to this Agreement shall be effective unless made in writing and either signed by duly authorized representatives of both parties, and signed by the party to be charged. This Agreement may be executed in two or more counterparts, each of which shall be deemed original but such counterparts together shall constitute one instrument. If any provision of this Agreement is held to be unenforceable or invalid, the other provisions shall continue not be construed as the waiver of any subsequent default of a similar nature.

21. Third Party Beneficiary. The parties acknowledge that Fiserv Solutions, Inc. is an intended third party beneficiary of this Agreement.

Business Online Banking Service Agreement



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IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

Blue Grass Federal
600 High Street
Paris, KY 40361

Company

Street Address

City, State, Zip

Signature

Signature

Name

Name

Title

Title

Date

Date

SCHEDULE A

ACH setup fee \$75.00
ACH monthly fee \$20.00