

## **Midtown Bank & Trust Company Corporate Online Banking Agreement**

This Agreement (“Agreement”) made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as “Company”) and Midtown Bank & Trust Company (hereinafter referred to as “Bank”).

WHEREAS, the Company desires to have the capacity to access certain account balance and activity information with respect to certain accounts maintained by the Customer with the Bank via electronic means and

WHEREAS, the Bank is capable of providing such information reporting and transfer services and is willing to act as an Originating Depository Financial Institution (“ODFI”) with respect to any such transfer which utilizes the Automated Clearing House (“ACH”) subject to the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the premises, and mutual promises contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Bank agree as follows:

1. **Access.** Bank will provide access to services selected by the Customer from time to time during the term of this Agreement subject to the terms stated in this document. The Customer may select additional services or delete services, but no such selection or deletion shall be binding upon Bank until such time as Bank shall have received written notice of the Customer’s election to increase or delete services and the Customer shall have executed such supplemental agreements, if applicable, as Bank may deem appropriate. Bank shall have a reasonable time after receipt of such notice to implement the requested service. Supplemental agreements relating to the services selected by the Customer shall be executed concurrently with this Agreement, if at the time additional services are requested.
2. **Instructions.** Bank shall provide the Customer with instructions describing the proper use and security measures to be maintained in connection with the use of the services. These instructions may be amended from time to time by Bank, in its sole discretion, and the Customer agrees to immediately comply with amended instructions upon receipt. It is understood by the Customer that the proper use of services and the information or transactions made available in connection with the use of those services are dependent upon exact and full compliance with the operating instructions provided by the Bank. **The Bank shall have no liability for the failure by the Customer to comply completely with the instructions as amended from time to time.**
3. **Data Protection.** The Bank shall take reasonable precautions to protect the confidentiality of the Customer’s data. In addition to any security procedures specified in the instructions provided by the Bank, the Customer shall have the responsibility for implementing such additional security measures as the Customer may deem necessary or appropriate on its premises to safeguard and prohibit unauthorized access to the services, but the implementation of such security procedures shall not relieve the Customer of its indemnification obligations under the succeeding sentence. The Customer agrees to indemnify and save harmless Bank from any and all loss of damage suffered as a result of any unauthorized use by the Customer, its officers, agents, employees, or independent contractors of the services or the use of any information obtained by such unauthorized access.
4. **Obligations of the Bank.** The Bank shall be obligated only to exercise reasonable care in providing these services to the Customer and shall have no liability in connection with providing such services to the Customer except to the extent that the Bank shall be guilty of negligence in which instance the

Bank shall only be liable for the actual monetary loss suffered by the Customer as a direct result of such negligence. IN NO EVENT SHALL THE BANK BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY COMPUTER SOFTWARE MALFUNCTION OR A MALFUNCTION IN ANY OF THE OTHER SYSTEMS USED TO PROVIDE THE SERVICES; NOR SHALL IT, IN ANY INSTANCE, BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES SUFFERED OR INCURRED BY THE CUSTOMER IN CONNECTION WITH THE USE OF THESE SERVICES.

5. **Customer's Obligations.** As a condition precedent to the Bank's obligation to provide the services, the Customer shall (a) comply with all instructions provided by the Bank with respect to use of these services; (b) accurately input any data fields necessary to initiate, release, or cancel any transaction; (c) notify the Bank of change in employees authorized to access the services.
6. **Applicable Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia.
7. **Recording of Transmissions.** The Customer on behalf of itself and its employees, agrees that all telephone conversations and data transmissions received from, made for or made pursuant to or in connection with this Agreement may be recorded, intercepted and retained by the Bank by use of tape or other data storage means.
8. **Confidentiality.** The Customer acknowledges that the use of these services will give Customer access to information and other material, which is proprietary to the Bank and agrees to treat all such information coming into its possession as a result of the use of any of these services as confidential. The Customer agrees not to disclose any such information to any person or entity except to its employees having a need to have access to the services in connection with the use thereof and the Customer's business. The obligation of confidentiality shall survive the termination of this Agreement.
9. **Termination.** The Customer may terminate this Agreement thirty days (30 days) following the Bank's receipt of written notice of such termination. The Bank reserves the right to terminate this Agreement with or without cause immediately upon providing written notice of such termination to the Customer. Any termination of this Agreement shall not affect any of the Customer's obligations arising prior to such termination. Upon termination of this Agreement, the Customer shall return to the Bank all software, documentation, and other information provided by the Bank relating to use of these services by the Customer and shall have no further rights to use of such information.
10. **Correction of Errors.** The Bank shall have the right to exercise its best efforts to complete or correct any data input by the Customer which is incorrect or incomplete, so that it can be processed in compliance with the requirements of these services. However, the Bank shall have no obligation to make any such corrections and no liability shall accrue to the Bank as a result of exercising its best efforts to make such completions or connections.
11. **Payment of Services.** The Company shall pay the Bank for the services provided at the rates established by the Bank, as may be amended from time to time by the Bank at its discretion. In addition, the Company shall be responsible for payment of any sales, use, excise or other similar tax relating to the services provided under this Agreement. Charges for these services do not include any charges or fees agreed to separately by the Bank and the Customer with respect to activity in the account or accounts maintained by the Company at the Bank.
12. **Force Majeure.** All of the Bank's obligations, responsibilities and covenants hereunder, whether express or implied, shall be suspended at the time, or from time to time, as with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, any Act of God, war, epidemic, strike, lockout, riot, weather conditions, equipment failure or malfunction, material shortage,

electrical power disruption or shortage, communication failure or other condition or circumstance not wholly controlled by the Bank.

**13. Entire Agreement.** This Agreement, together with any schedules and/or supplemental agreements including any software license agreement attached thereto, constitutes the entire and complete Agreement between the Bank and the Company and supersedes any prior agreement(s) between the parties.

**14. Notices.** Any written or other communication required or permitted to be given under this Agreement shall be delivered, or sent by United States Postal Services registered or certified mail, postage prepaid, or by express carrier addressed as specified below by the parties:

Bank: Midtown Bank & Trust Company  
712 West Peachtree Street  
Atlanta, Georgia 30308  
404-969-4400

Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15. Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

\_\_\_\_\_  
Customer

By: \_\_\_\_\_

Title: \_\_\_\_\_

Midtown Bank & Trust Company

By: \_\_\_\_\_

Title: \_\_\_\_\_