

## FUNDS TRANSFER AGREEMENT

To induce Alden State Bank, a New York bank having its chief executive office at 13216 Broadway, Alden, New York 14004-0238, (the "Bank") to provide funds transfer services to the undersigned (the "Customer"), and for other valuable consideration, the receipt of which is acknowledged, the Customer agrees with the Bank as follows:

**1. Definitions.** In this Agreement, each of the following terms has the meaning given it for purposes of Article 4A of the Uniform Commercial Code of the State of New York: (a) Beneficiary, (b) Beneficiary's Bank, (c) Funds Transfer, (d) Funds Transfer Business Day, (e) Funds Transfer System, (f) Funds-Transfer System Rule, (g) Intermediary Bank, (h) Payment Order, (i) Receiving Bank and (j) Security Procedure.

**2. Applicability.** Each Payment Order issued in the name of the Customer, each amendment or cancellation of any such Payment Order, each communication amending or canceling any such Payment Order and each Funds Transfer begun by any such Payment Order shall be governed by (a) this Agreement, (b) the Wire Transfer Enrollment Form completed by the customer, (c) each operating procedure for Funds Transfers established by the Bank and communicated to the Customer by the Bank, (d) Article 4A of the Uniform Commercial Code of the State of New York as varied by this Agreement and (e) each applicable Funds-Transfer System Rule.

### **3. Payment Orders and Amendments and Cancellations of Payment Orders.**

a. The Customer shall be bound by, whether or not authorized, any Payment Order, or any amendment or cancellation of any Payment Order issued in the name of the Customer and accepted by the Bank in compliance with the Security Procedure set forth in the Wire Transfer Enrollment Form and agreed to by the Customer and the Bank.

b. The Customer acknowledges that (i) any Beneficiary's Bank may make payment of any Payment Order issued in the name of the Customer on the basis of an identifying or bank account number contained therein even if such identifying or bank account number identifies a person different from any Beneficiary identified therein by name, (ii) any Receiving Bank may rely on an identifying number contained in any such Payment Order as the proper identification of any Beneficiary's Bank even if such identifying number identifies a person different from any Beneficiary's Bank identified therein by name, (iii) any Receiving Bank may rely on an identifying number contained in any such Payment Order as the proper identification of any Intermediary Bank even if such identifying number identifies a person different from any Intermediary Bank identified therein by name and (iv) the Bank shall not be obligated to verify that (A) any identifying or bank account number of a Beneficiary and name of Beneficiary contained in any such Payment Order identify the same person, (B) any identifying number of a Beneficiary's Bank and name of a Beneficiary's Bank contained in any such Payment Order identify the same person or (C) any identifying number of an Intermediary Bank and name of an Intermediary Bank contained in any such Payment Order identify the same person.

c. Unless any earlier time is set forth in any operating procedure for Funds Transfers established by the Bank and communicated to the Customer by the Bank, (i) if the Bank receives any Payment Order issued in the name of the Customer as required by any such operating procedure later than 3:00 P.M. on any Funds-Transfer Business Day of the Bank the Bank may, but shall not be obligated to, treat such Payment Order as having been received at the opening of the first Fund-Transfer Business Day following such Funds-Transfer Business Day, and (ii) if the Bank receives any communication amending or canceling any such Payment Order as required by any such operating procedure later than 3:00 P.M. on any such Funds-Transfer Business Day, the Bank may, but shall not be obligated to, treat such communication as having been received at the opening of the second Fund-Transfer Business Day following such Funds-Transfer Business Day.

d. The Bank shall not have any obligation to accept any Payment Order issued in the name of the Customer. Without limiting the generality of the preceding sentence, the Bank shall not have any obligation to accept any such Payment Order that (i) is not received by the Bank as required by any operating procedure for Funds Transfers established by the Bank and communicated to the Customer by the Bank, (ii) does not contain all information required by any such operating procedure or is otherwise incomplete, (iii) contains any condition upon its execution, (iv) designates a Funds-Transfer System or Intermediary Bank that for any reason the Bank determines to be unavailable for any Funds Transfer contemplated thereby, (v) provides for the payment of an amount in excess of the amount available for withdrawal from any deposit account from which such payment is to be made less the amount of any fee to be imposed by the Bank in connection with the execution thereof and to be charged against such deposit account, (vi) the Bank is unable to execute or (vii) cannot be verified to the satisfaction of the Bank as authentic and correct. Any such Payment Order that the Bank determines not to accept shall be deemed to have been rejected by the Bank, and to have automatically lapsed, when the Bank makes such determination. The Bank may, but shall not be obligated to, notify the Customer of the rejection of any such Payment Order.

e. If any event or condition that is beyond the control of the Bank and that the Bank is unable to prevent by the exercise of reasonable diligence (including, but not limited to, any flood or any other natural catastrophe, fire, riot, war, embargo, or act or any requirement of any governmental authority) prevents the Bank from performing or delays the performance by the Bank of any obligation of the Bank with respect to any Payment Order issued in the name of the Customer, any amendment or cancellation of any such Payment Order, any communication amending or canceling any such Payment Order or any Funds Transfer begun by any such Payment Order, the Bank shall not have any liability as a direct or indirect result of such failure or delay.

f. The Bank may, but shall not be obligated to, record by any electronic or other equipment any oral Payment Order issued in the name of the Customer or any oral communication amending or canceling any Payment Order issued in the name of the Customer.

g. The Customer shall pay each fee imposed by the Bank in connection with any Payment Order issued in the name of the Customer, any amendment of any such Payment Order or any Funds Transfer begun by any such Payment Order, whether or not set forth in any operating procedure for Funds Transfers established by the Bank, and communicated to the Customer by the Bank. If such fee is not charged against any deposit account of the Customer with the Bank, whether open in the name of the Customer alone or otherwise, it shall be payable by the Customer on demand.

h. If the Bank executes any Payment Order issued in the name of the Customer even though the amount thereof plus the amount of any fee to be imposed by the Bank in connection with the execution thereof and to be charged against any deposit account from which payment of the amount thereof is to be made exceeds the amount available for withdrawal from such deposit account, (i) the Customer shall on demand reimburse the Bank for such excess, and (ii) the Bank may, but shall not be obligated to, withdraw such excess from any deposit account of the Customer with the Bank, whether open in the name of the Customer alone or otherwise.

i. The customer shall indemnify the Bank and each officer, employee and other agent of the Bank on demand against each liability, cost and expense (including, but not limited to, if the Bank or such officer, employee or other agent retains counsel for advice, litigation or any other purpose, reasonable attorney's fees and disbursements) imposed on, incurred by or asserted against the Bank or such officer, employee or other agent as a direct or indirect result of accepting any Payment Order issued in the name of the Customer or any communication amending or canceling any such Payment Order.

#### **4. Security Procedures.**

a. The Customer shall comply with the Security Procedures set forth in the Wire Transfer Enrollment Form to verify that any Payment Order issued in the name of the Customer or any communication amending or

canceling any such Payment Order is that of the Customer. By completing the Wire Transfer Enrollment Form, the customer acknowledges that the Security Procedures set forth constitute commercially reasonable security procedures.

b. The Bank may, but shall not be obligated to, establish a Security Procedure to detect error in the transmission or content of any Payment Order issued in the name of the Customer or any communication amending or canceling any such Payment Order. The Bank shall not have any obligation to detect any such error.

c. The Customer shall (i) keep confidential all information relating to any Security Procedure used to (A) verify that any Payment Order issued in the name of the Customer or any communication amending or canceling any such Payment Order is that of the Customer or (B) detect error in the transmission or content of any such Payment Order or communication, (ii) not reveal any such information to any person not authorized to issue any such Payment Order or communication and (iii) notify the Bank of any unauthorized disclosure or use of any such information.

d. The Bank may, but shall not be obligated to, (i) monitor any Security Procedure used to (A) verify that any Payment Order issued in the name of the Customer or any communication amending or canceling any such Payment Order is that of the Customer or (B) detect any error in the transmission or content of any such Payment Order or communication and (ii) report any possible breach of any Security Procedure to the Customer.

5. Reasonable Time. A reasonable time for the Customer to notify the Bank as to the relevant facts with respect to any unauthorized, unenforceable or erroneously executed Payment Order issued in the name of the Customer shall be 45 days after the relevant date provided in Article 4A of Uniform Commercial Code of the State of New York.

## **6. Modification and Termination.**

a. This Agreement or any operating procedure for Funds Transfers established by the Bank and communicated to the Customer by the Bank may be modified or terminated by the Bank at any time by a notice by the Bank to the Customer of such modification or termination. Such modification or termination shall become effective immediately unless such notice specifies a later time for its becoming effective.

b. This Agreement may be terminated by the Customer at any time, but such termination shall not become effective until (i) a written notice thereof is received by an officer of the Bank at the chief executive office of the Bank and (ii) a reasonable period of time for the Bank to act upon such notice has expired.

c. No modification of this Agreement by the Bank or termination of this Agreement by the Bank or the Customer shall impair or otherwise adversely affect any obligation of the Customer pursuant to this Agreement, or right or remedy of the Bank pursuant to this Agreement or arising as a result of this Agreement, whether such obligation, right or remedy has therefore arisen or thereafter arises.

**7. Representatives and Warranties.** The Customer represents and warrants to the Bank that the execution, delivery to the Bank and performance of this Agreement by the Customer (a) do not and will not violate applicable law, any judgment or order of any court, agency or other governmental body by which the Customer is bound or, if the Customer is not an individual, any certificate or articles of incorporation, by-laws, partnership agreement or other charter, organizational or other governing document of the Customer, (b) do not and will not violate or constitute any default under any agreement or instrument by which the Customer is bound, (c) if the Customer is not an individual, are in furthermore of the purposes and within the power and authority of the Customer and (d) do not and will not require any authorization of, notice to or other act by or relating to any person (including, but not limited to, if the Customer is not an individual, any shareholder, board of directors or member of the Customer) that has not been duly obtained, given or done and is not in full force and effect.

## **8. Notices.**

a. Each notice and other communication by the Bank to the Customer relating to this Agreement (i) may be given orally or in writing, (ii) if given by facsimile, may be directed to the Customer at the last telephone number for receipt of facsimiles by the Customer shown in the records of the Bank relating to this Agreement, (iii) if given otherwise in writing, may be directed to the Customer at the last address of the Customer shown in such records and (iv) if sent by mail or overnight courier service, shall be deemed to have been given when deposited in the mail, first-class or certified postage prepaid, or accepted by any post office or overnight courier service for delivery and to have been received by the Customer upon the earlier of (A) the actual receipt thereof or (B) three days after being so deposited or accepted.

b. Except as provided otherwise in any Security Procedure used to (i) verify that any Payment Order issued in the name of the Customer or any communication amending or canceling any such Payment Order is that of the Customer or (ii) detect error in the transmission or content of any such Payment Order or communication, each notice and other communication by the Customer to the Bank (A) shall be in writing and (B) shall be deemed to have been given only when actually received by an officer of the Bank at the chief executive office of the Bank.

## **9. Additional Provisions.**

a. The Bank may, but shall not be obligated to, place an administrative hold on and set off against each obligation of the Customer pursuant to this Agreement each obligation of the Bank in any capacity to, in any capacity and whether alone or otherwise, the Customer, whether or not then due and whether pursuant to any deposit account or otherwise. Such set off shall become effective at the time the Bank opts therefor even though evidence thereof is not entered in the records of the Bank until later.

b. This Agreement shall be binding upon the Customer and each legal representative, successor and assignee of the Customer and shall accrue to the benefit of and be enforceable by the Bank and each successor and assignee of the Bank.

c. This Agreement contains the entire agreement between the Bank and the Customer with respect to the subject matter of this Agreement and supersedes each action heretofore taken or not taken, each course of conduct heretofore pursued, accepted, or acquiesced in, and each oral or written agreement or representation hereafter made, by or on behalf of the Bank with respect thereto. No action heretofore or hereafter taken or not taken, no course of conduct heretofore or hereafter pursued, accepted or acquiesced in, no oral or written agreement or representation heretofore made, and no oral agreement or representation hereafter made, by or on behalf of the Bank shall modify or terminate this Agreement, impair or otherwise adversely affect any obligation of the Customer pursuant to this Agreement or right or remedy of the Bank pursuant to this Agreement or arising as a result of this Agreement or operate as a waiver of any such right or remedy. No modification of this Agreement or waiver of any such right or remedy shall be effective unless made in writing daily executed by the Bank and specifically referring to such modification or waiver.

d. All rights and remedies of the Bank pursuant to this Agreement or arising as a result of this Agreement shall be cumulative and no such right or remedy shall be exclusive of any such right or remedy.

e. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any such provision shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

f. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the internal law of the State of New York, without regard to principles of conflict of laws.



10. WAIVER OF TRIAL BY JURY AND CLAIMS TO CERTAIN DAMAGES. THE CUSTOMER KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT THE CUSTOMER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO, AND EACH RIGHT TO ASSERT ANY CLAIM FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES IN ADDITION TO ACTUAL DAMAGES IN, ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER BASED ON ANY CONTRACT OR NEGLIGENT, INTENTIONAL OR OTHER TORT OR OTHERWISE, IN CONNECTION WITH (A) THIS AGREEMENT, ANY PAYMENT ORDER ISSUED IN THE NAME OF THE CUSTOMER, ANY AMENDMENT OR CANCELLATION OF ANY SUCH PAYMENT ORDER, ANY COMMUNICATION AMENDING OR CANCELING ANY SUCH PAYMENT ORDER OR ANY FUNDS TRANSFER BEGUN BY ANY SUCH PAYMENT ORDER OR (B) ANY ACTION HERETOFORE OR HEREAFTER TAKEN OR NOT TAKEN, ANY COURSE OF CONDUCT HERETOFORE OR HEREAFTER MADE, BY OR ON BEHALF OF THE BANK IN CONNECTION WITH THIS AGREEMENT OR ANY SUCH PAYMENT ORDER, AMENDMENT, CANCELLATION, COMMUNICATION OR FUNDS TRANSFER.

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Company Name

By \_\_\_\_\_  
Title