



## **PROSPERITY BANK®**

### **TREASURY MANAGEMENT SERVICES**

#### **ACH THIRD-PARTY SENDER ADDENDUM**

This ACH Third-Party Sender Addendum (the “**Addendum**”) amends and supplements the ACH Origination Service Terms and sets forth the terms under which Customer may act as a Third-Party Sender to transmit Credit and/or Debit Entries through Prosperity by means of the Automated Clearing House Network (“**ACH**”) (the “**Services**”). The Services are subject to the Treasury Management Services Master Agreement (the “**Master Agreement**”) between Prosperity and Customer, which, along with all other agreements incorporated into the Master Agreement, are incorporated herein by reference (the Master Agreement and the ACH Origination Service Terms together with this Addendum are referred to herein as the “**Agreement**”) and all Applicable Laws. Unless otherwise noted, capitalized terms herein will have the same meaning as in the Master Agreement or the NACHA Rules, as applicable.

**1. REGISTRATION OF THIRD-PARTY SENDER.** Customer understands that Prosperity must register Customer as a Third-Party Sender with NACHA and agrees to fully cooperate in that process. Customer hereby remakes, as a Third-Party Sender, the representations, warranties and covenants made in the ACH Origination Service Terms. Customer hereby represents, warrants and covenants that Prosperity is authorized to originate Entries on behalf of each Originator for which Customer acts as a Third-Party Sender to the Receivers’ accounts, and hereby makes to Prosperity all additional representations and warranties made by a Third-Party Sender to an Originating Depository Financial Institution (“**ODFI**”) under the NACHA Rules.

#### **2. REQUIREMENTS AS TO ORIGINATORS.**

(a) Customer agrees to enter into a binding agreement with each Originator (“**ACH Agreement**”) that: (i) authorizes Prosperity to originate Entries on behalf of the Originator to Receivers’ accounts; (ii) restricts Entries by impermissible SEC Codes or otherwise restricts Entries as set forth in the ACH Origination Service Terms, including prohibiting any Entries that violate Applicable Laws; (iii) binds the Originator to comply with the NACHA Rules and contains at least the same provisions as between Prosperity and Customer, including, without limitation, authorization requirements, the audit rights of Prosperity set forth in the ACH Origination Service Terms and provisions with respect to return rate monitoring; (iv) includes terms that permit Customer to terminate or suspend the ACH Agreement for any breach of the NACHA Rules or as required for Customer, as Third-Party Sender, to comply with the NACHA Rules; and (v) permits Customer and Prosperity to audit the Originator’s compliance with the ACH Agreement and the NACHA Rules. Customer will be responsible for verifying the proper authorization and execution of all ACH Agreements, which must be executed by authorized signers of Originators. The ACH Agreement must be approved in form by Prosperity and satisfy all of the requirements of the NACHA Rules prior

to use by Customer; provided, that Prosperity's review and approval shall not be relied upon by Customer as confirmation that the ACH Agreement complies with Applicable Laws and the NACHA Rules.

(b) Prior to executing an ACH Agreement with an Originator, Customer shall have conducted an investigation appropriate to the degree of risk associated with the Originator and in accordance with Prosperity's due diligence requirements, including, as deemed necessary, physical inspection of the Originator's premises, its data security and customer identification processes, and Customer shall have verified through such investigation that the Originator conducts a legal bona fide business operation and has the proper facilities, equipment and inventory, and, where necessary, licenses and permits to do business. At the request of Prosperity, Customer will provide photographs taken of the Originator's premises, inventory, or product, and/or a credit bureau report on principals of the business.

(c) Before Customer originates any Entries for a new Originator, Customer shall provide Prosperity with the following information pertaining to such Originator: name; principal business activity; street address; telephone number; employer identification number; name and telephone number of the principal; date of the ACH Agreement; and summary of Customer's due diligence. Prosperity shall have the right, in its sole discretion, to refuse to accept Entries from any such Originator and/or to perform its own due diligence during the onboarding of a new Originator before initiating any Entry on such Originator's behalf. Customer shall, following periodic requests from Prosperity, provide to Prosperity any information considered to be reasonably necessary to identify each Originator on whose behalf Customer initiates Entries hereunder within two (2) Business Days of Prosperity's request.

(d) At all times, Customer shall be responsible for supervising and overseeing each Originator's performance under the applicable ACH Agreement and shall be responsible for their respective compliance with Applicable Laws, including the NACHA Rules.

(e) Customer shall establish, implement and periodically review exposure limits for Originators and establish policies and procedures to: (i) monitor the Originators' origination and return activity across multiple Settlement Dates and require corrective action if Return Rates exceed the requirements of the NACHA Rules; and (ii) enforce restrictions on the types of Entries that may be originated and enforce exposure limits, each as established by Prosperity from time to time.

(f) Customer, as a Third-Party Sender, agrees not to use the Services to transmit Entries on behalf of any other Third-Party Sender (a "**Nested Third-Party Sender**"). As part of its due diligence review of each Originator, Customer is responsible for confirming that such Originator is not a Nested Third-Party Sender. Customer agrees to indemnify and hold Prosperity harmless from and against any and all Losses that arise directly or indirectly in connection with Customer's use of the Services to transmit Entries on behalf of a Nested Third-Party Sender, whether or not Customer had knowledge that such person was a Nested Third-Party Sender, and Customer agrees to promptly reimburse Prosperity for any fines or penalties and associated costs (including attorney's fees and other legal expenses) imposed on or assessed against Prosperity by NACHA, any ACH Operator, or any state or federal regulatory agency in connection therewith.

**4. TRANSMITTAL OF ENTRIES BY CUSTOMER.** Customer will initiate Entries as provided in the ACH Origination Service Terms. Customer, on behalf of its Originators, authorizes

Prosperity to originate the types of Entries submitted by Customer as a Third-Party Sender on behalf of an Originator to Receivers' accounts; provided, where required, such Entries are in compliance with the formatting and other requirements set forth in the NACHA Rules, the ACH Origination Service Terms, the Documentation and any other materials provided by Prosperity to Customer; and Prosperity agrees to originate and transmit such Entries in accordance with this Addendum. For each Entry for which Customer is not the Originator, Customer represents and warrants that it will not transmit to Prosperity any Entries that violate the NACHA Rules or Applicable Laws or that are otherwise restricted by Prosperity, and represents and warrants that the Originator of the Entry has agreed to assume the responsibilities of an Originator under the NACHA Rules and has acknowledged that the Originator may not initiate Entries that violate the NACHA Rules or Applicable Laws.

**5. OBLIGATIONS OF CUSTOMER AS A THIRD-PARTY SENDER UNDER THE NACHA RULES.** In addition to Customer's other duties, responsibilities, warranties, representations and liabilities under the Agreement, for each and every Entry transmitted by Customer as a Third-Party Sender to Prosperity, Customer represents and warrants to Prosperity and agrees that Customer, as a Third-Party Sender, shall: (a) perform all of the duties, including, but not limited to, the duty to identify Originators; (b) assume all of the responsibilities, including, but not limited to, the responsibilities of ODFIs and Originators; (c) make all of the warranties, including, but not limited to, the warranties of ODFIs, the warranty that each Originator has agreed to assume the responsibilities of an Originator under the NACHA Rules and is legally able to do so; (d) assume all of the liabilities, including, but not limited to, liability for indemnification for failure of an Originator to perform its obligations as an Originator of Third-Party Sender in accordance with the NACHA Rules; and (e) limit the dollar value and types of the Entries that are transmitted to Prosperity by Customer as Third-Party Sender, as set forth in the Documentation.

**6. LIMITS ON ACH ENTRIES OR FILES.** In addition to the limitations set forth in the Documentation, Prosperity may place additional limits on the amount or the type of Credit Entries or Debit Entries that Customer may originate in a file, batch or any single Entry. Any such limits will be communicated by Prosperity to Customer from time to time and Customer hereby agrees to communicate any such limits to each Originator and ensure that all Entries originated by Customer comply with such limits. Prosperity reserves the right to modify limits in its sole discretion.

**7. ANNUAL SELF-ASSESSMENT; AUDIT RIGHTS.** Customer must conduct an annual audit of its compliance with the NACHA Rules and an annual self-assessment as to data security and maintain the results for review by Prosperity for not less than six (6) years. Customer agrees to provide documentation supporting any such audit and self-assessment within five (5) Business Days following a request from Prosperity. In addition to Prosperity's audit rights under the Master Agreement, Prosperity reserves the right to conduct periodic audits and other due diligence of each Originator for whom Customer is originating Entries under this Addendum.

**8. INDEMNIFICATION.** In addition to Customer's other indemnification obligations under the Master Agreement, Customer agrees to indemnify, defend and hold Prosperity harmless from and against any and all Losses that arise directly or indirectly from use of the Services by any of its Originators, including the failure of any Originator to perform its obligations under Applicable Laws, including the NACHA Rules.

**9. PAYMENT.** Customer, as a Third-Party Sender, shall maintain sufficient Available Funds in the Authorized Accounts to cover its payment obligations under this Addendum and agrees to pay

Prosperity for each ACH Transaction originated by Customer as Third-Party Sender on behalf of any Originator for which Prosperity is not paid.

**10. TERMINATION.** In addition to Prosperity's termination rights under the Master Agreement, Prosperity has the right to terminate or suspend this Addendum, or any Originator of Customer, for any breach of the NACHA Rules or as required for Prosperity to comply with the NACHA Rules.

**Customer (name of business if entity):** [Company]

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

Printed Name: Name

Title: Title

Date: Date

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