

Company:



PROSPERITY BANK[®]

TREASURY MANAGEMENT SERVICES

CHECK POSITIVE PAY SERVICE TERMS

These Check Positive Pay Service Terms (the “**Service Terms**”) set forth the terms under which Customer may review and decision Checks drawn on Customer’s Account as a method for monitoring potential Check fraud or other unauthorized transactions (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 together with these Service Terms 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.

1. DEFINITIONS.

- (a) “**Check**” means, for purposes of these Service Terms, a draft (other than a documentary draft) payable on demand and drawn on a bank, including without limitation a cashier’s check, teller’s check, or such instrument that may be described on its face by another term such as “money order,” drawn on an Authorized Account.
- (b) “**Check Data**” means the Account number on which the Check is drawn, the Check number, the Check Issue Date and the dollar amount of the Check. If Customer has enrolled in Payee Match Services, “Check Data” also includes the payee name.
- (c) “**Check Issue File**” means a communication from Customer received by Prosperity containing at a minimum the Check Data for each Check and such other information as may be required by Prosperity for performance of the Services.
- (d) “**Check Issue Date**” means the date of a Check as indicated in the applicable Check Issue File, and if not specified in such Check Issue File, shall be the date of the first Check Issue File listing such Check
- (e) “**Exception Check**” means a Check presented for payment which: (i) does not have a Check number on its MICR line; (ii) has a Check number on its MICR line that does not appear in the Check Issue File; (iii) has a Check number on its MICR line that appears in the Check Issue File but a discrepancy exists between the dollar amount appearing on the MICR line of the Check and the dollar amount associated with the Check number appearing in the Check Issue File; (iv) has a Check number on its MICR line that is in the Check Issue File but appears to be a duplicate; or (v) does not electronically match the Check Issue File for any reason not stated above and Prosperity determines

in its discretion to include it as an Exception Check. Stale Checks that are presented to Prosperity for payment more than 6 months after the Check date are also Exception Checks.

(f) “**Instruction**” means a communication from the Customer instructing Prosperity to either pay or return an Exception Check.

2. IMPLEMENTATION PROCESS. Customer must specify its preferences for the Services during the implementation process in the Documentation as directed by Prosperity, including the Account(s) to be enrolled in the Services (“**Authorized Account(s)**”) and the Users authorized by Customer with respect to the Services. The Services will be available once Prosperity has notified Customer that the implementation process is complete. Customer is solely responsible for the accuracy and timeliness of the Documentation it provides to Prosperity.

3. CONFORMITY AND SAMPLING. All Checks drawn on an Account shall at all times conform to Prosperity’s specifications. Prior to implementation of the Services, Customer agrees to provide Prosperity with test data for Prosperity’s inspection and testing to ensure, in Prosperity’s sole determination, that Prosperity’s quality control and processing specifications with respect to MICR quality, paper stock and other criteria for the Services are satisfied. In the event that Prosperity determines that Customer’s test data does not meet Prosperity’s requirements, Customer will not be eligible to use the Services.

4. DELIVERY OF CHECK ISSUE FILE. Each Business Day prior to placing Checks in circulation that will be drawn on the Authorized Account(s), Customer will deliver a Check Issue File to Prosperity via the Internet Banking Service or other method approved by Prosperity by 7:00 a.m. Central Time (the “**Cutoff Time**”). Customer authorizes Prosperity to pay and charge to the Authorized Account(s) each Check that Prosperity determines in its discretion is listed on a Check Issue File and is not an Exception Check. Customer assumes full responsibility for the timely and accurate submission of Check Issue Files and any related information to Prosperity. Prosperity is entitled to rely on the contents of each Check Issue File and is not responsible for detecting any Customer error contained therein. Customer will be solely liable for any Losses arising out of inaccurate or untimely information contained in any Check Issue File. Customer must provide each Check Issue File in the format and medium required by Prosperity, as may be modified by Prosperity from time to time. If any Check Issue File does not meet Prosperity’s specification and/or is not received by the Cutoff Time, Prosperity may treat such Check Issue File as if it was not received.

5. EXCEPTION CHECKS.

(a) Exception Checks will be identified and reported to Customer in an “**Exception Report**” made available through the Internet Banking Services or other method now or hereafter offered by Prosperity for the Services. Customer must review the Exception Report and deliver Instructions to Prosperity for each Exception Check presented therein no later than the applicable Cutoff Time, which is 12:00 p.m. (noon) Central Time on the next Business Day following issuance of the Exception Report. Customer is responsible for, and Prosperity may rely upon, the contents of each Instruction and Prosperity is not responsible for detecting any Customer error contained in any Instructions. Prosperity will act upon the most recent Instructions received by the Cutoff Time with respect to each Exception Check. Customer’s failure to timely access and review an Exception Report for any reason, including if Prosperity does not provide notice that the Exception Report is available, does not relieve

Customer of its obligation to provide Instructions for each Exception Check identified therein prior to the Cutoff Time.

(b) Prosperity is not obligated to comply with Instructions received after the Cutoff Time, or in a format or medium, or at a place not specified in the Documentation, but instead may treat such Instructions as though they have not been received. In the event that an Instruction is not properly provided for any Exception Check, Prosperity will either pay or reject such Exception Check in accordance with Customer's default elections as set forth in the Documentation. Instructions deemed to have been provided (or not provided) under this Section and Customer's default elections for Exception Checks as set forth in the Documentation will control, notwithstanding any other communication Prosperity may have received from Customer regarding the Exception Check.

6. ENCODING ERRORS. After a Check is presented for payment from an Authorized Account, Prosperity will compare the Check Data from the MICR line of each Check as encoded by the bank of first deposit against the Check Issue File. If the bank of first deposit has not properly encoded the information on the Check: (a) there could be a delay between when the Check is presented to Prosperity and when it is posted to the Authorized Account and processed through the Services; (b) the Check could be incorrectly identified as an Exception Check or as a match for a Check in the Check Issue File; or (c) there could be a delay in processing the return of the Check and resulting credit to the Authorized Account, if the Check is returned through the Services. Customer acknowledges that Prosperity is not responsible for encoding errors made by the bank of first deposit and will not be liable for any Losses resulting from delays in processing or returning any such Check or in crediting Customer's Account for the returned item (as applicable), or from improper processing of any such Check through the Services.

7. OVER-THE-COUNTER PRESENTMENT.

(a) Prosperity will follow its usual and customary over-the-counter encashment procedures (as may be in effect from time to time) for any Check issued on an Authorized Account, and such procedures shall at least include comparison of the Check Data of any Check presented to a teller against the Check Issue File. For purposes of this Section, Check Data does not include the payee name regardless of Customer's enrollment of an Authorized Account in Payee Match Services. Customer acknowledges that Prosperity will not verify the payee name against the Check Issue File for Checks cashed over-the-counter and agrees that Prosperity may disregard any election for Payee Match under these circumstances without liability to Customer.

(b) Customer hereby acknowledges that Prosperity has the unrestricted right to refuse to cash any Check drawn or purported to be drawn by Customer. In addition to its other indemnification obligations in this Agreement, Customer agrees unconditionally to release, indemnify, defend and hold Prosperity harmless from and against any and all Losses which Prosperity may suffer or incur in connection with providing the over-the-counter encashment services; including without limitation, any refusal to cash any Check. Notwithstanding anything to the contrary herein, in no event shall Prosperity be liable for Losses arising out of or related to: (i) any Check paid over-the-counter, if at the time the teller reviewed the Check Issue File, the Check did not appear to be an Exception Check; (ii) any Check presented over-the-counter that was not paid because when the teller reviewed the Check Issue File, the Check appeared to be an Exception Check; (iii) any Check presented over-the-counter that was not paid because the Customer did not deliver to Prosperity a Check Issue File listing such Check; or (iv) any Check presented over-the-counter on any day for which Customer has requested

Prosperity to suspend the Services, or any Check for which Prosperity and Customer have mutually agreed Prosperity to pay. Further, Prosperity makes no warranty that the individual cashing the Check is the intended named payee of the Customer.

8. STOP PAYMENT ORDERS. To stop payment on a Check, Customer must place a stop payment order in compliance with the Account Terms. If a Check listed in a Check Issue File is missing, lost, stolen or destroyed and cannot be accounted for, Prosperity will not be liable for such Check being paid from the Authorized Account unless and until Customer places a timely stop payment order on it.

9. CHECK COPIES. Customer acknowledges that it is responsible for making decisions regarding payment of Exception Checks and issuing Instructions based on the available electronic information through the Services. If Customer requests a copy or other image of a Check from Prosperity other than in the form of available electronic information through the Services, Prosperity will not be liable if it fails to produce a copy or other image of such Check prior to the Cutoff Time for Customer to deliver its Instructions.

10. LIMITATION OF LIABILITY AND INDEMNIFICATION.

(a) Customer agrees that Prosperity exercises ordinary care and will not be liable to Customer with respect to any Check that Prosperity pays or returns in accordance with these Service Terms. Any Exception Check that Prosperity returns in accordance with Customer's Instructions or default elections for Exception Checks as set forth in the Documentation shall be a proper dishonor and Customer hereby waives any right to assert that the return was improper. Any Exception Check that Prosperity pays in accordance with Customer's Instructions or default elections for Exception Checks as set forth in the Documentation shall be deemed to be properly payable and Customer hereby waives any right to assert that the Exception was not properly payable.

(b) Each Check that Customer has authorized or is deemed to have authorized Prosperity to pay pursuant to Section 4 (Delivery of Check Issue File) or Section 6 (Encoding Errors) above or otherwise will be paid without Prosperity performing its customary (or any other) Check verification procedures. Prosperity will have no liability whatsoever for paying a Check if: (i) its Check number or amount is altered, (ii) it is counterfeit, (iii) it bears a forged or unauthorized signature and/or endorsement and/or no or incomplete endorsement, (iv) the payee has been altered, or (v) it was otherwise not validly issued or is not properly payable.

(c) Notwithstanding anything herein to the contrary, Prosperity will not be liable to Customer for wrongful dishonor when Prosperity, acting in good faith, returns a Check if: (i) Prosperity reasonably believed the Check was not properly payable, (ii) there are insufficient Available Funds on deposit in the Authorized Account(s), (iii) Prosperity is required to do so by Applicable Law, or (iv) Prosperity acted in accordance with these Service Terms, including acting upon any Instructions to return an Exception Check or Customer's default elections for Exception Checks as set forth in the Documentation, in which case such dishonor shall be proper, and Customer hereby waives any right to assert that the return was improper.

(d) Customer agrees to cooperate with Prosperity in any loss recovery efforts Prosperity undertakes to reduce any Losses that arise in connection with the Services. Customer acknowledges that the Fees to be paid for the Services have been established in part in contemplation of the above

indemnifications and limitations on Prosperity's liability and Customer's agreement to assist the Prosperity in any loss recovery efforts. If Customer incurs Losses in connection with the Services, Prosperity assigns to Customer any claims that Prosperity may have against the depository or collecting bank to recover the loss, including any claim for breach of warranty under the applicable provisions of Article 4 of the UCC.

11. TERMINATION. The Positive Pay Services with respect to an Authorized Account will automatically terminate if that Account is closed for any reason, but the Positive Pay Services will remain in effect for any other Authorized Account(s). Either party may terminate the Positive Pay Services and/or the Payee Match Service for any Authorized Account(s) by written notice to the other party clearly describing the intent to terminate and the related Account(s) at least twenty (20) calendar days prior to the termination date specified in such notice. Termination of the Positive Pay Services will not terminate Customer's or Prosperity's rights or obligations with respect to events or actions that occurred before such termination. Termination of the Positive Pay Services will automatically terminate the Payee Match Service, if applicable.