

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“Company”) and National Bank of Middlebury, Vermont (the “Bank” or “we”). This agreement is governed by the laws of the State of Vermont.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, the parties hereto agree as follows:

Company wishes to begin using the National Bank of Middlebury Positive Pay Service. Company agrees to abide by the rules set forth now in effect or as they may be changed from time to time.

**AGREEMENT**

1. Positive Pay Service. The Positive Pay Service can be used to identify fraudulent checks attempting to clear Account(s) you enroll in the Positive Pay Service. With the Check Positive Pay Service you will submit Issued check data (the “Issue File”) containing the check number, dollar amount, date of the check. The Bank compares your Issue File against checks presented to us for payment, including checks presented for immediate payment (cashing a check at a National Bank of Middlebury branch). Any check presented to us for payment that does not match the Issue File will be an exception or violation. The following sets forth the description of an exception or violation:
  - a) Exceptions. Items presented for payment through our inclearings (deposited items) not matching your Issue File will be exceptions. Using the Positive Pay Module within Business Online Banking, you will have the opportunity to pay or return the exception item(s). It is your responsibility to process all exceptions each business day between the hours of 8:00 a.m. EST and 10:00 a.m. EST. For purposes of this Agreement, a business day is defined as every day except Saturdays, Sundays and Federal Holidays. If we do not receive a decision from you by 10:00 a.m. EST we will return the check.
  - b) Violations. Items presented to us for immediate payment (cashing a check at a National Bank of Middlebury branch) not matching your Issue File will be a violation. The Bank will refuse to cash the check and refer the person presenting the check back to the Company for resolution.
2. Uploading Issue Files. The Bank will instruct the Company on how to upload the Issue File via the Positive Pay Module within the Business Online Banking system. The Bank provides three (3) types of formats; Delimited, Microsoft Excel, Fixed Length and manual entry. You may upload the file at any time during the hours of 8:00 a.m. to 5:00 p.m. as long as the information is received by National Bank of Middlebury no less than **24 hours prior to disbursing the checks**. If you are going to use software to upload an Issue File to our system, we ask that you send us a test file created by your software so that we can input your software’s format into our system to allow you to upload your Issue File.
3. Checks Covered by the Service. The Positive Pay Service applies only to checks issued by the Company from the Eligible Accounts specifically designated for the Positive Pay service set forth below. The Company must provide and, keep up to date the Issue File of checks issued by the Company on the Positive Pay System, including the check number, issue date and the exact amount. Checks not included on an Issue File on a timely basis or presented for payment prior to being uploaded to the Positive Pay System will be treated as Exception or Violation Items.

4. **Positive Pay Exception Items.** A daily report showing any “Exception Items” will be available to the Company in the Positive Pay module within Business Online Banking. Items will be noted as an Exception Item if a check is presented for payment and (i) is not found in the Issue File, (ii) is a duplicate of a previously paid item, (iii) the check is listed in the Issue File with a Stop Payment status, (iv) the check is listed with a Void status in the Issue File, (v) has a different dollar amount than is shown in the Issue File, (vi) does not have a check number, or (vii) the Account it is presented against is in a dormant status, the check has a stale date or is post-dated.

5. **Payment of Checks.** The Bank must receive your “Pay” or “Return” decision via the Positive Pay Module within Business Online Banking by the designated cutoff time of 10:00 a.m. EST, otherwise the Exception Item will be returned by the Bank.

6. **Termination.** Either the Bank or the Company may terminate this Agreement at any time upon prior written notice to the other. Upon termination, the Bank shall have no further obligation to perform Positive Pay Services or to notify the Company of any Exception or Violations Items, including Exception Items pertaining to checks added to the Issued File prior to the effective termination date.

7. **Fees/Rules.** Company agrees that the Bank has the right to charge a fee for the Positive Pay Service upon notice to the Company. In addition, the Bank has the right to amend these rules from time to time providing the Company with a copy of the amended rules.

8. **MICR Encoding.** The Company agrees to insure the MICR encoding ink is of high quality. Not using high quality MICR ink could result in a large number of Positive Pay violations and high costs to the Company.

9. **Limitation on Liability.** The Company agrees that the Bank shall not be liable for any item paid by the Bank that either (i) matched the Issue File, or (ii) if the item appeared on the Exception Report and you indicated the item was valid. The Company further agrees that the Bank shall not be liable for any item returned by the Bank that did not match the Issued File and either (i) appeared on the Exception Report and was not indicated as a valid item, or (ii) appeared on the Exception Report and was indicated as an invalid item. You agree that you are solely responsible for any loss due to use of your Account by any authorized user.

10. **Wrongful Honor.** It shall constitute wrongful honor by the Bank if the Bank pays an Exception Item listed in a timely Exception Item report unless: (a) Company issued a “Pay” decision, or (b) Company did not work exception by cutoff time and the Bank processed the item as “Pay”. In the event that there is a wrongful honor: (1) The Bank shall be liable to the Company for the lesser of the amount of the wrongfully paid Exception Item or the Company’s actual damages resulting from the Bank’s payment of the Exception Item. (2) The Bank expressly waives any right it may have to assert that the Company is liable for the amount of the wrongfully honored Exception Item on the grounds that the Exception Item was properly payable under applicable provisions of the UCC. (3) The Bank retains the right to assert the Company’s failure to exercise reasonable care under the UCC. (4) The Bank retains the right to assert the defense that the Company has sustained no actual damages because the Bank’s honor of the Exception Item discharged for value an indebtedness of the Company.

11. **Wrongful Dishonor.** Except as provided below, it shall constitute wrongful dishonor by the Bank if the Bank dishonors an Exception Item (a) that the Bank has been ordered to pay pursuant to a “Pay” decision, or (b) for which the Company has not issued a “Return” decision under the pay default option. In the event of a wrongful dishonor: (1) The Bank’s liability for wrongful dishonor of an Exception Item shall be limited to the damages for wrongful dishonor recoverable under applicable provisions of the UCC. (2) Notwithstanding the preceding sentence, the Bank shall have no liability to the Company for wrongful dishonor when the Bank, acting in good

---

## Positive Pay Agreement



Serving Vermont Communities Since 1831

P.O. Box 189, Middlebury, Vermont 05753-0189 [www.nbmvmt.com](http://www.nbmvmt.com)

Phone: 1-802-388-4982

---

faith, returns an Exception Item: (a) that it reasonably believed was not properly payable, (b) if there are insufficient available funds on deposit in the Account, or (c) if required to do so by the service of legal process on the Bank or instructions of regulatory or government authorities or courts.

### 12. Notices and Instructions.

- a) Except as otherwise expressly provided herein, we shall not be required to act upon any notice or instruction received from you or any other person, or to provide any notice or advice to you or any other person with respect to any matter.
- b) We shall be entitled to rely on any written notice or other written communication believed by us in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth below. You may add or delete any Authorized Representative by written notice to us signed by at least two (or one, if only one exists) Authorized Representatives other than that being added or deleted. Such notice shall be effective on the second business day following the day of our receipt.
- c) Except as otherwise expressly provided herein, any written notice or communication shall be delivered or sent to:

Attention: Electronic Services Department  
National Bank of Middlebury  
P.O. Box 189  
Middlebury, VT 05753

And, if to Company, addressed to:

Attention: \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### 13. Governing Law.

This Agreement shall be governed by the laws (excluding the law of conflicts) of the State of Vermont and applicable Federal law.

### 14. General Provisions.

- a) Severability. If any court or tribunal of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

**Positive Pay Agreement**



P.O. Box 189, Middlebury, Vermont 05753-0189 [www.nbmvmt.com](http://www.nbmvmt.com)

Phone: 1-802-388-4982

- b) Amendments. The provisions of this Agreement may be amended only by agreement executed by both parties.
- c) Assignment. Neither party may assign or transfer any its rights or obligations under this Agreement, but the provisions of this Agreement shall be binding upon and inure to the benefit of any legal successor to the Bank or to the Company, whether by merger, consolidation or otherwise.
- d) Waiver. The waiver by a party to this Agreement of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by the other party.
- e) Entire Agreement. This Agreement, including the attached Schedules, is the entire agreement and understanding between the parties related to the subject matter of this Agreement as of the date hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter of this Agreement. This Agreement does not change the terms of any other agreement, including the Business Deposit Account Agreement, except that it relates to Positive Pay.
- f) Headings. Headings to sections of this Agreement or any Schedules are included for ease of reference and shall not be deemed to create rights, remedies, claims, or defenses arising under this Agreement.
- g) Beneficiaries. This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

**15. Jury Waiver Provision.**

You agree that you shall not (a) seek a jury trial in any lawsuit, proceeding, counterclaim, or any other action based upon, or arising out of, this Agreement, any Account, or the dealings or the relationship between or among you and us, or (b) seek to consolidate any such action with any other action in which a jury trial cannot be or has not been waived. The provisions of this paragraph shall be subject to no exceptions. We have not agreed with any of you or represented to any of you that the provisions of this paragraph will not be fully enforced in all instances. You acknowledge that this waiver may deprive you an important right and that this waiver has been knowingly and voluntarily made.

**Please list below the Account(s) (the “Eligible Accounts”) to set up with Positive Pay Service:**

_____	_____	_____
_____	_____	_____

**Positive Pay Agreement**



P.O. Box 189, Middlebury, Vermont 05753-0189 [www.nbmv.com](http://www.nbmv.com)

Phone: 1-802-388-4982

**By signing below, you are certifying the representations made and agreeing to all of the terms and conditions set forth in the Agreement.**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company Authorized Signature

\_\_\_\_\_  
National Bank of Middlebury  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**The following people (in addition to the Company Authorized signer above) have the authority to authorize payment of a check that is in Violation and not part of the Company's Issue File.**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

At least one signer must have full signing authority on the Account(s) listed above and that signer, by signing above, gives authority for other users who are not authorized signers in the Account but who are located on the Positive Pay User Access form to have the access specified on that form.

This authority is to remain in full force and effect until National Bank of Middlebury has received written notification from you of your termination in such time and manner as to afford National Bank of Middlebury a reasonable opportunity to act on it. You understand that you are in full control of your Account and that if at any time you decide to discontinue service, you will provide written notification to National Bank of Middlebury. Your use of the service signifies that you have read and accepted all of the terms and conditions of this Positive Pay Agreement.

# Positive Pay Agreement



P.O. Box 189, Middlebury, Vermont 05753-0189 [www.nbmvt.com](http://www.nbmvt.com)

Phone: 1-802-388-4982

## Schedule - Authorized Positive Pay User Access

Company Name: \_\_\_\_\_

**Authorized Users:**

Action:  Add  Change  Remove

---

Signature	Printed Name	Title
Positive Pay Access**		
<b>Upload or manually upload Issue File</b>	Yes	No
<b>Work Positive Pay exceptions/violations</b>	Yes	No

*Check marking "Yes" will authorize this user to make decisions whether to pay or return/refuse an item presented for payment.*

Action:  Add  Change  Remove

---

Signature	Printed Name	Title
Positive Pay Access**		
<b>Upload or manually upload Issue File</b>	Yes	No
<b>Work Positive Pay exceptions/violations</b>	Yes	No

*Check marking "Yes" will authorize this user to make decisions whether to pay or return/refuse an item presented for payment.*

Action:  Add  Change  Remove

---

Signature	Printed Name	Title
Positive Pay Access**		
<b>Upload or manually upload Issue File</b>	Yes	No
<b>Work Positive Pay exceptions/violations</b>	Yes	No

*Check marking "Yes" will authorize this user to make decisions whether to pay or return/refuse an item presented for payment.*

*\*\*For security reasons, it is not recommended to authorize the same user to both upload or manually upload an Issue File and be able to work exceptions/violations. We suggest you have one user upload or manually upload an Issue File and another user work the Positive Pay exceptions/violations. We also suggest that the Positive Pay user(s) be an authorized signer on the Account.*

\_\_\_\_\_  
Signature of Authorized Signer on Account(s)

\_\_\_\_\_  
Printed Name of Authorized Signer on Accounts(s)

\_\_\_\_\_  
Date