

**IN THE CIRCUIT COURT FOR SULLIVAN COUNTY  
AT KINGSFORT, TENNESSEE**

**TENNESSEE ELECTRIC COMPANY, INC.  
d/b/a TEC Industrial Maintenance &  
Construction,**

**Plaintiff**

**VS.**

**TRISUMMIT BANK,**

**Defendant**

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**CASE NO. C40137(M)**

**AMENDED COMPLAINT**

This is an action to recover compensatory and punitive damages for the unauthorized transfer of funds from Plaintiff's bank accounts.

**PARTIES**

1. Plaintiff is a Tennessee corporation with principal offices located in Kingsport, Tennessee.

2. Defendant TriSummit Bank is a Tennessee banking corporation with offices at 422 Broad Street, Kingsport, Tennessee. Its registered agent for service of process is R. Lynn Shipley, Jr., 422 Broad Street, Kingsport, Tennessee 37660-4208.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to T.C.A. § 16-10-101. Venue is proper in this Court pursuant to T.C.A. § 20-4-101.

## STATEMENT OF FACTS

4. Plaintiff is a specialty contractor providing electrical, mechanical, maintenance and construction services in the Southern, Eastern and Midwestern United States. Defendant is a financial institution that provides banking, financial products and financial services to its customers including internet or online banking services. At all times material hereto, Plaintiff was a "customer" of Defendant within the meaning of T.C.A. § 47-4A-105(a)(3).

5. On or about October 8, 2010, Plaintiff and Defendant entered into TriSummit Bank Treasury Management Services eTreasury Banking Agreement, a copy of which is attached to this Complaint as **Exhibit No. 1** and incorporated herein by reference (the "Banking Agreement"). The Banking Agreement specifically provides that Defendant agreed to provide to Plaintiff internet banking services including the ability of Plaintiff "to originate and receive Automated Clearing House ("ACH") transactions, initiate wire transfers, and initiate electronic fund transfer services, all by means of a personal computer."

6. Exhibit A to the Banking Agreement sets forth the account numbers and purpose for authorized ACH originations. The account numbers referenced are "1000020113, 100002012, 1000023794" and the purpose for the ACH originations is "Payroll and Vendor Payments." Plaintiff only used its operating account (Account No. 1000020113) under the Banking Agreement as the designated account for ACH originations for the purpose of payroll payments to its employees. Generally, ACH originations are banking transactions in which the account holder authorizes third parties to draft from specified accounts through the Automated Clearing House Network. At all times material hereto, the ACH drafts authorized by Plaintiff were limited to drafts issued on Plaintiff's operating account (Account No. 1000020113) to fund specific individual payments to Plaintiff's employee for payroll which were deposited directly to employee bank accounts as designated by Plaintiff via electronic fund transfers. Plaintiff's

operating account was a zero balance account and maintained a zero balance, except when monies were deposited to fund Plaintiff's authorized ACH drafts.

7. Plaintiff and Defendant commenced operating under the Banking Agreement sometime in mid-to-late October 2010. At all material times hereto, Defendant made a line of credit available to Plaintiff to fund operating expenses of Plaintiff's business such as Plaintiff's payroll which Plaintiff funded and paid on a weekly basis. Plaintiff's use of the ACH feature of the Banking Agreement worked substantially as follows: Each Tuesday, as required by Defendant, Plaintiff would log into Defendant's internet banking website and upload payroll files that would contain a list of the employees by name, the routing number to the employee's bank, the employee's bank account number, and the total amount to be paid each employee for that payroll period. Upon receipt of the weekly files, Defendant would draw from the available funds under Plaintiff's line of credit and cause that amount to be deposited in Plaintiff's operating account. Defendant would then cause an ACH draft or drafts to be issued from Plaintiff's operating account to fund Plaintiff's payroll and deposit by electronic fund transfer each individual amount in each individual employee's designated account based on the information contained in the payroll files uploaded by Plaintiff. Initially, Defendant employed no security measures to verify that the files uploaded by Plaintiff each Tuesday were in fact Plaintiff's files and/or that the individual payment orders to the individual employees were actually authorized by Plaintiff.

8. During the time period after October 8, 2010 and prior to the Defendant's unauthorized transfer of funds at issue, Plaintiff uploaded to Defendant's website three (3) to five (5) files each week for Plaintiff's weekly payroll. Typically, three (3) to four (4) of the payroll files were relatively small as compared to one file which was for the largest amount of Plaintiff's weekly payroll and generally ranged from \$200,000.00 to \$240,000.00 each week. The weekly payroll files generally paid between 350 to 400 employees. In order to meet the employees'

expectation to access proceeds of their paycheck on Thursday of each week, the Defendant required that Plaintiff's payroll files be uploaded by Plaintiff on the Tuesday prior to the Thursday. From the inception of the Banking Agreement through the time period at issue, Plaintiff uploaded its payroll files once per week.

9. In late 2011, Defendant, through its authorized agents, notified Plaintiff of a security procedure implemented by Defendant and to be used from that point forward by Defendant with respect to Plaintiff's electronic fund transfers including ACH transactions initiated by Plaintiff. The security procedure implemented by Defendant was that, after Plaintiff uploaded its weekly payroll files to be drafted in accordance with the procedure outlined above and prior to the execution of the payment orders by Defendant, the Defendant, through its authorized representative, would contact Plaintiff by telephone indicating that the call was being recorded to obtain verification from Plaintiff that the files uploaded by Plaintiff were in fact Plaintiff's payment order(s) and to further verify the total amount of the payment order(s). Upon receiving such telephone confirmation, Defendant would execute the specific payment order(s).

10. In February of 2012, representatives of Defendant met with representatives of Plaintiff at which time the parties discussed Defendant's telephone confirmation security procedure. At the meeting, Defendant's representatives stated that verification of the ACH drafts by telephone confirmation would continue to be utilized by Defendant as a means by which to protect both parties from fraudulent transactions on Plaintiff's operating account. Plaintiff avers that Defendant's representations to Plaintiff and the parties utilizing the above procedure created an agreement between Plaintiff and Defendant to use telephone confirmation as a security procedure for the purpose of verifying payment orders issued by Plaintiff utilizing ACH drafts and for Defendant to record such telephone verification.

11. Plaintiff avers that, subsequent to the implementation of the security procedure utilizing verification by telephone and prior to Defendant's unauthorized transfer of the funds at issue, Defendant, prior to the execution of Plaintiff's payment orders, always contacted Plaintiff by telephone, informed Plaintiff that the call was being recorded and verbally confirmed each of Plaintiff's payment orders in the form of ACH drafts regardless of the amount of the draft. Plaintiff avers, based on Defendant's representations, that the Defendant recorded each of the telephone conversations in which Plaintiff's payment orders were verified.

12. On May 8, 2012, Plaintiff was unable to log into Defendant's website from Plaintiff's computer utilizing Plaintiff's IP address for purposes of uploading Plaintiff's weekly payroll files. Plaintiff, upon contacting Defendant and discussing the situation with Plaintiff's authorized agent, Jeremy Wright, was informed by Mr. Wright that updates or maintenance of Defendant's website were likely causing the problems with Plaintiff's attempted login. Plaintiff, later that day at the invitation of Defendant, went to Defendant's Kingsport branch and by logging into Defendant's website from Defendant's computer utilizing Defendant's IP address was able to upload Plaintiff's payroll files for that week, consistent with the parties' prior practice and procedure. On May 8, 2012, at approximately 3:17 that afternoon, Defendant accepted by electronic means the Plaintiff's four (4) payment orders for that week totaling \$32,668.97, \$23,611.99, \$11,444.71 and \$202,644.47, each of which were to be drafted and paid from Plaintiff's operating account.

13. On May 9, 2012, Plaintiff received two telephone calls during the lunch hour from a "Jim" who identified himself as being with Defendant's "IT Department" and who stated that he wanted Plaintiff to log onto Defendant's website for on-line banking to determine if the website was fixed. "Jim" called back at approximately 1:28 p.m. and again asked that Plaintiff "log onto" the Defendant's website. Plaintiff's representative told "Jim" that there was no need to access the website at that time because Plaintiff had the prior day accessed the website to upload the

payroll files needed for Plaintiff's payroll for that week. "Jim" then told Plaintiff to try to log into the website the following day, that the website would be fixed.

14. As was customary and in accordance with the parties' agreement regarding security procedures, Defendant's agent, Jeff, called Plaintiff at approximately 3:12 p.m. on the afternoon of May 9, 2012 from a recorded line to confirm or verify the four (4) payroll files and ACH drafts uploaded by Plaintiff on May 8, 2012 from Defendant's Kingsport branch. Plaintiff, during such telephone conversation, confirmed the amount of the payroll files and amount of ACH drafts uploaded by Plaintiff the previous day, May 8, 2012. During this phone call, Plaintiff also informed Jeff of the previous calls that afternoon from "Jim." Jeff stated that the calls were "strange" and for Plaintiff to notify one of Defendant's officers, Jeremy Wright or Freddie Malone, about the calls from "Jim." Plaintiff attempted to contact Mr. Wright, but he was not in his office. Plaintiff then spoke with Sharon at Plaintiff's Kingsport branch, informed her of "Jim's" calls and Sharon said that "they [Defendant] would look into it."

15. At the 3:12 p.m. call from Jeff to Plaintiff, Jeff failed to inform Plaintiff that, at 1:07 that afternoon, some two hours and five minutes earlier, Defendant had accepted a \$327,804.00 ACH draft from Plaintiff's operating account, which was never authorized by Plaintiff, that was then paid out by Defendant to fifty-five (55) different deposit accounts in different part of the United States. Further, at the 3:12 p.m. call, Jeff failed to seek or obtain verification for the \$327,804.00 ACH draft in accordance with the parties' security procedures agreement.

16. On the morning of May 10, 2012, Plaintiff received a call from Brian Krebbs who identified himself as a prior news reporter on cyber crimes and that he had received a tip on a possible "hacking" of Plaintiff's bank accounts at Defendant for a large sum of money. Mr. Krebbs said that the source of the "hacking" might be persons who were located in Russia, the Ukraine or somewhere overseas. At approximately 10:15 a.m. on the morning of May 12,

2012, Plaintiff called Freddie Malone, an officer of Defendant, and informed Mr. Malone about the calls received by Plaintiff from "Jim" the previous day, and the call from Mr. Krebbs earlier that morning about a potential "hacking" of Plaintiff's bank account from Russia, the Ukraine, or another foreign country. During this telephone call, Mr. Malone failed to disclose to Plaintiff the \$327,804.00 draft that the Defendant had paid the previous day from Plaintiff's operating account without verification or authorization from Plaintiff. Further, during the course of this telephone conversation, Mr. Malone failed to seek or obtain verification for the \$327,804.00 ACH draft in accordance with the parties' security procedure agreement.

17. On May 10, 2012, Plaintiff received a telephone call at 12:33 p.m. from Jeremy Wright, Defendant's representative, seeking authorization for the four ACH drafts for that week, even though authorization for the four authorized drafts had been obtained the previous day. Mr. Wright, however, failed to disclose to Plaintiff that the \$327,804.00 ACH draft had been paid by Defendant with Plaintiff's funds the previous day, even though such payment order had not been authorized or verified by Plaintiff. During the course of this telephone call when Defendant inquired about the \$327,804.00 ACH draft, Plaintiff's representative immediately responded that this amount had not been authorized. In this conversation, Defendant did again verify the ACH drafts for the payroll files that were uploaded on May 8, 2012. Plaintiff's representative then advised Mr. Wright not to honor the \$327,804.00 ACH draft and to reject the transaction or transactions represented thereby. On May 10, 2012 at approximately 1:46 p.m., Freddie Malone called Plaintiff and informed Plaintiff that there were fraudulent ACH transactions submitted by an unknown entity on Plaintiff's operating account which had paid by the Defendant. By letter dated May 10, 2012, Plaintiff again notified Defendant that the \$327,804.00 ACH transaction was not authorized and demanded that any funds paid be returned to Plaintiff's account as well as any interest charges related to the use of such funds. A copy of the May 10, 2012 letter is attached hereto as **Exhibit No. 2**.

18. Plaintiff avers that on May 10, 2012, Defendant improperly honored fifty-five separate ACH drafts on Plaintiff's operating account in amounts ranging from \$550.00 to \$11,000.00, all of which totaled \$327,804.00 (the "Unauthorized ACH Drafts"). Plaintiff avers that each of the Unauthorized ACH Drafts were funded from monies withdrawn by Defendant from Plaintiff's operating account using funds advanced to Plaintiff utilizing Plaintiff's line of credit. Plaintiff further avers that it has repaid to Defendant the monies used to fund payment of the Unauthorized ACH Drafts and that Plaintiff owes no monies to the Defendant under a line of credit or other lending arrangement. A list of the Unauthorized ACH Drafts are set forth on **Exhibit No. 3** attached hereto and incorporated herein by reference. As reflected on Exhibit No. 3, Defendant was able to recover some, but not all, of Plaintiff's money which Defendant improperly permitted to be drafted from Plaintiff's operating account, resulting in a net loss to Plaintiff of \$192,656.96.

19. Plaintiff avers that the Defendant knew or should have known that the Unauthorized ACH Drafts were fraudulent or fraudulently submitted based, without limitation, on the following: (a) Plaintiff previously submitted its payroll files containing the authorized ACH drafts earlier that week on Tuesday, May 8, 2012, which was consistent with the parties' customary practice in order for Plaintiff's employees to receive their money by the following Thursday; (b) the Unauthorized ACH Drafts were uploaded on a Wednesday as opposed to a Tuesday which was inconsistent with the parties' prior business practice and, in the ordinary course, would have prevented the employees from receiving their money on Thursday; (c) the 55 drafts comprising the Unauthorized ACH Drafts were not representative of the number of drafts for Plaintiff's weekly payroll; (d) the respective amounts of the Unauthorized ACH Drafts were not representative of the amounts paid to individual employees on Plaintiff's weekly payroll but far exceeded such routinely paid amounts; (e) the bank's to which the Unauthorized ACH Drafts were routed were not representative of Plaintiff's employees' banks; (f) the number of the



Unauthorized ACH Drafts that were in even amounts which was not ordinary nor representative of the ACH drafts for Plaintiff's weekly payroll; and (g) the account names listed for the Unauthorized ACH Drafts were not representative of the names of Plaintiff's employees and to which Defendant had direct access.

20. Plaintiff further avers that the Defendant attempted to cover-up its actions in paying the Unauthorized ACH Drafts by (a) failing to disclose the \$327,804.00 ACH draft in its telephone conversations with Plaintiff on May 9, 2012 and May 10, 2012; and (b) contacting the Plaintiff on May 10, 2012 and misleading Plaintiff by attempting to obtain verification of the \$327,804.00 ACH draft when it knew or should have known at the time that the ACH draft for \$327,804.00 including that the individual payees or beneficiaries of the \$327,804.00 ACH draft were fraudulent and not authorized by Plaintiff.

21. Despite repeated demands, Defendant has failed and refused to pay or reimburse Plaintiff the remaining \$192,656.96 which Defendant improperly and unlawfully permitted to be drafted and paid from Plaintiff's bank accounts.

**COUNT I**  
**(Strict Liability)**

22. The allegations of Paragraphs 1 thru 21 of this Amended Complaint are adopted and incorporated herein by reference.

23. Plaintiff avers that the Unauthorized ACH Drafts constitute fund transfers within the meaning of T.C.A. § 47-4A-104(a) and are governed by Article 4A of the Uniform Commercial Code, as adopted in the State of Tennessee, T.C.A. § 47-4A-101, et seq.

24. T.C.A. § 47-4A-204(a) states in pertinent part:

If a receiving bank accepts a payment order issued in the name of its customer as sender which is: (i) Not authorized and not effective as the order of the customer under § 47-4A-202; or (ii) Not enforceable, in whole or in part, against the customer under § 47-4A-203; the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund . . .

25. Plaintiff avers that, with respect to the transactions at issue, Plaintiff was the alleged "sender" of the Unauthorized ACH Drafts and Defendant was the receiving bank which accepted or executed the payment orders evidenced by the Unauthorized ACH Drafts. Further, for purposes of the transactions at issue, Defendant issued various payment orders to the banks listed on Exhibit No. 3 which, in turn, credited the individual accounts listed on Exhibit No. 3 with funds sent by Defendant and drawn from Plaintiff's operating account with Defendant. Therefore, Defendant also acted as the originating bank for the Unauthorized ACH Drafts.

26. T.C.A. § 47-4A-202(a) states that:

A payment order received by a receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

27. Plaintiff avers that the payment orders received by Defendant in the form of the Unauthorized ACH Drafts as set forth on Exhibit No. 3 were not authorized payment orders of Plaintiff, nor is Plaintiff otherwise bound by such orders under the law of agency. Plaintiff avers, upon information and belief, that such payment orders were issued by third parties located in Russia, the Ukraine, or overseas who were not authorized by Plaintiff to access or otherwise approve drafts from Plaintiff's accounts. Plaintiff, therefore, avers that the payment orders in the form of the Unauthorized ACH Drafts were not authorized orders of Plaintiff as contemplated by T.C.A. § 47-4A-202(a).

28. T.C.A. § 47-4A-202(b) provides that:

[i]f a bank and its customers have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as to the order of the customer, whether or not authorized if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders; and (ii) the bank proves that it accepted the payment in good faith and in compliance with the security procedures and any written agreement or instructions of the customer restricting acceptance of payment order in the name of the customer.

29. Plaintiff avers that the payment order(s) received by Defendant in the form of the Unauthorized ACH Drafts on Plaintiff's operating account were not effective as the order of Plaintiff pursuant to T.C.A. § 47-4A-204(a)(i) on the grounds that the telephone confirmation of Plaintiff's payment orders was not a commercially reasonable security procedure or, alternatively, to the extent the telephone confirmation of payment orders was a commercially reasonable security procedure or part of a commercially reasonable security procedure, the Defendant did not comply with such security procedure by failing to verify the Unauthorized ACH Drafts by telephone confirmation prior to Defendant paying such drafts or prior to executing such payment orders.

30. Plaintiff, therefore, avers that T.C.A. § 47-4-204(a) applies and Defendant is not entitled to payment from Plaintiff for the Unauthorized ACH Drafts honored or paid by Defendant. Accordingly, pursuant to T.C.A. § 47-4-204(a), Defendant is obligated to refund payment to Plaintiff in the amount of \$192,656.96 and pay interest thereon from May 10, 2012 to the date of judgment.

**COUNT II**  
**(Negligence)**

31. The allegations of Paragraphs 1 thru 30 of this Amended Complaint are adopted and incorporated herein by reference.

32. Plaintiff avers that the Defendant, in drafting Plaintiff's operating account to pay the Unauthorized ACH Drafts, failed to act as a prudent financial institution in the same or similar circumstances or failed to act in a commercially reasonable manner by, *inter alia*, (a) failing to take action to protect or block Plaintiff's operating account from unauthorized drafting based on Plaintiff's warnings regarding the unusual calls from "Jim" received by Plaintiff on May 9, 2012 and reported to Defendant on that date; (b) failing to take action to block or protect Plaintiff's operating account from unauthorized drafting despite Plaintiff's warnings on the morning of May 10, 2012 that Plaintiff's account was potentially subject to a cyber crime originated from Russia, the Ukraine, or overseas; (c) failing to confirm by telephone Plaintiff's authorization of the Unauthorized ACH Drafts in accordance with the parties' prior business practices and security procedure agreement; (d) failing to recognize the suspicious and fraudulent nature of the Unauthorized ACH Drafts given that: (i) Plaintiff had previously uploaded authorized ACH drafts on May 8, 2012 for Plaintiff's weekly payroll consistent and in keeping with the parties' prior business practices, (ii) the files representing the Unauthorized ACH Drafts were uploaded on Wednesday as opposed to Tuesday, the day Plaintiff's payroll files were previously uploaded while the Banking Agreement was in effect, (iii) the number of drafts comprising the ACH Unauthorized Drafts as compared to Plaintiff's routine payroll, (iv) the amount of the individual Unauthorized ACH Drafts as compared to the amounts routinely paid by Plaintiff to its employees, (v) the banks to which the Unauthorized ACH Drafts were routed as compared to the bank's to which payments to Plaintiff's employees were routinely routed, (vi) the number of the Unauthorized ACH Drafts in even amounts, and (vii) the account names

for the Unauthorized ACH Drafts as compared to the account names of Plaintiff's employees, e.g., Normatov, Brahn, Matro, Flores, Santamaria, Hale, Koroma, Pati, Wroblewski, Roskopf, Morozova, Jaojoco, Kushernov, Santiago, Hoang and Kardar; (e) failing to institute commercially reasonable security measures to protect or prevent Plaintiff's loss of funds resulting from the Unauthorized ACH Drafts; and (f) failing to use its discretion to not honor the Unauthorized ACH Drafts when a reasonable person under the same or similar circumstances using reasonable commercial or banking practices would have recognized that the Unauthorized ACH Drafts set forth on Exhibit No. 3 were fraudulent or unauthorized.

33. Plaintiff avers that Defendant's conduct or lack of conduct, as described above, was the proximate cause of Plaintiff's loss or damage to the extent of the funds not refunded by Defendant or \$192,656.96.

34. Accordingly, the Defendant committed the tort of negligence entitling Plaintiff to recover the sum of \$192,656.96 together with such other damages proximately caused by Defendant's negligence.

### **COUNT III** **(Breach of Contract)**

35. The allegations of Paragraphs 1 thru 34 of this Amended Complaint are adopted and incorporated herein by reference.

36. The Banking Agreement creates the following, *inter alia*, contractual obligations on the Defendant in processing ACH transactions: (a) the requirement that all ACH transfer requests be initiated in accordance with the Banking Agreement; (b) the requirement of an authorization agreement with a recipient of an ACH fund transfer; (c) the requirement to reverse an unauthorized ACH draft or one that was erroneously initiated; (d) the obligation to implement

some form of procedure to verify that Plaintiff's ACH transfer requests were initiated in accordance with the Banking Agreement; and (e) the obligation of Defendant to recover funds as the result of its negligence.

37. Plaintiff avers that the Defendant breached the terms of the Banking Agreement by, *inter alia*, failing: (a) to operate in accordance with the parties' security procedure agreement; (b) to recover the funds paid by Plaintiff on the Unauthorized ACH Drafts, each of which were attributable to the Defendant's negligence; and/or (c) to act in a commercially reasonable fashion in permitting and/or failing to recoup the proceeds of the ACH Unauthorized Drafts.

38. Plaintiff avers that it is entitled to recover from Defendant the damages proximately caused by Defendant's breach of the Banking Agreement including Plaintiff's loss, interest thereon, attorney's fees and such other damages as may be awarded by the Court.

**COUNT IV**  
**(Gross Negligence, Intentional Misconduct and Recklessness)**

39. The allegations of Paragraphs 1 thru 38 of this Amended Complaint are adopted and incorporated herein by reference.

40. Plaintiff avers that, pursuant to the terms of the Banking Agreement and notwithstanding any contrary terms thereof, Defendant remains liable to Plaintiff for Defendant's gross negligence or willful misconduct.

41. Plaintiff avers that the conduct of the Defendant, as described herein, constitutes gross negligence in that Defendant committed negligent acts, as described herein, with a reckless disregard of the rights of Plaintiff with respect to Plaintiff's property and/or property rights.

42. Plaintiff further avers that Defendant engaged in intentional and/or willful misconduct evidenced by, without limitation: (a) Defendant's non-disclosure of the \$327,804.00 ACH draft in its telephone conversations with Plaintiff of May 9, 2012 and May 10, 2012; (b) Defendant's conscious effort to seek or obtain Plaintiff's authorization of the \$327,804.00 ACH draft when Defendant knew or had reason to know that the \$327,804.00 ACH draft or individual drafts comprising such amount were fraudulent and under the circumstances was not, nor could have been authorized by Plaintiff; (c) Defendant's conscious effort to cover up its reckless conduct of paying the \$327,804.00 ACH draft given the existing facts and circumstances and of which Defendant had knowledge; and (d) Defendant's conscious efforts to disregard or ignore Plaintiff's warnings regarding unusual contacts from persons representing themselves as an agent of Defendant, but who were not affiliated with Defendant, including the failure to protect Plaintiff from liability for the cyber crimes that were ultimately committed involving Plaintiff's operating account.

43. Plaintiff avers that the Defendant's conduct, as described herein, was not only intentional but also reckless in that the Defendant, was aware of but consciously disregarded a substantial and unjustifiable risk to the Plaintiff's monies of such a nature that Defendant's disregard of the risk of loss to Plaintiff constitutes a gross deviation from the standard of care that an ordinary person or a financial institution employing reasonable commercial practices would have exercised under the circumstances.

44. Accordingly, Plaintiff, in addition to being entitled to compensation for the monetary loss of \$192,656.96, is also entitled to an award of punitive damages against the Defendant.

**COUNT V**  
**(Fraudulent Concealment)**

45.. The allegations of Paragraphs 1 thru 44 of this Amended Complaint are adopted and incorporated herein by reference.

46. Plaintiff avers that the nature of the relationship between the Plaintiff and Defendant that arose as a result of the banking services provided by Defendant created a duty on Defendant to disclose to Plaintiff any material activity on Plaintiff's bank accounts arising from Plaintiff's use of Defendant's internet or electronic banking services arising out of the Banking Agreement, the course of dealing between the parties, or otherwise.

47. Plaintiff avers that, by virtue of Defendant's skill, knowledge, training, judgment, and/or expertise in providing and holding itself out as qualified to provide internet and electronic banking services, Plaintiff imposed trust and confidence in Defendant that Plaintiff's use of Defendant's internet or electronic banking services including the security procedures available or implemented by Defendant would not place Plaintiff's funds at risk for unauthorized payments or unauthorized drafting of funds from Plaintiff's accounts.

48. Plaintiff avers that, given the nature of the relationship between Plaintiff and Defendant arising from the trust and confidence reposed by Plaintiff in Defendant as set forth above, the Defendant in its communications with Plaintiff via telephone on May 9, 2010 and the morning and early afternoon of May 10, 2010 had a duty to disclose to Defendant the activity on Plaintiff's account including the \$327,804.00 of ACH drafts paid by Defendant on May 9, 2010. Plaintiff avers that it reasonably relied on such nondisclosure and thereby suffered injury in the form of a monetary loss of \$192,656.96. Plaintiff avers that Defendant's failure to disclose such information when Defendant had a duty to do so constitutes fraudulent concealment.



49. Alternatively, Plaintiff avers that the Defendant attempted to trick or devised a scheme to mislead or deceive Plaintiff when Defendant's agent, Jeremy Wright and/or Freddie Malone, contacted Plaintiff and sought to utilize Defendant's security procedures to secure authorization from Plaintiff for the \$327,804.00 ACH drafts when the Defendant knew that such ACH drafts totaling \$327,804.00 were not authorized by Plaintiff and had been fraudulently obtained by third parties. Plaintiff, therefore, alternatively contends that such conduct by the Defendant, through its authorized officers and agents, constitutes the tort of fraudulent concealment.

50. Plaintiff avers that, as a result of Defendant's conduct that gives rise to the tort of fraudulent concealment as described herein, Plaintiff is entitled to the award of punitive damages from the Defendant in addition to its monetary loss of \$192,656.96.

#### **COUNT VI** **(Fraud)**

51. The allegations of Paragraphs 1 thru 50 of this Amended Complaint are adopted and incorporated herein by reference.

52. Plaintiff avers, for the reasons stated herein, Defendant had a duty to disclose to Plaintiff material transactions involving ACH drafts from Plaintiff's account through the use of Defendant's internet and electronic banking services.

53. Plaintiff avers that the Defendant failed to disclose material facts to Plaintiff including, without limitation, Defendant's payment of \$327,804.00 in unauthorized ACH drafts on Plaintiff's account on May 9, 2012 until such time as Defendant was unable to obtain Plaintiff's authorization to pay the unauthorized drafts.

54. Plaintiff further avers that Defendant's nondisclosure including Defendant seeking authorization of the \$327,804.00 in unauthorized ACH drafts when Defendant knew that such

ACH drafts were unauthorized and fraudulently obtained was done to create a false impression with Plaintiff regarding the drafts from its account and to fraudulently induce Plaintiff to authorize the payment of such drafts. Plaintiff avers that Defendant's conduct including the attempted use of its security procedure to obtain authorization for payment of ACH drafts from Plaintiff's account when Defendant knew such drafts were unauthorized or fraudulently obtained represented Defendant's use of existing devices or methods to obtain an undue advantage over Plaintiff.

55. Plaintiff avers that it reasonably relied on Defendant's nondisclosure and was injured thereby in the form of a monetary loss of \$192,656.96.

56. Plaintiff, therefore, avers that the Defendant is guilty of the tort of fraud entitling Plaintiff to the recovery of compensatory and punitive damages from the Defendant.

**WHEREFORE**, Plaintiff Tennessee Electric Company, Inc. prays for relief as follows:

1. That proper process be issued and Defendant be required to answer or otherwise respond to the Complaint within the time permitted by law;
2. That Plaintiff have and receive a judgment against the Defendant in the amount of \$192,656.96 together with interest thereon from May 12, 2012 to the date of judgment;
3. That Plaintiff be awarded punitive damages in the amount of Two Million Dollars (\$2,000,000.00);
4. That Plaintiff be awarded such further general or specific relief as the Court deems proper; and
5. THAT A JURY BE IMPANELED TO TRY ALL ISSUES OF FACT IN THIS CASE.

**HUNTER, SMITH & DAVIS, LLP**

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**cowens@hstdlaw.com**

**Attorneys for Tennessee Electric Company**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **Amended Complaint** has been served upon all parties by hand delivery, facsimile transmission, electronic mail, or by mailing a copy of same by United States Mail, postage prepaid, to the offices of William R. O'Bryan, Jr., Esq., and Junaid A. Odubeko, Esq., Attorneys for Defendant, at Butler, Snow, O'Mara, Stevens & Cannada, PLLC, The Pinnacle at Symphony Place, 150 Third Avenue South, Suite 1600, Nashville, Tennessee 37201, on this the 2<sup>nd</sup> day of July, 2013.

**HUNTER, SMITH & DAVIS, LLP**

BY Mark S. Dessauer  
Mark S. Dessauer

DESSAUER: S-T: TENNESSEE ELECTRIC  
TEEC.89546

COPY

TRISUMMIT BANK  
TREASURY MANAGEMENT SERVICES  
eTREASURY BANKING AGREEMENT

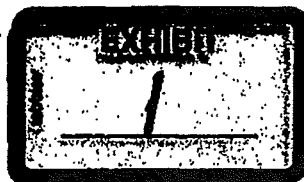
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THIS eTREASURY BANKING AGREEMENT (this "Agreement") is made and entered this 8th day of October, 2010 by and between TRISUMMIT BANK (herein the "Bank"), a bank chartered under the laws of the State of Tennessee, and Tennessee Electric Company Inc. (the "Customer") a Tennessee corporation. This Agreement shall supplement the Trisummit Bank Terms and Conditions (the "Terms and Conditions") found on the Bank's website at [www.trisummitbank.com](http://www.trisummitbank.com) solely with respect to the Services (as defined below). To the extent any term or condition of this Agreement is different or inconsistent with the Terms and Conditions, the terms of this Agreement shall govern, but only to the extent such terms and conditions related to the Services.

WITNESSETH:

In consideration of the mutual promises herein contained, the parties agree as follows:

1. **General.** The treasury management services to be provided by the Bank to the Customer in connection with the Bank's online internet banking system, all related materials and documentation (collectively, "eTreasury Banking") permit the Customer to obtain and conduct certain activities with the Bank. In addition to the activities and services available to Customer under eTreasury Banking, upon execution of this Agreement, the Customer shall be able to originate and receive Automated Clearing House ("ACH") transactions, initiate wire transfers, and initiate other electronic funds transfer services, all by means of a personal computer (collectively, the "Services").
2. **Use of Services.** The Bank will enable the Customer to use the Services, and the Bank shall associate the Services with the Customer's existing eTreasury ID and eTreasury PIN, if previously assigned.
3. **Fees.** Customer agrees to pay the fees for access to and use of the Services at the rates specified in the Treasury Management Schedule of Fees, as provided to the Customer in Exhibit D. The Bank may change the fees charged to the Customer any time during the Term (as defined herein) of this Agreement. The Bank may deduct all fees due from any account of the Customer at the Bank.
4. **Completion of Exhibits.** Before accessing the Services, the Customer shall complete and execute, where appropriate, all of the information in Exhibit A (ACH Account Information & Authorized Representatives), Exhibit B (Bank Operational / Security Procedures), and Exhibit C (Resolution Authorized eTreasury Banking Agreement).
5. **Maintenance.** After installation of the Services and until the termination of this Agreement pursuant to Section 6, the Bank will assist the Customer with the use of the Services and will provide to the Customer any modifications, refinements and enhancements to the Services provided to the Bank from its service provider.
6. **Term.** This Agreement is effective from the date the Bank makes the Services available to the Customer and shall remain in force until termination. This Agreement shall be terminated (i) upon termination of the account relationship between the parties; (ii) failure of the Customer to comply with the terms and conditions of this Agreement; (iii) failure of the Customer to provide annual financial statements to the Bank as required in Section 10; (iv) failure of the Customer to meet the minimum credit standards required by the Bank; or (v) any other event that causes the Bank's service provider to be unable to provide the Services to the Bank or the Customer.
7. **Account.** The Customer will maintain with the Bank at least one demand deposit account (the "Account(s)") for the purpose of providing available funds and for deposit of received funds in connection with the use of the Services. In addition to the terms of this Agreement, the Account will be subject to a separate Depositary Agreement. Unless the Bank otherwise requires the Customer to maintain collected funds, the Customer agrees to maintain sufficient available funds in the Account(s) to support any transaction initiated under the Services and to cover any fees the Customer is obligated to pay under this Agreement. If at any time there are not sufficient collected funds in the Account to cover all outstanding transactions and other payment obligations of the Customer under this Agreement, Customer agrees to immediately pay the Bank the amount of any deficiency in such outstanding transactions and obligations. The Bank may, without prior notice or demand, obtain payment from Customer for any of its obligations under this Agreement by debiting any account of the Customer at the Bank.



govern those ACH Transfer Requests initiated under this agreement for Services. A separate ACH Agreement between the Bank and the Customer shall govern any non-Services initiated request.

- 10.4 **Customer Representations and Agreements:** Customer represents to the Bank that (i) each person or entity shown as the Receiver of an Entry has authorized the Entry prior to its submission to the Bank, such authorization is and shall remain in effect until the Receiver's account is debited or credited, and the original or image equivalent of such authorizations shall be retained by Customer for two (2) years after termination or revocation of such authorizations; and (ii) each Entry transmitted to the Bank conforms to Customer's obligations under this Agreement, the Rules, operating instructions and all applicable laws and regulations. Customer agrees to be bound by the Rules in effect at the time. Customer will submit at the Bank's request any authorization forms as required by law.
- 10.5 **Pre-Notification.** Prior to the initiation of any Entries to a specified account, the Customer will (i) enter into an Authorization Agreement with the Recipient affected; and (ii) within the time specified in the Rules, send through the Bank a notice (referred to as "pre-notification"), prepared in accordance with the requirements specified by the Rules, that the Customer intends to initiate one or more Entries to a specified account. The Customer may then initiate Entries through the Bank to the specified account in accordance with this Agreement, the Authorization Agreement and the Rules after a period of 10 calendar days shall have elapsed from the time the notice was sent by ACH to the RDFI, unless within that period the Bank receives notice that the RDFI will not accept such Entries. The Bank will promptly notify the Customer of any non-acceptance of the Entries by the RDFI. If the RDFI subsequently accepts such Entries, another prenotification record will be submitted.
- 10.6 **Processing Schedule.** Provided Entries are initiated through the Services before 3:00 p.m. Eastern Time on any Bank Processing Day, or such other cutoff time as the Bank may hereafter establish, the Bank will deliver the Entries to the ACH the same day initiated through the Services. Bank Processing Day is any day except Saturday, Sunday or any holiday observed by Federal Reserve Banks and Branches. Customer will transmit or deliver Entries to the Bank using the Services not later than 48 hours prior to the Settlement Date for Credit entries, and 24 hours prior to the Settlement Date for Debit entries.
- 10.7 **Funds for Entries.** The Customer will provide immediately available funds to cover any Credit Entry initiated by it. The Customer will receive immediately available funds for any electronic Debit Entry initiated by it on the applicable Settlement Date.
- 10.8 **Settlement Limits.** The Bank may establish maximum dollar amounts for ACH file transmission ("Settlement Limits") for Customer, by giving the Customer either oral or written notification of Settlement Limit, and The Bank may refuse to transmit entries of files that are in excess of Customer's Settlement Limit. The Bank may change Customer's Settlement limit from time to time by giving Customer either oral or written notice, however, the settlement limit may be changed immediately upon giving telephone notice to the Customer in the event the Customer (i) files or has filed against it a petition in bankruptcy or other laws relating to the relief of debtors; (ii) suspends the transaction of its usual business, dissolves, or transfers to another party a significant portion of its assets; or (iii) is declared to be in default under any other obligation to the Bank.
- 10.9 **Variable Debit Entries.** In the event that a preauthorized Debit Entry varies in the amount from the Pre-notification record pursuant to the same Authorization Agreement, the Customer will mail or deliver to the Recipient, at least 10 calendar days prior to the date on which the Debit Entry is scheduled to be initiated by the Customer, a written notice of the amount and scheduled date of the Debit Entry, provided that, if the Customer informs the Recipient in the Authorization Agreement of the right to receive notice of all variable Debit Entries, the Recipient may agree in the Authorization Agreement to receive such prior written notice only when a Debit Entry does not fall within a specified range of amounts or, alternatively, only when a Debit Entry differs from the most recent Debit Entry by more than an agreed upon amount.
- 10.10 **On-Us Entries.** Except as otherwise provided herein, in the case of an Entry received for credit or debit to an account maintained by the Bank (an "On-Us Entry"), Bank shall credit or debit the Recipient's account in the amount of such Entry on the Settlement Date, provided the requirements set forth herein are otherwise met. If those requirements are not met, Bank shall use reasonable efforts to credit or debit the

Recipient's account in the amount of such Entry on the next Banking Day following the date the Entry was received by the Bank. Bank shall have the right to reject an On-Us Entry for any reason for which an Entry may be returned. In the case of an On-Us Entry, Bank will have all rights of a RDFI.

- 10.11 Notice of Provisional Credit. In the case of any Credit Entry subject to Article 4A of the Uniform Commercial Code, credit given by the RDFI to the Recipient with respect to such an Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided in Tennessee Code Annotated Section 47-4A-403(a). If such settlement or payment is not received, the RDFI shall be entitled to a refund from the Recipient of the amount credited, and the Customer shall not be deemed to have paid the Recipient the amount of the Entry.
- 10.12 Stop Payment of ACH Entries. Neither the Customer nor the Bank will have the right to adjust or stop payment of any Entry after it has been received by ACH. If either the Customer or the Bank asserts that an Entry has been erroneously initiated, a Reversal or Adjustment Entry may be initiated by the Customer or the Bank as set forth in the Rules. In addition, either the Customer or the Bank may make an oral or written request to the RDFI to stop payment of, or to adjust, an Entry which has been or is asserted by the Customer or the Bank to have been erroneously initiated, and the RDFI may elect whether to honor such request. All oral requests must be confirmed in writing in two (2) days of such oral request. The Bank will have no obligation to the Customer with respect to any such request that is not honored.
- 10.13 Debits Not As Authorized. If an unauthorized Debit Entry is confirmed in writing by the Recipient, the Recipient will have the right, unless waived in accordance with the Rules, to have the amount of such Debit Entry immediately credited to the Recipient's account by the RDFI as set forth in the Rules. The Customer's Account will be debited for the amount thereof, and if the balance in the Account is insufficient, the Customer will, on demand, provide immediately available funds to the Bank to satisfy such insufficiency.
- 10.14 Dishonored Entries. For any Debit Entry equal to or in excess of \$2,500.00 that (i) is initiated by the Customer; (ii) is not posted to a Recipient's account by the RDFI; (iii) is returned to the Bank; and (iv) the Bank has notice of, the Bank will promptly notify the Customer of such Return Entry. Except as provided above, the Bank will have no obligation with respect to such Return Entry. Notice of all other Return Entries less than \$2,500.00 will be provided to the Customer in the Customer's normal monthly statement of the Account.
- 10.15 Reversing Entries. If the Customer discovers that any Entry it has initiated was in error, the Customer will notify the Bank immediately. The Bank will then notify the Customer as to whether the transmission of the File or the Entry to the ACH has been initiated. The Customer shall then have the sole right and responsibility to initiate a Reversal of the Entry in accordance with the Rules.
- 10.16 Remakes of Rejected Entries or Files. If an Entry or file is rejected by the ACH due to improper processing or unexcused delays by the Bank, the Bank will Remake such Entry or File and send it to the ACH. If such Entry or File was rejected as a result of improper processing or the supplying of incomplete information by the Customer, the Customer will Remake the Entry or File, and the Bank will send such Entry to the ACH. The Customer will retain and provide the Bank on request all information necessary to Remake any File or Entry for three days after midnight of the Settlement Date.
- 10.17 Customer's Agents. In the event Customer authorized any third party, such as a payroll processing service, to perform obligations of services to Customer hereunder, the Bank shall have no additional liability to Customer occasioned by said agency so long as the Bank acted in accordance with instructions hereunder. Customer agrees to assume responsibility for any errors or wrongdoing by such third party or any of its employees.
- 10.18 Compensation. Subject to the foregoing limitations, any damages or other compensation due Customer resulting from the Bank's performance hereunder shall be limited to interest on the funds at issue at the "federal funds rate" at the close of business on each day the error or delay remains uncorrected; provided, however, that if the Bank is unable to recover funds at issue as a result of the Bank's negligence, the Bank shall be liable for Customer's actual loss, not to exceed the amount of the funds that the Bank is unable to

recover, plus interest. In no event shall the Bank be liable to Customer for indirect, consequential, special, punitive or exemplary damages.

- 10.19 **Indemnification.** In consideration for the Bank's making available to Customer the Services hereunder, Customer agrees to indemnify and hold the Bank harmless from and against all damages, costs and expenses (including reasonable attorneys' fees and costs of investigation) arising from or in any manner related to entries processed or related actions taken back by the Bank in accordance with certain instructions provided by Customer, including but not limited to, actions taken by the Bank to cancel entries (i) any decision by the Bank not to effect a transfer for any specified reason herein; (ii) a breach of Customer's representations; (iii) acts or omissions of Customer's agents; (iv) or otherwise, so long as the Bank acts in compliance with this Agreement.
- 10.20 **Force Majeure.** The Bank shall not be responsible for any loss, damage, liability or claim arising, directly or indirectly, from any error, delay, or failure in performance of any of its obligations hereunder which is caused by fire or other natural disaster, strikes, civil unrest, any inoperability of communications facilities or any other circumstances beyond the reasonable control of the Bank.
11. **Wire Transfers.** The Customer acknowledges that the Wire Transfer ("Wire Transfer") feature of the Services is an alternate entry system for issuing wire transfer orders between the Customer and the Bank. The following provisions shall govern the acceptance and liability for only those Wire Transfer requests initiated through the Services:
- 11.1 **Initiating Transfers.** The Customer may direct the Bank to transfer funds under the Services ("Funds Transfer Request") by initiating such requests through the eTreasury Banking system.
- 11.2 **Honoring Transfers.** The Bank will be under no obligation to honor, either in whole or in part, any Funds Transfer Request: (a) which exceeds the Customer's collected available balance in the Customer's account from which the Customer wishes to transfer funds; (b) which is not in accordance with any other written agreements between the Customer and the Bank; (c) which is not in accordance with the current published Depository Agreement of the Bank; or (d) which is not in accordance with this Agreement. Notwithstanding the foregoing, the Bank, in its sole discretion and without any obligation to do so, may choose to honor a Funds Transfer Request which may be drawn on uncollected funds or which will result in an overdraft in the Customer's account with the Bank, and in such instance, the Customer will be liable to the Bank for the amount of such uncollected funds drawn upon or such overdraft plus any additional charges and expenses as provided by the current Depository Agreement and Pricing Schedule affecting such account, including reasonable attorney's fees and costs of collection, if applicable. The Bank's election to honor any such Funds Transfer Request shall not affect the Bank's right to refuse to honor any one or more subsequent or other Funds Transfer Requests.
- 11.3 **Execution.** The Bank will execute any properly authorized Funds Transfer Requests, if accepted, on the date transmitted under the Services, provided such requests are initiated through the Services before 3:00 p.m. Eastern Time, or such other cutoff time as the Bank may hereafter establish ("Cutoff Time"), on a business day for the Bank, the Funds Transfer System and the receiving bank. "Funds Transfer System" for the purpose of this Agreement will mean the wire transfer network through which a Funds Transfer Request will be transmitted to the receiving bank. Funds Transfer Requests initiated after the Cutoff Time will be executed on the next business day for the Bank, the Funds Transfer System, and the receiving bank. In executing any Funds Transfer Request, the Bank may utilize such means of transmission and such Funds Transfer System as the Bank in its discretion selects. The Bank may also select the order in which to execute multiple pending Funds Transfer Requests.
- 11.4 **Authorization to Charge Account.** Upon receipt of any Funds Transfer Request initiated under the Services, the Customer authorizes the Bank to charge the Customer's accounts in the amount of the Funds Transfer Request, plus any applicable fees and charges as provided in the Depository Agreement and this contract.
- 11.5 **Transfer Tracing.** If the Customer requests, the Bank will endeavor to trace any Funds Transfer Request executed by the Bank on behalf of the Customer in order to verify that the beneficiary received the transferred funds. In order to perform the trace, the Customer will provide the Bank with such

information as the Bank may request, including the date and reference number of the Funds Transfer Request.

11.6 Incoming Transfers. Incoming funds which the Bank receives before 3:00 p.m. Eastern Time on any business day will be credited to the Customer's Account on that day. Otherwise the Bank will credit incoming funds on the next business day following receipt. Notwithstanding the foregoing, the Bank, in its sole discretion and without obligation to do so, may credit incoming funds on the same day received, even if receipt is not before 3:00 p.m., however, the Bank's election to give same day credit on any such transaction shall not waive or discharge the Bank's right to adhere to the 3:00 p.m. deadline for any one or more subsequent or other transactions. If the Customer requests, in writing, the Bank will notify the Customer of incoming funds within a reasonable time following receipt thereof. The Bank will have no liability for failure to give such notice.

11.7 Additional Information. The Customer will provide to the Bank any information the Bank may reasonably request in connection with any Funds Transfer Request and the performance of this Agreement. Failure to provide such information within a reasonable time after requested by the Bank will relieve the Bank from any liability or loss which might arise by reason of failure to provide such information.

12. Unauthorized Access; Security Procedures. The Customer shall be solely responsible for protecting against unauthorized access to the Services and any and all losses and damages arising from any unauthorized access to the Services. The Customer shall establish an "eTreasury Administrator." The eTreasury Administrator shall provide physical security, passwords and other security procedures necessary to ensure the confidentiality of access features. The eTreasury Administrator shall make such procedures and security features known only to those authorized representatives of the Customer, who will use eTreasury Banking. The Bank shall have no obligation, liability or control, either directly or indirectly over said procedures or the failure of the eTreasury Administrator to maintain said procedures. Any instructions, directions or other information provided by the Customer, or any representative of the Customer, under eTreasury Banking, shall be deemed to have been authorized by the Customer, and the Bank shall be indemnified and held harmless by the Customer for acting upon any such direction, instruction or information. Customer agrees to immediately provide written notice to the Bank in the event that the eTreasury Administrator changes or Customer otherwise becomes aware that access to eTreasury Banking has been compromised in any way. The Bank may change, add or delete any procedures established pursuant to this Agreement, from time to time, upon notice to Customer.

13. Verification. The Bank shall be entitled, at its sole discretion, to seek verification or authentication of any file or transmission by contacting an Authorized Representative of the Customer as designated on Exhibit A by telephone or by any other means set forth in any regulations or publications made available to Customer or otherwise deemed reasonable by the Bank. If the Bank is unable to obtain verification or authentication sought, the Bank, in its sole discretion, either process or refuse to process the transmissions.

14. Inconsistency of Name and Account Number. Customer acknowledges and agrees that if any entry describes the Receiver, RDFI, or any intermediary bank inconsistently by name and number (account number in Receiver's case; bank number in bank's case), payment might be made by the intermediary or RDFI on the basis of the number even if it identifies a person or bank, as the case may be, different from the named Receiver or bank, and that Customer's obligation to pay the amount of the entry is not excused in such circumstances.

15. Records Retention. The Customer will retain copies of all data transmitted, authorizations, and any other documentation used in connection with the Services for any required retention period under the Rules and applicable state or federal law.

16. Indemnification. The Customer will defend, indemnify and hold harmless the Bank against and in respect to any and all loss, liability, expense and damage, including consequential, special and punitive damages, directly or indirectly resulting from: (i) the processing of any request received by the Bank under the Services; (ii) any breach of the provisions of this Agreement or the Rules; (iii) any dispute between the Customer and any third party in connection with the use of the Services; and (iv) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including attorney's fees) incident to the foregoing. The terms of this Section shall survive termination of this Agreement.



17. Compliance with Laws. Customer will comply with all applicable state and federal laws and regulations governing the Services, including the sanctions set forth in those laws and regulations administered and/or enforced by the Office of Foreign Assets Control ("OFAC") as in effect from time to time, in addition to complying with the Rules for ACH transactions. The Customer's failure to comply with applicable laws, Rules and regulations may, in the sole discretion of the Bank, be grounds for the Bank to terminate Customer's use of the Services. Customer shall indemnify Bank for any fines or penalties incurred by Bank that are the result of Customer's failure to comply with this Agreement.
18. DISCLAIMER OF WARRANTY. NO WARRANTIES WITH RESPECT TO THE SERVICES ARE MADE BY THE BANK NOR DOES THE BANK WARRANT THAT THE SERVICES WILL MEET SPECIFIC REQUIREMENTS OF THE CUSTOMER. THE BANK MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SERVICES. THE BANK DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
19. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL THE BANK BE LIABLE TO CUSTOMER FOR ANY DAMAGES, INCLUDING LOST PROFITS, LOST SAVINGS OR OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND DOCUMENTATION, OR FOR ANY CLAIM BY ANOTHER PARTY. THE BANK'S DUTIES AND RESPONSIBILITIES IN CONNECTION WITH ACH AND WIRE TRANSFERS ARE LIMITED TO THOSE DESCRIBED IN THIS AGREEMENT. THE BANK WILL BE DEEMED TO HAVE EXERCISED ORDINARY CARE AND TO HAVE ACTED REASONABLY IF THE BANK HAS ACTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND WILL BE LIABLE FOR LOSS SUSTAINED BY CUSTOMER ONLY TO THE EXTENT SUCH LOSS IS CAUSED BY THE BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE BANK WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE BANK'S ACT OR OMISSION. THE BANK WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE: (A) RELATED TO THE DISHONESTY OF THE CUSTOMER'S EMPLOYEES, OFFICERS OR AGENTS; (B) RESULTING FROM ANY RECEIVING BANK'S FAILURE TO ACCEPT ANY ACH OR FUNDS TRANSFER REQUESTS; OR (C) RESULTING FROM ANY DELAY IN THE PERFORMANCE OF THIS AGREEMENT, WHICH IS CAUSED BY AN ACT OF GOD, FIRE OR OTHER CASUALTY, ELECTRICAL OR COMPUTER FAILURE, DELAYS OR FAILURE TO ACT BY ANY CARRIER, MEDIUM OR AGENT OPERATING BETWEEN THE BANK AND THE CUSTOMER OR BETWEEN THE BANK AND THIRD PARTIES OR ANY OTHER CONDITION OUTSIDE THE BANK'S CONTROL. NO THIRD PARTY WILL HAVE RIGHTS OR CLAIMS AGAINST THE BANK UNDER THIS AGREEMENT. THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.
20. Notices. Unless otherwise stated herein, all notices required by this Agreement shall be sent by prepaid certified mail, return receipt requested and shall not be deemed to have been given until received by the other party. Until either party hereto advises the other party of a change in how notices shall be addressed, all notices shall be sent to addresses below:

If to Bank:                      TriSummit Bank  
Treasury Management Department  
P.O. Box 628  
Kingsport, TN 37662  
or  
422 Broad Street  
Kingsport, TN 37660

If to Customer:                Tennessee Electric Company Inc.  
1700 John B. Dennis Hwy.  
Kingsport, TN 37664

**EXHIBIT A**  
**TREASURY MANAGEMENT SERVICES - TREASURY BANKING AGREEMENT**  
**ACH ACCOUNT INFORMATION & AUTHORIZED REPRESENTATIVES**

The following corporate data base information is required for ACH account and user setup in accordance with the Agreement between Customer and Bank.

Customer Name: Tennessee Electric Company Inc.

Customer Address: 1700 John B. Dennis Hwy., Kingsport, TN 37664

Telephone Number (With Area Code): (423) 247-4141

Account Number(s): 1000020113, 1000020121,  
1000023794

Tax ID: 62-0645369

Purpose for ACH origination: Payroll and Vendor Payments  
(Bank will only process ACH transaction types: PPD, CCD, and CTX.)

**CREDIT ORIGINATION:**

Maximum transaction amount per file \$ 350,000

How often will files be transmitted: Weekly

Maximum individual transaction amount \$ 350,000

**DEBIT ORIGINATION:**

Maximum transaction amount per file \$ \_\_\_\_\_ How often will files be transmitted \_\_\_\_\_

Maximum individual transaction amount \$ \_\_\_\_\_

(Debit files may require documentation from above customer evidencing consent from their customer to debit the checking account involved)

The Authorized Representatives listed below are empowered to submit and/or make corrections to monetary ACH ENTRIES and WIRE TRANSFERS. This list SUPERSEDES all previously submitted authorized representative documentation. CURRENT USERS NOT ON THIS LIST WILL BE DELETED. Customer must submit a new Exhibit A whenever Authorized Representatives are added or deleted. Two (2) or more Authorized Representatives must be listed; eTreasury Administrator, as defined in Section 12, should be listed first.

**AUTHORIZED REPRESENTATIVE NAME(s)**  
(List in calling priority order)

**AUTHORIZED REPRESENTATIVE SIGNATURE(s)**

<b>TREASURY ADMINISTRATOR</b> Name: (Type or Print) <u>Julie N. Kirby</u> <u>423-247-4141</u> <u>423-914-1656</u> (Work Phone Number) (After Hours Phone Number)	<u>Julie N. Kirby</u>
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Name: (Type or Print) <u>Greg B. Bailey</u> <u>423-247-4141</u> <u>423-917-2350</u> (Work Phone Number) (After Hours Phone Number)	<u>Greg B. Bailey</u>
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Name: (Type or Print) <u>Jenni Smith</u> <u>423-247-4141</u> <u>423-946-0462</u> (Work Phone Number) (After Hours Phone Number)	<u>Jenni Smith</u>
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Name: (Type or Print) _____  (Work Phone Number) (After Hours Phone Number)	_____
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RECEIVED  
NOV 29 2010

EXHIBIT B  
TREASURY MANAGEMENT SERVICES eTREASURY BANKING AGREEMENT  
BANK OPERATIONAL SECURITY PROCEDURES

1. **ACCEPTANCE/REJECTION OF ENTRIES:** All ACH input files containing Entries must be set up and approved by Bank before being processed by Bank's ACH processing system. Bank will accept and process a NACHA formatted input file which passes Bank's validation process and will reject a file which does not pass Bank's validation process. Customer agrees that a file which passes Bank's validation process and all Entries thereon shall be deemed to be authorized by Customer.
2. **VERIFICATION OF FILE AUTHENTICITY AND ACCURACY:** Bank will call Customer when a file has been rejected for any reason specified in paragraph 1 hereof. Calls will be made to an Authorized Representative ("Authorized Representative") listed on Exhibit A when there is a discrepancy (1) in the transmittal signature, (2) in the total number of items, (3) in the total dollar amount for debits and, separately, for credits in each file, (4) in delivery of scheduled file. Customer will be requested to rectify any discrepancies prior to Bank processing the Entries.
3. **CANCELLATION OF REVERSAL REQUESTS:** A request that an Entry be deleted, an item reversed or canceled by Bank may be given to Bank by an Authorized Representative by telephone or facsimile, provided Customer agrees to provide the written request for cancellation or reversal containing an ORIGINAL, authorized signature through the U.S. Mail or by courier from Customer within 48 hours of the telephone or facsimile request. Bank shall be relieved of liability for acting on telephone or facsimile instructions Bank reasonably believes to be those of Customer's Authorized Representative(s).
4. **RECORDING OF PHONE INSTRUCTIONS:** Bank may tape record any phone requests, calls, and other instructions. Customer agrees to indemnify and hold Bank harmless against any liability Bank may incur as a result of such tape recording.
5. **TWO-FACTOR AUTHENTICATION:** Bank may require Customer to use an identity verification token (e.g., an ActivIdentity OTP Token) to access the Services. Bank will deliver the identity verification tokens to the eTreasury Administrator designated in Exhibit A for distribution to Authorized Representatives.
6. **NEW USER VERIFICATION:** Any addition of Customer representatives that are granted access to the Services by the eTreasury Administrator will be authenticated by the Bank before the new user account is activated.
7. **OTHER SECURITY PROCEDURES AVAILABLE TO CUSTOMER:** Bank will make available to Customer other security procedures including, but not limited to, IP address filter to limit access to Services from specified Customer computers, and Time Restrict to restrict access to Services during non-business hours.
8. **AMENDMENTS TO SECURITY PROCEDURES:** Bank may, from time to time, amend the procedures in Exhibit B by 30 days notice to Customer.

EXHIBIT C  
TREASURY MANAGEMENT SERVICES, eTREASURY BANKING AGREEMENT  
RESOLUTION AUTHORIZING eTREASURY BANKING AGREEMENT

RECEIVED  
NOV 29 2010  
BY: \_\_\_\_\_

I, the undersigned, do hereby certify that I hold the title of President at Tennessee Electric Company, Inc. ("Customer"), organized under the laws of the State of Tennessee, and that at a meeting of the Board of Directors or other governing authority of the Customer duly held on November 15, 2010 at which a quorum was present and acting throughout, the following resolutions were adopted and have not been rescinded, revoked, or modified, but are still in full force and effect;

WHEREAS, from time to time, Customer wishes to request TriSummit Bank ("Bank") by written instruction, telephone, terminal communication device, internet banking, or otherwise, to originate ACH transactions to other financial institutions or to other accounts at Bank as provided in that certain Treasury Management Services, eTreasury Banking Agreement;

NOW THEREFORE, BE IT RESOLVED, that any 3 of those persons listed below (is) (are) hereby authorized to execute the Treasury Management Services, eTreasury Banking Agreement (including any exhibits thereto) and to initiate ACH transactions on behalf of the Customer:

Greg Boehling - President  
TYPED NAME AND TITLE

[Signature]  
SIGNATURE

Julie Neeley - Controller  
TYPED NAME AND TITLE

[Signature]  
SIGNATURE

Jenni Smith - Admin. Assistant  
TYPED NAME AND TITLE

[Signature]  
SIGNATURE

\_\_\_\_\_  
TYPED NAME AND TITLE

\_\_\_\_\_  
SIGNATURE

FURTHER RESOLVED, that the authority conferred hereby shall continue in full force and effect until written notice of modification or revocation of this resolution by a duly appointed official of the Customer shall be received by Bank. Bank shall be protected in acting upon any form of written notice which it in good faith believed to be genuine and what it purports to be.

I further certify that the persons referred to in the foregoing resolution have supplied specimen of their signature(s) opposite their typed names and titles.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 15 day of November, 2010.

[Signature]  
Corporate Secretary or President

By: Greg Boehling

Title: President & CEO



1700 John B Dennis Hwy • Kingsport, TN 37664  
423 247-4141

Mr. Freddie Malone  
TriSummit Bank  
862 Med Tech Parkway  
Johnson City, TN 37604

May 10, 2012


Re: Fraudulent ACH transaction

Dear Mr. Malone,

As you informed me during our telephone conversation today, May 10, 2012 at 1:46p, there was a fraudulent ACH transaction submitted by an unknown entity to which Tennessee Electric did not authorize to act on our behalf. Per standard operating procedure that requires a taped telephone call and confirmation from our company before any ACH is accepted, TriSummit's Jeremy Wright made a call on May 10<sup>th</sup> at 12:33p to Tennessee Electric's Jenni Smith to verify the validity of the ACH transaction in the amount of \$327,804. Mrs. Smith informed Mr. Wright the transaction was not authorized nor initiated by Tennessee Electric and rejected the ACH transaction.

This letter is to confirm in writing the ACH in question was not authorized by our company and per Ms. Smith's direction, and further confirmed by this letter, was rejected and all funds should be returned to our account. As such, we hereby accept no liability for funds not returned in a timely manner and expect to be reimbursed any amount TriSummit is not able to recover and any interest charges related to these funds.

Sincerely,

  
Gregory R. Boehling  
President & CEO  
Tennessee Electric Co., Inc.  
1700 John B Dennis Hwy  
Kingsport, TN 37664

cc: Jenni Smith  
Robert B. Jordan  
Chris Owens — Hunter Smith & Davis  
Ted Fields — TriSummit Bank



# Fraudulent ACH File Status

Bank	Customer	Account	Amount	Recovered	Possible Recovery	Loss	Withholding	Comments
Bank of America	Victor's Market	62006774059	\$4,672.00			\$4,672.00		Funds not available
Bank of America	Charles McGee	956017230633	\$4,680.00			\$4,680.00		Funds not available
Bank of America	Sean Gilliam	959001300075	\$7,530.00	\$7,530.00				Received 05/24/12
Bank of America	Angela Gustin	22301278243	\$9,180.00	\$9,180.00				Received partial recovery 6/25/12
Bank of America	Cheryl Peterson	237008460785	\$9,018.00	\$9,018.00				Received 05/15/12
Bank of America	Dora Bailey	36740245	\$4,980.00	\$4,980.00				Received 05/15/12
Bank of America	Derek Hornsby	7885106	\$4,000.00	\$4,000.00				Received partial recovery 6/25/12
Bank of America	Deborah Bowden	501000724837	\$4,821.00	\$4,821.00				Received partial recovery 6/25/12
Bank of America	Brian Butler	2154612940	\$5,880.00	\$2,536.26		\$3,343.74		Received partial recovery 6/25/12
Bank of America	Faith Hoffman	4870256789	\$4,911.00	\$4,911.00				Received 05/15/12
Bank of America	Justin Smith	488080780739	\$4,504.00			\$4,504.00		Funds not available
Bank of America	Jose A Moreno	4785000160	\$550.00	\$550.00				Received 06/12/12
Bank of America	Rachelle Thiers	48808080817	\$4,960.00	\$4,960.00				Funds not available
Bank of America	Marlene Charles	9520830026	\$4,890.00	\$4,890.00				Received partial recovery 6/25/12
Bank of America	Robert Sentenaro	56588330	\$4,890.00	\$4,890.00				Received 05/15/12
Bank of America	Bonnie Davis	5200830479	\$3,000.00	\$3,000.00				Funds not available
Bank of America	June Davis	1531101006	\$5,000.00	\$5,000.00				Funds not available
Bank of America	Lisa Hale	713302712417	\$4,800.00	\$4,800.00				Received 05/24/12
Bank of America	Barbara Allen	357157	\$4,756.00	\$4,756.00				Funds not available
Bank of America	Columbus Ixona	528843465	\$4,500.00	\$4,500.00				Funds not available
Bank of America	Uriel Williams	8080879066	\$4,201.00	\$4,201.00				Funds not available
Bank of America	Amber Hachens	6307470132689500	\$4,389.00	\$4,389.00				Funds not available
Bank of America	Sail Pail	182083069	\$4,587.00			\$4,587.00		Funds not available
Bank of America	Michael Staub	734050577	\$9,000.00	\$9,000.00				Funds not available
Bank of America	Edward Nuckor	84400107280120	\$4,965.00	\$4,965.00				Funds not available
Bank of America	Madeline Thomas	844001077860100	\$4,782.00			\$4,782.00		Funds not available
Bank of America	Susan Ward	45744125	\$4,975.00			\$4,975.00		Funds not available
Bank of America	Andrew Wholenard	828643643	\$7,467.67	\$7,467.67				Received partial recovery 06/29/12
Bank of America	Angela Macdonald	952080883	\$4,880.00	\$4,880.00				Funds not available
Bank of America	Henry Garcia	42024784	\$4,500.00	\$4,486.59		\$13.41		Received partial recovery 06/29/12
Bank of America	John Burnett	44967837	\$4,590.00	\$8,590.00				Funds not available
Bank of America	Joan Gahen	400884973	\$4,800.00			\$4,800.00		Funds not available
Bank of America	Kathia Morozova	451651204	\$9,000.00	\$9,000.00				Funds not available
Bank of America	Katherine Laplace	458318273	\$4,980.00	\$956.40		\$4,023.60		Received partial recovery 6/28/12
Bank of America	Ranberry King	953880810	\$4,812.00			\$4,812.00		Funds not available
Bank of America	Sara Jean Concornt	419457310	\$9,000.00	\$9,000.00				Received 05/15/12
Bank of America	Wendell Bushner	45178267	\$11,000.00			\$11,000.00		Funds not available
Bank of America	Mark Davis	10900003246585	\$4,985.00			\$4,985.00		Funds not available
Bank of America	Dennis Hassel	70057237	\$4,780.00	\$9,780.00				Received 05/17/12
Bank of America	Paul Brown	608082792	\$4,508.00			\$4,508.00		Funds not available
Bank of America	Adriana Santiago	7800737813439	\$4,501.00			\$4,501.00		Funds not available
Bank of America	Gleason Long	806515764	\$4,800.00			\$4,800.00		Funds not available
Bank of America	Janele Garcia	451844027	\$4,570.00		\$4,570.00			Bank is returning to us
Bank of America	Kenna Wright	181108207	\$4,815.00			\$4,815.00		Funds not available
Bank of America	Heather Gagliardi	1800140789479	\$4,912.00			\$4,912.00		Funds not available
Bank of America	Bradley Cox	26868155443	\$9,400.00			\$9,400.00		Received 05/15/12
Bank of America	Therese Hoang	133448715272	\$9,493.00	\$9,493.00				Received 05/15/12
Bank of America	Brian Schrader	28617325	\$5,000.00	\$5,000.00				Funds not available
Bank of America	Dorothy Edmond	140858016	\$4,789.00			\$4,789.00		Funds not available
Bank of America	Sherry Morton	141380213	\$4,780.00			\$4,780.00		Funds not available
Bank of America	Doreen Bialal	755007443	\$4,780.00			\$4,780.00		Funds not available
Bank of America	Erwin Wiley	754484785	\$7,089.00			\$7,089.00		Funds not available
Bank of America	Forrest Marshall	283548522	\$8,540.00			\$8,540.00		Received 05/15/12
Bank of America	Sarah Kender	6737811260	\$4,985.00			\$4,985.00		Funds not available
Bank of America	Lorraine Lopez	157200612	\$4,439.00	\$13,137.04	\$4,570.00	\$13,656.96	\$0.00	Received on 5/23/12
Bank of America	Total		\$327,884.08	\$130,137.04	\$4,570.00	\$190,656.96	\$0.00	



COPY

TRISUMMIT BANK  
TREASURY MANAGEMENT SERVICES  
eTREASURY BANKING AGREEMENT

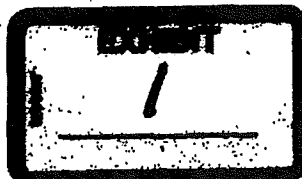
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THIS eTREASURY BANKING AGREEMENT (this "Agreement") is made and entered this 8th day of ~~October~~ November, 2010 by and between TRISUMMIT BANK (herein the "Bank"), a bank chartered under the laws of the State of Tennessee, and Tennessee Electric Company Inc. (the "Customer") a Tennessee corporation. This Agreement shall supplement the TriSummit Bank Terms and Conditions (the "Terms and Conditions") found on the Bank's website at [www.trisummitbank.com](http://www.trisummitbank.com) solely with respect to the Services (as defined below). To the extent any term or condition of this Agreement is different or inconsistent with the Terms and Conditions, the terms of this Agreement shall govern, but only to the extent such terms and conditions related to the Services.

WITNESSETH:

In consideration of the mutual promises herein contained, the parties agree as follows:

1. **General.** The treasury management services to be provided by the Bank to the Customer in connection with the Bank's online internet banking system, all related materials and documentation (collectively, "eTreasury Banking") permit the Customer to obtain and conduct certain activities with the Bank. In addition to the activities and services available to Customer under eTreasury Banking, upon execution of this Agreement, the Customer shall be able to originate and receive Automated Clearing House ("ACH") transactions, initiate wire transfers, and initiate other electronic funds transfer services, all by means of a personal computer (collectively, the "Services").
2. **Use of Services.** The Bank will enable the Customer to use the Services, and the Bank shall associate the Services with the Customer's existing eTreasury ID and eTreasury PIN, if previously assigned.
3. **Fees.** Customer agrees to pay the fees for access to and use of the Services at the rates specified in the Treasury Management Schedule of Fees, as provided to the Customer in Exhibit D. The Bank may change the fees charged to the Customer any time during the Term (as defined herein) of this Agreement. The Bank may deduct all fees due from any account of the Customer at the Bank.
4. **Completion of Exhibits.** Before accessing the Services, the Customer shall complete and execute, where appropriate, all of the information in Exhibit A (ACH Account Information & Authorized Representatives), Exhibit B (Bank Operational / Security Procedures), and Exhibit C (Resolution Authorized eTreasury Banking Agreement).
5. **Maintenance.** After installation of the Services and until the termination of this Agreement pursuant to Section 6, the Bank will assist the Customer with the use of the Services and will provide to the Customer any modifications, refinements and enhancements to the Services provided to the Bank from its service provider.
6. **Term.** This Agreement is effective from the date the Bank makes the Services available to the Customer and shall remain in force until termination. This Agreement shall be terminated (i) upon termination of the account relationship between the parties; (ii) failure of the Customer to comply with the terms and conditions of this Agreement; (iii) failure of the Customer to provide annual financial statements to the Bank as required in Section 10; (iv) failure of the Customer to meet the minimum credit standards required by the Bank; or (v) any other event that causes the Bank's service provider to be unable to provide the Services to the Bank or the Customer.
7. **Account.** The Customer will maintain with the Bank at least one demand deposit account (the "Account(s)") for the purpose of providing available funds and for deposit of received funds in connection with the use of the Services. In addition to the terms of this Agreement, the Account will be subject to a separate Depository Agreement. Unless the Bank otherwise requires the Customer to maintain collected funds, the Customer agrees to maintain sufficient available funds in the Account(s) to support any transaction initiated under the Services and to cover any fees the Customer is obligated to pay under this Agreement. If at any time there are not sufficient collected funds in the Account to cover all outstanding transactions and other payment obligations of the Customer under this Agreement, Customer agrees to immediately pay the Bank the amount of any deficiency in such outstanding transactions and obligations. The Bank may, without prior notice or demand, obtain payment from Customer for any of its obligations under this Agreement by debiting any account of the Customer at the Bank.



8. **Authorization.** The Customer will provide to the Bank properly executed authorizations from Customer, in form acceptable to the Bank, identifying by name and title the officers of the Customer who are authorized to sign this Agreement and perform the obligations of the Customer under this Agreement. From time to time hereafter, the Customer may identify other persons who are authorized to provide instructions or directions to the Bank, to sign any document or instruction on behalf of the Customer relating to this Agreement, and to take any action on behalf of the Customer; provided, however, that the Bank may rely upon, as authentic and duly authorized, any written or other communication from any person purporting to be an officer of the Customer or other representative of the Customer regardless of whether the Customer shall have provided to the Bank any evidence of such person's authority.
9. **Account Reconciliation.** All transactions which result in a debit or credit to the Account initiated by the Customer under the Services will be reflected on the Customer's monthly account statements. The Customer will notify the Bank, within 30 days after the mailing of the Account statement(s) by the Bank of any discrepancies between the Account statement(s) and the Customer's records of transactions initiated through the Services. Failure of the Customer to notify the Bank within such time period of any such discrepancies will preclude the Customer from asserting any claims for damages or other liabilities against the Bank by reason of such discrepancies.
10. **ACH Transfers.** The Customer acknowledges that the ACH feature of the Services is an alternate entry system for issuing funds transfer requests to the Automated Clearing House Network. The Customer understands that the Bank will not process ACH transaction types: IAT, TEL, and WEB. The Customer is required to complete the ACH origination information requested on Exhibit A. The Customer agrees to provide the Bank with current annual financial statements at inception of this Agreement, and each year thereafter within one hundred twenty (120) days following the Customer's fiscal year end. The Customer understands that this Agreement for ACH access is treated as a loan request and credit will be verified by the Bank at the inception of this Agreement and at least annually thereafter. The Customer authorizes the Bank to check its credit and to inquire into other records related to it. The Customer understands and acknowledges that information gathered by the Bank will be used in evaluating participation in the Services and/or other relationships with the Bank and its affiliates. Without limitation of any other provision of this Agreement, the following provisions shall govern the acceptance and liability for all ACH requests initiated in connection with the Services:
- 10.1 **Certain Definitions.** Unless otherwise defined herein, capitalized terms utilized in this Section 10 shall have the meaning provided in the National Automated Clearing House Association Operating Rules and the NACHA Guidelines (herein collectively the "Rules") in effect as amended from time to time during the term of this Agreement. The Bank agrees to supply Customer with one copy of the Rules free of charge upon request. Capitalized terms within this Section not otherwise defined in this Agreement shall have the meanings assigned to them in the Rules.
- 10.2 **Compliance With Rules.** The Customer agrees that all ACH Entries ("Entries") and all ACH Notices ("Notices") initiated under this Agreement are to be governed in all respects by the Rules and agrees to be bound by and to comply with the Rules in effect from time to time. The Customer's failure to comply with the Rules may, in the sole discretion of the Bank, be grounds for the Bank to terminate or suspend Customer's use of the Services. The Customer further agrees that the Bank has the right to audit Customer's books and records to ensure compliance with the Agreement and the Rules. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control the interpretation of this Agreement.
- 10.3 **Transmittal of Entries.** Subject to this Section 10 and pursuant to the other provisions of this Agreement and the Rules, the Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to Entries initiated by the Customer through the Services. The Customer shall transmit to the Bank those ACH Debits ("Debits") and ACH Credits ("Credits") as required in the Rules and the terms of this Agreement in accordance with the procedures outlined in the Services. The Customer will provide all information specified by the Bank from time to time, which information will include, without limitation, the account number of the account to be debited or credited (as the case may be), the amount of each such Credit or Debit, and the Receiving Depository Financial Institution (the "RDFI"). The Bank will deliver the Entries to the ACH and Credit and Debit any accounts as required by the Entries and the Rules. Written notification of cancellation received by the Customer from any Recipient will be accepted as revocation of the Authorization Agreement for preauthorized disbursements. This Agreement shall only



govern those ACH Transfer Requests initiated under this agreement for Services. A separate ACH Agreement between the Bank and the Customer shall govern any non-Services initiated request.

- 10.4 **Customer Representations and Agreements.** Customer represents to the Bank that (i) each person or entity shown as the Receiver of an Entry has authorized the Entry prior to its submission to the Bank, such authorization is and shall remain in effect until the Receiver's account is debited or credited, and the original or image equivalent of such authorizations shall be retained by Customer for two (2) years after termination or revocation of such authorizations; and (ii) each Entry transmitted to the Bank conforms to Customer's obligations under this Agreement, the Rules, operating instructions and all applicable laws and regulations. Customer agrees to be bound by the Rules in effect at the time. Customer will submit at the Bank's request any authorization forms as required by law.
- 10.5 **Pre-Notification.** Prior to the initiation of any Entries to a specified account, the Customer will (i) enter into an Authorization Agreement with the Recipient affected; and (ii) within the time specified in the Rules, send through the Bank a notice (referred to as "pre-notification"), prepared in accordance with the requirements specified by the Rules, that the Customer intends to initiate one or more Entries to a specified account. The Customer may then initiate Entries through the Bank to the specified account in accordance with this Agreement, the Authorization Agreement and the Rules after a period of 10 calendar days shall have elapsed from the time the notice was sent by ACH to the RDFI, unless within that period the Bank receives notice that the RDFI will not accept such Entries. The Bank will promptly notify the Customer of any non-acceptance of the Entries by the RDFI. If the RDFI subsequently accepts such Entries, another prenotification record will be submitted.
- 10.6 **Processing Schedule.** Provided Entries are initiated through the Services before 3:00 p.m. Eastern Time on any Bank Processing Day, or such other cutoff time as the Bank may hereafter establish, the Bank will deliver the Entries to the ACH the same day initiated through the Services. Bank Processing Day is any day except Saturday, Sunday or any holiday observed by Federal Reserve Banks and Branches. Customer will transmit or deliver Entries to the Bank using the Services not later than 48 hours prior to the Settlement Date for Credit entries, and 24 hours prior to the Settlement Date for Debit entries.
- 10.7 **Funds for Entries.** The Customer will provide immediately available funds to cover any Credit Entry initiated by it. The Customer will receive immediately available funds for any electronic Debit Entry initiated by it on the applicable Settlement Date.
- 10.8 **Settlement Limits.** The Bank may establish maximum dollar amounts for ACH file transmission ("Settlement Limits") for Customer, by giving the Customer either oral or written notification of Settlement Limit, and The Bank may refuse to transmit entries of files that are in excess of Customer's Settlement Limit. The Bank may change Customer's Settlement limit from time to time by giving Customer either oral or written notice, however, the settlement limit may be changed immediately upon giving telephone notice to the Customer in the event the Customer (i) files or has filed against it a petition in bankruptcy or other laws relating to the relief of debtors; (ii) suspends the transaction of its usual business, dissolves, or transfers to another party a significant portion of its assets; or (iii) is declared to be in default under any other obligation to the Bank.
- 10.9 **Variable Debit Entries.** In the event that a preauthorized Debit Entry varies in the amount from the Pre-notification record pursuant to the same Authorization Agreement, the Customer will mail or deliver to the Recipient, at least 10 calendar days prior to the date on which the Debit Entry is scheduled to be initiated by the Customer, a written notice of the amount and scheduled date of the Debit Entry, provided that, if the Customer informs the Recipient in the Authorization Agreement of the right to receive notice of all variable Debit Entries, the Recipient may agree in the Authorization Agreement to receive such prior written notice only when a Debit Entry does not fall within a specified range of amounts or, alternatively, only when a Debit Entry differs from the most recent Debit Entry by more than an agreed upon amount.
- 10.10 **On-Us Entries.** Except as otherwise provided herein, in the case of an Entry received for credit or debit to an account maintained by the Bank (an "On-Us Entry"), Bank shall credit or debit the Recipient's account in the amount of such Entry on the Settlement Date, provided the requirements set forth herein are otherwise met. If those requirements are not met, Bank shall use reasonable efforts to credit or debit the

Recipient's account in the amount of such Entry on the next Banking Day following the date the Entry was received by the Bank. Bank shall have the right to reject an On-Us Entry for any reason for which an Entry may be returned. In the case of an On-Us Entry, Bank will have all rights of a RDFI.

- 10.11 Notice of Provisional Credit. In the case of any Credit Entry subject to Article 4A of the Uniform Commercial Code, credit given by the RDFI to the Recipient with respect to such an Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided in Tennessee Code Annotated Section 47-4A-403(a). If such settlement or payment is not received, the RDFI shall be entitled to a refund from the Recipient of the amount credited, and the Customer shall not be deemed to have paid the Recipient the amount of the Entry.
- 10.12 Stop Payment of ACH Entries. Neither the Customer nor the Bank will have the right to adjust or stop payment of any Entry after it has been received by ACH. If either the Customer or the Bank asserts that an Entry has been erroneously initiated, a Reversal or Adjustment Entry may be initiated by the Customer or the Bank as set forth in the Rules. In addition, either the Customer or the Bank may make an oral or written request to the RDFI to stop payment of, or to adjust, an Entry which has been or is asserted by the Customer or the Bank to have been erroneously initiated, and the RDFI may elect whether to honor such request. All oral requests must be confirmed in writing in two (2) days of such oral request. The Bank will have no obligation to the Customer with respect to any such request that is not honored.
- 10.13 Debits Not As Authorized. If an unauthorized Debit Entry is confirmed in writing by the Recipient, the Recipient will have the right, unless waived in accordance with the Rules, to have the amount of such Debit Entry immediately credited to the Recipient's account by the RDFI as set forth in the Rules. The Customer's Account will be debited for the amount thereof, and if the balance in the Account is insufficient, the Customer will, on demand, provide immediately available funds to the Bank to satisfy such insufficiency.
- 10.14 Dishonored Entries. For any Debit Entry equal to or in excess of \$2,500.00 that (i) is initiated by the Customer; (ii) is not posted to a Recipient's account by the RDFI; (iii) is returned to the Bank; and (iv) the Bank has notice of, the Bank will promptly notify the Customer of such Return Entry. Except as provided above, the Bank will have no obligation with respect to such Return Entry. Notice of all other Return Entries less than \$2,500.00 will be provided to the Customer in the Customer's normal monthly statement of the Account.
- 10.15 Reversing Entries. If the Customer discovers that any Entry it has initiated was in error, the Customer will notify the Bank immediately. The Bank will then notify the Customer as to whether the transmission of the File or the Entry to the ACH has been initiated. The Customer shall then have the sole right and responsibility to initiate a Reversal of the Entry in accordance with the Rules.
- 10.16 Remakes of Rejected Entries or Files. If an Entry or file is rejected by the ACH due to improper processing or unexcused delays by the Bank, the Bank will Remake such Entry or File and send it to the ACH. If such Entry or File was rejected as a result of improper processing or the supplying of incomplete information by the Customer, the Customer will Remake the Entry or File, and the Bank will send such Entry to the ACH. The Customer will retain and provide the Bank on request all information necessary to Remake any File or Entry for three days after midnight of the Settlement Date.
- 10.17 Customer's Agents. In the event Customer authorized any third party, such as a payroll processing service, to perform obligations of services to Customer hereunder, the Bank shall have no additional liability to Customer occasioned by said agency so long as the Bank acted in accordance with instructions hereunder. Customer agrees to assume responsibility for any errors or wrongdoing by such third party or any of its employees.
- 10.18 Compensation. Subject to the foregoing limitations, any damages or other compensation due Customer resulting from the Bank's performance hereunder shall be limited to interest on the funds at issue at the "federal funds rate" at the close of business on each day the error or delay remains uncorrected; provided, however, that if the Bank is unable to recover funds at issue as a result of the Bank's negligence, the Bank shall be liable for Customer's actual loss, not to exceed the amount of the funds that the Bank is unable to

recover, plus interest. In no event shall the Bank be liable to Customer for indirect, consequential, special, punitive or exemplary damages.

- 10.19 Indemnification. In consideration for the Bank's making available to Customer the Services hereunder, Customer agrees to indemnify and hold the Bank harmless from and against all damages, costs and expenses (including reasonable attorneys' fees and costs of investigation) arising from or in any manner related to entries processed or related actions taken back by the Bank in accordance with certain instructions provided by Customer, including but not limited to, actions taken by the Bank to cancel entries (i) any decision by the Bank not to effect a transfer for any specified reason herein; (ii) a breach of Customer's representations; (iii) acts or omissions of Customer's agents; (iv) or otherwise, so long as the Bank acts in compliance with this Agreement.
- 10.20 Force Majeure. The Bank shall not be responsible for any loss, damage, liability or claim arising, directly or indirectly, from any error, delay, or failure in performance of any of its obligations hereunder which is caused by fire or other natural disaster, strike, civil unrest, any inoperability of communications facilities or any other circumstances beyond the reasonable control of the Bank.
11. Wire Transfers. The Customer acknowledges that the Wire Transfer ("Wire Transfer") feature of the Services is an alternate entry system for issuing wire transfer orders between the Customer and the Bank. The following provisions shall govern the acceptance and liability for only those Wire Transfer requests initiated through the Services:
- 11.1 Initiating Transfers. The Customer may direct the Bank to transfer funds under the Services ("Funds Transfer Request") by initiating such requests through the eTreasury Banking system.
- 11.2 Honoring Transfers. The Bank will be under no obligation to honor, either in whole or in part, any Funds Transfer Request: (a) which exceeds the Customer's collected available balance in the Customer's account from which the Customer wishes to transfer funds; (b) which is not in accordance with any other written agreements between the Customer and the Bank; (c) which is not in accordance with the current published Depository Agreement of the Bank; or (d) which is not in accordance with this Agreement. Notwithstanding the foregoing, the Bank, in its sole discretion and without any obligation to do so, may choose to honor a Funds Transfer Request which may be drawn on uncollected funds or which will result in an overdraft in the Customer's account with the Bank, and in such instance, the Customer will be liable to the Bank for the amount of such uncollected funds drawn upon or such overdraft plus any additional charges and expenses as provided by the current Depository Agreement and Pricing Schedule affecting such account, including reasonable attorney's fees and costs of collection, if applicable. The Bank's election to honor any such Funds Transfer Request shall not affect the Bank's right to refuse to honor any one or more subsequent or other Funds Transfer Requests.
- 11.3 Execution. The Bank will execute any properly authorized Funds Transfer Requests, if accepted, on the date transmitted under the Services, provided such requests are initiated through the Services before 3:00 p.m. Eastern Time, or such other cutoff time as the Bank may hereafter establish ("Cutoff Time"), on a business day for the Bank, the Funds Transfer System and the receiving bank. "Funds Transfer System" for the purpose of this Agreement will mean the wire transfer network through which a Funds Transfer Request will be transmitted to the receiving bank. Funds Transfer Requests initiated after the Cutoff Time will be executed on the next business day for the Bank, the Funds Transfer System, and the receiving bank. In executing any Funds Transfer Request, the Bank may utilize such means of transmission and such Funds Transfer System as the Bank in its discretion selects. The Bank may also select the order in which to execute multiple pending Funds Transfer Requests.
- 11.4 Authorization to Charge Account. Upon receipt of any Funds Transfer Request initiated under the Services, the Customer authorizes the Bank to charge the Customer's accounts in the amount of the Funds Transfer Request, plus any applicable fees and charges as provided in the Depository Agreement and this contract.
- 11.5 Transfer Tracing. If the Customer requests, the Bank will endeavor to trace any Funds Transfer Request executed by the Bank on behalf of the Customer in order to verify that the beneficiary received the transferred funds. In order to perform the trace, the Customer will provide the Bank with such

21. Entire Agreement; Severability. This Agreement together with all exhibits, schedules and attachments hereto, the Terms and Conditions, the Depository Agreement and the Rules (as incorporated herein) represent the entire agreement and understanding of the parties. If any portion of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect. In the event of any inconsistency or conflict between the terms of this Agreement and any present or future statute, regulation or governmental policy to which the Bank is subject and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and the Bank shall incur no liability to the Customer as a result of such violation or amendment.
22. Governing Law. This Agreement is governed by the laws of the State of Tennessee (except to the extent Federal law governs the copyrights) and the Rules.
23. Amendment; Modification. From time to time, the Bank may amend any of the terms and conditions contained in this Agreement. Such amendments shall become effective upon receipt of notice by Customer or such later date as may be stated in the Bank's notice to Customer. Any use of Services provided hereunder after the date Customer receives notice of amendment shall constitute acceptance of the terms of said amendment. Customer may submit amendments authorizing the addition or deletion of authorized eTreasury Administrators, ACH abilities or wire transfers. Such amendments shall be effective after the Bank has received and had a reasonable opportunity to act upon them.
24. Signatures. By signing this Agreement, the undersigned acknowledges that they have read and accepted the terms and conditions of this Agreement, and agree to be bound by its terms and also gives authorization to Bank to investigate credit of said company for purposes of the Services.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

BANK: TRISUMMIT BANK

By: Freddie H. Malone

Name: FREDDIE H. MALONE

Title: VICE PRESIDENT

CUSTOMER: Tennessee Electric Company Inc.

By: Gregory R. Boehling

Name: GREGORY R. BOEHLING

Title: PRESIDENT

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BY: .....

**EXHIBIT A**  
**TREASURY MANAGEMENT SERVICES, eTREASURY BANKING AGREEMENT**  
**ACH ACCOUNT INFORMATION & AUTHORIZED REPRESENTATIVES**

The following corporate data base information is required for ACH account and user setup in accordance with the Agreement between Customer and Bank.

Customer Name: Tennessee Electric Company Inc.

Customer Address: 1700 John B. Dennis Hwy., Kingsport, TN 37664

Telephone Number (With Area Code): (423) 247-4141

Account Number(s): 1000020113, 1000020121,  
1000023794

Tax ID: 62-0645369

Purpose for ACH origination: Payroll and Vendor Payments  
(Bank will only process ACH transaction types: PPD, CCD, and CTX.)

**CREDIT ORIENTATION:**

Maximum transaction amount per file \$ 350,000

How often will files be transmitted: Weekly

Maximum individual transaction amount \$ 350,000

**DEBIT ORIENTATION:**

Maximum transaction amount per file \$ \_\_\_\_\_ How often will files be transmitted \_\_\_\_\_

Maximum individual transaction amount \$ \_\_\_\_\_

(Debit files may require documentation from above customer evidencing consent from their customer to debit the checking account involved)

The Authorized Representatives listed below are empowered to submit and/ or make corrections to monetary ACH ENTRIES and WIRE TRANSFERS. This list SUPERSEDES all previously submitted authorized representative documentation. CURRENT USERS NOT ON THIS LIST WILL BE DELETED. Customer must submit a new Exhibit A whenever Authorized Representatives are added or deleted. Two (2) or more Authorized Representatives must be listed; eTreasury Administrator, as defined in Section 12, should be listed first.

**AUTHORIZED REPRESENTATIVE NAME(s)**  
(List in calling priority order)

**AUTHORIZED REPRESENTATIVE SIGNATURE(s)**

<b>eTREASURY ADMINISTRATOR</b> Name: (Type or Print) <u>Julie N. Kirby</u> <u>423-247-4141</u> <u>423-914-1656</u> (Work Phone Number) (After Hours Phone Number)	<u>Julie N. Kirby</u>
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Name: (Type or Print) <u>Craig B. Blevins</u> <u>423-247-4141</u> <u>423-917-2350</u> (Work Phone Number) (After Hours Phone Number)	<u>Craig B. Blevins</u>
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Name: (Type or Print) <u>Jenni Smith</u> <u>423-247-4141</u> <u>423-946-0462</u> (Work Phone Number) (After Hours Phone Number)	<u>Jenni Smith</u>
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Name: (Type or Print) _____ _____ (Work Phone Number) (After Hours Phone Number)	_____
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EXHIBIT B  
TREASURY MANAGEMENT SERVICES, eTREASURY BANKING AGREEMENT  
BANK OPERATIONAL/SECURITY PROCEDURES

1. **ACCEPTANCE/REJECTION OF ENTRIES:** All ACH input files containing Entries must be set up and approved by Bank before being processed by Bank's ACH processing system. Bank will accept and process a NACHA formatted input file which passes Bank's validation process and will reject a file which does not pass Bank's validation process. Customer agrees that a file which passes Bank's validation process and all Entries thereon shall be deemed to be authorized by Customer.
2. **VERIFICATION OF FILE AUTHENTICITY AND ACCURACY:** Bank will call Customer when a file has been rejected for any reason specified in paragraph 1 hereof. Calls will be made to an Authorized Representative ("Authorized Representative") listed on Exhibit A when there is a discrepancy (1) in the transmittal signature, (2) in the total number of items, (3) in the total dollar amount for debits and, separately, for credits in each file, (4) in delivery of scheduled file. Customer will be requested to rectify any discrepancies prior to Bank processing the Entries.
3. **CANCELLATION OF REVERSAL REQUESTS:** A request that an Entry be deleted, an item reversed or canceled by Bank may be given to Bank by an Authorized Representative by telephone or facsimile, provided Customer agrees to provide the written request for cancellation or reversal containing an ORIGINAL authorized signature through the U.S. Mail or by courier from Customer within 48 hours of the telephone or facsimile request. Bank shall be relieved of liability for acting on telephone or facsimile instructions Bank reasonably believes to be those of Customer's Authorized Representative(s).
4. **RECORDING OF PHONE INSTRUCTIONS:** Bank may tape record any phone requests, calls, and other instructions. Customer agrees to indemnify and hold Bank harmless against any liability Bank may incur as a result of such tape recording.
5. **TWO-FACTOR AUTHENTICATION:** Bank may require Customer to use an identity verification token (e.g., an Actividentity OTP Token) to access the Services. Bank will deliver the identity verification tokens to the eTreasury Administrator designated in Exhibit A for distribution to Authorized Representatives.
6. **NEW USER VERIFICATION:** Any addition of Customer representatives that are granted access to the Services by the eTreasury Administrator will be authenticated by the Bank before the new user account is activated.
7. **OTHER SECURITY PROCEDURES AVAILABLE TO CUSTOMER:** Bank will make available to Customer other security procedures including, but not limited to, IP address filter to limit access to Services from specified Customer computers, and Time Restrict to restrict access to Services during non-business hours.
8. **AMENDMENTS TO SECURITY PROCEDURES:** Bank may, from time to time, amend the procedures in Exhibit B by 30 days notice to Customer.

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EXHIBIT C  
TREASURY MANAGEMENT SERVICES, eTREASURY BANKING AGREEMENT  
RESOLUTION AUTHORIZING eTREASURY BANKING AGREEMENT

I, the undersigned, do hereby certify that I hold the title of President at Tennessee Electric Company, Inc. ("Customer"), organized under the laws of the State of Tennessee, and that at a meeting of the Board of Directors or other governing authority of the Customer duly held on November 15, 2010 at which a quorum was present and acting throughout, the following resolutions were adopted and have not been rescinded, revoked, or modified, but are still in full force and effect;

WHEREAS, from time to time, Customer wishes to request TriSummit Bank ("Bank") by written instruction, telephone, terminal communication device, internet banking, or otherwise, to originate ACH transactions to other financial institutions or to other accounts at Bank as provided in that certain Treasury Management Services, eTreasury Banking Agreement;

NOW THEREFORE, BE IT RESOLVED, that any 3 of those persons listed below (is) (are) hereby authorized to execute the Treasury Management Services, eTreasury Banking Agreement (including any exhibits thereto) and to initiate ACH transactions on behalf of the Customer:

Greg Boehling - President  
TYPED NAME AND TITLE

[Signature]  
SIGNATURE

Julie Neeley - Controller  
TYPED NAME AND TITLE

[Signature]  
SIGNATURE

Jenni Smith - Admin. Assistant  
TYPED NAME AND TITLE

[Signature]  
SIGNATURE

\_\_\_\_\_  
TYPED NAME AND TITLE

\_\_\_\_\_  
SIGNATURE

FURTHER RESOLVED, that the authority conferred hereby shall continue in full force and effect until written notice of modification or revocation of this resolution by a duly appointed official of the Customer shall be received by Bank. Bank shall be protected in acting upon any form of written notice which it in good faith believed to be genuine and what it purports to be.

I further certify that the persons referred to in the foregoing resolution have supplied specimen of their signature(s) opposite their typed names and titles.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 15 day of November, 2010.

[Signature]  
Corporate Secretary or President

By: Greg Boehling

Title: President & CEO

## Fraudulent ACH File Status

Bank	Customer	Account	Amount	Recovered	Possible Recovery	Loss	Waiting	Comments
Andrews Fed CU	Victoria Marshall	82008774059	\$4,672.00			\$4,672.00		Funds not available
Bancorp	Cicero McGee	9590171203533	\$4,691.00			\$4,691.00		Funds not available
Bancorp	Sean Gilham	9590201301075	\$7,530.00	\$7,530.00				Received 05/14/12
Bank of America	Angela Gaskins	223012758363	\$9,180.00	\$203.00		\$8,977.00		Received partial recovery 6/25/12
Bank of America	Cheryl Pestana	2370005656785	\$9,018.00	\$9,018.00				Received 05/15/12
Bank of America	Dana Bailey	367742045	\$4,930.00	\$4,930.00				Received 05/15/12
Bank of America	David Normatov	78895166	\$5,000.00	\$4,955.66		\$44.34		Received partial recovery 6/25/12
Bank of America	Deborah Bowden	501000724937	\$4,921.00	\$4,895.77		\$25.23		Received partial recovery 6/25/12
Bank of America	Eldon Blazier	2154613940	\$5,980.00	\$2,536.26		\$3,443.74		Received partial recovery 6/25/12
Bank of America	Faith Huffman	4870256789	\$4,911.00	\$4,911.00				Received 05/15/12
Bank of America	Jaclyn Beehn	488038738759	\$4,914.00			\$4,914.00		Funds not available
Bank of America	Jose A Mateo	4703008360	\$550.00	\$550.00				Received 06/12/12
Bank of America	Kelsha Flores	488039093817	\$5,960.00			\$5,960.00		Funds not available
Bank of America	Mariene Charles	9522063026	\$4,890.00	\$4,843.69		\$46.31		Received partial recovery 6/25/12
Bankatlantic	Roberto Santamaria	58508530	\$8,930.00	\$8,930.00				Received 05/15/12
BB&T	Bonnie Davis	5200832479	\$3,000.00			\$3,000.00		Funds not available
Capital One	June Davis	1351181806	\$5,000.00			\$5,000.00		Funds not available
Capital One	Lisa Hake	733102712417	\$6,800.00			\$6,800.00		Funds not available
Citadel Federal	Barbara Allen	357157	\$4,756.00	\$4,756.00				Received 05/14/12
Citibank	Columbus Koroma	926843485	\$4,920.00			\$4,920.00		Funds not available
City of West Virginia	Ulku Williams	8006879996	\$4,201.00			\$4,201.00		Funds not available
Columbus Bank	Amanda Hutchens	65074701326689800	\$4,389.00	\$4,389.00				Received 05/14/12
Comerica Bank	Sall Pail	1852853959	\$4,687.00			\$4,687.00		Funds not available
Fifth Third Bank	Michael Staub	7342605727	\$9,000.00			\$9,000.00		Funds not available
First California	Edwina Rucker	8440012073280120	\$4,985.00			\$4,985.00		Funds not available
First California	Melina Thomas	8440012077360100	\$4,782.00			\$4,782.00		Funds not available
Hancock Bank	Susan Ward	45749425	\$4,975.00			\$4,975.00		Funds not available
JP Morgan Chase	Andrew Wroblewski	828643643	\$7,650.00	\$7,447.67		\$202.33		Received partial recovery 06/29/12
JP Morgan Chase	Angela Roskopf	937400893	\$4,890.00			\$4,890.00		Funds not available
JP Morgan Chase	Henry Garrido	420274784	\$4,500.00	\$4,486.59		\$13.41		Received partial recovery 06/29/12
JP Morgan Chase	John Burnett	449497937	\$8,590.00	\$8,590.00				Received 05/15/12
JP Morgan Chase	Josue Galvan	400894973	\$4,400.00			\$4,400.00		Funds not available
JP Morgan Chase	Karina Morozova	451695204	\$9,000.00			\$9,000.00		Funds not available
JP Morgan Chase	Katarina Jaojoco	456318273	\$4,990.00	\$958.40		\$4,031.60		Received partial recovery 6/28/12
JP Morgan Chase	Kimberly King	955881610	\$4,812.00			\$4,812.00		Funds not available
JP Morgan Chase	Sara Jean Corcoran	419457510	\$9,000.00	\$9,000.00				Received 05/15/12
JP Morgan Chase	Vladislav Kushnerov	451708247	\$11,000.00			\$11,000.00		Funds not available
Kinecta Fed CU	Kieth Davis	10300032268585	\$4,985.00			\$4,985.00		Funds not available
Legacy Bank	Dennis Hassell	70057237	\$9,780.00	\$9,780.00				Received 05/17/12
Midfirst Bank	Paul Brown	606062792	\$4,508.00			\$4,508.00		Funds not available
NetSpend	Adriana Santiago	70007576143439	\$8,501.00			\$8,501.00		Funds not available
PNC Bank	Glenn L Long	8045115764	\$4,801.00			\$4,801.00		Funds not available
RBS Citizens	Jarele Gaines	4519640627	\$4,970.00		\$4,970.00			Bank is returning to us
Regions Bank	Kevin Wright	163109107	\$4,815.00			\$4,815.00		Funds not available
SunTrust Bank	Heather Quigley	1000140789479	\$4,912.00			\$4,912.00		Funds not available
US Bank	Braden Cox	103681515443	\$9,600.00			\$9,600.00		Funds not available
US Bank	Thanh Hoang	153498715272	\$9,493.00	\$9,493.00				Received 05/16/12
USAA Federal Sav	Brian Schrader	28617525	\$5,000.00	\$5,000.00				Received 05/15/12
USAA Federal Sav	Donna Eckhard	140859616	\$4,789.00			\$4,789.00		Funds not available
USAA Federal Sav	Sherry Morton	141300213	\$4,790.00			\$4,790.00		Funds not available
Wells Fargo	Dennis Bridal	7556607443	\$4,799.00			\$4,799.00		Funds not available
Wells Fargo	Fawn Wiley	7544354785	\$7,699.00			\$7,699.00		Funds not available
Wells Fargo	Ronald Marshall	2935489522	\$8,540.00	\$8,540.00				Received 05/16/12
Wells Fargo	Sean Kardar	6737911260	\$4,985.00			\$4,985.00		Funds not available
West Bank	Laverne Foster	1372003832	\$4,433.00	\$4,433.00				Received on 5/23/12
<b>Total</b>			<b>\$327,804.00</b>	<b>\$130,177.04</b>	<b>\$4,970.00</b>	<b>\$192,656.96</b>	<b>\$0.00</b>	

