

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

**DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO
(I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING
PRACTICES AND BUSINESS FORMS, (II) MAINTAIN
INVESTMENT PRACTICES AND (III) CONTINUE USING CREDIT CARDS**

The Diocese of Rochester the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor" or "Diocese"), hereby moves this Court (this "Motion") for entry of interim and final orders, substantially in the forms attached hereto as *Exhibits A* and *B*, respectively, authorizing the Debtor to (i) continue using its existing bank accounts, banking practices and business forms, (ii) maintain investment practices, and (iii) continue to use certain credit cards. In support of this Motion, the Debtor respectfully represents as follows:

BACKGROUND

1. On September 12, 2019 (the "Petition Date") the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is authorized to continue to operate its business and remain in possession of its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested or appointed in this chapter 11 case, and as of the date of this Motion, no official committee has been appointed or designated.

2. Information regarding the Diocese's history, business operations, operational structure, facts supporting this Motion and the events leading up to the chapter 11 case can be

found in the *Affidavit of Daniel J. Condon in Support of Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Lisa M. Passero in Support of Chapter 11 Petition and First Day Pleadings*, each of which was filed on the Petition Date and is incorporated herein by reference.

JURISDICTION

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and rule-based predicates for the relief sought in this Motion are sections 105(a), 363(c), 345(b), 364(a), 503(b)(1), 1107(a) and 1108 of title 11 of the United States Code (11 U.S.C. 101 *et seq.*, the “Bankruptcy Code”), Rules 4001(c), 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(A) & (B) of the Local Bankruptcy Rules for the Western District of New York (the “Local Rules”).

RELIEF REQUESTED

5. By this motion the Debtor seeks authorization to: (i) continue to use, with the same account numbers, all of the existing Bank Accounts (as defined below), (ii) treat the Bank Accounts of the Debtor as debtor-in-possession accounts; (iii) continue to use, in their present form, all correspondence and business forms (including, without limitation, letterhead, purchase orders and invoices) and other documents relating to its Bank Accounts existing immediately before the Petition Date, without reference to its status as a debtor-in-possession; (iv) maintain investment practices, and (v) continue use of certain credit cards, all of which represent a departure from certain operating guidelines established by the Office of the U.S. Trustee for Region 2, which includes the Western District of New York (the “U.S. Trustee”).

6. The Debtor further requests that the Court authorize its Banks (as defined below) to continue to maintain, service and administer the Bank Accounts, including charging any undisputed, outstanding service charges owed to the Banks on the Petition Date, and that each of the Banks be authorized and directed to receive, process, honor, and pay (i) all post-petition checks, drafts, wire transfers and other electronic payment requests (to the extent of funds on deposit) together with (ii) any prepetition checks or payment requests, but solely to the extent they relate to payments or obligations approved by separate order of this Court.

I. Existing Accounts and Practices.

7. In the ordinary course of business, the Debtor utilizes several bank accounts at a limited number of banking institutions to receive, hold and distribute funds to pay various obligations.

A. Bank Accounts and Banking Practices.

8. The Diocese employs a cash management system in its ordinary course of business to manage its operations. The Diocese's primary banking relationship is with M&T Bank, where it maintains its operating account (the "Operating Account"), as well as an internet banking account ("Internet Account") used to accept credit card donations, an account to manage payments to and from Siena Catholic Academy (the "Siena Account"), and an account to manage the Debtor's charitable gift annuity program (the "CGA Account", collectively the "M&T Accounts"). The Debtor also utilizes a lockbox service with M&T Bank. Lockbox receipts are directly deposited into the Operating Account as they are received. The Debtor has two additional bank accounts, one at JPMorgan Chase Bank, N.A. (the "Chase Account") and one at Key Bank, N.A. (the "Key Account"), each of which is used to make payments associated with

the Protected Self Insurance Program (together the “Self-Insurance Accounts” and collectively with the M&T Accounts “Bank Accounts”).¹

9. *The Operating Account.* The Operating Account is the Debtor’s primary account, from which it pays operating and payroll expenses and holds the majority of its operating cash. Among the various categories of sub accounts in the Operating Account are unrestricted funds, funds allocated to schools, PSIP funds, donor restricted funds, and second collections which are required to be remitted to the United States Conference of Catholic Bishops.

10. *Internet Account.* The Internet Account is a function of the Debtor’s Internet banking capabilities used to accept credit cards. The Internet Banking Account maintains a zero balance at the end of each day when the funds contained therein are swept to the Operating Account.

11. *Siena Account.* The Siena Account at M&T Bank is used by the Debtor to hold non-tuition deposits and to reimburse the Debtor for expenses such as school lunches and field trips.

12. *CGA Account and CGA Investment Account.* The Diocese maintains a charitable gift annuity program pursuant to N.Y. Insurance Law § 1110, which allows the Diocese to make annuity agreements with donors under which the Debtor receives gifts in exchange for its agreement to make annuity payments to donors. The Debtor maintains an investment account at Wilmington Trust, (the “CGA Investment Account”) for the purpose of investing and holding donated funds and funds from which annuity payments are made in accordance with the requirements of Insurance Law § 1110. The purpose of the CGA Account, which maintains a zero balance, is to receive transfers of annuity payment funds from the CGA Investment Account

¹ A listing of each of the Bank Accounts, together with the last four digits of each account number, is attached to this Motion as *Exhibit C*.

and disburse those annuity payments to annuitants. The Debtor moves funds from the CGA Investment Account to the CGA Checking Account quarterly to cover disbursements from that account.

13. *The Chase Account.* The Debtor maintains the Chase Account to hold and pay out funds under its PSIP that are paid through its third-party administrator, Waldorf Servicing, LLC. The Debtor is seeking to continue its self-insurance program through a separate motion and seeks to continue the use of this account in connection with that application. The Debtor moves funds into the Chase Account from the Operating Account to cover disbursements from that account.

14. *The Key Account.* The Debtor maintains the Key Account for the purpose of making payments on its legacy insurance claims, which are primarily related to Workers' Compensation. Funds received for payment of legacy Workers' Compensation claims are kept in the Operating Account and transferred to the Key Account to cover payment of checks when written. The Debtor moves funds into the Key Account from the Operating Account as needed to cover disbursements from that account. The Debtor is seeking to continue its self-insurance program through a separate motion and seeks to continue the use of this account in connection with that application.

B. Credit Accounts.

15. In addition to its bank accounts, the Debtor has an irrevocable standby letter of credit (the "Standby Letter of Credit") from M&T in the amount of \$844,000, in favor of the Workers' Compensation Board. The Standby Letter of Credit secures the Debtor's obligations to its legacy Workers' Compensation claimants.

16. Additionally, the Debtor has a credit card account with M&T bank covering 36 individual credit cards (the “M&T Credit Cards”) used by its employees, the balance of which has traditionally been paid in full on a monthly basis in the ordinary course of business. The M&T Credit Cards have differing credit limits (ranging from \$2,000 to \$10,000). The aggregate credit limit for the M&T Credit Cards is \$100,000. Finally, the Debtor maintains two credit accounts with Wegmans, one for the Debtor’s use and one specifically for use by Siena Catholic Academy (together, the “Wegmans Credit Accounts”). Both the M&T Credit Cards and the Wegmans Credit Accounts are unsecured. The Debtor wishes to continue using its existing M&T Credit Cards and Wegmans Credit Accounts in the ordinary course of business.

C. Investment Accounts and Practices.

17. In the ordinary course of business, the Debtor invests its funds with a non-debtor entity, The Communis Fund of the Diocese of Rochester, Inc. (“Communis”). The Debtor also invests certain charitable gift annuity funds in the CGA Investment Account. As discussed herein, the Diocese of Rochester respectfully requests authorization to maintain its investments in both the Communis and the CGA Investment Account.

18. *Communis*. Communis is a not-for-profit corporation formed in 2005 to maintain investments on behalf of the Debtor and various separately incorporated Catholic entities. Communis seeks to maximize investment returns through economies of scale obtained by pooling separately identifiable investments. Communis provides for administration and protection of temporal goods, as required by Canon Law. Communis is exempted from certain federal and state securities laws pursuant to the Philanthropy Protection Act of 1995. *See, e.g.*, 15 U.S.C. §§ 77c(a)(4), 78c(a)(12)(A)(v), 80a-3(c)(10), 80a-3a. The participants in Communis include: the Diocese, the Priests’ Retirement Plan, Lay Employees’ Retirement Plan, various

parishes, Catholic Charities of the Diocese of Rochester and St. Bernard's School of Theology & Ministry. As of June 30, 2019 Communis had approximately \$57,669,749 in restricted and unrestricted Diocesan funds under management. Investments are overseen by the Communis board.

19. *CGA Investment Account.* The Debtor maintains the CGA Investment Account at Wilmington Trust with an approximate balance of \$304,000 as of June 30, 2019 in accordance with Section 1110 of the New York Insurance Law. The CGA Investment Account supports 11 charitable gift annuities. The Debtor pays out approximately \$35,000 annually to annuitants.

20. Investments in the CGA Investment Account are overseen by Federated Clover Investment Advisors in consultation with from the Debtor.

II. Business Forms.

21. In the ordinary course of business, the Debtor uses multiple check types associated with the Bank Accounts. Additionally, the Debtor uses a variety of correspondence and business forms including, but not limited to, letterhead, purchase orders and invoices. To minimize the expense and disruption to the Debtor's estate associated with developing and/or purchasing entirely new forms, the delay in conducting business prior to obtaining such forms and the confusion of employees, vendors and suppliers, the Debtor seeks authority to continue to use all correspondence and business forms as such forms existed immediately prior to the Petition Date, without reference therein to the Debtor's status as debtor-in-possession. The Debtor will use its reasonable best efforts to mark "debtor-in-possession" on business forms as soon as reasonably practicable following the Petition Date.

22. The Debtor respectfully requests a waiver of the requirement to close prepetition Bank Accounts and open new post-petition accounts. Closing bank accounts would cause

enormous disruption to the Debtor's operations and fulfillment of its mission. As described above, the Debtor's bank accounts are central to the cash management system the Debtor needs to maintain collections and disbursements in the ordinary course of its business. If the Debtor is required to open new accounts as of the Petition Date, it would unnecessarily distract the Debtor's key business office personnel in an office that is already operating at maximum capacity. In addition, changing the bank accounts would also cause disruptions in essential deposit activity, disrupting the mainstream of revenue that the Diocese receives from the Catholic Ministries Appeal, therefore causing harm to the Debtor's operations. As a result, the Debtor respectfully submits it is appropriate to maintain its prepetition Bank Accounts.

23. The Diocese further requests that it be authorized to continue to use all correspondence and existing business forms (including, but not limited to, letterhead, purchase orders, envelopes, charitable solicitation material, and checks), without reference to the Debtor's status as a debtor-in-possession. It is anticipated that the Diocese's chapter 11 case will receive widespread publicity so entities doing business with the Diocese will most probably know that the Diocese is involved in a bankruptcy proceeding. If the Diocese is required to change its current business forms, the new forms may cause confusion to the Diocesan employees, vendors and donors. The Debtor also believes that it would be costly and disruptive to cease using all existing forms and to purchase new stationary and business forms.

BASIS FOR RELIEF

I. The Court Should Approve the Debtor's Continued Use of the Bank Accounts, Forms and Banking Practices.

A. The Debtor's Banking Practices and Accounts are Essential to the Debtor's Ongoing Operations and Restructuring Efforts.

24. The Debtor has a long standing relationship with M&T Bank and a long established practice with respect to its use of its Bank Accounts. The Diocese respectfully submits that the continued use of its Bank Accounts is essential to the efficient continuation of the Debtor's operations and reorganization to ensure as many resources as possible are available to pay creditors' claims.

25. Courts have recognized that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993); *see also In re Cent. Kan. Crude, L.L.C.*, No. 09-13798, 2009 Bankr. LEXIS 5448, at *7 (Bankr. D. Kan. Dec. 3, 2009) (holding that continuation of the debtor's cash management system "without interruption is vital to the efficient and economic administration of this Chapter 11 case"); *In re US Airways, Inc.*, Case No. 04-13819 (Bankr. E.D. Va. Sept. 14, 2004) [Docket No. 105]. As a result, courts have concluded that the requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." *In re Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor "to administer more efficiently and effectively its financial operations and assets").

26. The continued use of the Operating Account, in conjunction with the other Bank Accounts will facilitate the Debtor's transition into this chapter 11 case by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in payment of post-petition debts. The Debtor respectfully submits that parties in interest will not be harmed by the continued maintenance of its Bank Accounts because, with the assistance of professionals, the Debtor has implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date.

B. Strict Adherence to the U.S. Trustee's Guidelines Would Cause Substantial Disruption to Debtor's Operations.

27. The U.S. Trustee has promulgated Operating Guidelines and Financial Reporting Requirements for Debtors in Possession and Trustees (the "U.S. Trustee Guidelines")² which purport to require, among other things, that unless the Court orders otherwise, a debtor to: (a) close all existing bank accounts and open new debtor-in-possession accounts; (b) maintain a separate debtor-in-possession account for cash collateral; and (c) obtain checks that bear the designation "debtor in possession." The Diocese respectfully requests that in order to preserve the Debtor's value as a going concern, it should be relieved of strict adherence to the U.S. Trustee Guidelines.

28. One of the purposes of the U.S. Trustee Guidelines is to provide a clear line of demarcation between prepetition and post-petition claims and payments so as to help prevent inadvertent payment of prepetition claims, by voiding checks drawn before the Petition Date. As discussed below, the Debtor will ensure through clear record keeping a separation between pre and post-petition financial activity.

² See https://www.justice.gov/ust-regions-r02/file/region_2_operating_guidelines.pdf/download.

29. The Debtor submits that maintaining the existing Bank Accounts will facilitate the Debtor's ability to collect, deposit and account for receipts and pay post-petition bills. Closing the Bank Accounts would require the Debtor to open new accounts and arrange alternative procedures for electronic and manual transfers to and from the Bank Accounts. The result would be a disruption of processing payments, and similarly would disrupt wire transfers, payroll obligations, and post-petition obligations to vendors and other creditors.

30. The Debtor also requests authority to preserve various reporting and accounting mechanisms, such as signatory authorizations and accounting systems central to the maintenance of the Bank Accounts. The interruption or termination of such reporting and accounting mechanisms would undermine the utility of the Bank Accounts. In accordance with existing practices, the Debtor will maintain strict records of all receipts and disbursements from the Bank Accounts during the pendency of this case and will ensure that its records properly distinguish between pre-petition and post-petition transactions and report accordingly to the U.S. Trustee.

31. The Debtor also respectfully submits that maintenance of the Bank Accounts will avoid delays in payments to administrative creditors, ensure a smooth transition into chapter 11, and facilitate the Debtor's efforts to complete this case rapidly and successfully. Thus, the Debtor respectfully requests that its existing Bank Accounts be deemed debtor-in-possession accounts and that the maintenance and continued use of those accounts, in the same manner and with the same account numbers, styles and document forms as those employed during the prepetition period, be authorized subject only to a prohibition against honoring prepetition checks without specific authorization from this Court.

32. M&T Bank, JPMorgan Chase Bank and Key Bank, N.A. are all on the U.S. Trustee's list of authorized depositories.³ Section 345(b) of the Bankruptcy Code permits the use of non-FDIC insured accounts, typically with the requirement that such institutions post a bond, but the bonding requirement may be waived by the Court and should be waived here.

33. One of the issues the Debtor faces in opening new accounts is that the parties that direct electronic deposits to the Debtor's lockbox would have to be instructed to redirect payments, and as a result of delay in making changes to electronic payment protocols and human error, funds may not make their way to the Debtor or may not arrive in a timely manner. One example is the bi-monthly ACHs that process student tuition for Siena Catholic Academy, which funds are paid directly to the Debtor's Operating Account.

34. Courts in the Western District of New York and Region 2 have waived the U.S. Trustee Guidelines to allow the continued use of cash management and prepetition bank accounts employed in the ordinary course of the debtor's prepetition business. *See, e.g., In re Eight Zero Eight of WNY, Inc.*, Case No. 19-10281 (CLB) (Bankr. W.D.N.Y. Apr. 1, 2019) [Docket No.33]; *In re East Pattern & Model Corp.*, Case No. 18-21309 (PRW) (Bankr. W.D.N.Y. Jan. 25, 2019) [Docket No. 45]; *In re Tonawanda Coke Corporation*, Case No. 18-12156 (MJK) (Bankr. W.D.N.Y. Oct. 19, 2018) [Docket No. 29]; *In re Kallstrand, LLC*, Case No. 17-20008 (PRW) (Bankr. W.D.N.Y. Mar 2, 2017) [Docket No. 23]; *In re Flour City Bagels, LLC*, Case No. 16-20213 (PRW) (Bankr. W.D.N.Y. Mar. 3, 2016) [Docket No. 37]. Likewise, similar relief has been granted in other diocesan bankruptcies. *See, e.g., In re Archbishop of Agana*, Case No. 19-00010 (Bankr. D. Guam Jan. 25, 2019) [Docket No. 52]; *In re Diocese of Winona-Rochester*, Case No. 18-33707 (Bankr. D. Minn. Dec. 7, 2018) [Docket. No. 47]; *In re*

³ See https://www.justice.gov/ust-regions-r02/file/wdny_dep.pdf/download available at <https://www.justice.gov/ust-regions-r02/region-2-chapter-11-4>.

Roman Catholic Church of the Archdiocese of Santa Fe, Case No. 18-13027 (Bankr. D.N.M. Dec. 4, 2018) [Docket No. 30].

35. Strict adherence to the U.S. Trustee Guidelines in this chapter 11 case would significantly disrupt the ordinary financial operations of the Debtor, reducing efficiencies and causing unnecessary expense, while providing little benefit to creditors. The Debtor respectfully requests that the Court waive the requirements of the U.S. Trustee Guidelines in this chapter 11 case as requested herein.

C. The Debtor Should be Granted Authority to Use Existing Business Forms and Checks Until they are Depleted.

36. To minimize expenses and disruption to the chapter 11 estate, the Debtor respectfully requests authority to continue to use all correspondence and business forms (including letterhead, purchase orders, invoices and the like) as such forms were in existence immediately before the Petition Date, without reference to the Debtor's status as debtor-in-possession. The Debtor also requests authorization to use the existing check stock without the "debtor in possession" label for checks that it manually writes until such check stock runs out. As soon as practicable after the Petition Date, the Debtor will include "debtor in possession" on the checks it prints electronically. Upon depletion of the Debtor's check stock and/or business forms stock, the Debtor will obtain new check stock and/or business forms stock reflecting its status as a debtor-in-possession.

37. By virtue of the nature and scope of the Debtor's operations and the number of suppliers of goods and services with whom the Debtor transacts on a regular basis, it is important that the Debtor be permitted to continue to use its existing checks and other business forms without alteration or change, except as requested herein. Indeed, because it would appear that parties doing business with the Debtor will be aware of the Debtor's status as debtor-in-

possession as a result of the widely publicized nature of this chapter 11 case as well as the communications and notice of commencement of this chapter 11 case the Debtor intends to distribute to such parties, changing business forms is unnecessary and would be unduly burdensome.

D. The Debtor Should Be Authorized to Continue Using Debit, Wire and ACH Payments.

38. The Debtor requests further relief from adherence to the U.S. Trustee Guidelines to the extent doing so would require that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement. Considering the nature of the Debtor's operations, in certain instances, it may be necessary for the Debtor to conduct transactions by debit, wire or ACH Payments and other similar methods, as discussed above. The Debtor maintains accurate records and will be able to properly account for any such transactions. The Debtor, therefore, requests that its Banks be authorized to continue to pay, honor and execute any and all debit instructions, wires and ACH Payments issued and drawn on the Bank Accounts after the Petition Date.

E. The Debtor Should Be Authorized to Honor Certain Prepetition Obligations Related to its Bank Accounts.

39. In accordance with its contractual arrangements with the Banks, the Debtor incurs periodic service charges and other fees, costs, charges and expenses to the Banks in connection with the maintenance of the Bank Accounts (collectively, the "Service Charges"). Payment of the prepetition Service Charges is in the best interests of the Debtor and all parties in interest in this chapter 11 case, as it will prevent any disruption to the Bank Accounts. Further, because the Banks have setoff rights for the Service Charges, payment of prepetition Service Charges should not alter the rights of unsecured creditors in this chapter 11 case. Accordingly, by this Motion,

the Debtor also seeks authority to pay, at the Debtor's sole discretion, the prepetition Service Charges, if any.

II. The Court Should Authorize the Debtor to Continue to Invest Through Communis and Maintain a Charitable Gift Annuity Account through the CGA Investment Account.

40. The Debtor respectfully requests authority to continue to invest with Communis and the CGA Investment Account.

A. Cause Exists for Waiving the Investment and Deposit Guidelines of Section 345 of the Bankruptcy Code with Respect to Communis.

41. By investing in Communis, the Debtor will be able to earn interest on excess cash, as contemplated by section 345(a) of the Bankruptcy Code, without incurring the administrative costs and compliance risk associated with managing a portfolio of direct purchases of U.S. Government Securities.

42. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of money of estates, such as cash, as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). While section 345(b) of the Bankruptcy Code generally requires that, with respect to investments other than investments "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," the estate must require a bond in favor of the United States secured by the undertaking of a U.S. Trustee-approved corporate surety, it allows the court to dispense with this limitation "for cause." 11 U.S.C. § 345(b)(2).

43. In determining whether the "for cause" standard has been met, the Court should consider a "totality of the circumstances," utilizing the following factors:

- a. the sophistication of the debtor's business;

- b. the size of the debtor's business operations;
- c. the amount of the investments involved;
- d. the bank ratings (Moody's and Standard & Poor) of the financial institutions where the debtor-in-possession funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor's own business of insuring the safety of the funds;
- g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. the benefit to the debtor;
- i. the harm, if any, to the estate; and
- j. the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

In re Serv. Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999); *see also In re Ditech Holding Corp.*, Case No. 19-10412 (JLG), 2019 Bankr. LEXIS 1892, at *14 (Bankr. S.D.N.Y. June 24, 2019).

44. Here, the Debtor submits that "cause" exists under section 345(b) of the Bankruptcy Code to allow the Diocese to continue its Communis Funds investments. Communis (i) invests conservatively; (ii) has a very low expense ratio; (iii) is overseen by an independent board of reputable community members, sophisticated business people and representatives of the Debtor; and (iv) provides benefits to other non-debtor entities including parishes and other separately incorporated entities. Moreover, the Diocese's investment in Communis is subject to certain limitations on withdrawals and a substantial portion of those Diocesan funds represent restricted donations which must be used in accordance with donative intent and therefore cannot be used to satisfy general creditor claims. Therefore, requiring the Debtor to limit its investments to U.S. Government Securities, would be administratively difficult, potentially

expensive, and would be of limited utility in achieving section 345(b)'s purpose of protecting funds for the benefit of the Debtor's creditors. To do so, the Debtor would need to (a) arrange for the withdrawal of its investment in Communis, (b) hire new personnel or a third-party investment manager to oversee such investments and (c) establish (i) a new account to trade the securities and (ii) associated controls and procedures. Communis is a large, sophisticated pooled investment fund, and its financial management team, which sits on the board of Communis has determined that investment in Communis will benefit the Debtor and the other investor participants in Communis. The Debtor respectfully submits that it should be allowed to continue to invest through Communis.

45. Courts in New York have granted this type of relief. *See, e.g., Décor Holdings, Inc., et al.*, Case No. 19-71020 (Bankr. E.D.N.Y. Feb. 27, 2019) [Docket No. 84]; *Toisa Limited, et al.*, Case No. 17-10184 (Bankr. S.D.N.Y. Feb. 1, 2017) [Docket No. 17]; *In re The Great Atlantic & Pacific Tea Company, Inc.*, Case No. 10-24549 (Bankr. S.D.N.Y. Feb. 4, 2011) [Docket No. 733]; *In re Reader's Digest Ass'n, Inc.*, Case No. 09-23529 (Bankr. S.D.N.Y. Nov. 23, 2009) [Docket No. 306]; *In re ION Media Networks, Inc.*, Case No. 09-13125 (Bankr. S.D.N.Y. May 21, 2009) [Docket No. 35]. The Debtor respectfully submits that the present circumstances warrant similar relief in this chapter 11 case.

B. To Comply with State Law, the Debtor Should be Allowed to Maintain a Diversified Portfolio in the CGA Investment Account without a Bond.

46. The funds invested in the CGA Investment Account are specifically earmarked and used to fund charitable gift annuity obligations of the Debtor. As noted above, this account exists and is operated pursuant to N.Y. Insurance Law § 1110 which imposes strict investment requirements. The statute requires the Debtor to maintain a separate charitable gift annuity investment account and the funds deposited must "be invested in accordance with specific

investor standards N.Y. Ins. Law §1110. Importantly, the statute further provides that funds in the account “shall not be applied to pay its debts and obligations or for any purpose except the aforesaid annuity benefits.” *Id.* The funds in the CGA Investment Account are invested in a diversified manner consistent with the prudent investor standard. The Debtor respectfully submits that as the funds may not be used to pay creditors other than annuity holders, and are in large part donor designated for the benefit of entities other than the Debtor, the strictures of 11 U.S.C. § 345(b) should not apply.

III. The Court Should Authorize the Debtor to Continue to Use Unsecured Credit.

47. The Debtor and M&T Bank are parties to a Visa Charge Card Agreement for Commercial Card, Corporate Card, and Purchasing Card Accounts (the “Credit Card Agreement”) for a credit line with an aggregate charge limit of \$100,000. A copy of the Credit Card Agreement is attached hereto as *Exhibit D*.

48. The Debtor has issued 36 M&T Credit Cards to key staff and personnel. As part of its reorganization, the Debtor intends to reduce the number of issued credit cards to 14, and to limit them to one or two key employees in each department. Continued use of the M&T Credit Cards is essential to the Debtor’s operations so staff do not have to be issued cash or check books to carry out basic transactions on the Debtor’s behalf.

49. As of the Petition Date, the M&T Credit Card line of credit had zero balance due. The Debtor proposes to continue use of the credit cards subject to M&T Bank’s consent and the terms and conditions of the Credit Card Agreement and the Proposed Interim Order and Proposed Final Order.

50. The proposed interim order and proposed final order provide that (a) nothing therein modifies or amends the Credit Card Agreement, (b) M&T Bank shall have the right to

terminate the credit cards in accordance with the terms of the Credit Card Agreement, (c) M&T Bank shall have the right to renew or not renew the Credit Card Agreement in accordance with its terms, and (d) each of M&T Bank and the Debtor reserve their rights with respect to all other issues in this case.

51. The Diocese wishes to continue using its Wegmans Credit Accounts as well, subject to Wegmans' agreement to extend unsecured credit post-petition on the terms set forth in the Wegmans Credit Account Agreement. The accounts are used to purchase food for Diocesan events and meetings and provide the added benefit of allowing the Diocese to take advantage of its tax exempt status without having to bring a tax exemption form to the store for each purchase. The combined credit limit on both the Wegmans Credit Accounts is \$4,500.

52. The Debtor seeks to continue using its pre-petition M&T Credit Cards and Wegmans Credit Accounts as opposed to obtaining new unsecured credit in the ordinary course of business under section 364(a) of the Bankruptcy Code. The Debtor paid off its existing M&T credit card through August 31, 2019 and Wegmans Credit Accounts through July 31, 2019.

BANKRUPTCY RULE 6003 IS SATISFIED

53. Bankruptcy Rule 6003 provides that a bankruptcy court may approve a motion to “use, sell, [or] lease” property of the estate, or to “pay all or part of a claim that arose before the filing of the petition,” prior to twenty-one (21) days after the filing of the petition, “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Immediate and irreparable harm exists where, as is the case here, the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t. Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in the context of Bankruptcy Rule 4001). The Debtor

submits that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor, as described herein, and that cause exists under Bankruptcy Rule 6003 for the Court to grant immediate relief.

WAIVER OF NOTICE AND STAY REQUIREMENTS

54. Given the nature of the essential and critical relief requested herein, the Debtor respectfully requests a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a), and (b) the 14-day stay under Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

RESERVATION OF RIGHTS

55. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, nor does it waive its rights under the Code of Canon law, or any applicable State or Federal law.

NOTICE

56. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims, (iii) all required governmental agencies; (iv) the Debtor's Banks and (v) Communis. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that further notice of this Motion is neither required nor necessary.

NO PRIOR REQUEST

57. The Debtor has not previously sought the relief requested herein from this or any court.

WHEREFORE, the Debtor respectfully requests that the Court enter interim and final orders in substantially the form attached hereto as *Exhibit A* and *B* respectively, granting the relief requested in the motion and granting such other and further relief as the Court deems just and proper.

Dated: September 12, 2019

BOND, SCHOENECK & KING, PLLC

By: Stephen A. Donato

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*Proposed Attorneys for the Diocese of
Rochester*

Exhibit A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO (I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING PRACTICES AND BUSINESS FORMS (II) MAINTAIN INVESTMENT PRACTICES, AND (III) CONTINUE TO USE CREDIT CARDS

Upon the motion of the Diocese of Rochester (the “Debtor”), for entry of interim and final orders authorizing, but not directing, the Debtor to (i) continue using its existing bank accounts, banking practices, and business forms, (ii) maintain investment practices and, (iii) continue using credit cards, and granting related relief (the “Motion”)¹; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. A final hearing on the Motion shall be held on October __, 2019 at _____:_____ a.m./p.m. prevailing Eastern Time. (the "Final Hearing"). Any objections or responses to the Motion shall be filed on or before _____, 2019 at 4:00 p.m. and served on parties in interest as required by the Local Rules. This Interim Order, and all acts taken in furtherance of or reliance upon this Interim Order, shall be effective notwithstanding the filing of an objection.

3. The Debtor is authorized to continue using its banking practices as described in the Motion.

4. The Debtor is authorized to: (a) continue to use, with the same account numbers, all of its bank accounts in existence as of the Petition Date as described in the Motion (collectively, the "Bank Accounts"); (b) use, in their present form, all correspondence and business forms including, but not limited to, letterhead, purchase orders and invoices), as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtor's status as debtor in possession; provided, however, that upon depletion of the Debtor's correspondence and business forms, the Debtor will obtain new business forms reflecting its status as debtor in possession; and provided, further, however, that as soon as practicable after the Petition Date, the Debtor will obtain a "debtor in possession" stamp to mark its checks or note its status as "debtor in possession" on checks that are electronically printed; and (c) treat the Bank Accounts for all purposes as debtor in possession accounts, including specifically taking such steps as may be necessary to delineate and separately account for prepetition and postpetition transactions.

5. All banks at which the Bank Accounts are maintained (the "Banks") are authorized to continue to service and administer the Bank Accounts as accounts of the Debtor as

debtor in possession, without interruption and in the ordinary course, and to receive, process, honor and pay (i) any and all post-petition checks, drafts, wire transfers and other electronic payment requests issued and drawn on the Bank Accounts (to the extent of funds on deposit), together with (ii) any prepetition checks or payment requests, but solely to the extent they relate to payments or obligations approved by separate order of this Court.

6. The Debtor is authorized to direct the Banks, and the Banks are authorized to rely on the Debtor's direction, to pay obligations in accordance with this Order or any separate order of this Court. The Banks shall not be liable to any party on account of following the Debtor's instructions or representations as to whether any order of this Court has authorized the honoring of any prepetition checks, drafts, wires or transfers.

7. Except as otherwise provided in this Order or any separate order of this Court, all Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn or otherwise issued prior to the Petition Date. As soon as practicable after the entry of this Order, the Debtor shall serve a copy of this Order on those Banks that make disbursements pursuant to the Debtor's banking practices.

8. The Banks are authorized to charge and the Debtor is authorized to pay or honor, both prepetition and post-petition service and other fees, costs, charges and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Debtor.

9. The Debtor is authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; provided, however, that the Debtor may only open a new bank account with a banking institution

designated as an authorized depository under the U.S. Trustee Guidelines (an “Authorized Depository”), unless first obtaining the consent of the U.S. Trustee.

10. Without prejudice to the Debtor’s right to seek authorization to continue its prepetition investment practices on a permanent basis at the Final Hearing on the Motion, the Debtor is authorized, but not directed, to continue its prepetition investment practices through the date which is 45 days from the date of entry of this Interim Order. Without in any way limiting the foregoing, notwithstanding section 345 of the Bankruptcy Code and without prejudice to the Debtor’s seeking an order from this Court determining that some or all of its investments are not property of the estate, (a) the Debtor is authorized, but not required, to invest excess cash at (i) Communis Fund of the Diocese of Rochester, Inc., without the need for a bond, or (ii) in any Authorized Depository and (b) the Debtor is authorized, but not required, to continue to invest its charitable gift annuity funds at Wilmington Trust or another bank, without the requirement of a bond or investment exclusively in securities insured or guaranteed by the United States or backed by the full faith and credit of the United States.

11. Any payment from a Bank Account at the request of the Debtor made by any of the Banks on or prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to settle), or any instruments issued by any of the Banks on behalf of the Debtor pursuant to a “midnight deadline” or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from such Bank Account prepetition.

12. All accounts opened by the Debtor following the Petition Date at any bank shall be subject to the rights and obligations of this Order and treated as Bank Accounts hereunder.

13. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

14. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Debtor's rights with respect to such matters are expressly reserved.

15. Nothing in the Motion or this Order, nor the Debtor's payment of any amounts pursuant to this Order, if any, shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver or impairment of the Debtor's rights to contest the validity or amount of any claim on any grounds, (iii) a promise to pay any claim, or (iv) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

16. The requirements set forth in Local Rule 9013-1(A) and (B) are satisfied.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

18. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

19. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise. Any subsequent modification or vacatur of this Order shall not invalidate any action taken pursuant to this Order prior to the modification or vacatur of the Order.

20. The Debtor is authorized and empowered to take all actions it determines are necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

21. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: September __, 2019
Rochester, New York

Hon. Paul R. Warren
United States Bankruptcy Judge

Exhibit B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

FINAL ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO (I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING PRACTICES AND BUSINESS FORMS (II) MAINTAIN INVESTMENT PRACTICES, AND (III) CONTINUE TO USE CREDIT CARDS

Upon the motion of the Diocese of Rochester (the “Debtor”), for entry of interim and final orders authorizing, but not directing, the Debtor to (i) continue using its existing bank accounts, banking practices, and business forms, (ii) maintain investment practices and, (iii) continue using credit cards, and granting related relief (the “Motion”)¹; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and an interim order on the Motion having been entered on _____, 2019; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. All Objections to the Motion or the relief requested therein that have not been made, withdrawn, waived or settled, and all reservations of rights included therein, are overruled and disallowed on the merits.

3. The Debtor is authorized to continue using its banking practices as described in the Motion.

4. The Debtor is authorized to: (a) continue to use, with the same account numbers, all of its bank accounts in existence as of the Petition Date as described in the Motion (collectively, the "Bank Accounts"); (b) use, in their present form, all correspondence and business forms including, but not limited to, letterhead, purchase orders and invoices), as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtor's status as debtor in possession; provided, however, that upon depletion of the Debtor's correspondence and business forms, the Debtor will obtain new business forms reflecting its status as debtor in possession; and provided, further, however, that as soon as practicable after the Petition Date, the Debtor will obtain a "debtor in possession" stamp to mark its checks or note its status as "debtor in possession" on checks that are electronically printed; and (c) treat the Bank Accounts for all purposes as debtor in possession accounts, including specifically taking such steps as may be necessary to delineate and separately account for prepetition and postpetition transactions.

5. All banks at which the Bank Accounts are maintained (the "Banks") are authorized to continue to service and administer the Bank Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process, honor and pay (i) any and all post-petition checks, drafts, wire transfers and other electronic payment requests issued and drawn on the Bank Accounts (to the extent of funds on deposit),

together with (ii) any prepetition checks or payment requests, but solely to the extent they relate to payments or obligations approved by separate order of this Court.

6. The Debtor is authorized to direct the Banks, and the Banks are authorized to rely on the Debtor's direction, to pay obligations in accordance with this Order or any separate order of this Court. The Banks shall not be liable to any party on account of following the Debtor's instructions or representations as to whether any order of this Court has authorized the honoring of any prepetition checks, drafts, wires or transfers.

7. Except as otherwise provided in this Order or any separate order of this Court, all Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn or otherwise issued prior to the Petition Date. As soon as practicable after the entry of this Order, the Debtor shall serve a copy of this Order on those Banks that make disbursements pursuant to the Debtor's banking practices.

8. The Banks are authorized to charge and the Debtor is authorized to pay or honor, both prepetition and post-petition service and other fees, costs, charges and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Debtor.

9. The Debtor is authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; provided, however, that the Debtor may only open a new bank account with a banking institution designated as an authorized depository under the U.S. Trustee Guidelines (an "Authorized Depository"), unless first obtaining the consent of the U.S. Trustee.

10. The Debtor is authorized, but not directed, to continue its prepetition investment practices. Without in any way limiting the foregoing, notwithstanding section 345 of

the Bankruptcy Code and without prejudice to the Debtor's seeking an order from this Court determining that some or all of its investments are not property of the estate, (a) the Debtor is authorized, but not required, to invest excess cash at (i) Communis Fund of the Diocese of Rochester, Inc., without the need for a bond, or (ii) in any Authorized Depository and (b) the Debtor is authorized, but not required, to continue to invest its charitable gift annuity funds at Wilmington Trust or another bank, without the requirement of a bond or investment exclusively in securities insured or guaranteed by the United States or backed by the full faith and credit of the United States.

11. Any payment from a Bank Account at the request of the Debtor made by any of the Banks on or prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to settle), or any instruments issued by any of the Banks on behalf of the Debtor pursuant to a "midnight deadline" or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from such Bank Account prepetition.

12. All accounts opened by the Debtor following the Petition Date at any bank shall be subject to the rights and obligations of this Order and treated as Bank Accounts hereunder.

13. Subject to the consent of M&T Bank, the Debtor may continue to use M&T Bank credit cards in place pre-petition pursuant to the Visa Charge Card Agreement for Commercial Card, Corporate Card, and Purchasing Card Accounts (the "Credit Card Agreement"), and (a) nothing in this Order modifies or amends the Credit Card Agreement, (b) M&T Bank shall have the right to terminate the credit cards in accordance with the terms of the Credit Card Agreement, (c) M&T Bank shall have the right to renew or not renew the Credit

Card Agreement in accordance with its terms, and (d) each of M&T Bank and the Debtor reserve their rights with respect to all other issues in this case.

14. Subject to the consent of Wegmans, the Debtor may continue to use the Wegmans Credit Accounts.

15. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

16. To the extent the implementation of this Order does not comply with the applicable requirements under section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines, or otherwise, such requirements under section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines, or otherwise are waived.

17. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Debtor's rights with respect to such matters are expressly reserved.

18. Nothing in the Motion or this Order, nor the Debtor's payment of any amounts pursuant to this Order, if any, shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver or impairment of the Debtor's rights to contest the validity or amount of any claim on any grounds, (iii) a promise to pay any claim, or (iv) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

19. The requirements set forth in Local Rule 9013-1(A) and (B) are satisfied.

20. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise. Any subsequent modification or

vacatur of this Order shall not invalidate any action taken pursuant to this Order prior to the modification or vacatur of the Order.

21. The Debtor is authorized and empowered to take all actions it determines are necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

22. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: October __, 2019
Rochester, New York

Hon. Paul R. Warren
United States Bankruptcy Judge

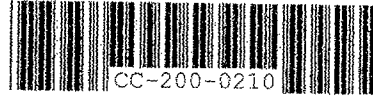
Exhibit C

Bank Accounts

Bank	Address	Account Designation	Last 4 Digits of Account Number
M&T Bank	255 East Avenue Rochester, NY 14624	Operating Account	2953
M&T Bank	255 East Avenue Rochester, NY 14624	Deposit Account	2979
M&T Bank	255 East Avenue Rochester, NY 14624	Siena Account	2987
M&T Bank	255 East Avenue Rochester, NY 14624	CGA Account	8564
Key Bank, N.A.	P.O. Box 93855 Cleveland, OH 44101	Key Bank Account	9944
JPMorgan Chase, N.A.	P.O. Box 182051 Columbus, OH 43218	Chase Account	6645

Exhibit D

Credit Card Agreement



VISA® CHARGE CARD AGREEMENT
FOR COMMERCIAL CARD, CORPORATE CARD, AND PURCHASING CARD ACCOUNTS

I. Definitions. In this Agreement:

"Account" means the Client's Visa® Corporate Card, Purchasing Card or Commercial Card account with the Bank, including any and all Virtual Account(s) (defined below) opened pursuant to the Client's Visa® Charge Card Application or Client's request as amended from time to time ("Application") and subject to the terms of this Agreement and the Application.

"Account Balance" means the Client's total indebtedness to the Bank under this Agreement at any time, including without limitation Purchases, Loans, Late Charges, Over-the-Limit Charges, Annual Membership Fees, Loan Service Charges, Processing Fees, Statement Fees, Report Fees, Returned Item Fees, the Bank's reasonable attorneys' fees and collections costs incurred in enforcing this Agreement and all of the fees which appear on the Fee Schedule. No periodic rate is used to compute any finance charge for such Account.

"Affiliate" means any parent, subsidiary, or other legal person under common control with a party; "common control" means 50% or more common ownership.

"Aggregate Statement" means a periodic statement of Client's Account aggregating all of the Client's Cardholder Account periodic statements, with such enhancements as Client may subscribe to from time to time.

"Application" is defined in the definition of Account above.

"Annual Billing Account Fee" means an annual fee which is charged for maintaining the Client's master billing and collateral account, which includes data on all Cardholders of Client, and an additional annual fee which is charged for each subsidiary or division billing account specified by the Client as indicated on the Fee Schedule.

"Annual Membership Fee" means an annual fee as specified on the Fee Schedule for each Card issued to a Cardholder at Client's request, in the amount agreed upon separately by the Bank and the Client.

"Bank" means M&T Bank, National Association, 54 Main Street, Oakfield, New York 14125, Attention: Visa® Commercial, Corporate/Purchasing Card Manager.

"Billing Period" means the accounting period covered by an Aggregate Statement, for a monthly, semi-monthly or other cycle as offered by the Bank and elected by the Client.

"Card" means a Visa® Corporate, Commercial, or Purchasing charge card issued by the Bank, as a member of Visa® USA, Inc. or Visa® International, Inc. to the Client for use for the Client's Account by a Cardholder. A Generic Card in the form of a Card or a Virtual Account (as defined in Section 28 below) is deemed to be a Card whenever such term is used in this Agreement, Application and any related schedules, exhibits, amendments, riders or other documents.

"Cardholder" means a principal, officer, partner or employee of Client to whom a Card is issued at Client's request and authorization.

"Card Program Administrator" means the representative designated by Client as the primary contact for the Bank, or that representative's deputy, to design and administer Client's card program and, without limitation, to communicate credit requests, design card authorization levels, determine report needs, designate and terminate Cardholders, receive and be responsible for distribution of Cards to Cardholders, and receive and pay statements.

"Cardholder Account" means all indebtedness outstanding at any time for Loans and Purchases made by a Cardholder or other authorized employee of Client designated by a Cardholder and recorded by the Bank by means of a unique account number assigned to or embossed on a Card requested by Client.

"Client" means the entity or sole proprietor in the name of which a Visa® Corporate Card, Visa® Commercial Card, Visa® Purchasing Card Account, or Virtual Account has been opened with the Bank and includes each Affiliate of the Client.

"Convenience Check" means any Visa® direct loan check issued by the Bank for use with Client's Account.

M&T Bank, N.A. Internal Use

Alt/Neg

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Visa Charge Card Agreement (Notary) - 02/10



"Commercial Card" means a business-purpose corporate charge card issued under an Account for which all amounts outstanding are due and payable in full at the end of each Billing Period, intended primarily as a means to fund travel and entertainment expenses, procurement, and fleet related expenses.

"Corporate Card" means a business-purpose charge card issued under an Account for which all amounts outstanding are due and payable in full at the end of each Billing Period, intended primarily as a means to fund travel and entertainment expenses, including Loans and Purchases.

"Fee Schedule" means the Bank's current fee schedule to this Agreement as amended from time to time by the Bank upon 30 days' prior written notice.

"Generic Card" has the meaning ascribed to it in Section 28 of this Agreement.

"Guarantor" means any principal of Client or other guarantor or endorser of Client's indebtedness to the Bank; and upon the first use of Client's Account with M&T Bank, N.A., any continuing guaranty of Client's indebtedness to Manufacturers and Traders Trust Company from time to time shall apply to guarantee repayment of any and all of Client's indebtedness to M&T Bank, N.A., from time to time including without limitation Expenses pursuant to Section 22 below, the benefits of each such guaranty in connection with Visa® Corporate, Commercial or Purchasing Card indebtedness having been assigned to M&T Bank, N.A. by Manufacturers and Traders Trust Company.

"Implementation Fee" means a one-time charge for the establishment of the Account and the production of any documents necessary to establish the account or the Bank's security interest in any collateral which may be pledged to secure the same.

"Issuer ISA" has the meaning ascribed to it in Section 10.1 hereof.

"Late Charge" or "Delinquency Charge" means the Bank's current delinquency charge as disclosed in Section 24 below, or on the Fee Schedule, which charge shall be added to any amount due and payable under any periodic statement, which amount is not received by the Bank on the statement due date or by such other due date as may be permitted by the Bank.

"Loan" means a loan of money from the Bank, obtained by any use of the Account other than for Purchases, including cash, credit obtained by presentment of a Convenience Check, or by presenting a Card at a bank participating in the Visa® program or at electronic banking facilities honoring the Card.

"Loan Service Charge" means the Bank's service charge for each Loan advanced under the Account in the amount disclosed on the Fee Schedule.

"Logo Digitization Fee" means a one-time fee for customizing all Cards issued with the Client's name and logo.

"Maximum Credit Limit" means the maximum amount which the Client is authorized by the Bank to borrow under this Agreement and the Client's application. The Client may also designate a Maximum Credit Limit for each Cardholder authorized by the Client.

"Maximum Legal Rate" has the meaning ascribed to it in Section 24 hereof.

"Over-the-Limit Charge" means the charge imposed by the Bank for any Billing Period in which the Client's Account Balance exceeds the Maximum Credit Limit or any Cardholder Account Balance exceeds its specified Cardholder Maximum Credit Limit.

"Payment Account" means the Client's demand deposit account at Manufacturers and Traders Trust Company or other bank (the "Depository Bank") designated by the Client on Client's application for the Cards, or on a separate form, as the account to be debited for all amounts which become due under this Agreement. The Client hereby authorizes the Bank to obtain payment in full for all amounts which become due hereunder by debit entry to the Payment Account through the automated clearing house (ACH) system. The Client hereby grants to the Bank a security interest and right of offset in all amounts from time to time on deposit in the Payment Account and in the Client's other property held by the Depository Bank from time to time, as partial security for payment of all amounts which become due under this Agreement. The Bank reserves its right to require, as a condition for continuing to extend credit under this Agreement, that the Payment Account be subdivided so as to create a segregated, pledged account within the sole control of the Bank, and funded by the Client to maintain a balance equal to the Maximum Credit Limit or such greater amount specified by the Bank as sufficient to secure repayment of all amounts which might become due under this Agreement.

"Processing Fee" means a charge in the amount disclosed on the Fee Schedule, compensating the Bank for the cost of processing each payment made by check or other payment item rather than by automatic deduction from a demand deposit account.

"Purchase" means a purchase or lease of goods or services from a merchant participating in the Visa® program.

"**Purchasing Card**" means a corporate charge card issued under an Account for which all amounts outstanding become due and payable in full at the end of each Billing Period, intended primarily for procurement.

"**Report Fee**" means the fee for each periodic report of Card expenditures ordered by the Client, in the amount disclosed on the Fee Schedule.

"**Returned Item Fee**" means the fee imposed by the Bank, as specified on the Fee Schedule, for any check or other payment item tendered hereunder which is returned unpaid for insufficient funds or for any other reason.

"**Transaction Fee**" means a fee which will be billed monthly and will be charged on each transaction based on the Client's estimated purchases. The fee per transaction is specified on the Fee Schedule.

"**Transmission Fee**" means the monthly fee as specified on the Fee Schedule assessed to each Client who elects to receive one or more reports by electronic transmission either in addition to any reports which are sent by mail or in lieu of such reports.

"**Virtual Account**" means a Visa[®] account provided with no corresponding plastic and intended primarily for Electronic Commerce Transactions as such term is defined in the Visa[®] USA Inc. Operating Regulations as the same may be amended from time to time.

"**Visa[®] Rules**" has the meaning ascribed to it in Section 11 hereof.

2. **Access.** Credit may be obtained by the Client under the Account through the use of a Card (including a Virtual Account) or a Convenience Check by a Cardholder. A Card may be used to pay for Purchases or, if so determined by the Client, to obtain Loans.
3. **Cardholder Cards.** From time to time the Client may request the Bank to issue a Card to the Client for a Cardholder. Any such request shall contain such Cardholder's name and address, as well as a specimen signature or other security data as requested by the Bank, and Client's directions regarding PIN issuance and any other Cardholder options which may become available under this Agreement. Upon receiving any such request, the Bank may issue to the Client for such Cardholder a Card having the characteristics requested by the Client, or the Bank may refuse to issue a Card to the Client for such Cardholder on such terms. The Bank will notify the Client by telephone, or facsimile, or as otherwise required by law, of each approval or disapproval of a Card requested by Client.
4. **Limits.**
 1. The Client shall not at any time permit its actual outstanding Account Balance or any Cardholder's account balance to exceed the respective Maximum Credit Limit approved by the Bank. Even though for certain Clients, the sum of the approved Cardholder Maximum Credit Limits might exceed the respective Client's Maximum Credit Limit, Client's aggregate indebtedness under the Account shall not exceed the Client's Maximum Credit Limit.
 2. **Revising the Maximum Credit Limit.** Bank, at its sole discretion, shall have the right to revise the Maximum Credit Limit on an Account. Bank shall provide contemporaneous notice to Client of any decrease in the Maximum Credit Limit. In the event that the decrease results in a revised Maximum Credit Limit that is lower than the current amount due on the Account, Client shall have ten (10) days to make a payment to Bank on the Account that is sufficient to reduce the outstanding amount due for such Account to an amount that is less than the revised Maximum Credit Limit. Bank may revise Maximum Credit Limits and/or limit spending activity on any Account for which fraudulent activity is suspected.
 3. In the event a reduction of the Maximum Credit Limit materially and adversely affects Client's utilization of a Card under this Agreement, Client may terminate this Agreement upon ten (10) days prior written notice to Bank.
5. **Excess Borrowings; Over-the-Limit Fees.** The Bank may, at its sole discretion, but need not, permit the aggregate indebtedness incurred to exceed the Client's or any Cardholder's Maximum Credit Limit. The Client shall be liable to the Bank for any Purchases or Loans exceeding such a Maximum Credit Limit. The Client shall, upon demand by the Bank, pay to the Bank the amount by which the Account Balance exceeds the Maximum Credit Limit. In addition, if the Client's Account Balance or any Cardholder's Account Balance exceeds the applicable Maximum Credit Limit at any time during any Billing Period, Client shall be liable for an Over-the-Limit Charge for the Billing Period for each such Account.
6. **Business Purpose Cards.** The Client warrants and represents to the Bank that all Cards issued by the Bank to the Client and Client's Cardholders shall be used solely for business purposes.
7. **Issuance of Cards.** Each Card issued by the Bank to the Client for a Cardholder shall be embossed with the name of the Client, the name of such Cardholder, a card number different from that assigned to any other Card and a date of expiration two years after the end of the month during which the Account is opened or renewed. The Card shall be mailed or delivered by the Bank to the Card Program Administrator for delivery to such Cardholder, or to the Cardholder directly, as the Client shall elect. Information concerning the use by Cardholder of the Card, including details regarding each individual transaction, may be furnished by Bank to the Client. Information concerning reimbursement received, employment status, and location may be furnished by Client to Bank. The Client shall be responsible for developing and distributing employee Cardholder agreements, guidelines, directions, disclosures, and other materials deemed appropriate by the Client.

8. **Fee Per Card.** The Client shall pay to the Bank an Annual Membership Fee for each Card (whether original or renewal) issued by the Bank to the Client, in the amount disclosed on the Fee Schedule.
9. **Statements and Reports.** On a periodic basis, on a date selected by the Bank, the Bank shall prepare separate statements and reports requested by the Client for each Billing Period, and thereafter shall mail or electronically deliver such statements to the Card Program Administrator. The Card Program Administrator shall work with the Bank to determine what levels of authorization and which reports of Cardholder activity, purchases by merchant or merchant category, and other types of reports the Client wishes to receive, and the frequency and mode of transmission of each of them.
10. **Promise to Pay and Foreign Exchange.** The Client promises to pay to the order of the Bank on demand in immediately available United States funds on the closing date of each Billing Period a payment equal to the Client's entire Account Balance for each Billing Period, which Account Balance shall include all Purchases and Loans, if any, and all applicable fees and charges posted to Client's Account during the Billing Period, including without limitation Annual Membership Fees, Late Charges, Statement Fees, Report Fees, Over-the-Limit Fees, Loan Service Charges, Returned Item Fees, and Over-the-Limit Charges, plus all applicable penalties and interest. Such payment in full shall be due and payable on or before the due date shown on the Aggregate Statement for the Billing Period. Such payment shall be made by automatic debit to the Client's Payment Account, or by such other method as the Bank permits. Any payment received by the Bank from the Client under this Agreement shall be applied to accrued and unpaid fees and charges, to penalties, and to Purchases and Loans, in such order as the Bank shall, in its sole discretion, determine. Credit obtained under the Account in foreign funds will be converted to United States funds at a conversion rate explained in the following sentence. The exchange rate between the transaction currency and the billing currency used for processing international transactions will be (a) a rate selected by Visa[®] from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa[®] itself receives, or (b) the government mandated rate in effect for the applicable central processing date plus (c) 1 percent. If Client obtains a refund or other adjustment for a Purchase, Client will receive an adjustment to the Account Balance, not cash.
- 10.1 **Visa[®] International Service Assessment Fee.** If a Card is used for a transaction conducted in U.S. dollars in a foreign country, an International Service Assessment Fee ("Issuer ISA") of 0.80% of the transaction amount, subject to change at Visa's discretion, will be assessed to Client. The Issuer ISA will appear on the Cardholder statement as part of the transaction amount.
11. **Billing Error Resolution.** If the Client or any Cardholder suspects there is an error on an Account Statement or needs more information concerning a transaction, the Card Program Administrator or Cardholder should notify the Bank in writing as soon as possible on a separate sheet mailed to the address listed on the Account Statement. Such notice must not reach the Bank not longer than sixty (60) days after the first statement on which the questioned item appears. Telephone notice will not preserve the Client's rights. The written notice must contain the Client's and the Cardholder's names, the Card number, the dollar amount of the questioned item, and an explanation of (a) why the amount is disputed or (b) what additional information is required. The Bank will acknowledge the Client's query and respond with any appropriate correction or change within ninety (90) days, or within such other time as required by law or any Visa[®], rules, regulations and procedures, as the same may be amended from time to time ("Visa[®] Rules"). Notwithstanding any notification by Client of a billing error or dispute, Client understands and agrees that the full amount shown as due on an Account Statement shall nevertheless continue to be due and payable by the Client's regular due date, and failure to make payment in full and on time may result in the imposition of a Late Charge.
12. **Merchant Disputes.** Client agrees that if it has a dispute regarding the quality of goods or services purchased, it shall contact seller directly in an effort to resolve such questions, problem or dispute. The Bank's obligation to the Client with respect to any merchant dispute shall be as set forth in the Visa[®] Rules for commercial, corporate or purchasing charge cards.
13. **Merchant Categories.** The Card Program Administrator shall designate for the Bank the merchant categories for which each Card is intended to be valid and any amount-per-cycle restrictions. The Client understands that the Bank is not liable for payment system or merchant bank errors in coding merchants nor for Cardholder misuse of a Card to purchase prohibited goods or services available through a merchant acting outside of the permitted merchant category or any other restriction.
14. **Financial and Other Information.** If the Client is not providing such information under another credit facility with an Affiliate of the Bank, the Client shall provide to the Bank in form and number of copies and by accountants satisfactory to the Bank, within 60 days after the end of each fiscal year of the Client, statements of income and cash flows and the financial position and balance sheet of the Client as of the fiscal year end, each in reasonable detail and certified by an officer or member of the Client to have been prepared in accordance with generally accepted accounting principles to present fairly the results of the Client's operations and cash flows and its financial position in conformity with such principles, and to be correct, complete and in accordance with the Client's records. Promptly upon the request of the Bank from time to time, the Client shall supply all additional information requested and permit the Bank's officers, employees, accountant, attorneys and other agents to (a) visit and inspect each of the Client's premises, (b) examine, audit, copy and extract from the Client's records and (c) discuss the Client's and its Affiliates' business, operations, assets, affairs or condition (financial or other) with its responsible officers and independent accountants.
15. **Representations and Warranties.** The Client represents and warrants to the Bank, as of the date of this Agreement and of each

borrowing, that: (a) the Client is an entity or sole proprietor which is (i) duly organized and existing and in good standing under the laws of the jurisdiction in which it was formed, (ii) duly qualified, in good standing and authorized to do business in every jurisdiction in which failure to be so qualified might have a material adverse effect on its business or assets, and (iii) has the power and authority to own each of its assets and to use them as contemplated now or in the future; (b) the execution, issuance, delivery to the Bank and performance by the Client under this Agreement are in furtherance of the Client's purposes and within its power and authority, do not violate any statute, regulation or other law or any judgment, order or award of any court, agency or other governmental authority or of any arbitrator or violate the Client's certificate of incorporation or other governing instrument, constitute a default under any agreement binding on the Client, or result in a lien or encumbrance on any assets of the Client, and have been duly authorized by all necessary corporate or membership action; (c) the Client conducts its business in compliance with all applicable laws and has obtained all necessary approvals to enter into this Agreement; (d) the Client maintains a system of accounting and reserves in accordance with generally accepted accounting principles, or those principles applicable to the Client if a governmental entity, has filed and will file each tax return required of it and, except as disclosed to the Bank in a schedule attached to the Client's financial statements, has paid and will pay when due each tax, assessment, fee, charge, fine and penalty imposed by any taxing authority upon the Client or any of its assets, income or franchises, as well as all amounts owed to mechanics, materialmen, landlords, suppliers and the like in the ordinary course of business; (e) the Client has good and marketable title to each of its assets free of security interests and liens except as disclosed in its financial statements and to the Bank, will maintain its property in good repair and will maintain and on request provide to the Bank evidence of insurance coverage satisfactory to the Bank including without limitation fire and hazard, liability, worker's compensation and business interruption insurance and flood hazard insurance as required; (f) there is no pending or threatened claim, audit, investigation, action or other legal proceeding or judgment, order or award of any court, agency or other governmental authority or arbitrator which involves the Client or its assets which might have a material adverse effect upon the Client or threaten the validity of this Agreement or any related document or transaction; and (g) the Client will immediately notify the Bank of any such action, of any change in the Client's address, and of the occurrence of any Event of Default, of any material change in the Client's ownership or management, and of any material adverse change in the Client's ability to pay amounts to become due under this Agreement.

16. **Changes in Credit Limits.** From time to time the Client may by written notice to the address provided in the set-up forms for the Account, or by facsimile or electronic transmission, as permitted by the Bank, to such location or address as Bank may designate from time to time, request the Bank to raise or lower the Cardholder's Maximum Credit Limit. Upon receiving any such request to raise a Maximum Credit Limit, the Bank may, but need not, raise such Maximum Credit Limit. Written notice may consist of a letter mailed or delivered by courier to the Bank, telephonic notice followed by writing, completing and signing the appropriate form as designated by the Bank from time to time, or by such other method as designated by the bank from time to time.
17. **Nonrenewals.** From time to time the Client may request the Bank not to issue a renewal Card to the Client for a particular Cardholder. The Bank shall not be responsible for nonrenewal of a particular Cardholder's Card until the Bank has actually received and had a reasonable time to act on written notice of Client's request for the non-renewal.
18. **Cancellations.** If at any time the Client wishes to terminate the ability of a Cardholder to use a Card issued by the Bank to the Client for such Cardholder but is unable to obtain the Card from such Cardholder, the Client may request the Bank to revoke the Card. The Bank shall not be responsible for revocation of a particular Cardholder's Card until the Bank has actually received and had a reasonable time to act on written notice of Client's request for the revocation. If the Bank would have reported such Card for publication on any list of canceled Visa® cards had it revoked the Card on its own initiative, it shall report such Card for publication on such list. Such revocation shall not affect any obligation of the Client under this Agreement. The Client shall be liable for all use of such Card prior to the surrender of such Card to the Bank.
19. **Revocation by Bank.** The Bank may revoke, with or without cause, any and all Cards issued by the Bank to the Client for one or all of Client's Cardholders, effective upon the Bank's giving oral or written notice of revocation to the Client. Such revocation shall not affect any obligation of the Client under this Agreement. Upon such revocation, the Client shall surrender each such Card to the Bank, and shall be liable for all use of each such Card until the Bank has actually received and has a reasonable time to act upon receipt of such surrendered Card. If such Card is not surrendered to the Bank upon its revocation, the Bank may, but need not, report it for publication on any list of canceled Visa® cards.
20. **Refund of Fee.** If any Card is revoked by the Bank without cause, the Bank shall upon request refund to the Client or credit against the then Account Balance, a portion of the annual fee paid by the Client to the Bank for such Card. The amount of such refund or credit shall be determined by multiplying the annual fee by the number of complete months remaining until expiration of the Card and dividing by 12.
21. **Events of Default.** Any Account Balance shall, at the Bank's option and without demand or notice, become immediately due and payable upon the happening of any of the following events (each, an "Event of Default"):

(a) The failure to pay when due any amount payable under this Agreement, whether for principal, interest, Late Charges, Annual Membership or other fees or otherwise;

- (b) The failure to pay when due, by acceleration or otherwise, any amount payable by the Client to the Bank or any of its Affiliates, whether for principal, interest or otherwise;
- (c) The failure of the Client to perform any obligation under this Agreement or under any other agreement with the Bank or any of its Affiliates;
- (d) The dissolution, termination of existence, insolvency (however evidenced), business failure, bankruptcy or appointment of a receiver of any part of the property of the Client, the failure of the Client to pay its debts as they become due, an assignment for the benefit of creditors or commission of an act of bankruptcy by the Client, the commencement of any proceeding under any bankruptcy or insolvency law by or against the Client, or the service or filing of any warrant, attachment, levy, tax lien or assessment or similar process against the Client;
- (e) The making of any representation or warranty under this Agreement, in any other agreement of the Client with the Bank or any of its Affiliates or in any report, certificate or financial statement furnished to the Bank or any of its Affiliates by the Client which is false or misleading in any material respect as of the date of the making of such representation or warranty or omits any material fact or substantial contingent or unliquidated liability of or claim against the Client; or
- (f) The occurrence of any adverse change in Client's financial condition which the Bank deems to be material, or which causes the Bank to deem itself insecure or the prospect of payment of such Account Balance impaired.

22. **Expenses.** The Client agrees to reimburse Bank for any and all expenses which Bank or any third party may incur in providing special services to Client at Client's request in connection with this Account. Expenses include but are not limited to charges for duplicating lost statements and reports, courier charges, and expenses for expediting the reissue of lost or stolen cards. The Client shall pay all costs and expenses incurred by the Bank in collecting any amount due under this Agreement or in enforcing any right under this Agreement, including without limitation, the reasonable fees and disbursements of counsel to the Bank.

23. **Remedies; Termination.** Upon the happening of any Event of Default, all amounts outstanding under this Agreement shall become immediately due and payable at the option of the Bank; and the Bank may terminate the Account and this Agreement and revoke all Client's Cards effective immediately upon telephonic or written notice to the Client. Also, in addition to all other remedies available to the Bank as a secured creditor under the Uniform Commercial Code, effective immediately upon the occurrence or existence of any Event of Default, unless sooner by express agreement of the Client, the Client authorizes the Bank to debit from the Payment Account an amount equal to the entire Maximum Credit Limit, to hold such amount in escrow for the Client so long as this Agreement is in effect, as security for payment of amounts which become due under the Account, and to apply the escrowed funds to pay amounts coming due under the Account if insufficient funds are available in the Payment Account; and to replenish the escrowed amount as needed to equal the Maximum Credit Limit. The Bank shall return any remaining escrowed funds within 180 days after the latest of termination of this Agreement, revocation of all Cards, and satisfaction of all amounts that become due under this Agreement. In addition, the Bank may terminate the Account and this Agreement, and revoke all Cards issued to the Client, with or without cause, effective upon notice of termination to the Client. The Client may terminate this Agreement at any time, effective upon written notice to the Bank, but termination of this Agreement shall not affect any obligation of the Client. Upon termination, the Client shall surrender to the Bank all Cards issued by the Bank to the Client. Until any such Card is surrendered to the Bank and the Bank shall have had a reasonable time to act upon receipt of such surrendered Card, the Client shall be liable for all use of such Card. The Bank may, but need not, report for publication on any list of canceled Visa® cards any Card not surrendered to the Bank upon termination of this Agreement.

24. **Delinquency Charge and Post Default Credit.** If any payment is not made by the payment due date indicated on the periodic statement, Client agrees to pay a default charge in the amount of 1.25% of the late payment or \$25, whichever is greater, or such other amount as may be specified in the Fee Schedule, for each month or fraction thereof that the balance remains unpaid. The late charge will not apply to payments which were to have been made by ACH transfer from a Payment Account. If the delinquency charge is construed as interest by any court of law, then it is the intent of Bank and Client that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law ("Maximum Legal Rate"). Solely to the extent necessary to prevent interest under this Account from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Bank, shall be refunded to Client.

The Bank shall not be responsible for failing to extend credit under this Agreement if any Event of Default has happened, if extending the credit would cause the Maximum Credit Limit to be exceeded, if the Card sought to be used to obtain the credit has expired or been revoked, or if this Agreement has been terminated. If, however, the Bank, in its discretion, extends the credit, the credit shall be subject to the terms and conditions of this Agreement.

25. **No Liability.** The Bank shall not be responsible for any failure of a merchant, bank or electronic banking facility to honor a Card, for any Cardholder's use of a card to make a prohibited purchase through a merchant with or without a permitted category code, or for any other claim against a merchant or Cardholder arising out of a Purchase paid for by using a Card or Convenience Check, and any dispute arising in connection with any such Purchase shall be resolved by the Client directly with the merchant involved. The Bank shall not be liable for any interruption, delay, inaccuracy, error or failure in delivery of reports requested by the Client in connection with the Account,

whether resulting from delay or failure of electronic terminal or other communications media at the merchant's site or any other point, action or inaction of any other party, war, insurrection, riot, civil commotion, act of God, accident, fire, flood, water damage, explosion, mechanical breakdown, interruption of power supply or other utility services, strike or stoppage of labor, industrial sabotage, suspension of postal or courier service, any law, decree, regulation or order of any governmental body including any court or tribunal or any other cause whatsoever not within the control of the Bank.

26. **Client's Liability.** To the fullest extent permitted by applicable law, the Client shall be liable for all indebtedness resulting from the authorized or unauthorized use of the Cards and for all Loans and Purchases charged to the Account, authorized or unauthorized by the Client. For purposes of this Agreement, the term "unauthorized use" does not include any use of a Card by a Cardholder, whether such use occurs before or after termination of the employment of such Cardholder by the Client, so long as the Cardholder's Card has not been revoked and surrendered pursuant to this Agreement.
27. **Loss, Theft or Unauthorized Use of Card.** The Client agrees to notify the Bank immediately of the loss, theft, or possible unauthorized use of a Card by telephone by calling 1-800-443-8671, or in writing sent to M&T Bank, N.A., P.O. Box 4028, Buffalo, New York 14240-4028, Attention: Visa® Investigations. To the extent any applicable law or regulation requires the Bank to investigate an unauthorized use claim, while the Bank investigates any unauthorized use claim made by the Client, the full amount shown as due on an Account Statement shall nevertheless continue to be due and payable by the Client's regular due date, failure to make payment in full and on time may result in the imposition of a Late Charge, and, upon conclusion of such investigation, the Bank will credit the Account with any amount due to the Client.
28. **Generic Charge Card Liability**
 1. In addition to all the other terms and conditions of this Agreement, this section 28 further governs the use and issuance of a generic Visa® Card or a Virtual Account, collectively defined below as a Generic Card.
 2. Each generic Card issued or Virtual Account provided by the Bank generically to Client or one of Client's departments or divisions, that is, in the case of a Card, with no individual name imprinted on the issued generic Card, or, in the case of a Virtual Account, provided in the form of a Visa® account with no corresponding plastic, shall be considered a generic Card ("Generic Card"). Bank shall issue or provide Generic Card(s) in the form of a Card or a Virtual Account at Client's request and upon approval of the Application or request for a Card or Virtual Account in the manner provided for in the Application. Client understands that Generic Cards are subject to all the terms and conditions governing Cards in accordance with this Agreement. Moreover, Cards issued or Virtual Account provided in the manner of a Generic Card may be rejected by commercial establishments when presented for payment due to the fact that the holder of a Generic Card in the form of a Card or Virtual Account may not be able to satisfactorily prove to the establishment his/her authority to make charges through use of the Generic Card.
 3. In addition to the other indemnification provisions of this Agreement, Client agrees to indemnify and hold Bank harmless from any loss, claim, damage, or liability arising due to the refusal of any commercial establishment to accept any Generic Card in the form of a Card or Virtual Account.
 4. Notwithstanding anything to the contrary in this Agreement, to the fullest extent permitted by applicable law, Client agrees to be liable to repay Bank according to the terms of this Agreement, for any and all charges, authorized or unauthorized, posted to an Account through use of a Generic Card in the form of a Card or a Virtual Account by any person, whether or not Bank shall have been notified that the Generic Card in the form of a Card or Virtual Account has been lost or stolen.
 5. Client understands that risk of unauthorized use of a Generic Card in the form of a Card or Virtual Account (that is, use of a Generic Card by an individual without implied, actual, or apparent authority to incur charges with the Generic Card and from which use Client receives no benefit) may be substantially increased when a Generic Card in the form of a Card is not issued to a specific individual, or a Virtual Account is not provided to, and in the name of, a specific individual, because there is no indication on the Generic Card itself in the form of a Card or Virtual Account that the holder is or is not authorized to use the Generic Card.
 6. Client agrees that Bank makes no representations or warranties with respect to the risks attendant with issuing or providing Generic Cards in the form of a Card or a Virtual Account in this manner, and Client hereby accepts all such risks and agrees to indemnify and hold Bank harmless from any loss, claim, damage or liability arising therefrom.
29. **Indemnification.** The Client will indemnify and hold harmless the Bank, its officers, directors, and employees and Visa® and its members (including Bank) from and against any and all claims, demands, actions, proceedings, liabilities, losses, and actual damages and expenses, including without limitation actual and reasonable counsel fees arising out of or in connection with any breach of any representation, warranty or covenant of Client or any failure by the Client to perform Client's obligations under this Agreement or any action commenced by a party other than Client with respect to any Card or Cardholder Account issued hereunder. This Indemnification shall survive termination of this Agreement.
30. **Amendments.** This Agreement may not be amended orally or by any course of conduct pursued by either or both of the Bank and the Client. The Bank may amend this Agreement at any time by mailing or delivering written notice of amendment to the Client. The notice


shall specify the effective date of the amendment, which date shall be at least 30 days after the date the notice is mailed or delivered by the Bank to the Client if the change is adverse to the Client. The Bank and the Client may also amend this Agreement at any time in a writing executed by both the Bank and the Client. In addition, the Client understands that benefits enjoyed by the Client as a result of the Bank's Visa® membership may be terminated or amended at any time at the pleasure of Visa®, without notice to either the Bank or the Client.

- 31. **Notices.** Except as specifically provided in other sections of this Agreement, any notice or demand by the Bank to the Client under this Agreement may be oral or written and may be delivered personally to the Client, by telephone or otherwise, or mailed to the Client, at the phone number or address provided on Client's Application or such subsequent address as is delivered pursuant to this paragraph. Any statement or written notice or demand mailed or delivered by the Bank to the Client under this Agreement shall be mailed or delivered to the address of the Client set forth in the Client's application or in the Bank's subsequent records. Any request or notice by the Client to the Bank under this Agreement other than a notice described in Section 27 of this Agreement (which shall be given as prescribed in Section 27) shall be in writing, signed by an officer of the Client and mailed or delivered to the Bank in an envelope addressed to M&T Bank, N.A., P.O. Box 4028, Buffalo, New York 14240-4028, Attention: Visa® Corporate/Commercial/Purchasing Card Operations, or to such other address as is designated by the Bank by written notice.
- 32. **Severability.** Each provision of this Agreement shall be interpreted so as to be valid under any applicable law or regulation, but if any provision is determined by a court of competent jurisdiction to be unenforceable, such provision shall be deemed deleted to the extent unenforceable without invalidating the remaining provisions of this Agreement.
- 33. **Entire Agreement.** This Agreement, the Application and any schedules, exhibits, amendments, attachments and riders to this Agreement constitute the entire agreement between the Bank and the Client with respect to the Visa® Account, and supersede all previous oral or written proposals, representations, understandings, promises and agreements concerning the Account.
- 34. **No Waiver.** No failure by the Bank to exercise, no delay by the Bank in exercising, and no single or partial exercise by the Bank of any right or remedy under this Agreement or otherwise shall operate as a waiver or limitation of such right or remedy or any other right or remedy under this Agreement or otherwise. No waiver by the Bank shall be effective unless evidenced by a written agreement executed by the Bank, limited to the specific instance, and no such waiver shall constitute a waiver of such right or remedy in the future or any other right or remedy. The rights and remedies specified in this Agreement are cumulative and not exclusive of any other right or remedy of the Bank.
- 35. **Successors.** This Agreement shall be binding upon the Client and its successors and inure to the benefit of the Bank and its successors and assigns. This Agreement is not assignable by the Client.
- 36. **Governing Law.** This Agreement shall be governed by the laws of the State of New York without regard to the laws of other States.
- 37. **Waiver of Jury Trial and Venue.** Client hereby knowingly, voluntarily, and intentionally waives any right to trial by jury Client may have in any action or proceeding, in law or in equity, in connection with this Agreement or any Account established pursuant thereto. Client represents and warrants that no agent or representative of Bank has represented expressly or otherwise, that Bank will not, in the event of litigation, seek to enforce this jury trial waiver. Client acknowledges that Bank has been induced to enter into this Agreement by, among other things, the provisions of this section. Client agrees that any action or proceeding to enforce or arising out of this Agreement may be commenced in the Supreme Court of New York in any county or in the District Court of the United States in any District, in which Bank has an office, and Client waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such Court shall be properly served and shall confer personal jurisdiction if served by registered mail to Client at the address of record provided by Client to Bank.
- 38. **Schedules.** Client agrees that the following Schedules for which a box is checked are included in this Agreement and incorporated herein by reference as if fully set forth herein, and Client further agrees to be bound by the terms of each such Schedule by virtue of Client's initial's below, and signature on this Agreement.

[CHECK AND INITIAL ALL SCHEDULES THAT APPLY]

- FEE SCHEDULE
- SCHEDULE A - REBATES
- SCHEDULE B - AGGREGATE STATEMENT AND CHECK PAYMENT PROCESSING SCHEDULE
- SCHEDULE C - INDIVIDUAL BILL SCHEDULE AMENDMENT

Client Initial



M&T BANK, NATIONAL ASSOCIATION

By: *Douglas A. Dunbar*

Douglas A. Dunbar
Title: Vice President
Attention: M&T Business Telephone
BankingPhone: 1-800-724-2240

(Facsimile signature permitted for Bank only)

CLIENT:	
TAX ID/SS# <u>16-0755765</u>	
*Client Legal Name (please print): <u>DIOCESE OF ROCHESTER</u>	
<i>[Signature]</i> Authorized Signature 1	<u>LISA M PASSERO, CHIEF FINANCIAL OFFICER</u> Printed Name and Title
Date: <u>6-14-11</u>	
Authorized Signature 2	Printed Name and Title
Date:	
* Sole proprietors should use their individual names and not their trade names	

ACKNOWLEDGMENT

STATE OF New York)
: SS.
COUNTY OF Monroe)

On the 14th day of June, in the year 20 11, before me, the undersigned, a Notary Public in and for said State, personally appeared Lisa M. Passero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

Lynn M. Pierleoni
Notary Public, State Of New York
No. 01P1607937
Qualified in Monroe County
My Commission Expires September 3, 2014

CERTIFICATION OF RESOLUTIONS

(Business Entities Only)


Note: Capitalized terms used in this certification and the resolutions below shall have the meanings ascribed to them in the foregoing Agreement.

The undersigned, corporate secretary or authorized officer, hereby certifies that he/she has the power and authority to execute and deliver this certification to the Bank on behalf of the Client. The undersigned further certifies that the following are true and correct:

(1) **Resolutions.** The resolutions set forth below were duly adopted by the Client's board of directors (if a corporation), membership (if a limited liability company), partners (if a partnership) or such other governing body as may be applicable to Client, at a meeting duly called and held, or by unanimous consent, on 6-14-11. (ii) the resolutions have not been rescinded, revoked or modified in any way, but rather are in full force and effect as of the date of this certification; and (iii) neither the resolutions nor any actions to be undertaken pursuant thereto violate or will result in a violation of any statute, regulation or law applicable to Client, nor any governing documents applicable to Client, nor any instrument, agreement or other document to which Client is a party or which is otherwise applicable to Client or its business or assets.

2. **Incumbency.** Each person whose name appears below, opposite a title/position ("Position"), has been duly elected or appointed and qualified for such Position at the Client and that on the date of this Certificate such person holds such Position, and that each signature appearing below is a true specimen of the signature of the person whose signature it purports to be.

Authorized Signature for Certification of Resolutions:


Authorized Signature 1

LISA M. PASSERO, CHIEF FINANCIAL OFFICER
Printed Name and Title

Date: 6-14-11

Authorized Signature 2

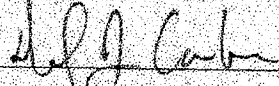
Printed Name and Title

Date:

* Sole proprietors should use their individual names and not their trade names.

3. **Organization and Standing.** The Client is duly organized, validly existing and in good standing under the laws of the State of New York. No petition for dissolution has been filed or is pending. The Client has, and at the time of adoption of the Resolutions, had full power and lawful authority to adopt the Resolutions and to confer the powers granted in them to the Position or persons named or referenced in said Resolutions including any delegation of powers; and any person holding such Position or the person so named shall have full power and lawful authority to exercise those powers. No other action or consent of any other person or entity is necessary in order for this Certificate or the Resolutions to be effective.

Corporate Secretary Authorized Signature:


Corporate Secretary Signature (Different from Authorized Signor)

Daniel J. Condon, Chancellor
Secretary Printed Name and Title

Date: June 14, 2011

[Note regarding who can be the authorized signer]
Note: If the person signing above is authorized to transact business by any resolutions, this certificate should be attested by a second officer, director, member or partner of the Client, unless the Client is a single owner and has no other officer, director or member. The person signing above can be the corporate secretary or an officer authorized to certify.

RESOLUTIONS

RESOLVED, that the Client is authorized to enter into the Agreement; and it is further

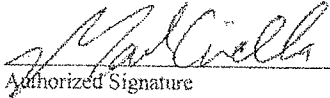
RESOLVED, that the signer of the Agreement and any other person listed under Incumbency above (an "Authorized Person") is authorized, on behalf of Client, to enter into the Agreement and to take all actions thereunder, pursuant thereto or in connection therewith; and it further

RESOLVED, that the authority conferred by these resolutions is retroactive and any action heretofore taken by any person (including but not limited to an Authorized Person) on behalf of the Client with respect to the Agreement is ratified and confirmed; and it is further

RESOLVED, that the foregoing resolutions shall remain in full force and effect and may be relied upon, notwithstanding the dissolution or termination of existence of the Client or any change in the identity of, or any modification or termination of any authority of, any Authorized Person, until a copy of a subsequent resolution revoking or amending them, duly certified by an Authorized Person of the Client, shall be actually received by the account officer of Bank responsible for the obligations of the Client and Bank shall have had a reasonable time to act thereon; and any action taken by Bank prior to such actual receipt and passage of time shall be binding upon the Client, irrespective of when such resolutions may have been adopted.

FOR M&T USE ONLY:

CLIENT'S AUTHORIZATION CONFIRMED BY RELATIONSHIP MANAGER:


Authorized Signature

Mark Ciella, VP
Printed Name and Title

Date: 11/8/11