

# TERMS AND CONDITIONS FOR TREASURY SERVICES

## IMPORTANT INFORMATION ABOUT YOUR TREASURY SERVICES

*Use of the Services means you agree to these Terms.*

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## TERMS AND CONDITIONS FOR TREASURY SERVICES

These Terms and Conditions for Treasury Services (referred to herein as these “Terms” or “Agreement”) apply to certain services that you the customer (referred to herein as “you” or “Customer”) may obtain from First National Bank of Omaha (referred to herein as “we”, “us”, or “the Bank”). First National Bank of Omaha has divisions that operate under various brand names. For specific information, please (i) contact your Relationship Manager, (ii) call our centralized Customer Care Team at 866-461-1467 to be connected with your applicable representative, or (iii) visit us online at [firstnational.com/site/corporate](http://firstnational.com/site/corporate).

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means for you: When you open an account, we will ask for your name, physical address, date of birth, and other information that will allow us to identify you. We may also ask for other identifying documents. We will let you know if additional information is required.

In consideration of our agreement to make services available to you, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you and we (collectively the “parties”) agree as follows. By executing one (1) or more enrollment forms requesting one (1) or more Services or by using one (1) or more Services, Customer accepts the Terms of this Agreement.

### SECTION 1 – GENERAL TERMS

#### 1.1 Services That We Provide

You may decide which of our services you wish to receive. Some services may require the completion of an application or enrollment form. Other services may simply be provided on request (although we may require that requests be in writing). All the services listed in sections two (2) through seven (7), collectively “Services”, are covered by these Terms. Other services may also be covered if your application, enrollment, or request refers to these Terms. These Terms include and incorporate any supplemental attachments, schedules, enrollment forms, and applications related to your receipt of the Services. Applications, enrollments, and requests are subject to our approval. Technology, as defined in [Section 1.9 titled "Access to Technology"](#), provided to you by us is considered part of your Services. Certain Services may only be relevant to some of your accounts with us. On request from time to time, we will provide you with a listing of those accounts and the Services applicable to them. You may request us to change that listing, but you agree that we will be given a reasonable opportunity to react after receiving your request. Certain Services are subject to deadlines and cut-off times as detailed in the [Processing Schedule \(see Exhibit 1\)](#).

#### 1.2 Termination of Services

(a) *For Convenience.* You may terminate receiving some or all of the Services whenever you choose. We may terminate providing some or all of the Services whenever we choose. In either case, the party terminating shall notify the other in writing at least sixty (60) days in advance. The preceding sentences of this paragraph do not apply if you and we have separately agreed in writing to a specific term. In that case, termination may only occur: (i) at the end of the agreed term or a renewal term, with at least thirty (30) days’ prior written notice; or (ii) prior to the end of the agreed term, for cause as noted in paragraph (b) below.

(b) *For Cause.* Either party may suspend or terminate immediately without advance notice prior to the end of the agreed term, for cause. Cause will exist: (i) for either party, if the other party commits a material breach of these Terms or any other banking service agreement between the parties; (ii) for either party, if a material adverse change occurs in the other party’s financial condition (including a bankruptcy, reorganization, or receivership proceeding); (iii) for us, if you no longer satisfy our underwriting or policy standards for the Services in question; (iv) for us, if your use of the Services creates a risk of loss to us (including a third party claim or a reputational injury resulting from the inappropriate use of our Services or your violation of law); or (v) for us, if you fail to provide information reasonably requested by us.

(c) *Effects of Termination.* In the event Services are terminated for any reason prior to the term set forth and agreed upon by the parties, all payments and fees owed to us by you will immediately become due and payable. These Terms will survive the termination of Services.

### **1.3 Compensation**

(a) *Standard Pricing.* If we have committed to a non-standard fee schedule in writing for you, see [paragraph 1.3\(b\)](#). If we have not committed to a non-standard fee schedule, you agree to compensate us for Services rendered in accordance with our standard pricing schedules, as in effect from time to time. You understand that exchange rates, purchase and sale prices, commissions, and other amounts that we may charge you in any particular transaction are not necessarily the same as the amounts that we may pay, may reflect a spread or margin retained by us, and may be different than the amounts we charge in other transactions or to other customers. Fees do not include applicable taxes, if any, which are your responsibility (except for taxes based on our net income).

(b) *Non-Standard Pricing.* If we have separately agreed to a non-standard fee schedule for you that includes fixed prices or restriction of fee increases (a “Fee Schedule”), which Fee Schedule would be attached hereto and incorporated by this reference, you agree that you will not terminate any Services while the fixed price term is applicable, except that you may terminate earlier for cause (as defined in [paragraph 1.2\(b\)](#)). Additionally, except for Services that we are unable or unwilling to provide to you, you agree to obtain the Services covered by the fixed price term only from us during the period of time in which the fixed fee term in the Fee Schedule is applicable. The preceding sentence will not apply if you have separately made a minimum fee commitment to us in writing.

(c) *Payment of Fees.* Regardless of the fees charged to you, you agree that we may deduct our compensation from your account(s) with us on a monthly basis and upon termination. If you have made other payment arrangements, we will not make deductions from your account(s) unless those other arrangements fail to produce payments when required.

### **1.4 Our Standard of Care**

We have certain obligations to you under applicable law. In addition, we agree to use ordinary care in performing Services. That obligation shall be measured by the reasonableness of banking procedures established for the transaction involved and general banking usage in the local area served by us; clerical error, inadvertence or oversight, or an honest mistake of judgment shall not constitute a failure to exercise ordinary care.

### **1.5 Your Remedies**

You agree to notify us promptly if you believe we have failed to fulfill our obligations to you. If we are unable to resolve your issue, you may terminate receipt of any service in accordance with [Section 1.2 titled “Termination of Services”](#). If you prefer not to terminate, you agree to give us written notice of our failure, in which case we shall be afforded a reasonable opportunity to cure. If Services are not performed or are defectively performed and we have failed to cure, you shall be entitled to a reasonable fee credit to be applied to the fees invoiced for such Services (or, with our consent, other Services).

### **1.6 Your Obligations**

(a) *Access Requirements.* You are responsible for obtaining and maintaining any hardware, software, communications, encryption capability, and trained Personnel (as defined in [paragraph 1.8](#)) needed to access or use the Services (the “Access Requirements”), and you understand that the Access Requirements may change over time. You are responsible for protecting your systems against viruses and other unwanted functionalities, and you agree to take reasonable efforts not to introduce the same to our systems. You are responsible for your own computer back-ups and contingency planning (including contingency planning for an unplanned interruption in our Services). You are solely responsible for selecting the Services you need, for the accuracy and adequacy of the data you provide, and for the results of using the Services in the operation of your business. You represent and warrant that you have all necessary rights, power, and authority to provide us with any information and initiate the transactions that you submit in connection with the Services. You agree to use ordinary care in using our Services. You agree to review within a reasonably prompt time all account, analysis, and other statements (paper and/or online) after we make them available to you (see your Commercial Deposit Agreement for additional relevant terms). If we provide you with statements relating to the

Services that reflect debits to your account(s), your review should not be any later than five (5) days after the statement is made available. You agree to give us immediate verbal notice, thereafter confirmed in writing, of any unauthorized, erroneous, or improperly executed transactions. If we provide you with written or electronic instructions, operating procedures, input or transmission formats, incoming work specifications, deadlines or cut-off times, or other limitations or requirements relating to use of the Services (referred to herein as “Rules”), you agree to comply with those Rules and understand that we may reject or be unable to process incoming items, instructions, or work that does not comply. In the event you fail to comply with the Rules non-compliance fees may apply.

*(b) Requirements of Law.* You also agree to comply (and to remain in compliance) with all applicable federal, state, and local laws, rules, regulations, ordinances, and determinations of governmental authorities (referred to herein as “Requirements of Law”) including the Gramm-Leach-Bliley Act, Electronic Fund Transfers Act, the Unlawful Internet Gambling Enforcement Act, Federal Reserve Regulation E, the Bank Secrecy Act, the USA PATRIOT Act, and all rules, regulations, and obligations with respect to programs administered by the Office of Foreign Assets Control (“OFAC”) or the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). You agree not to: (i) resell or otherwise make our Services available to others; or (ii) use our Services in a way that damages or violates the rights of any third party, that violates Requirements of Law, or that will subject us, our affiliates, or our contractors to investigation, liability or legal action. To the extent that the Services we provide are subject to and involve the use of clearing systems (such as the Federal Reserve) or other networks or associations, including VISA, MasterCard, Electronic Check Clearing House Organization (“ECCHO”), and the National Automated Clearing House Association (“NACHA”) (such systems, networks, and associations being referred to collectively herein as “Associations”), you agree to comply with such rules, regulations, and guidelines of the Associations. You agree to indemnify us against any regulatory fine we incur because of your breach of any Association rules or these Terms. You understand and agree that we are not responsible for the acts or omissions of any Association (including, for example, an Association’s failure to satisfy a customary service level that affects our performance) or of any other member of any Association. Nothing in these Terms shall be construed to diminish, restrict, or otherwise reduce your obligations under relevant Association rules. Our rights and remedies under these Terms are in addition to (and not in lieu of) our rights and remedies under Association rules.

*(c) Your Responsibilities.* To the extent that our Services involve the processing of consumer payments, you agree to receive, respond to, and resolve, at your own expense, all consumer complaints regarding those payments. You agree not to materially change your business or submit to us any transactions that are submitted in a way or for a product or service of yours that was not previously described to and expressly accepted by us. If work to be processed by us is time sensitive, we recommend that you submit the work to us in advance of our final input deadline. This will minimize the possibility of delays resulting from unplanned occurrences (for example, payroll files should be submitted at least two (2) days prior to the payroll effective date).

## **1.7 Overdrafts**

You agree to maintain a sufficient balance in your account to cover checks, Drafts (as defined in [paragraph 3.3\(a\)](#)) you write, and the other withdrawals and transfers you make or authorize. If available funds are not on deposit at the time we review your balance after any check, Draft, or transfer request is presented, we may, without prior notice, refuse payment or we may (but need not) pay the item. We need not review your account more than once in making this determination. We are not obligated to pay checks, Drafts, transfers, or other items on your account if there are not sufficient available funds in your account or if you do not make other satisfactory arrangements approved in writing by one of our officers. In the event that we (in our sole discretion) pay any check, Draft, transfer, or other item when there are not sufficient funds in your account, you shall immediately reimburse us for any overdraft and related fee created thereby or we may, at our discretion, deduct the amount of the overdraft and related fee from any other account that you maintain with us or any of our affiliates.

## **1.8 Your Personnel**

You are responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, and contractors, including persons granted signature authority on your accounts and personnel who are permitted to give us instructions in respect of transactions processed hereunder (collectively, your “Personnel”). We are entitled,

without further inquiry or investigation, to assume that the actions of your Personnel are appropriate and authorized by you. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls that will prevent (or at least allow the early detection of) fraud or other unauthorized activity by your Personnel. As between you and us, you agree to accept sole responsibility for losses attributable to the acts or omissions of your Personnel. Your Personnel include any third party with which you may have contracted to support electronic billing and payment functionality for your customers (for example, billing service providers and Internet and web site service providers). Certain Services require the use of passwords, Personal Identification Numbers (PINs), or other identifying information. You agree to give this identifying information only to your Personnel duly authorized to execute or utilize such Services. Any use of Services by Personnel with the correct identifying information will be deemed authorized by you.

## **1.9 Access to Technology**

If we provide or permit you to access hardware, software, documentation, systems, or other technology or intellectual property (collectively and individually “Technology”), you agree that we and/or our suppliers retain all intellectual property rights in the Technology. You further agree: (i) to read and comply with any license terms (See [Exhibit 3 License Terms](#)) that are made available to you in connection with the Technology; (ii) to use the Technology solely for purposes of accessing or using our Services; (iii) to maintain the confidentiality of the Technology and not to copy, transfer or disclose the Technology; (iv) not to attempt to circumvent any use or access limitations contained in the Technology, not to access any system, file, software, or service other than those specifically made available by us and not to translate, reverse engineer, disassemble, or decompile any Technology; (v) to limit Technology access to those of your Personnel who have a need to have such access in connection with your receipt of Services from us (and, on request, you agree to advise us in writing of who those persons are); (vi) to use the Technology in accordance with its documentation and all relevant security policies and procedures; and (vii) to return any and all copies of the Technology to us on request (except such hardware as you may have purchased from us). Technology is provided to you on an AS IS basis, and for purposes of these Terms will be considered part of the “Services.” You agree to be responsible for misuse of Technology by your Personnel or by third parties to whom your Personnel may disclose their User IDs and/or passwords. You agree to cooperate with us in the investigation of any apparent unauthorized use of or access to our Technology by any person using a User ID or password assigned to you or who otherwise appears to have accessed our Technology through your systems.

## **1.10 Electronic Access and Security Issues**

*(a) Electronic Access.* If we provide you with PINs, tokens, User IDs (including customer identifiers), and/or passwords (collectively and individually “Security Credentials”) for use in any of the Services, you agree to keep and to require your Personnel to keep your Security Credentials secret, and you agree to prevent unauthorized access to any system. Protective measures applied to Security Credentials should be at least as protective as those applied to your most confidential information. You agree to notify us immediately if: (i) your Security Credentials are lost, stolen, or if you believe someone else has discovered your Security Credentials; (ii) you reasonably suspect there has been a breach of any system; or (iii) there is a malfunction in your system (including non-Bank-provided software). You should change Security Credentials whenever any person with access to them transfers to a new assignment, leaves your employment, or is no longer authorized to use the Services on your behalf, or if you believe your Security Credentials have been compromised. Security Credentials should also be changed regularly. We are authorized to provide Services to, to release your account information to, and accept as authentic any instructions given to us by any person who has entered any Security Credentials assigned to you. We assume no risk for security of public/private networks or telephone/data lines used in conjunction with the Services.

*(b) Security Issues.* If a security breach occurs, unless our internal security is proved to have been breached, there will be a presumption that your security has been breached. If you request Services that allow for you to appoint an administrator(s) (collectively and individually, “Administrator”), that Administrator may have the ability to appoint additional Administrators and each Administrator will have the ability to determine which of your employees or representatives will have access to the Services (your “Users”), the type of access they will have (including access to information about your accounts and the ability to initiate transactions therein), and the ability to add, delete, and modify Security Credentials. Your Administrators are solely responsible for determining, on your behalf, who should be

trusted with your Security Credentials and for supervising their use thereof. You are responsible for all transactions initiated by your Users even though they engage in transactions that you have not authorized, regardless of the purpose and regardless of whether the User violates your rules. If a User loses or forgets their Security Credentials, they should contact your Administrator. If an Administrator loses or forgets their Security Credentials, they should contact us. You understand and agree that ANY ONE (1) USER may be able to initiate transactions (including transfers) from any of your accounts using the Services, regardless of whether the User is authorized on those accounts and regardless of whether any of those accounts normally require two (2) or more signatures or has other restrictions.

### **1.11 Changes**

You acknowledge and agree that the Services (including Access Requirements service features and our [Processing Schedule \(Exhibit 1\)](#)) and the systems we use to provide the Services may change over time. We may also unilaterally amend these Terms and any applicable Rules from time to time. If we believe such a change will have a material impact on you, we will give you reasonable advance notice of the change. Unless a shorter period is required to prevent loss to you or us or unless the change is based on a change in Association rules, we will give you thirty (30) days notice of changes or amendments. If you do not agree with a change or amendment, you may terminate prior to the change or amendment taking effect or in accordance with [paragraph 1.2\(a\)](#) regardless of any notice requirements.

### **1.12 Relationship of Parties; Third Parties**

The parties intend their relationship to be that of independent contractors. Neither party shall be deemed an agent, employee, partner, or joint venturer of the other nor shall either party have the power or authority to bind the other in any way. Nothing herein shall be construed to grant either party any right, title, interest, or license in or to the other's name, trademarks, other proprietary information, or intellectual property. These Terms are solely for the benefit of you and us and may not be relied upon or enforced by any third party. No third party (including your Personnel and your customers) is a third party beneficiary of these Terms. Nothing in these Terms is intended to impair either party's rights, claims, or defenses against any third party.

### **1.13 Affiliated Customer Groups**

These Terms apply to Services provided to the customer entity that applies or enrolls for Services (the "Parent") or any Sponsored Entity (as defined below) each of which is referred to herein as a "customer" or "you." A "Sponsored Entity" is any entity identified as such in a paper or electronic writing delivered by the Parent to us. Sponsored Entities must provide a Certification of Business Depository Resolutions in the form required by us. Unless we have agreed otherwise in writing, your obligations to us are joint and several. By requesting Services on behalf of any Sponsored Entity, the Parent is agreeing to these Terms, as amended from time to time, on behalf of such Sponsored Entity. The Parent represents and warrants that it has all necessary right, power, and authority to request Services, and to make the agreement contained in the preceding sentence on behalf of all Sponsored Entities. Termination of these Terms as to any customer shall not terminate these Terms as to any other customer.

### **1.14 Miscellaneous**

*(a) Agreement and Amendment.* These Terms may be supplemented by completed enrollment forms that we accept from you and such accepted enrollment forms will be considered part of these Terms (enrollment forms may, for example, permit you to select from among various optional product features). These Terms along with any schedules, supplemental attachments, enrollment forms, and applications specifically referenced herein constitute the entire agreement between the parties except for the terms of our deposit account agreements, which contain additional terms governing deposit accounts (collectively the "Agreement" or "Terms"). In the event of conflict between these Terms and the deposit agreement, whichever provision is more protective of us shall control). Except as provided in [section 1.11 titled "Changes"](#), these Terms cannot be amended except in writing signed by the parties. If the parties mutually agree to supplement or amend these Terms in a separate written document that is signed by both parties and specifically references these Terms, that separate document shall control to the extent that it is inconsistent with these Terms; all other provisions of these Terms shall remain in full force and effect.



*(b) Assignability.* These Terms shall be binding upon and inure to the benefit of the parties and their successors and assigns and may not be assigned (including by operation of law) by either party without the other's written consent.

*(c) Choice of Law.* These Terms shall be governed by federal laws and regulations, applicable clearinghouse rules, and such additional rules, regulations, and policies (including banking days and cut-off times) as we may establish from time to time. To the extent that state law is applicable to these Terms including the Uniform Commercial Code, these Terms shall be construed in accordance with the laws of the State of Nebraska (excluding conflict of law principles).

*(d) Venue.* Any actions arising out of or related to these Terms or the Services shall be commenced and maintained solely and exclusively in the federal or state courts located in the county and state where the Customer's local branch of the bank is located, except that either party may (in its sole and absolute discretion) institute legal action in any appropriate jurisdiction to protect its intellectual property rights.

*(e) Severability.* These Terms will be construed to vary, by agreement, applicable law to the maximum extent permitted by law. If a provision of law cannot be varied by agreement, that provision of law will supersede the conflicting variation to the minimum extent required by such law. If any provision of these Terms is held to be invalid or unenforceable, such invalidity or unenforceability will not affect any other Terms. If any term is held to be unreasonable in time, scope, or otherwise, it shall be construed by limiting it to the minimum extent so as to be enforceable.

*(f) Waiver.* No waiver of these Terms by us will be effective unless signed by two (2) of our authorized officers. We reserve the right to waive the enforcement of any of these Terms with respect to any transaction or series of transactions. Any such waiver will not affect our right to enforce any of our rights with respect to other customers, or to enforce any of our rights with respect to later transactions with you, and will not be sufficient to modify these Terms on a going forward basis.

*(g) Use of Service Providers.* We are entitled to use such agents, contractors, service providers, networks, and other third parties as we may deem appropriate in providing the Services.

*(h) Execution and Counterparts.* The parties may agree to these Terms through the execution of multiple enrollment forms or applications, executed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by PDF is as effective as executing and delivering these Terms in the presence of the other party. In proving these Terms, a party may produce or account only for the executed counterpart of the party to be charged.

*(i) Retention of Agreement.* You agree that we may maintain a copy of these Terms and any and all other documentation related to the Services in electronic form and that we may destroy the originals. You agree that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image, or facsimile) will in all respects be considered equivalent to an original, and you waive any objection to our use of such copies.

*(j) Construction.* As used in these Terms, the term "including" means "including, but not limited to." In addition, all references to banking days mean days other than Saturday, Sunday, or federal holidays.

*(k) Audits.* You agree to submit annual financial statements and such other financial information as we may reasonably request from time to time, and you agree that we may conduct audits and on-site inspections as we reasonably deem necessary to verify your compliance with these Terms or other applicable Association rules.

### **1.15 Communications and Notices**

All communications and notices provided pursuant to this Agreement will be provided in writing to the other party at the postal, e-mail, facsimile, or other address we have for you in our records. Notices to us should be sent to our Legal Department – 1620 Dodge Street, Stop Code 3290, Omaha, Nebraska 68197. Notices will be deemed to have been given or made: (i) when received, if delivered by hand or courier; (ii) three (3) Business Days after such notice is deposited in the United States mail; or (iii) if sent by e-mail, express mail, or facsimile, the earliest to occur of its actual receipt by the intended recipient or the Business Day following the day in which it was sent provided that we will not be deemed to have received an e-mail or facsimile until we confirm such receipt by returning a facsimile or e-mail to you. Either party may change its address for notices by giving written notice from a duly authorized representative to the other party. If

you use e-mail to contact us, it should only be used for general, non-urgent communications. You should not rely on e-mail for time-sensitive notices. We caution you against using email for transmitting sensitive or confidential information. If you choose to communicate with us via email, we strongly suggest that you encrypt those communications (on request, we will inform you of the encryption protocols that we can accommodate). If you opt not to encrypt your outgoing email to the Bank, we may require a disclaimer to be executed by you. Except for notices of termination, breach, or default which shall be given by written notice, you agree that we may also communicate with you via posting information on the Bank's website, e-mail or other electronic communication, your account analysis, or other paper and/or online statements. We may monitor and record all communications (including electronic transmissions and telephone conversations) between us and you or your representatives.

### **1.16 Confidentiality**

Each party: (i) agrees to protect and maintain in confidence any information that it may obtain from the other party during the term of this Agreement; (ii) shall use such information solely for the purposes contemplated by this Agreement and shall not rent, sell, lease, transfer, provide, or otherwise disclose such information to any third party except as required by applicable law or regulation; (iii) take all reasonable steps to protect the confidentiality of such information, in no event using a standard of care less than the same standard used to protect its own confidential information pursuant to applicable privacy regulations; and (iv) shall give access to such information only to those employees who have a need to know in connection with performing that party's obligations under this Agreement. Upon request by the disclosing party, the receiving party shall promptly destroy such information or return such information to the disclosing party in the same format as was provided to the extent they are reasonably able and in compliance with Requirements of Law. The confidentiality obligations in this section do not apply to information that: (i) is, at the time of disclosure or thereafter becomes, through no act or omission of the receiving party, a part of the public domain; (ii) was in the receiving party's lawful possession without an accompanying secrecy obligation prior to the disclosure; (iii) is hereafter lawfully disclosed to the receiving party by a third party without an accompanying secrecy obligation or breach of any duty or agreement by which such third party is bound; or (iv) is independently developed by the receiving party. This section shall not be deemed to prohibit disclosures: (i) required by applicable law, regulation, court order, or subpoena; (ii) to auditors or regulators; (iii) to service providers of Bank as necessary for the performance of Bank's duties under this Agreement, provided such service providers are subject to binding confidentiality obligations. Breach of this section shall give rise to irreparable injury, inadequately compensable in damages. Accordingly, the disclosing party may seek injunctive relief against the breach or threatened breach by the other in addition to such legal remedies as may be available, including the recovery of damages.

## **SECTION 2 – INFORMATION AND DATA DELIVERY SERVICES**

Please Note: None of these Information and Data Delivery Services diminishes your responsibility to discover and report unauthorized signatures, endorsements, or alterations of items, unauthorized transfers, and other discrepancies. Nor shall these Services be construed to increase our duties with respect to your accounts, other Services or the payment of items.

### **2.1 Cash Management Online (“CMO”)**

Cash Management Online Services permit online access to certain information as well as increased control of online access and management of your accounts. Services may be unavailable during scheduled maintenance, for security reasons, due to system problems, if communications lines are down, and for other reasons.

### **2.2 FirstTools<sup>SM</sup>**

FirstTools<sup>SM</sup> is a Service that allows use of certain application services available from LendingTools.com (“LendingTools”) We have a separate agreement with LendingTools, which, among other things, makes available the LendingTools software, systems, application services, and necessary equipment and technology (collectively, the “System”) to our customers, including you. Through our relationship with LendingTools, a System will be made available to you in addition to the selected Services as documented via Schedule A. The parties may amend Schedule A at any time, to add or subtract applicable Services, by signing and dating an amended or replacement Schedule A. The System and LendingTools Services will generally be available twenty-four (24) hours per day, seven (7) days per week, except for



scheduled maintenance. The System and LendingTools Services may be unavailable at other times for security reasons, due to System problems, and for other reasons.

## SECTION 3 – PAPER DISBURSEMENT SERVICES

### 3.1 Positive Pay

*(a) Description of Service.* Positive Pay Services will allow us to compare items received for payment on your relevant account(s) (in this section collectively “Items”), against the item issue listings that you provide to us (your “Issue File”). Your Issue File must comply with the criteria, operating procedures, or Rules we establish from time to time. Any Items received by us and not matched against your Issue File will be considered “Exceptions.” We will make available to you a daily report of Exceptions. See our [Processing Schedule \(Exhibit 1\)](#) for further information. That report will list the serial number of each Exception and the amount for which it has been encoded (and, if you are receiving payee name verification services, the report will set forth whether the payee matched the payee on your Issue File). You understand that report information is subject to the limitations of high speed equipment used to capture the information, the quality of the underlying Items for accurate scanning, and scanning errors made by others.

*(b) Accuracy; Notification.* You are responsible for the adequacy and accuracy of your Issue File and for providing the most current available version to us before our receipt of the Items listed thereon. If you believe that any Exception should be paid, you must notify us prior to the Exception Report Deadline (see our [Processing Schedule \(Exhibit 1\)](#)). Notification may be made via CMO or other means acceptable to us, and must identify the relevant Exception(s) that you want paid. Unless otherwise agreed by the parties (i.e. applicable default settings), if you fail to provide timely notification, we may return all Exceptions stamped with a reason deemed appropriate by us in the circumstances. If your notification only refers to certain Exceptions, all other Exceptions may be returned. All Items matching your Issue File and all Exceptions that you indicate should be paid will be considered properly payable and charged to your relevant account and will be deemed authorized by you and in accordance with these Terms. The foregoing notification deadline also establishes the standard by which you will be considered to have exercised reasonable promptness with regard to the daily report, which will be considered a statement of account under the Uniform Commercial Code (“UCC”). We will process Items covered by Positive Pay Services in good faith and with ordinary care in the circumstances (which include the procedures set forth in this and the preceding paragraph). Procedures in place for non-Positive Pay Items will not be applicable in determining whether we have satisfied the foregoing responsibilities.

*(c) Authenticity of Items.* We agree to follow your instructions with regard to paying Items in accordance with the preceding paragraphs. You agree that we will not be otherwise responsible for the authenticity or alteration of Items, or for the presence or validity of signatures, dates, or amounts thereon. You understand that Positive Pay Services are not equivalent to, and do not replace, stop payment orders.

### 3.2 Reverse Positive Pay

*(a) Description of Service.* With Reverse Positive Pay Services, we will provide you with a daily transmission of items drawn on your relevant account(s) (in this section collectively “Items”) (see our [Processing Schedule \(Exhibit 1\)](#)). In connection with our processing hereunder we may or may not identify Items that should not be paid based on any instructions you may have previously provided us (for example, stop payment Items); these Items will be handled in accordance with our standard processing procedures and will not be referenced in the daily transmissions to you. This Service does not apply to Items presented over our teller line. A daily notification of exception Items will be provided in a mutually agreed manner.

*(b) Notification of Items not to be Paid.* If you believe any Item listed in your daily transmission or daily notification of exception Items should not be paid, you must notify us in the form of a legible, properly completed bouncer sheet in the form we specify. Bouncer sheets must be actually received by us no later than the Bouncer Deadline. On receipt of your bouncer sheet we will return Items stamped with a reason deemed appropriate by us in the circumstances. The foregoing notification deadline also establishes the standard by which you will be considered to have exercised reasonable promptness with regard to the daily transmission and daily notification of exception Items which will be considered a statement of account under the UCC. You understand that these Services require your bouncer sheet entries to be completely accurate. You agree that we are not responsible for paying an Item that is not accurately described in your bouncer sheet. All Items listed in your daily transmission or daily notification of exception Items not

accurately described on your bouncer sheet will be considered properly payable and charged to your relevant account and will be deemed authorized by you and in accordance with these Terms. We will process Items covered by Reverse Positive Pay Services in good faith and with ordinary care in the circumstances (which include the procedures set forth in this and the preceding paragraph). Procedures in place for non-Reverse Positive Pay Items will not be applicable in determining whether we have satisfied the foregoing responsibilities.

*(c) Authenticity of Items.* We agree to follow your instructions with regard to paying Items in accordance with the preceding paragraphs. You agree that we will not be otherwise responsible for the authenticity or alteration of Items, or for the presence or validity of signatures, dates, or amounts thereon. You understand that Reverse Positive Pay Services are not equivalent to, and do not replace, stop payment orders.

### **3.3 Payable through Drafts**

*(a) Description of Service.* We agree to act as a collecting bank to process items or drafts drawn on you and marked “payable through” us (referred to herein as “Drafts”). Each Draft will: (i) state prominently on its face that it is “payable through” us; (ii) be encoded with the transit routing number designated by us; and (iii) be encoded in its account number field with the draft account number designated by us. Drafts are subject to applicable Requirements of Law as in effect from time to time, and you are responsible for compliance. We will, however, be responsible for complying with obligations imposed on collecting banks. You acknowledge and agree that we may receive electronic images of Drafts.

*(b) Draft Lists; Availability.* A list of Drafts received by us (a “Draft List”) will be made available to you via transmission or other mutually agreed method on a daily basis. See our [Processing Schedule \(Exhibit 1\)](#) for further information. You shall notify us immediately if you do not receive a Draft List on time (a “Notice of Non-Receipt of Draft List”). Draft images may be viewed online or we may (for an additional fee) transmit an image file to you. The making available of Draft Lists to you pursuant to this paragraph shall constitute presentment and no other or further presentment of any Draft shall be required.

*(c) Treatment of Drafts.* We are authorized to provisionally debit your relevant account referenced for the total dollar amount of all Drafts received by us, subject only to adjusting your account the following banking day for any Drafts for which payment is refused by you in accordance with the following paragraph. We will notify you when a Draft is received by us and there are not sufficient funds in your account to pay such Draft.

*(d) Refusal to Pay Draft.* You shall complete and return to us a Draft Bouncer Sheet identifying the Drafts for which you refuse payment. We must receive the Draft Bouncer Sheet for any Draft that you refuse to pay by no later than the Bouncer Deadline. We will acknowledge receipt of the Draft Bouncer Sheet (see our [Processing Schedule \(Exhibit 1\)](#)). You shall notify us immediately if you do not receive such acknowledgment of receipt on time (a “Notice of Non-Receipt of Bouncer Acknowledgement”). You will be liable to us for the amount of any Draft for which we have provisionally charged you and which is not identified by you in a Draft Bouncer Sheet received by us prior to the Bouncer Deadline. Your Notice of Non-Receipt of Draft List and Notice of Non-Receipt of Bouncer Acknowledgement will be directed to the recipient we specify. In the event that you do not provide a Notice of Non-Receipt of Draft List, you shall be deemed to have received your Draft List on time. In the event that you do not provide a Notice of Non-Receipt of Bouncer Acknowledgement, you will be deemed to have not submitted a Draft Bouncer Sheet on time.

*(e) Validity of Signature.* Except as expressly provided in this paragraph, we will not be responsible for the validity of signatures, endorsements, dates, amounts, or the acceptance of stop payment orders relative to Drafts. In obtaining acceptance and payment of any Draft, we warrant that we have title to such Draft or are authorized to obtain acceptance and payment on behalf of one who has good title; provided, however, that we make no warranty with respect to the signature of the drawer of any Draft.

*(f) Indemnification for Drafts.* In the event that a court of competent jurisdiction determines, in any suit in which you are not a party adverse to us, that we are accountable for any Draft, you will pay us the amount of such Draft plus interest and other costs and expenses (including attorneys’ fees) expended in such suit.

### **3.4 Controlled Disbursement**

With Controlled Disbursement Services, you may issue items that use the routing number of another financial institution (the controlled disbursement point) that have made arrangements with us. Such items will be paid from an account that you maintain with us and you agree that we may pay and otherwise treat such items the same as if they were issued using our routing number. The total dollar amount of items received through the controlled disbursement point prior to the cut-off on any banking day (see our [Processing Schedule \(Exhibit 1\)](#)) shall be reported to you via CMO or other mutually agreed method on the day of receipt. Items received after the cut-off or through our teller line will be included in the total for the next banking day.

### **3.5 Account Reconciliation**

Account Reconciliation Services provide you with the ability to reconcile paid items and issued items through your CMO services. Use of this Service does not affect your obligations to report unauthorized signatures, alterations, endorsements, or any other unauthorized transaction or discrepancy. Your use of this service does not increase our duty with respect to accounts or the payment of items.

### **3.6 Image Archive**

Image Archive Services permit access to digital images of checks and items paid with respect to your account(s). Images may be made available on a mutually agreed schedule via online transmission or delivery of media (special Access Requirements may apply). If an image is missing or is illegible, our sole responsibility will be to use reasonable efforts to provide you with a legible image or copy on your request. If we provide you media which contains a defect or is unreadable in its entirety, you must notify us within forty-five (45) days after delivery. Our sole responsibility will be to replace the defective file or media, or (if we are unable to do so) to refund the fees you paid in respect thereof. We will not be liable for delays in providing images. We will not be liable for damages arising out of these Services in excess of the amount of the check or other item giving rise to your damage claim (this limitation is in addition to and not in lieu of the other limitations set forth in these Terms).

## **SECTION 4 – DEPOSITORY SERVICES**

### **4.1 Return Item Notification**

This service will generally result in the transmission of notice to you of: (1) deposited items that are returned to and received by us; and (2) notifications of return that we receive from others. Notifications will generally be transmitted within the same day of our receipt of the returned item or notification of return. We will separately confirm the specific means of notification and covered deposit account(s). This service is not guaranteed to be one hundred percent (100%) free from error, interruption, or delay. Failure to transmit notice to you does not affect our right to revoke credit previously given for any item.

### **4.2 Lockbox Services (Wholesale and Retail)**

*(a) Description of Service.* Lockbox is a service offered to you in which you receive checks or other mutually agreed upon payment instruments from your customers by mail to a post office box and the Bank picks up the payments and deposits them in your account(s). There are two basic types of Lockbox Services: wholesale (used for high dollar, low volume payments) and retail (used for high volume, low dollar payments, such as taxes, utilities, licenses and fees, and accompanied by standardized remittance documents).

*(b) Standard Procedures.* Lockbox Services will be provided in accordance with the lockbox procedures we have established for your account(s), as in effect from time to time (we will confirm the procedures that are in effect on request). To the extent the lockbox procedures established for your account(s) impose obligations on you, you agree to comply with those obligations or Rules. You agree that your incoming work shall comply with the minimum processing requirements we specify from time to time.

*(c) Endorsement.* We may, but are not required, to endorse all remittances as follows: “Credited to the account of the within named payee in accordance with payee’s instructions. “First National Bank of Omaha, 1620 Dodge Street,

Omaha, Nebraska 68197.” We are further authorized to supply any additional endorsement necessary to any remittance returned by the drawee bank for the reason that the payee’s personal endorsement is required.

*(d) Substantial Compliance; Exception Items.* Substantial compliance with our standard lockbox/remittance procedures shall be deemed to constitute the exercise of due care; provided, however, that occasional unintentional deviations from the standard procedures shall not be deemed a failure to exercise due care in respect to the transactions in which the deviations occur. Failure to exercise due care shall not be inferable by reason of the loss of an item without an additional showing of negligence on our part. Without limiting the foregoing, you agree that we shall have no liability for depositing and/or endorsing exception items on your behalf. Exception items include, but are not limited to, items that are unsigned, items that are undated, post-dated or stale dated, items where the payee line is blank or does not match your name, items containing inconsistent amounts, and items that bear paid-in-full or similar notations.

*(e) Health Related Covered Entity.* Unless otherwise agreed by the parties, if the Services under this Section are for a covered entity as defined by the Health Insurance Portability and Accountability Act (“HIPAA”), the supplemental [Business Associate Agreement \(Exhibit 2\)](#), herein incorporated by this reference, shall govern as to the handling of protected health information.

*(f) Access to Technology.* Unless otherwise agreed by the parties, if the Services under this Section use the vendor (DigitalDeposit™, DigitalLockbox™, ImageBranch™ and WebDDL™) software, the supplemental [License Terms \(see Exhibit 3\)](#), herein incorporated by this reference, shall be applicable.

### **4.3 Disaster Recovery Lockbox Services**

*(a) Description of Service.* Upon declaration of a disaster, Disaster Recovery (“DR”) Lockbox Services will be provided in accordance with [Section 4.2](#), our standard lockbox procedures and (if applicable) the specific Remittance Instructions/Processing Guidelines we have established for your account(s), as in effect from time to time (we will confirm the procedures that are in effect on request). In the event multiple customers are affected by the same disaster, Lockbox Services will be provided to the best of our ability, provided that your right to immediate access and exclusive use of our Lockbox Services is conditioned upon no other customer having obtained prior use of the Lockbox Services.

*(b) Our Responsibilities.* The Disaster Lockbox Services are subject to the creation and completion of an implementation plan. Following that, to the extent that we are requested to provide disaster recovery services, our Services will consist of maintaining the capability to receive remittance mail forwarded to one of our processing centers, opening, extracting, and scanning such mail, and processing it in accordance with the Remittance Instructions/Processing Guidelines we have established for you.

*(c) Your Responsibilities.* To the extent that our standard procedures impose obligations on you, you agree to comply with those obligations or Rules. You are responsible for providing any and all information we deem necessary for the creation of the previously mentioned Remittance Instructions/Processing Guidelines. You must participate in defining the parameters for the scope of work, providing sort patterns and scan lines, setting up instructions, and providing any exception processing guidelines required to process remittances. You agree to notify us of any updates or changes in sort patterns throughout the duration of this Agreement. You are further responsible for declaring a disaster once it occurs. It is your sole responsibility to establish mail forwarding with the United States Postal Service. Upon our request, you must make available any necessary Personnel on location and at your own expense. You agree that your incoming work will comply with the minimum processing requirements we specify from time to time.

*(d) Demand Deposit Account; Sufficient Funds.* You agree to maintain one (1) or more demand deposit account(s) with us in an open status and in compliance with your Commercial Deposit Agreement (each referred herein as your “Account”) and, if we require, agree to maintain a specified minimum balance therein. We may indicate in the title of your Account that it is for the benefit of one (1) or more customers. You represent, warrant, and agree that all customer funds on deposit in such Account are subject to these Terms. In any event, you agree to hold on to funds on deposit in trust for your customers, and agree to promptly and accurately remit customers’ funds to them. You are responsible for assuring that sufficient balances in available funds are on deposit to cover all transactions and all returns. We may charge your Account on transmission for all outgoing Automated Clearing House (“ACH”) credit entries and on returns thereof. If sufficient balances are not available, we may decline to forward transactions.

*(e) Endorsement; Method of Collection.* We may select the methods used for collection of items, including the use of other banks and clearinghouses, and we may agree to carry collection policies, procedures, and deadlines with such other banks and clearinghouses. We may also convert items into substitute checks (as defined under the UCC) or otherwise collect them electronically. We may charge back to your Account the amount of any: (i) item or entry which is returned unpaid or which is not paid within a reasonable time; or (ii) any electronic deposit for which we do not receive settlement within a reasonable period of time. Alternatively, we may set-off such amount against the amount of any credit or other transfer due to you.

*(f) Third party claims.* You understand that credits to you and your customers may be revoked due to third party claims, demands, or other processes recognized by relevant Association rules (including returns, reversals, adjustments, reclamations, or claims based on breach of any warranty made by us or you under the NACHA Rules).

*(g) Health Related Covered Entity.* Unless otherwise agreed by the parties, if the Services under this Section are for a covered entity as defined by the Health Insurance Portability and Accountability Act ("HIPAA"), the supplemental [Business Associate Agreement \(Exhibit 2\)](#), herein incorporated by this reference, shall govern as to the handling of protected health information.

*(h) Access to Technology.* Unless otherwise agreed by the parties, if the Services under this Section use the vendor (DigitalDeposit™, DigitalLockbox™, ImageBranch™ and WebDDL™) software, the supplemental [License Terms \(see Exhibit 3\)](#), herein incorporated by this reference, shall be applicable.

#### **4.4 Remote Deposit Capture-**

*(a) Description of Service.* Remote Deposit Capture ("RDC") Services will consist of us processing, as further described below, checks that you receive and transmit to us for processing as check images. By submitting an image to us, you are authorizing and instructing us to accept that item for deposit to your Account(s). Our Services will include: (i) arranging for a host system to receive electronic image and data files that you transmit of checks made payable to you; (ii) converting such files to depository files; (iii) serving as the collecting bank with respect to the items reflected in such files; (iv) providing electronic access to the image files for your transactions; and (v) standard reports. We are not responsible for processing your deposit images and data until they are actually acknowledged by us. You understand that the Services are subject to certain usage and dollar volume limits that we may establish for you from time to time. We may refuse to process in excess of those limits (we will inform you of those limits on request). You agree not to submit checks that are drawn on an account owned by you or any affiliated person or entity or checks that are drawn on or are from institutions located outside the United States.

*(b) Hardware.* We may sell hardware identified in a separate written quotation. Prices indicated do not include, and you agree to pay, relevant sales/use taxes. Payment of the hardware purchase price is due, and title and risk of loss pass to you, on delivery. If we have provided you with hardware, you understand that we are not the manufacturer of the hardware. We shall have no liability whatsoever for personal injury (including death) or property damage caused by the hardware. The hardware is provided AS IS. Provided that you remain current in your monthly fees, and subject to manufacturer availability, we will promptly replace the hardware if it is defective and returned to us. If you believe the hardware is defective, call your Relationship Manager. Prior to authorizing a replacement, we may attempt to diagnose the problem over the phone and verify that it is not possible to affect a remote fix. Provided that the hardware has not been abused, misused, or cared for improperly, replacement will be at a reduced cost to you. If the hardware is lost or damaged by you, has been abused, misused, or cared for improperly, replacement will be at its full replacement price. If the hardware is returned without the corresponding power pack and cable, you agree to pay for replacement of the appropriate power pack and cables.

*(c) Your Responsibilities.* You: (i) are responsible for the accurate scanning of your checks, for the results of your use of the Services and for submitting accurate, complete, and readable files to us; (ii) shall assure that checks are properly endorsed before or during scanning (unless agreed upon otherwise an endorsement shall be applied by the scanner or system, but you understand and agree that you assume all risk of loss arising therefrom); (iii) shall not submit files to us that contain information which duplicates information you previously provided to us or that contain information with respect to checks that you have previously transferred to, deposited with or attempted to clear through a third party; (iv) shall assure that the images you create accurately represent all of the information on the front and back of your



checks, including all endorsements; (v) shall not alter any data you send so that it does not accurately reflect the checks referenced in the image files sent to us; (vi) shall retain the original scanned checks in a secure setting for a reasonable period (no less than sixty (60) days and no more than one hundred twenty (120) days after the image is sent to us); (vii) shall assure that such checks are not deposited or processed a second time; (viii) shall make such checks available to us upon request; (ix) shall completely and securely destroy the original checks following the retention period in clause (vi), unless doing so would be a violation of law, rule, or regulation; (x) agree that all data you transmit reflects the result of bona fide business transactions between you and your customer and no such entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context; (xi) are prohibited from using our Services in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us or our subcontractors to investigation, liability, or legal action; and (xii) agree to receive, resolve, and respond to consumer-alleged errors under applicable Requirements of Law. If an item is returned to us, we may make the return to you in the form of a substitute check (or a paper or electronic representation thereof). As to each item reflected in a check image deposit, you further warrant to us that: (i) you are a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item; (ii) the item has not been altered; (iii) the item bears all endorsements applied by parties that previously handled the item, in paper or electronic form, for forward collection or return; and (iv) no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item that has already paid. You further make all warranties set forth in and subject to the terms of §4-207 of the UCC for each item as if it were an item subject to the UCC and you make the warranties set forth in and subject to the terms of §229.34(c) and (d) of Federal Reserve Regulation CC for each item as if it were a check subject to that section. You must complete transmission of your transaction data to our host prior to the cut-off (see our [Processing Schedule \(Exhibit 1\)](#)), in order for such transactions to be processed on the same day. If there is a discrepancy between this cut-off time and the cut-off time disclosed in the Commercial Deposit Agreement, this cut-off time (set forth in the Processing Schedule) will control.

*(d) Sensitive Information.* In using the Services you will be creating electronic files of sensitive information of the persons and entities that deliver checks to you. You are responsible for protecting your computer systems and those files against inappropriate access (that protection may require the use of multifactor authentication, dual control access, and other methods). You bear the risk of loss or alteration of information in transit from your systems to ours.

*(e) Reviews, Audits and Investigations.* You understand that we may monitor any or all transactions. We may also conduct reviews, audits, and investigations related to your use of the Services and compliance with these Terms and the Operating Procedures. You agree to cooperate as reasonably requested in connection with those reviews, audits, and investigations

*(f) Access to Technology.* Unless otherwise agreed by the parties, if the Services under this Section use the vendor (DigitalDeposit™, DigitalLockbox™, ImageBranch™ and WebDDL™) software, the supplemental [License Terms \(see Exhibit 3\)](#), herein incorporated by this reference, shall be applicable.

#### **4.5 Reclear**

You authorize us to automatically attempt to reclear checks deposited in a relevant account(s) which are returned for insufficient or uncollected funds. Checks deposited and returned for any other reason will not be automatically recleared. You understand this procedure will delay the actual return of a deposited check which is returned the second time. Checks may or may not be converted to an electronic ACH entry.

#### **4.6 Check Block**

Check Blocking Services provide account fraud protection to your account(s) by refusing presentment at the teller line or automatically returning all checks presented against your account(s). Checks that have been electronically converted to ACH debits will not be blocked through this service. If you wish for protection against ACH debits, see [Section 5.2 titled "ACH Blocking."](#)

## SECTION 5 – ELECTRONIC TRANSACTION SERVICES

### 5.1 Automated Clearing House (“ACH”) (General)

*(a) Processing and Transmittal.* ACH Services will consist of creating ACH files based on information you provide and sending and/or receiving ACH transactions on your behalf. You shall transmit credit and debit Entries (and requests for cancelation or amendment thereof) to us to the location(s) and in accordance with the formatting and other requirements of the National Automated Clearing House Association (“NACHA”) rules and such additional policies and procedures (including restrictions on the types of ACH transactions that may be initiated) as may be provided by Bank from time to time. At this time the only restricted SEC codes are WEB and IAT which would require an enhanced review and onboarding process prior to any initiation. Unless otherwise defined herein, capitalized terms have the meanings provided in the NACHA Rules. The term “Entry” has the meaning provided in the NACHA Rules and also means the data received from you hereunder from which we initiate each Entry. We may send Entries to any ACH processor selected by us, to an affiliate bank, or directly to another bank. You understand that the Services are limited by exposure limits that we establish for you from time to time. In addition, we may reject files and/or Entries if we deem necessary for failure to comply with these Terms, loss prevention, or regulatory compliance purposes.

*(b) Account.* You agree to maintain sufficient balances in available funds in your relevant account(s) to cover all credit transactions and returns on all debit transactions you submit to us and, if we require, a specified minimum balance of available funds. We may charge your account on transmission for all outgoing credit Entries and, on receipt, for all incoming debit returns. If a relevant account does not have sufficient balances, we may, at our option, either debit any other account(s) of yours with us or our affiliates to provide such balances or decline to forward your transactions. In addition, for purposes of satisfying your payment obligations for the Services, we may consider any overdraft line of credit or other arrangement you have with us.

*(c) Receipt Notification.* Unless otherwise agreed upon by the parties, after receipt of a file transmission or batch release from you, we may send you an e-mail notification indicating that we have received an ACH file from you. This “ACH File Received” notification will indicate the total dollar value of debits and/or credits we plan to send based on your transmission. If the notification indicates invalid or unauthorized file totals or if you do not receive the notification promptly after you transmit or release to us, you agree to call our applicable ACH Operations/Cash Management Department. If you do not call by the ACH File Received Deadline (see our [Processing Schedule \(Exhibit 1\)](#)), you will be considered to have conclusively acknowledged that you received an ACH File Received notification that accurately reflects the transfers you have authorized. If you waive ACH File Received notification, you assume all risk of loss -- WE STRONGLY RECOMMEND THAT YOU ACCEPT ACH FILE RECEIVED NOTIFICATIONS AND STRONGLY RECOMMEND AGAINST WAIVING THAT NOTIFICATION. This paragraph shall not be considered to modify or constitute a part of the Security Procedure set forth in [paragraph 5.1\(i\)](#).

*(d) Standard of Care, Account Reconciliation, and Periodic Statement.* You agree to use ordinary care in using our Services. Under the NACHA operating rules, which are applicable to ACH transactions involving your account(s), we are not required to give next day notice of receipt of an ACH item, and we will not do so. However, we will notify you of the receipt of payments in the periodic statements we provide to you. You agree to review all account, analysis, and other statements (paper and/or online) that we make available to you, and you agree to do so within a reasonably prompt time after the statements are made available to you (see your Commercial Deposit Agreement for additional relevant terms). You agree to give us immediate verbal notice, thereafter confirmed in writing, of any unauthorized, erroneous, or improperly executed transactions. If you fail to notify us within thirty (30) days of receipt of a periodic statement, you agree that we shall not be liable for any other losses resulting from your failure to give such notice, including any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement. If you fail to notify us within sixty (60) days of receipt of a periodic statement, you shall be precluded from asserting such discrepancy against the Bank.

*(e) Cancelation, Amendment or Reversal.* If you request us to do so, we may, but are not obligated to, amend or cancel files or Entries after our initial receipt of your instructions. We have no obligation to cancel or amend files or Entries after we receive them. If you send us a Reversal and we are able to verify the authenticity of the Reversal using the Security Procedure, we will make a reasonable effort to act on your request. We will not be liable to you if such Reversal

is not effected. You agree to indemnify us in connection with any Reversal as provided in Article 4A of the UCC. Your foregoing indemnity obligation will survive termination of these Terms or any Service.

*(f) Third Party Service Providers.* In the event you use a third party service provider to send Entries to us on your behalf, you will remain fully responsible for all your obligations and warranties to us under these Terms and for the compliance of your third party service provider with your obligations and warranties under these Terms, including compliance with the NACHA Rules, the formatting, and other requirements with respect to Entries submitted to us on your behalf by a third party service provider and the Security Procedures of these Terms. Consistent with UCC § 4A-201, "Security Procedure" means a procedure established by agreement between you and the Bank for the purpose of verifying that a payment order or communication amending or cancelling a payment order is that of the customer. Upon request, you will provide us with a true and exact copy of your third party service provider agreement. You are responsible for contractually obligating your third party service provider to the foregoing obligations, warranties, and Security Procedures. We are not responsible in any manner for the acts or omissions of your third party service provider.

*(g) Originator Status and Warranties.* Unless you have separately contracted with us as third party sender, you agree that all ACH Entries you request us to originate are the result of bona fide business transactions between you and your customer, and no such Entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context. You understand that you will be considered the Originator of any ACH transactions submitted. Each time you use a Service, you agree to comply with all rules and operating guidelines of NACHA and you warrant that each Entry complies with NACHA Rules. You make the same warranties to us as we make under Section 2.4 (or any successor section) of the NACHA Rules. You agree not to initiate Entries that violate the laws of the United States. You agree to our current "annual NACHA Rules Update for ACH" as may be revised from time to time (the "ACH Update" previously the "Compliance Update for ACH Originators"), each of which is deemed incorporated herein by reference. You understand that the ACH Update is not a complete or exclusive summary of the NACHA Rules. You acknowledge receipt of the current ACH Update as of the effective date of these Terms. In addition, we will provide you with a current ACH Update upon your request. If you continue to initiate Entries after we provide such an ACH Update, you will be considered to have agreed to the terms set forth in that ACH Update (except that if you cease initiation of Entries within thirty (30) days after the date of such an ACH Update, initiation of Entries during that thirty (30) day period will not constitute your agreement). You are responsible for promptly handling and, if necessary, responding to and resolving at your own expense any Special Handling Claims (as defined below in [paragraph 5.1\(m\)](#)). The NACHA Rules contain special requirements and impose additional obligations on us when we act as the Originating Depository Financial Institution ("ODFI") for you with respect to certain Entry codes, including, but not limited to, the IAT Entry code. You will be deemed to have made the additional representations and warranties, and agreed to the additional covenants and agreements, contained in the NACHA Rules that are applicable to the codes and types of Entries you submit.

*(h) International ACH Transactions (IAT).* You specifically agree to comply with any requests for information required by the NACHA Rules with respect to IAT Entries. You further acknowledge and agree that you are responsible for ensuring that international ACH transactions are properly identified using the IAT Standard Entry Class Code. With respect to each Entry submitted, you represent and warrant that you have conducted a thorough examination of Receiver and other third party relationships to identify those transactions resulting in a transfer of funds to or from a party or financial agency outside the territorial jurisdiction of the United States. With respect to each IAT Entry you submit, you represent and warrant that you have submitted such IAT Entry in compliance with United States law, including your obligations under rules promulgated and programs administered by the OFAC and FinCEN that you are not acting on behalf of or transmitting funds to anyone subject to OFAC sanctions and that such IAT Entry complies with the laws and payment system rules of the receiving country. Receiving Depository Financial Institutions ("RDFI(s)"), Gateway Operators, us as ODFI and others involved with IAT Entries also have obligations under and have to comply with the NACHA Rules and United States law for IAT Entries. The performance by all participants, including us, of obligations with respect to IAT Entries may cause delays in processing, settlement and/or availability of IAT Entries or funds. You waive and release us from any liability or obligation, including funds availability obligations caused by or arising out of any such delay associated with IAT Entries.

*(i) Security Procedure* - You agree we will use the following "Security Procedure" to verify the authenticity of Entries transmitted to us electronically and not to detect errors in the transmission or content of Entries:

We will determine whether the transmission: (i) matches a unique customer identifier that we have assigned to you; or (ii) is received via a secure connection that we have established with you. This shall be accomplished by an industry-accepted method.

We may change your unique customer identifier(s) from time to time. You shall take all necessary steps to prevent the unauthorized use or disclosure of your unique customer identifier(s) and to otherwise establish and maintain procedures to protect against the provision of unauthorized Entries. **AN ENTRY SHALL BE EFFECTIVE AS YOUR VALID ORDER TO US AND YOU AGREE TO BE BOUND BY THE SAME IF: (1) IT WAS IN FACT TRANSMITTED OR AUTHORIZED BY YOU; OR (2) IT WAS ACCEPTED BY US IN COMPLIANCE WITH THE ABOVE SECURITY PROCEDURE, WHETHER OR NOT IT WAS ACTUALLY AUTHORIZED BY YOU.** Compliance with the Security Procedure shall be documented by our computer system and absent proof of tampering therewith such records shall be conclusive with respect to all questions concerning the actions documented therein. This Security Procedure may be carried out by our computers without unbundling of files or human oversight on individual Entries. You are solely responsible for the security of the non-bank endpoints. Bank does not guarantee security of the secured connection, which shall be considered part of your “transmitting facilities” for purposes of UCC §4A-203. You confirm and agree this Security Procedure is commercially reasonable for purposes of these Terms.

*(j) Security Program* - You shall establish, implement, and update commercially reasonable security policies, measures, and systems related to the initiation, processing, and storage of Entries. More specifically, these policies, measures, and systems must: (i) protect the confidentiality and integrity of Protected Information (defined below); (ii) protect against anticipated threats or hazards to the security or integrity of Protected Information; and (iii) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person. Protected Information is defined as the non-public personal information, including financial information, of a natural person used to create, or contained within, an Entry and any related Addenda Record. You are strictly responsible for establishing and maintaining commercially reasonable security measures to safeguard against unauthorized transmissions and network infections. You warrant that such measures will include security technology (e.g. secure web-servers) that provides a minimum level of security equivalent to 128-bit RC4 encryption technology for the entry and transmission of Entries over the Internet, and network security to safeguard account information and access from unauthorized individuals. You warrant that no individual will be allowed to initiate Entries in the absence of proper supervision and safeguards, and agree to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices, and related instructions provided by us in connection with the Security Procedures provided to you. If you believe or suspect that any such information or instructions have become known or accessed by unauthorized individuals, you agree to verbally notify us immediately, followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by us prior to receipt of such notification and within a reasonable period of time to prevent unauthorized transfers. If an Entry (or request for cancellation or amendment of an Entry) received by us purports to have been transmitted or authorized by you, it will be deemed effective as your Entry (or request) and you shall pay us the amount of such Entry even though the Entry (or request) was not authorized by you, provided we accepted the Entry in good faith and acted in compliance with the Security Procedures with respect to such Entry. In the event of any unauthorized instructions, you agree to cooperate and to provide such information as we may reasonably request to investigate and recover any resulting loss.

*(k) Authorized Representatives* - We will, in accordance with your requests from time to time, maintain records of your Authorized Representatives, change such records (with reasonable advance notice and after we have had a reasonable opportunity to act upon such notice), and confirm those records to you. We may require your requests to be confirmed in writing and to be from an Authorized Representative on your account or from another person with proper authority. These records are maintained as an administrative convenience only and do not form a part of the Security Procedure. We are permitted, but not required, to honor all requests and instructions from your Authorized Representatives.

*(l) Notice with Respect to Non-Consumer ACH Wholesale Credit Transactions and UCC Article 4A* - We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses. The rights and obligations of the Originator with respect to such payments shall be construed in accordance with and governed by the laws of the State of Nebraska, unless it has been otherwise agreed that the law of some other state shall govern. Credit given by us or a Receiving Depository Financial Institution (RDFI) with respect to an ACH credit Entry is provisional until the RDFI receives final settlement for such Entry through a Federal Reserve Bank or as otherwise

provided for under Article 4A. If we or a RDFI does not receive such final settlement or payment, you are hereby notified and agree that the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and the party making payment via such Entry (i.e. the Originator of the Entry) shall not be deemed to have paid the amount of such Entry.

*(m) Special Handling Claims* - To the extent that credits to any of your account(s) are revoked due to any third party claim or demand or any other process recognized by the NACHA Rules (including returns, reversals, adjustments, reclamations, or claims based on breach of any warranty made by us or you under the NACHA Rules, collectively "Special Handling Claims"), you shall immediately reimburse us for the amount thereof. Our right of reimbursement is absolute and unconditional, will survive any termination of these Terms, and will not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment, or right of recoupment. If Special Handling Claims become excessive (in our judgment) we may adjust fees, require reserves, and/or modify, suspend, or terminate Services. We also may delay the availability of any amount credited for a debit Entry or credit Reversal if we believe that there may not be sufficient funds in your account to cover chargeback or return of the Entry or Reversal.

*(n) Inconsistency of Name and Account Number* - An RDFI can make payment(s) to a Receiver based solely on the account number, even if the name in the Entry differs from the name on the account. We may send an Entry to a RDFI based solely on the bank identifying number, even if you provide us with a different RDFI name, and you will be bound thereby.

*(o) Termination of Services* - Notwithstanding [Section 1.2 titled "Termination of Services"](#), in the event you breach the NACHA Rules or cause us to breach the NACHA Rules we may immediately terminate or suspend these Terms as to ACH Services.

*(p) Data Retention* - You shall retain data adequate to permit remaking of Entries for seven (7) days following the date of their transmittal to us, and will provide such data to us upon request. Without limiting the foregoing, you specifically agree to be bound by and comply with all applicable provisions of the NACHA Rules regarding the retention of documents or any record, including your responsibilities to retain all items, source documents, and records of authorization in accordance with the NACHA Rules.

*(q) Tapes and Records* - All media, Entries, Security Procedures, and related records used by us for transactions contemplated by these Terms shall be and remain our property. We may, at our sole discretion, make available such information upon your request. Any expenses incurred by us in making such information available to you are your responsibility and may be debited from your account(s).

*(r) Evidence of Authorization* - You shall obtain all consents and authorizations required under the NACHA Rules and shall retain such consents and authorizations for two (2) years after they expire.

*(s) Audit Requirements* - You shall conduct, or have conducted, an audit, at least once a year, to verify your continued compliance with the NACHA Rules. More specifically, the audit must verify your security policies, measures, and systems related to the initiation, and verify processing and storage of Entries: (i) remain in compliance; and (ii) continue to be commercially reasonable. You agree to submit verification of this audit to us as soon as it is completed, or at any other time we may request.

## **5.2 ACH Blocking**

ACH Blocking Service provides a way for you to request that all ACH Entries against your applicable account(s) be blocked. Unless mutually agreed otherwise, blocked Entries will be returned with the return codes we specify. You agree not to authorize others to initiate Entries that are inconsistent with the blocking services you request from us. In the event we fail to block a debit Entry that was not authorized by you, our sole obligation shall be to promptly re-credit the amount thereof to your account(s), and we shall be subrogated to all of your rights and remedies related to that Entry and the transaction out of which it arose. In the event that we fail to block a credit Entry, our sole obligation shall be to transfer the subject funds back to the Originator of the Entry, if requested by you. You agree to execute such additional documents as we may reasonably request from time to time relating to the services provided hereunder (e.g., NACHA-required affidavits).



### **5.3 ACH Positive Pay**

*(a) Description of Service.* ACH Positive Pay Service is an online portal that provides you real time access to manage all incoming ACH debit transactions that may be unauthorized and allows you the opportunity to create customized instructions or rules on the management of ACH debit transactions being posted to your Accounts. An ACH customized instruction or rule may include the company id, and maximum authorized dollar amount.

*(b) Access and Notification.* You agree to access the online portal daily to review transactions and ACH Positive Pay Exceptions and to provide pay or return instructions to us. In addition, we strongly recommend you select or turn on email notifications. These settings will provide you with the opportunity to receive notification on each day on which ACH transactions are presented for payment.

*(c) Processing and Transmittal.* Your customized instructions or rules will be compared against ACH Entries presented to us for payment. Entries presented for payment will include all Entries received by us via direct origination, from the Federal Reserve Bank, correspondent and other banks. If an unauthorized ACH Entry posts to an Account, the customized instructions or rules determine whether the Entry requires a pay/return decision or if you should be alerted via your established method of notification that unauthorized activity has occurred (an "Exception Entry").

All customized instructions or rules must be set-up within the online portal no later than 8:00 PM CST on any day for effect the next Banking Day. Should you fail to modify or set up such instructions or rules by this time, we shall not be responsible for paying or returning any Entry.

All Exception Entries will be available to you no later than 8:00 am CST on each Banking Day that you have an Exception Entry. You may make your pay/return decisions through the online portal no later than 3:00 pm CST. If you fail to make a pay/return decision prior to the processing cut-off, the item will be paid or returned in accordance with your standing order or default decision.

*(d) Security Procedure.* You agree that the use of the ACH Positive Pay Service shall be carried out in accordance with the Service User Guide (herein incorporated by reference), and subject to the security procedures used in connection with our Business Online Banking service as are in effect from time to time. You acknowledge you have been advised as to the security procedures, in effect at the time of execution of this Agreement. You agree that we are entitled to modify or alter such security procedures, in whole or in part, at any time and that you will be required to comply with such security procedures as modified or altered in order to continue to use the ACH Positive Pay Service. You agree to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs and passwords. We may rely upon the accuracy and validity of any Exception Entry or decision, purported to be initiated by you to us, and shall not be liable for any costs or damages incurred by you or any other person in connection with any unauthorized Entries or Exception Entry decisions.

*(e) Excluded Transactions/Entries.* This Service is not designed to detect or prevent fraud due to other paperless transactions (Wire or EFT) to the Account. In addition, this Service excludes ACH Entries identified with Standard Entry Class (SEC) Codes of ACK, ADV, ATX, COR, DNE, ENR, IAT, MTE, SHR, TRC, TRX, and XCK since these transactions are either non-monetary or are checks which have been converted to electronic format. Also excluded are any incoming returns and corrections.

### **5.4 ACH Returns Redeposit**

You authorize us to automatically attempt to redeposit ACH Returns to the applicable account(s) which are returned for insufficient or uncollected funds. ACH Returns for any other reason will not be automatically redeposited. You understand this procedure will delay the actual return of an ACH Entry which is returned the second time.

## **SECTION 6 – BALANCE CONTROL SERVICES**

### **6.1 Target or Zero Balance Accounts**

Target or Zero Balance Account Services permit you to control the transfer of funds among your accounts. You may instruct us to make transfers among accounts to begin on a mutually agreeable date. With a date-related transfer, you may have funds transferred in one direction between accounts. We transfer funds on the banking days and for the

amounts you specify. With a balance-related transfer, you may have funds transferred to an account when the balance falls below a certain amount, from an account when the balance rises above a certain amount, or both.

## 6.2 First Sweep – Plus

*(a) Description of Service; First Asset Management Account (“FAM”) Account.* Until written directions to the contrary are received by us from one or more of the accountholders, we are authorized to administer your First Asset Management Account (“FAM Account”) as follows: (i) at the close of each banking day, after the posting of all items of deposit and withdrawal to the FAM Account for that day, we will determine the amount of collected funds in the FAM Account in excess of your Target Balance in \$1,000 increments or as otherwise agreed upon by the parties (the “Excess Amount”); (ii) each banking day, we will use the Excess Amount to acquire on your behalf an equivalent net asset value of shares in the Goldman Sachs Financial Square Government Fund or other applicable fund agreed upon by the parties (the “Fund”). Shares so acquired (“Your Shares”) in the Fund will be held of record in the name of “First National Bank of Omaha for the benefit of FAM accountholders.” Beneficial ownership will be allocated to you on our books as a portion of the aggregate Fund shares acquired by us for all FAM accountholders; (iii) income dividends that we receive from the Fund will be allocated to you on a daily basis based on your allocated share of the aggregate Fund shares at the beginning of the day and will be posted to your FAM Account on a monthly basis; (iv) sweeps to and from your FAM Account and income dividends from the Fund will be reflected on your monthly FAM Account statement; (v) the FAM Account may be terminated at any time by notice from you to us or from us to you; and (vi) the FAM Account will automatically terminate should you cease to maintain such account or if we should elect to terminate that account. Upon termination of the FAM Account, we may immediately redeem Your Shares and deposit the proceeds in your FAM Account, and after deducting all fees and charges then due us, we will pay any other cash in the FAM Account, including earnings, to you by depositing the same in any other account(s) maintained by you with us, as we deem appropriate.

*(b) Our Responsibilities and Liabilities.* You acknowledge and agree: (i) our sole duties with respect to the FAM Account are those specifically set forth herein; (ii) we are not exercising any discretionary authority under these Sweep Terms; (iii) we are not selling, soliciting, offering, or promoting any investment or the purchase of any investment contract or security; (iv) we have not made, and will not make, any recommendation with respect to the nature or investment quality of any of the investment options that may be implemented with moneys swept from the FAM Account; (v) we expressly disclaim any responsibility for your decision to invest in the Fund or any other investment options; (vi) all investment decisions you represent have been made and will be made without our participation or advice; (vii) your decision to invest will be made solely on the basis of your own knowledge; (viii) all investments from the FAM Account are made at your own risk and we will not be liable or responsible for any failure of the Fund; (ix) we will have no liability whatsoever to you with respect to actions taken or omitted to be taken by us in connection with the FAM Account, or the purchase of the shares in the Fund, except for actions taken or omitted to be taken by us in bad faith; and (x) we will have no responsibility or liability to you for the disbursement of amounts deposited or invested (hereunder or any part thereof) based upon any notice signed by you or bearing a signature or signatures believed by us to be genuine, except as set forth in these Sweep Terms. In case the FAM Account or Your Shares are attached, garnished, or levied, or the disbursement of proceeds is stayed or enjoined, or any other order, judgment, or decree is made or entered affecting the FAM Account or Your Shares (or any part thereof), you acknowledge and agree that we are expressly authorized in our sole discretion to obey and comply with all such orders, writs, decrees so entered or issued, whether with or without jurisdiction. In case we obey or comply with any such order, writ, or decree, you acknowledge and agree that we will not be liable to you or to any other person, firm, or corporation by reason of such compliance even if such order, writ, or decree is subsequently reversed, modified, annulled, set aside or vacated. You also acknowledge and agree that we will be under no obligation or duty to institute or defend against any lawsuit involving the FAM Account, these Sweep Terms or the activity provided for herein.

*(c) Non-Assignment; Collateral.* You agree not to pledge or otherwise assign your interest in Your Shares to or for the benefit of any third party. You hereby grant us a security interest in Your Shares, any earnings thereon, and any other amount held in the FAM Account, as security for payment of any obligation arising under these Sweep Terms, as a result of any overdraft on your FAM Account, under any loan made by us to you, or under any other obligation which you may have to us. We will have all of the rights and remedies of a secured party under the UCC with respect to this collateral, and you authorize us to execute in your name and to file on your behalf any financing statement which we deem advisable to file in order to protect our interest under the UCC. You also authorize us to certify checks drawn on the

FAM Account which are in excess of the current amount in the FAM Account, you agree to reimburse us for any such excess and you authorize us to redeem Your Shares and to deposit the proceeds thereof to the FAM Account to the extent necessary to cover such excess.

*(d) Set Offs and Charges.* We may set off and charge against any funds in the FAM Account, including the proceeds from the redemption of Your Shares, any liability, obligation, or debt of yours to us (including your obligation to reimburse us for any overdrafts or certifications of a check drawn on your FAM Account), whether that debt, liability, or obligation of yours is joint or several, primary or secondary, or absolute or contingent.

*(e) Receipt of the Fund Prospectus.* YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED AND READ THE GOLDMAN SACHS FINANCIAL SQUARE GOVERNMENT FUND OR OTHER APPLICABLE FUND PROSPECTUS AND THAT WE HAVE MADE NO ENDORSEMENT OR RECOMMENDATION OF THE FUND.

*(f) Bank Failure.* The Federal Deposit Insurance Corporation ("FDIC") requires us to disclose information to you on how your funds would be treated if a bank failure would occur. Funds that have been swept from an account(s) into the holding account at the bank will be treated as if they have not left the bank and will be insured up to the amount of the FDIC deposit insurance limit. Funds swept from the money market mutual fund to this account are deposits and will be insured up to the amount of the FDIC deposit insurance limit. Any funds in excess of the FDIC insurance limits will be treated as uninsured deposits. For funds still invested in the external money market mutual fund, you will be considered to have an ownership interest in shares in the money market mutual fund and such invested funds will either be available to your account the following business day or you will receive payment for the value of such shares in the money market mutual fund.

### **6.3 Loan Sweep**

*(a) Description of Service.* As used below, our "records" refers to the records that we maintain with respect to your sweep arrangement. Your "loan" refers to your selected line of credit and/or other loan products associated with your sweep arrangement (as contained in our records). Until we receive and have a reasonable opportunity to act on any written instructions to the contrary, you authorize us to take the following actions on your behalf. After the close of each banking day, we will determine whether the collected balance in your designated account(s) is above or below your "target balance" (as contained in our records). Any excess over the target balance will be applied to payment of your loan (up to your current loan balance). If your account does not contain at least the target balance, we will initiate an advance from your loan in an amount (up to your available credit) sufficient to restore your account balance to the target balance. After your loan matures, we may continue to initiate these advances, although we are not required to do so. If your loan has matured, all advances shall be repayable on demand or on such other terms as we specify (such as the loan terms in place prior to maturity or the terms of your loan as subsequently renewed, if applicable). These Terms are in addition to and not in lieu of the terms and conditions in effect for your loan (which may affect or restrict, among other things, payments to and advances from your loan notwithstanding these Terms). In the event of conflict between these Terms and your loan terms, your loan terms shall control. You remain fully responsible for compliance with your loan terms and repayment of your loan, even if these sweep arrangements do not function as described herein.

*(b) Bank Failure.* The FDIC requires banks to disclose information to you on how your funds would be treated if a bank failure would occur. Funds that have been swept out of the designated account will be used to reduce the loan balance; funds remaining in the designated account are insured deposits up to the FDIC limitation in the event of bank failure.

## **SECTION 7 – GLOBAL SERVICES**

### **7.1 FX Trading**

*(a) Description of Service.* You may submit requests ("Requests") for foreign exchange spot or forward transactions ("FX Transactions") with respect to currencies and value dates we determine to support from time to time. Prices and terms we quote for proposed FX Transactions may be withdrawn by us at any time prior to the receipt of a Confirmation (as defined in the paragraph 7.1 (c)) from us, via telephone, mail, or electronically. You agree to use the Services for purposes of your banking business, not for speculative investment or trading purposes and not for purposes of carrying out FX Transactions for others. For purposes of the preceding sentence, "your banking business" may include the

provision of foreign exchange transaction services to your banking customers, provided that: (i) you assure that your customers use those services solely for commercial purposes required by their businesses, not for speculative investment or trading purposes, and not for purposes of carrying out foreign exchange transactions for others; (ii) you are solely responsible for providing foreign exchange transactions and services to your customers in a lawful manner and in compliance with your own risk management policies; (iii) you do not use our name or marks without our prior approval and do not indicate to your customers that we are responsible for the foreign exchange transactions and services that you provide to your customers; and (iv) in addition to your obligations pursuant to [Section 8.3 titled "Your Liability"](#), you accept and assume all risks that arise out of your provision of foreign exchange transactions and services to your customers, including losses that you may sustain as a result of improperly hedging your own risks, and losses that customers may sustain and attempt to hold you or us responsible. These Services may be subject to various limits on open positions that we establish for you from time to time (we will inform you of those limits upon request).

*(b) Processing Requests; Our Obligations and Liabilities.* Requests must be submitted in the form and manner and in accordance with the cut-off times we specify from time to time. After we receive your Request, we may verify it via telephone with any representative of yours that is identified in our records (a "Confirming Agent") (on request, we will provide you with the list of Confirming Agents in our records). We are not obligated to accept any Request and may reject or delay the completion of any Request in our sole and absolute discretion. If we do so, we will promptly inform you, provided that you complied with applicable requirements in submitting the Request, and you will be free to submit such Request to another provider, regardless of any exclusivity or other Terms contained herein. You are solely responsible for determining that your Requests are complete, accurate, unambiguous, and legible before submitting them to us. We are not responsible for errors or delays that result from the incompleteness, inaccuracy, ambiguity, or illegibility of a Request. We are authorized but not obligated to fulfill and charge your account(s) for the amount of any Request we believe in good faith to have been submitted by you. We are not obligated to modify or cancel any FX Transactions after we have received your Request. If we attempt to complete a modification or cancellation that you request, you are responsible for the costs, expenses, and losses we incur. All FX Transactions are at your sole risk regardless of whether we provide you any advice in connection therewith. You understand that FX Transactions involve substantial risk and you agree to make your own determinations about the various risks of entering into FX Transactions. Each time you make a Request, you represent to us that you have the necessary expertise and commercial experience to evaluate the proposed transaction and that you are not relying upon us in making that evaluation. You are not entitled to rely upon any information or advice that we may provide and should not assume that our willingness to execute a particular transaction means that we consider it prudent. You understand that we are not acting as a fiduciary in providing these Services, that we are not obligated to manage, monitor, or inquire into the purposes of your FX Transactions, that we need not monitor the level of your FX Transactions (or increases or decreases therein), and that it is not our responsibility to safeguard against your Personnel using the Services for purposes you have not authorized or in violation of the restrictions that you have placed on those Personnel. We reserve the right to require any or all FX Transactions to be governed by separate documentation (for example, an International Swaps and Derivatives Association ("ISDA") master agreement). Our current policy is not to require such documentation unless we have projected that your annual notional turnover of FX Transactions may exceed \$50,000,000.

*(c) Confirmations.* We will make a confirmation ("Confirmation") available to you for each Request, normally, Confirmations will be made available within one (1) business day. Confirmations will be provided in the form and manner we specify from time to time (including via telephone or e-mail). You agree to verify that you receive a Confirmation for each Request and to review each Confirmation upon receipt to verify that it accurately reflects your Request. You agree to notify us immediately if you do not receive a Confirmation or if it is inaccurate or incomplete in any way. Your notification to us shall be provided by telephone and promptly confirmed in writing via facsimile or e-mail. If we do not receive your notification within one (1) business day of when we sent your Confirmation, you will be considered to have conclusively acknowledged that you received a Confirmation that accurately reflected your Request (a "Confirmed Request"). If a Request is either verified by a Confirming Agent or a Confirmed Request, it shall be effective as your authentic Request and you agree and are deemed obligated to such Request. You will also be obligated for all FX Transactions you actually request, regardless of whether you receive a Confirmation or whether verified by a Confirming Agent.

*(d) Use of Counterparty (ies).* We shall act on each Request that we accept by entering into an individual FX Transaction with a counterparty that we select. The pricing terms quoted in our Confirmation to you shall control as between you and us, but all other terms of such individual FX Transactions will be as contained in the ISDA documentation between us and the counterparty (those other terms will be provided to you on request). Those terms shall not be inconsistent with the Confirmation that we provided to you. Provided that no Default (as defined in [paragraph 7.1\(g\)](#)) by you occurs, we shall not default under any FX Transaction and we shall complete each FX Transaction in accordance with its terms. In addition to any amounts due under the Confirmation, you shall reimburse us immediately on demand for all payments we make to our counterparty(ies) in connection with each FX Transaction, whether due to your Default, early termination or otherwise. Unless we receive a Request at least two (2) business days in advance of the value date and accept it, a foreign exchange forward transaction may be closed out or rolled-over at our discretion.

*(e) Settlement Cut-Off Time.* You must settle with us for the full amount of each FX Transaction by making good funds available to us for the full amount of the FX Transaction no later than 2:00 p.m. Central Time on the value date of the FX Transaction.

*(f) FX Account; Required Balance.* You must maintain a designated account with us in connection with this Service (the "FX Account"). You must maintain the U.S. Dollar balance we require (the "Required Balance") in the FX Account at all times and agree to deposit increased amounts that we require within one (1) business day of our notification to you. You understand that, among other things, any adverse exchange rate movement prior to the value date of an FX Transaction may result in us requiring an increase in your Required Balance. The FX Account may be blocked to outgoing transfers and withdrawals in the event it is not in compliance with the Required Balance. In addition to our rights of setoff in the FX Account and your other accounts with us, you agree that we shall have a security interest in the FX Account and all sums on deposit in the FX Account in order to secure the payment and performance of your obligations. We reserve the right to transfer, assign, hypothecate and pledge to others our rights and interests in the FX Account. You represent, warrant, and covenant that: (i) this agreement is undertaken in the ordinary course of business, not in contemplation of insolvency, and with no intent to hinder, delay, or defraud your institution or creditors; (ii) these Terms, each FX Transaction and our security interest in the FX Account represent bona fide and arm's length transactions; (iii) our security interest in the FX Account is for adequate consideration; (iv) these Terms have been approved by your board of directors or loan committee, such approval is reflected in the minutes of a meeting of the board of directors or committee; and (v) these Terms will, continuously from the time of their execution, be maintained as an official record of your institution.

*(g) Default.* A "Default" shall exist if: (i) you breach these Terms (including your obligation to settle on a timely basis for each individual FX Transaction, and your obligation to maintain the Required Balance in the FX Account); (ii) you violate applicable Requirements of Law in any material respect; (iii) you fail to remain Well Capitalized as defined in regulations of the Office of the Comptroller of the Currency ("OCC"); (iv) you become the subject to any voluntary or involuntary bankruptcy, reorganization, conservatorship, or receivership proceeding. You agree to notify us immediately upon the occurrence of a Termination Event (as defined below), Default, or the occurrence of any event (that with notice or the passage of time) would constitute a Termination Event or Default. A "Termination Event" shall exist if: (i) you no longer satisfy our underwriting standards for the Services; (ii) your use of the Services creates a risk of loss to us (including a third party claim or a reputational injury resulting from the inappropriate use of our Services); or (iii) we determine that an FX Transaction may violate or cause you or us to violate Requirements of Law. Upon the occurrence of a Default or a Termination Event, we may reject or refuse to execute any further Requests (even if a Confirmation has already been issued). In addition, we may take such other actions in consequence of your Default as we deem necessary, including causing or permitting our counterparty(ies) to terminate, close out, reverse, cancel, or net against each other, any or all open positions in FX Transactions that we entered into in reliance on your Requests. We may exercise these rights in the manner we choose including any delay in exercising these rights, so long as we act in good faith. We may retain and suspend payments or credits due to you with respect to any of your FX Transactions while we are in the process of exercising the foregoing rights. The foregoing are in addition to and not in lieu of our other rights and remedies at law and in equity. If the proceeds we realize pursuant to foregoing are insufficient for the payment of all your obligations to us and the reimbursement of all losses we have incurred, you shall pay the deficit on demand. You agree to immediately reimburse us for the costs, expenses, and losses we incur in exercising the foregoing rights.



## SECTION 8 – LIABILITY, ETC.

### 8.1 Force Majeure

Any failure or delay in performance by us will be excused if due to interruption of communications or computer facilities (including the Internet), failure of equipment, emergency conditions, or other circumstances beyond our control. Unless otherwise required by applicable law, it is agreed that you shall bear all risk of loss due to: (i) compulsion or control of public authority or domestic or foreign government, de jure or de facto (or any agency thereof) whether rightfully or wrongfully exercised including declared or undeclared war, censorship, blockade, revolution, insurrection, civil commotion, or from any law, decree, moratorium, or regulation; and (ii) insolvency of the receiving bank, failure of any interbank or intermediary bank, all regardless of whether such occurrence takes the form of delay resulting in interest loss, loss due to depreciation in foreign currency, premature transfer, payment to the wrong person or in the wrong amount, or failure to effect payment in a timely manner or at all. You shall bear such risks whether in connection with the transfer required or requested by you or in connection with any transfer undertaken for the purpose of making available such foreign exchange as may be called for to meet such transfer or request. In addition, we shall be excused from failing to transmit, or delay in transmitting, any transfer or request if such transmittal would result in us exceeding any limitation upon our intra-day net funds position established pursuant to Federal Reserve guidelines or if we reasonably believe we will violate any Requirement of Law.

### 8.2 Our Liability

We are obligated under the UCC to re-credit your deposit account(s) for the amount of any items charged which were not properly payable. We may also have other liability to you imposed by statute which cannot be waived. Except for the liability referenced in the preceding two sentences, our-liability for any loss or damage for any cause whatsoever (including liability arising out of these Terms or our Services) shall be limited to liability for direct damages caused by our material breach of these Terms. Our cumulative aggregate liability shall not under any circumstances exceed the total fees paid to us for the Services involved in the breach for the six (6) months preceding the breach. **IN NO EVENT WILL WE BE LIABLE FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, NOR FOR ANY COSTS, EXPENSES OR ATTORNEY'S FEES ARISING OUT OF ANY CLAIM OR OCCURANCE RELATING TO THE SERVICES ADDRESSED IN THIS AGREEMENT, REGARDLESS OF WHETHER WE WERE INFORMED OF THEIR POSSIBILITY AND WHETHER THEY ARE BASED ON CONTRACT OR TORT REMEDIES, INCLUDING LOSSES OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM THE OUR ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT. IN NO EVENT WILL WE BE LIABLE OR RESPONSIBLE FOR, AND YOU BEAR ALL RISK ASSOCIATED WITH, FOREIGN EXCHANGE CONVERSION AND ANY GAINS AND LOSSES RESULTING FROM THE CONVERSION OF CURRENCIES IN CONNECTION WITH ANY TRANSFER OR REQUEST.** Product and Service descriptions contained in marketing or other materials provided to you before or after you agree to these Terms do not constitute representations or warranties; in order for a product or service description to constitute a warranty it must be contained in a document signed by a duly authorized officer of ours that expressly provides it is to be incorporated into these Terms. **EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, SERVICES ARE PROVIDED AS IS AND WE DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL IN RESPECT OF THE SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.** The preceding limitations of liability apply regardless of whether any limited remedy herein fails of its essential purpose. Services are not guaranteed to be free from error, interruption, or delay. Your remedies herein are exclusive and in lieu of all other remedies in law or equity. Any claim, action, or proceeding to enforce these Terms or to recover for any Services-related loss must be commenced within one (1) year from the date that the event giving rise to the claim, action, or proceeding first occurs.

### 8.3 Your Liability

You are liable and agree to indemnify, defend, and hold us harmless from and against any and all liabilities, claims, demands, losses, costs, damages, and expenses (including reasonable attorneys' fees) arising out of or related to: (i) any third party claim based on our provision of Services that you requested, including any responsibility that we have to others for handling or being associated with an instrument, transfer, or other transaction for you; (ii) your acts or omissions or breach of these Terms; (iii) us acting on your requests, instructions, or processing submissions, even if we

vary from our standard procedures in honoring such requests; (iv) any exchange rate loss that we may suffer in consequence of your breach of these Terms; or (v) our good faith acceptance or rejection of any transfer or request (including the acceptance of requests that do not comply with the Rules). In the event any checks, drafts, transfers, or other items on your account are determined to bear an unauthorized signature, to have been altered or otherwise to be irregular, we may (even though not liable for such items) take action reasonably requested by you to enforce against prior parties (including prior collecting banks, endorsers, and other holders) whatever rights you or we have against such prior parties. If we take such action, you shall indemnify us for all liabilities, costs, and expenses (including reasonable attorneys' fees and legal expenses) incurred. We may or may not condition our taking of such action on your execution of a written indemnification obligation, but you will in any event remain responsible under the preceding sentence. You are not required to indemnify us for our own willful misconduct.

**EXHIBIT 1**  
**PROCESSING SCHEDULES**  
(subject to change)

**Central Time**

**Mountain Time**

***Positive Pay***

- Exception Report Transmission

Daily Exception reports should begin to be available at or about 10:00 a.m. on the day our midnight deadline occurs with respect to the Items. If you have not received or been able to access your Exception report by noon, you must notify us immediately.

Daily Exception reports should begin to be available at or about 9:00 a.m. on the day our midnight deadline occurs with respect to the Items. If you have not received or been able to access your Exception report by noon, you must notify us immediately.

- Exception Report Deadline

3:00 p.m. on the same day that we made the report of the Exception available to you.

2:00 p.m. on the same day that we made the report of the Exception available to you.

***Reverse Positive Pay***

- Cut-Off
- Presentment Transmission

9:30 p.m.

8:30 p.m.

For items received by us prior to the Cut-Off on any banking day, the daily transmission will generally be made available at 4:00 a.m. on the next banking day following presentment (items received after the Cut-Off may be made available on the following banking day).

For items received by us prior to the Cut-Off on any banking day, the daily transmission will generally be made available at 5:00 a.m. on the next banking day following presentment (items received after the Cut-Off may be made available on the following banking day).

- Bouncer Deadline

2:00 p.m. on the same day that we transmitted the daily transmission to which the bouncer sheet relates.

1:00 p.m. on the same day that we transmitted the daily transmission to which the bouncer sheet relates.

***Payable Through Drafts***

- Cut-Off
- Presentment Transmission

Controlled Disbursement RT – 12:00 noon (or later based on FRB Presentment Delivery)  
Bank RT – 10:00 p.m.

Controlled Disbursement RT – 11:00 a.m. (or later based on FRB Presentment Delivery)  
Bank RT – 9:00 p.m.

Controlled Disbursement RT – For drafts received by us prior to the Cut-Off on any banking day, if requested, a Draft List may generally be made available to you by 1:00 p.m. on such day. Drafts received after the Cut-Off will be presented on the Draft List for the next banking day.

Controlled Disbursement RT – For drafts received by us prior to the Cut-Off on any banking day, if requested, a Draft List may generally be made available to you by 12:00 p.m. on such day. Drafts received after the Cut-Off will be presented on the Draft List for the next banking day.

Bank RT – For Drafts received by us prior to the Cut-Off on any banking day, a Draft List may be made available to you, on request, generally by 4:00 a.m. on the following banking day.

Bank RT – For Drafts received by us prior to the Cut-Off on any banking day, a Draft List may be made available to you, on request, generally by 3:00 a.m. on the following banking day.

- Bouncer Deadline

10:00 a.m. on the next banking day following the date of the Draft List identifying the relevant Draft.

9:00 a.m. on the next banking day following the date of the Draft List identifying the relevant Draft.

- Bouncer Acknowledgment 1:00 p.m. on the day we receive the Draft Bouncer Sheet, if received prior to the Bouncer Deadline. 12:00 p.m. on the day we receive the Draft Bouncer Sheet, if received prior to the Bouncer Deadline.

***Controlled Disbursement***

- Cut-Off 12:00 noon 12:00 noon

***Remote Capture***

- Cut-Off 8:00 p.m. 7:00 p.m.

***ACH***

- ACH File Received Deadline 30 minutes after we receive your file transmission or batch release. 30 minutes after we receive your file transmission or batch release.
- ACH Debit Block 10:00 a.m. 10:00 a.m.
- Rules/Instructions Cut-Off 8:00 p.m. 7:00 p.m.
- Decision Cut-Off 3:00 p.m. 2:00 p.m.

**You agree that we may, in our sole and absolute discretion, treat items, orders and transmissions that we receive after a Cut-Off as having been received prior to the Cut-Off.**

SUPPLEMENTAL BUSINESS ASSOCIATE AGREEMENT

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I. DEFINITIONS

A. In General. The following terms used in these Supplemental Business Associate Agreement (the "BAA"), but not otherwise defined, shall have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operation, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific Definitions

1. "Applicable Law" shall mean any of the following items, including any amendments to any such item as such may become effective:
  - a) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
  - b) the federal regulations regarding privacy and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and Subparts A and E of 164 (the "Privacy Rule");
  - c) the federal regulations regarding security and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and Subparts A and C of 164 (the "Security Rule");
  - d) the federal regulations regarding compliance and enforcement with respect to HIPAA, found at Title 45 CFR Part 160, Subparts C, D, and E (the "Enforcement Rule");
  - e) the federal regulations regarding breach notifications with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the "Breach Notification Rule"); and
  - f) the federal regulations regarding electronic data interchange and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 162 (the "Transaction Rule").
2. "Business Associate" shall have the same meaning as the term "business associate" in 45 CFR § 160.103.
3. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 CFR § 160.103.
4. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103.
5. "Electronic Transaction Rule" shall mean the final regulations issued by HHS concerning standard transactions and code sets under 45 CFR Parts 160 and 162.

II. RIGHTS AND OBLIGATIONS OF COVERED ENTITY

A. Privacy Practices and Restrictions

1. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.



3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

#### B. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule and/or the Security Rule if done by Covered Entity.

### III. RIGHTS AND OBLIGATIONS OF BUSINESS ASSOCIATE

#### A. General Obligations

1. Limits on Uses and Further Disclosures. Business Associate agrees to not use or further disclose PHI other than as permitted or required by the BAA or as Required By Law.
2. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA. Additionally, Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
3. Mitigation. Business Associate may take steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.
4. Reporting of Security Incidents. Business Associate agrees to report to Covered Entity any successful Security Incident affecting PHI in the possession of Business Associate of which it becomes aware. Such report shall be made as soon as possible, but in no event later than ten (10) business days following the date that the Business Associate becomes aware of such successful Security Incident. Business Associate shall report any Security Incident that is attempted but not successful of which it becomes aware only upon receipt of a written request from Covered Entity.
5. Subcontractors and Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply to Business Associate with respect to such information under HIPAA.
6. Assumption of Obligations and Duties. Business Associate agrees to be bound by, and comply with, Subpart E of 45 CFR Part 164 when and if Business Associate agrees to carry out one or more of Covered Entity's obligations.
7. Access to Books and Records. Business Associate agrees to make internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.
8. Compliance with Electronic Transactions Rule. If Business Associate conducts in whole or in part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transaction Rule. Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.
9. Prohibition on Sale of Records. As of the effective date specified by HHS in final regulations to be issued on this topic, Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual unless the Covered Entity or Business Associate obtained from the individual, in accordance with 45 CFR § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity

receiving Protected Health Information of that individual, except as otherwise allowed under the HITECH Act.

#### B. Obligations Relating to Individual Rights

1. Access to PHI. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, but in no event later than twenty (20) days after receiving a written request from Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
2. Amendment of PHI. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, but in no event later than forty (40) days after receiving a written request from Covered Entity.
3. Accounting of Disclosures and Report of Unauthorized Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, but in no event later than forty (40) days after receiving a written request from Covered Entity, information collected in accordance with the previous sentence, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
4. Business Associate shall provide Covered Entity with its documentation of disclosures, including unauthorized uses and disclosures, within twenty (20) business days of receiving a written request from Covered Entity for the same.

#### C. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this BAA or by Applicable Law, Business Associate may:

1. Use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement between the parties and in this BAA, provided that such use or disclosure would not violate HIPAA or the Privacy Rule if done by a Covered Entity;
2. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate;
3. Disclose PHI in its possession to a third party for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
4. Use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

#### D. Notification of Breach to Covered Entity

1. Discovery of Breach. Business Associate shall designate an employee ("Designated Employee") to receive reports of suspected Breaches of Unsecured PHI. Business Associate shall require its employees to report incidents identified as suspected Breaches of Unsecured PHI to the Designated Employee in writing within seventy-two hours of discovering such suspected Breach. Business Associate will be responsible for providing education to employees regarding what may constitute a Breach of Unsecured PHI. Business Associate shall determine whether a Breach of Unsecured PHI occurred.

2. 2. Notification to Covered Entity. Separate and apart from any Security Incident reporting requirement imposed on Business Associate, Business Associate will be required to provide Covered Entity's Privacy Officer with written notification of any Breach within ten (10) business days of the date Business Associate determines a Breach of Unsecured PHI has occurred.
3. In no event shall Business Associate notify third party of any Breach of Unsecured PHI that Business Associate receives under the BAA and the Services Agreement, unless required by law to do so. If Business Associate is required by law to disclose any Breach of Unsecured PHI to any third party, Business Associate will immediately notify Covered Entity and forward any document requiring such disclosure upon receipt, so that Covered Entity may have the opportunity to object to such disclosure. In the event of a Breach of Unsecured PHI, Covered Entity shall notify any affected individual, the media or the Secretary, as required or deemed appropriate by Covered Entity. Business Associate's mitigation obligations under the BAA do not include notification of a Breach of Unsecured PHI to any third party.
4. 3. Documentation of Breaches. Business Associate's Designated Employee will document all Breaches in a log, including the date of discovery of the Breach, as well as details surrounding the Breach. Business Associate shall provide Covered Entity with a copy of the log within twenty (20) days of receiving a written request from Covered Entity for the same.

#### IV. TERM AND TERMINATION

- A. Term. The term of this BAA shall begin on the Effective Date, and shall end upon the termination of the Services Agreement, or upon termination for cause as set forth in the following paragraph, whichever is earlier.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity shall have the following rights:
  1. If the breach is curable, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate fails to cure the breach or end the violation, Covered Entity may terminate this BAA and the Services Agreement.
  2. If the breach is not curable, Covered may immediately terminate this BAA and the Services Agreement. If termination is not feasible, Covered Entity may report the problem to the Secretary.
- C. Effect of Termination.
  1. Except as provided in the following paragraph, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Business Associate, or subcontractors or agents of Business Associate, and shall not apply to PHI that has already been destroyed in accordance with Business Associate's record retention policies. Business Associate shall retain no copies of the PHI.
  2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall notify the Covered Entity that return or destruction of PHI is infeasible. Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## V. INDEMNIFICATION

- A. Indemnification of Business Associate. Covered Entity shall be liable for and agree to indemnify the Business Associate for any and all claims, costs and expenses arising from or out of any alleged negligent act or omission of Covered Entity, its agents or employees, in performance of its obligations under this BAA.
- B. Indemnification of Covered Entity. Business Associate shall be liable for and agree to indemnify the Covered Entity for any and all claims, costs and expenses arising from or out of any alleged negligent act or omission of Business Associate, its agents or employees, in performance of its obligations under this BAA.

## VI. MISCELLANEOUS

- A. Regulatory References. A reference in this BAA to a section in HIPAA or in the Privacy Rule means the section in effect or as amended, and for which compliance is required.
- B. Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for the parties to comply with the requirements of HIPAA. All amendments to this BAA, except those occurring by operation of law, shall be in writing and signed by both parties.
- C. Survival. The rights and obligations under Section IV.C. of this BAA shall survive the term and termination of this BAA.
- D. Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that facilitates the parties' compliance with HIPAA. The headings in this BAA and the bracketed citations to the Privacy Rule in several paragraphs of this BAA are for reference only and shall not be relevant in interpreting any provision of this BAA.
- E. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity or Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- F. Effect on BAA. The terms and conditions of this BAA will override and control any conflicting term or condition of the underlying Services Agreement that addresses privacy and confidentiality specifically of PHI. All nonconflicting terms and conditions of the underlying Services Agreement remain in full force and effect.
- G. Counterparts. The parties may execute this BAA in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by PDF is as effective as executing and delivering this BAA in the presence of the other parties to this BAA. In proving this BAA, a party may produce or account only for the executed counterpart of the party to be charged.
- H. WAIVER. No failure or delay by either party in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, remedy, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any other rights or remedies provided by law.
- I. SEVERABILITY If any provision of this BAA shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and this BAA shall be construed as restricting, limiting or eliminating the particular provision held to be invalid or unenforceable so as to render the entire BAA valid and enforceable to the fullest extent possible.

## Exhibit 3

### LICENSE TERMS

This is a legal agreement between the end user (“You”) and Wausau Financial Systems, Inc., and its affiliates and subsidiaries (collectively “WAUSAU”). This is the end user License Agreement for the DigitalDeposit™, DigitalLockbox™, ImageBranch™ and WebDDL™ software (the “Software”).

BY INSTALLING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE BOUND BY THEM. YOU UNDERSTAND THAT, IF YOU PURCHASED THE PACKAGE FROM AN AUTHORIZED RESELLER OF WAUSAU, THAT RESELLER IS NOT WAUSAU’S AGENT AND IS NOT AUTHORIZED TO MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES STATUTORY OR OTHERWISE, ON WAUSAU’S BEHALF NOR TO VARY ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT.

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#### **LIMITATION OF LIABILITY.**

**A. No Liability for Consequential and Other Damages.** IN NO EVENT SHALL WAUSAU BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF DATA OR INTERRUPTION OR CORRUPTION OF DATA, EVEN IF WAUSAU WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**B. Maximum Liability.** IN NO EVENT SHALL WAUSAU'S MAXIMUM AGGREGATE LIABILITY RELATED TO OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY YOU TO WAUSAU DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CLAIM FIRST AROSE, OR THE TOTAL AMOUNT ACTUALLY PAID BY YOU TO WAUSAU IF SUCH PAYMENTS HAVE BEEN MADE FOR LESS THAN TWELVE (12) MONTHS FROM WHEN THE CLAIM FIRST AROSE.

**C. Waiver of Claims.** Each party hereby waives its rights to bring any claim against the other party arising in any way from or relating in any way to this Agreement more than one (1) year after such claim first arises.

**D. Applicability.** THE LIMITATIONS SET FORTH IN THIS LIMITATION OF LIABILITY SECTION WILL APPLY TO ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

**E. Basis of the Bargain; Failure of Essential Purpose.** You acknowledge that WAUSAU has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers of warranties and damages specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

**GENERAL:** This Agreement constitutes the entire understanding between WAUSAU and You with respect to subject matter hereof. Any change to this Agreement must be in writing, signed by WAUSAU and You. Terms and conditions set forth in any purchase order which differ from, conflict with, or are not included in this Agreement, shall not become part of this Agreement unless specifically accepted by WAUSAU in writing. You shall be responsible for and shall pay, and shall reimburse WAUSAU on request if WAUSAU is required to pay, any sales, use, value added (VAT), consumption or other tax (excluding any tax that is based on WAUSAU net income), assessment, duty, tariff, or other fee or charge of any kind or nature that is levied or imposed by any governmental authority on the Software.

**EXPORT AND IMPORT COMPLIANCE:** In the event You export the Software from the country in which You first received it, You assume the responsibility for compliance with all applicable export and re-export regulations, as the case may be.

**GOVERNING LAW; ARBITRATION:** This Agreement shall be governed by, and any arbitration hereunder shall apply, the laws of the State of Wisconsin, U.S.A.

In the event that a dispute arises between the parties in connection with this Agreement, the parties agree to submit the dispute to binding arbitration in accordance with the current rules of the American Arbitration Association. All arbitration proceedings shall be held at a mutually agreeable location. The parties agree that all decisions reached through arbitration will be final and binding upon both parties. The cost of any arbitration will be borne equally by the parties.