



## Agreement for Automated Clearing House (ACH) Services

This Agreement for Automated Clearing House (ACH) Services ("Online ACH Agreement") contains terms and conditions specifically applicable to our Automated Clearing House ("ACH") services ("Service"). The Online ACH Agreement incorporates the ACH Service Schedule and the general terms of the Treasury Management Services Agreement (the "TMS Agreement" or "General Terms") found below.

The terms "Bank," "we," "us," "our" and "ours" refer to First-Citizens Bank & Trust Company. The terms "Customer," "you," "your" and "yours" refer to the Bank customer enrolled in the Service (regardless of whether the customer is an Originator or Third Party Service Provider, as those terms are defined in this Agreement and the National Automated Clearing House Association ("NACHA") Operating Rules & Guidelines), and any person with actual, apparent, or inherent authority to access one or more of your business accounts who uses the Service, including the person accepting this Online ACH Agreement, and any amendments hereto, on behalf of such business. "TMS" refers to First Citizens Treasury Management Services. Capitalized terms used but not defined in the Service Schedule have the meaning given them in the General Terms.

The clicking of "I Accept" by any "User" (as that term is defined in the BOB Advantage Customer Agreement) with respect to this Online ACH Agreement, and any amendments hereto, constitutes acceptance of this Online ACH Agreement and is your acknowledgment that you have received this Online ACH Agreement, you have read and understand it, and agree to be bound by it. If you are a BOB Advantage User in connection with your employment by the Customer, you acknowledge and understand that you are accepting this Online ACH Agreement on behalf of your employer and you represent and warrant that: (i) you have full legal authority to bind your employer to this ACH Online Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of your employer, to be bound by this ACH Online Agreement.

If, within this Agreement, there is any conflict between the General Terms and the Service Schedule, the terms of the Service Schedule will prevail. You also agree to be bound by applicable federal and state laws and regulations and by the National Automated Clearing House Association ("NACHA") Operating Rules & Guidelines (the "ACH Rules") as these ACH Rules are updated and amended from time to time, and to comply with the audit requirements as set forth in the ACH Rules. (There is information about audit requirements in section 14.1 of the Service Schedule specific to Third Party Service Providers; however, all Originators are subject to certain audit requirements under the ACH Rules.) You agree that you are responsible for reviewing the most up-to-date copy of the ACH Rules and all amendments as they are published from time to time. The ACH Rules are available online for viewing at <http://www.nacha.org>. This NACHA website also enables you to sign up for a NACHA membership and/or to purchase a hard copy of the Rules for a nominal fee.

You specifically, acknowledge your understanding of, and agreement to comply with, the requirements set forth in Section 1.4 of the General Terms. You agree not to initiate any transactions in violation of the requirements or sanctions of the federal Office of Foreign Assets Control ("OFAC"), or act on behalf of, or transmit funds to or from, any party subject to OFAC sanctions. You also agree, as set forth in more detail in the General Terms, that you will not use the Service to process restricted transactions under the federal Unlawful Internet Gambling Act and/or its implementing regulations.

If you are a Third Party Service Provider, you agree to comply with the audit requirements set forth in the ACH Rules, and as more fully explained in the Appendices to the NACHA Operating Rules, concerning ACH functions you perform on behalf of Participating DFIs and ODFIs.

We reserve the right to amend this Online ACH Agreement at any time. We will provide you with notice of an amendment as required by law. We may provide notice of an amendment electronically and require acceptance of the amendment as a condition of continued use of the Service. Acceptance of the amendment by a User and/or your use of the Service after we amend this Online ACH Agreement will constitute your acceptance of such changes. You may decline changes by terminating the Service, in the manner provided in this Online ACH Agreement, before the changes go into effect. No prior, current or future course of dealing between us and you will constitute a modification of this Agreement or any agreement between us and you that is inconsistent with this Online ACH Agreement regardless of the practices and procedures used.

You agree that your electronic consent/acceptance or entry of information by a User is legally binding on you and enforceable against you and is the legal equivalent of your handwritten signature.

### ACH Service Schedule

#### 1. DESCRIPTION OF SERVICE

The Automated Clearing House ("ACH") Network ("ACH Network") is an electronic payment and collection system that allows funds to be transferred electronically between accounts at financial institutions that participate in the ACH Network. The Service generally consists of our transmittal, processing and settlement of Entries into and out of your accounts in accordance with our requirements, the ACH Rules, which govern the use of the ACH Network, and applicable laws and regulations. Other services we offer in connection with ACH transactions (e.g., ACH monitoring services) are subject to and governed by a separate service schedule.

## 2. DEFINITIONS

The following capitalized party names and terms, which have not already been defined above, are used in this Schedule and are defined below as follows:  
Parties:

- **Originating Depository Financial Institution (“ODFI”):** A Participating DFI with respect to Entries (i) it transmits directly or indirectly to an ACH Operator for transmittal to an RDFI, and (ii) on which it is designated as the ODFI in accordance with ACH Record Format Specifications. The ODFI is the financial institution that receives payment instructions from the Originator.
- **Originator:** The party that has authorized an ODFI (directly or through a TPS) to transmit, for the account of that party, a Credit Entry, Debit Entry, or Non-Monetary Entry to the Receiver’s account at the RDFI. The Originator is the party that has the contractual relationship with the Receiver, and is the ultimate beneficiary of receipt of the payment or the participant ultimately responsible for making the payment.
- **Participating Depository Financial Institution (“Participating DFI”):** A financial institution that is authorized to accept deposits, has been assigned a routing number, and has agreed to be bound by the ACH Rules.
- **Receiver:** The party that has authorized the Originator to initiate an ACH Entry (either credit, debit or Non-Monetary) to the Receiver’s account with the Receiving Depository Financial Institution (“RDFI”). With respect to debit Entries, the term Receiver means all parties whose signatures are required to withdraw funds from an account for purposes of the warranty provisions in the ACH Rules.
- **Receiving Depository Financial Institution (“RDFI”):** The financial institution that receives ACH Entries and posts them to the Receiver’s account.
- **Third Party Sender (“TPS”):** For purposes of this Service Schedule, a TPS is a type of Third Party Service Provider that acts as an intermediary in transmitting Entries between the Originator and an ODFI while acting on behalf of an Originator or another TPS when there is no direct contractual agreement between the ODFI and the Originator for ACH origination services. A party acting as TPS is also a TPSP.
- **Third Party Service Provider (“TPSP”):** For purposes of this Service Schedule, a Third Party Service Provider is an entity that performs any functions on behalf of the Originator, TPS, ODFI or RDFI related to the processing of ACH Entries. TPSPs may be, but are not always, TPSs. The term “Third Party Service Provider” may have a different meaning in the General Terms.

Other Terms:

- **Account:** The account you have designated to us to receive credits and debits in connection with the Service.
- **Business Online Banking (“BOB”) Advantage:** Our online banking system for business customers through which you can access our ACH service.
- **Effective Date or Effective Entry Date:** The date that you request in an Entry for the settlement of the Entry to occur.
- **Entry:** An order or request for or relating to the transfer of funds through the ACH Network, and the data you provide us for processing the order/request.
  - *Credit Entry:* An Entry that you initiate with us for the debiting of funds from your Account for transfer and crediting to an account at another financial institution.
  - *Debit Entry:* An Entry that you initiate with us to debit funds from an account at another financial institution and transfer the funds to your Account.
  - *Non-Monetary Entry:* Any notice or data complying with the ACH Record Format Specifications that is not an order or request for the transfer or withdrawal of funds. A Non-Monetary Entry is also referred to as a Pre-Note.
- **On-Us Entry:** A Credit or Debit Entry that is directed to another account maintained with us.
- **File:** A group of Entries associated with a given transmittal register and the control total set forth therein.
- **Processing Date:** The date we send your Entry to the ACH Network for processing. The Processing Date is also the date your account is debited for the transactions.
- **Settlement Date:** The date the settlement of the Entry actually takes place; i.e., with respect to credit or debit Entries, the date an exchange of funds with respect to an Entry is reflected on the books of the applicable Federal Reserve Bank(s), and with respect to a Non-Monetary Entry, the date specified in the Settlement Date Field of the Entry. The Settlement Date is generally the same date as the Effective Entry Date. The Receiving ACH Operator determines the Settlement Date based on the Effective Entry Date and the current ACH processing date.

## 3. ENTRY REQUIREMENTS; FILE CREATION AND TRANSMISSION; AGGREGATE LIMITS

**3.1 Requirements in General.** In using the Service and initiating Entries with us, you are subject to and bound by the “ACH Requirements,” which consist, collectively, of: (i) this Service Schedule, (ii) the file formatting and other requirements and specifications contained in the User Guide or in any other materials or instructions we provide you in connection with the Service, and (iii) the National Automated Clearing House Association (“NACHA”) Operating Rules & Guidelines (the “ACH Rules”), which govern the use of the ACH Network. The ACH Rules apply to all parties to an ACH transaction. You expressly accept and agree to be bound by the ACH Rules in your use of the Service.

**3.2 File Creation and Transmission.** You must either (i) create and transmit your Entry files to us through our BOB Advantage batch system, or (ii) create your Entry files using software obtained from a third party and transmit the files to us through our Data Exchange Service (“DES”). Regardless of your method of File transmission, Entry Files must be “unbalanced,” meaning the File will not include any offsetting Entries to your Account. All Files must meet the format specifications set forth in the ACH Rules.

**3.3 Origination of Entries.** In order to originate ACH Entries via BOB Advantage, your BOB Administrator shall be responsible for designating User(s) with authority to originate such Entries in BOB Advantage on your behalf (“ACH User(s)”). The BOB Administrator, and other User(s) with administrative permissions, may also set dollar limits on transfer amounts for each ACH User per account. Bank shall not be responsible for the authorities and limits established by your BOB Administrator and/or any other Users with administrative permissions. We shall be entitled to rely solely on the designations made through your BOB Advantage account and shall not be responsible for matching the names of the ACH Users designated in your BOB Advantage account to names or titles listed elsewhere, such as in a signature card, Customer Authorization Card, or banking resolution. You agree that any such Entries originated via BOB Advantage shall comply with the Security Procedures as defined in Section 4.1 of this Service Schedule. You agree to provide initial training to your BOB Administrator and ACH Users, and maintain ongoing training on an as-needed basis, to ensure each ACH User complies with the ACH Rules as these rules may change from time to time.

Your ACH Users will need “security credentials” (e.g., User IDs and passwords) in order to access BOB Advantage and originate ACH Entries. Each ACH User will also be required, prior to accessing or using the Service, to register his or her Multi-Factor Authentication (MFA)/Transaction Authentication

device(s) on BOB Advantage. (BOB Advantage utilizes MFA/out-of-band Transaction Authentication and other security tools that provide additional layers of security when initiating certain types of transactions from BOB Advantage. Any MFA/Transaction Authentication device(s) utilized by BOB Advantage are separate applications from BOB Advantage and will be required for all BOB Users who have access to originate ACH Entries.) Any intentional bypassing of required BOB Advantage security controls, or installation or usage of MFA/Transaction Authentication devices or applications not expressly authorized by First Citizens for use with BOB Advantage, is done so at your own risk. You agree to ensure that your ACH Users shall not give or make available their BOB Advantage security credentials to any other persons or entities and shall take customary and reasonable precautions to keep their security credentials secure. You agree to comply with the Security Procedures, including those described in this Online ACH Agreement, and any other security procedures established by Bank from time to time. Furthermore, you agree that we are entitled to rely on any ACH origination instructions we receive through your BOB Advantage account so long as the instructions comply with the Security Procedures, and Bank shall not be liable for any loss or damage incurred by you with respect to the authorization of an ACH Entry so long as we followed our security procedures.

**3.4 Aggregate Limits.** In our discretion, and for our protection, regardless of whether or not Prefunding (as that term is defined in Section 6.2 of this Service Schedule) is required, we may limit the aggregate dollar amount of your Entries for which final settlement is pending at any given time ("Aggregate Limits"). We will advise you when you enroll in the Service of your Aggregate Limits, and you agree not to exceed them. We may, in our sole discretion, refuse to process, or suspend the processing of, any Entries that exceed the Aggregate Limits, and we will have no liability to you or any other party for doing so. You agree to indemnify, defend and hold us harmless from any and all claims arising out of or relating to our refusal to process Entries that exceed the Aggregate Limits. We will periodically review your Aggregate Limits and may, in our sole discretion, change them at any time. We will notify you of changes. At our request from time to time, you agree to provide to us such information as we may reasonably require regarding your financial status, including, without limitation, copies of your most recent financial statements. We may also periodically obtain and review credit reports on you and/or your principals.

#### 4. SECURITY PRECAUTIONS AND PROCEDURES.

**4.1 Security Procedures.** You agree to comply with all security procedures and requirements contained in the ACH Requirements ("Security Procedures"). You acknowledge that the Security Procedures are intended to assist you in minimizing the risk of unauthorized Entries but are not designed to detect an error in the transmission or content of an Entry, and that there is no agreement between you and us on security procedures for the detection of errors. You agree to pay us the amount (or request cancellation or amendment) of an Entry we receive that was transmitted or authorized by you, regardless of whether (i) we complied with the Security Procedures with respect to the Entry, (ii) the Entry was erroneous in any respect, or (iii) the error would have been detected if we had complied with the procedures. You agree to take reasonable steps to maintain the confidentiality of the Security Procedures and any User IDs, passwords, tokens, codes, security devices and related instructions we provide you (collectively, "Access Codes"). If you know or suspect that the Security Procedures or any Access Codes have been divulged to or accessed by unauthorized persons, you must notify us immediately followed by written confirmation. You agree that we may follow any and all instructions entered and transactions initiated on your behalf using the Security Procedures until such time as you notify us that the Security Procedures or Access Codes have been stolen, compromised, or otherwise known to persons other than you and any authorized Users and we have had a reasonable time to act upon such notice.

**4.2 Virus Protection, Firewalls and Malicious Software ("Malware").** You are obligated to take security precautions to protect your computer. There are a number of means and mechanisms by which other persons may obtain information from your computer or trick you or other ACH Users in order to gain control of your compute (or any computer used to access your accounts). Such unauthorized persons may obtain such access and/or control when you or other individuals use your computer to, among other things, access information on removable or network storage, and/or use the Internet for purposes of sending and receiving emails, browsing various websites, and conducting searches – all things you are likely to do on your computer on a regular basis. Specifically, you may be unwittingly induced to install on your computer malicious software ("malware"), commonly referred to, among other names, as computer viruses, worms, Trojan horses, rootkits, backdoors, spyware, and adware, when, for example, you open an email attachment, click on a link in an email, click poisoned links within search results which lead you to other sites controlled by fraudsters, browse websites that have been attacked by viruses, install counterfeit software that appears legitimate but may contain malware, or insert on your computer removable storage devices such as CDs, MP3 players, and other USB memory devices. Once malware is installed on your computer, it is very difficult to detect using traditional antivirus software products running on the infected computer, and financial malware in particular is generally undetectable by all but a few antivirus products and often goes unnoticed until after unauthorized transactions have occurred.

We protect our own network and systems with various security protocols, but are under no obligation to determine if your computer (or any computer by which you access your accounts) is secure or if it is or may be compromised or insecure. We encourage you to routinely scan your hardware and software using reliable and current virus, firewall and malware protection products of your choice to detect and remove any viruses and malware found. A virus on your computer that goes undetected or unrepaired may corrupt and destroy your programs, files and even your hardware and may result in unauthorized transactions from your accounts.

We recommend, in summary, that you do the following when using your computer to originate ACH transactions and conduct other financial transactions:

- Access your accounts on one or more computers dedicated exclusively to performing financial work on which only essential security and financial software is installed. If you chose not to dedicate one or more of your computers exclusively to performing financial work, we especially encourage you to exercise caution when using your computer for activities unrelated to performing financial work.
- Do not access your accounts at Internet cafes and public WI-FI hotspots.
- Secure the computer(s) used to originate ACH transactions in a restricted area, and limit access to these computer(s).
- Monitor and reconcile your accounts regularly.
- Use the Internet cautiously.
- Notify us if you receive an online request to provide confidential information or data.
- Take note of any strange or unusual messages or activity on your computer.
- Use current virus, firewall and malware protection products on the computer(s) you use to perform financial work.
- Rebuild your computer if it becomes infected.

**You agree that we are not responsible for any viruses, firewalls, malware, or similar devices or programs that you may encounter when accessing your accounts, or for any unauthorized transactions resulting from these devices and programs.**

Businesses that routinely transfer funds electronically are often targeted by scammers and tricked into making transfers in either in the wrong amount or to a wrong or fictitious Receiver. This often occurs when the email system of the business (or the email system of the sender) is hacked, and an email message that appears genuine (purportedly from another company associate or a vendor) instructs the email recipient to originate a transfer. The directive is later discovered to be fraudulent. To protect yourself against this type scam, confirm via a call to a pre-established telephone number that the email directing the

transfer is authentic. Do not accept changes to transfer instructions via email. Do not rely on emails received through free email accounts, which typically have more security concerns than emails sent or received through private email servers. Be suspicious of any instructions that direct you to transfer funds to an account held in the name of an unknown Receiver or in an unexpected geographic location. Once funds are transferred, they are often difficult or impossible to retrieve, especially if the funds are transferred to a Receiver/RDFI in a foreign country.

## 5. OUR PROCESSING OF ENTRIES.

**5.1 General ACH Processing Terms.** Provided that an Entry complies with the ACH Requirements, and subject to our right to reject an Entry, we will process the Entry to conform to the applicable file specifications, transmit the Entry as the ODFI, and settle for the Entry in accordance with the ACH Rules. Except as provided below for On-Us Entries, we will transmit an Entry on or before the Settlement Date provided that: (i) we receive the Entry on a Business Day and by our applicable Cut-Off Time as stated below, (ii) funds are available in your Account to cover the amount of the Entry, and (iii) we receive the Entry at least one (1) Business Day before the Settlement Date if a Debit Entry, or at least two (2) Business Days before the Settlement Date if a Credit Entry. An Entry will be deemed received by us when we receive the electronic transmission containing the Entry. If you fail to comply with our processing deadlines or if an Entry otherwise fails to comply with the ACH Requirements, we may, in our sole discretion, use reasonable efforts to transmit the Entry in a timely manner, but we will have no liability to you if we fail to do so. We reserve the right to change our Cut-Off Time, which is set forth in Section 5.2 of the Agreement, and will give you prior notice if we do so.

**5.2 Cut-Off Time for Bank's Receipt of Entries.** We process ACH Entries at various times throughout each Business Day. Entries received by 10 p.m. Eastern time (the "Cut Off Time") are processed the same Business Day. Entries received after 10 p.m. on a Business Day or Entries received on a non-Business Day will be processed the next Business Day. Entries that are not On-Us Entries generally post to the Receiver's account on the Originator's scheduled Settlement Date as long as they are received on a timely basis by the ACH Operator (the Federal Reserve).

**5.3 Same Day ACH.** We offer an optional Same Day ACH service, as that service is defined by the ACH Rules. You must enroll in this optional service. For an Entry to be eligible for Same Day processing, the Entry must:

- have an Effective Entry Date that matches the Business Day on which we receive the Entry;
- be received by us prior to 12:30 p.m. Eastern time on the same Business Day; and
- be an amount no greater than \$25,000.

If an Entry does not meet the above criteria, it may be rejected or deferred for processing until the next Business Day.

Same Day ACH Entries may be subject to an additional per-Entry fee. To enroll in the Same Day ACH service, you must contact Business Support using the contact information contained in Section 15.

**5.4 On-Us Entries.** Provided an Entry complies with the ACH Requirements, we will credit or debit, as applicable, the Receiver's account in the amount of the Entry on the Effective Entry Date; however, we may delay posting as required or permitted by the ACH Requirements or reject an Entry as provided below. If the On-Us Entry fails to comply with the ACH Requirements, we will use reasonable efforts to credit or debit the Receiver's account in the amount of the Entry no later than the next Business Day following the Effective Entry Date or at such later time as required or permitted by the ACH Requirements.

**5.5 Rejection of Entries.** We may reject any Entry: (i) that does not comply with the ACH Requirements, (ii) that contains an Effective Entry Date more than thirty (30) calendar days after the Business Day we receive the Entry; (iii) if an On-Us Entry, for any reason for which an Entry may be returned under the ACH Rules; (iv) if you have failed to comply with your Account balance obligations; (v) if you do not adhere to the Security Procedures, and/or (vi) under circumstances that we know or reasonably suspect involve fraudulent, unlawful or disputed acts or that may subject us to an actual or potential loss of any kind. Provided you have complied with the Cut-Off Times, we will notify you no later than the Settlement Date if we reject an Entry. We may notify you by telephone, electronic transmission or other means, and the notice will be effective when given. We will have no liability to you or any third party for our rejection of an Entry or the fact that notice of rejection is not provided earlier than as stated herein.

**5.6 Cancellation or Amendment of Entries.** You have no right to cancel or amend an Entry after we have received it; however, provided the Entry complies with the ACH Requirements, we may use reasonable efforts to act on a cancellation or amendment request if we receive the request within a sufficient time prior to processing the Entry to prevent transmission, or, in the case of an On-Us Entry, to prevent crediting a Receiver's account. We will not be liable if a requested cancellation or amendment is not effected. You agree to reimburse us for any expenses, losses, or damages we may incur in effecting or attempting to effect your request for the reversal of an Entry.

**5.7 Returned Entries, Notice of Returned Entries and Notifications of Change.** NACHA expects that all ACH Network participants work towards reducing the number of overall returns, and in particular, administrative returns, thereby reducing the number of transactions entering the ACH Network that result in exceptions and returns. Accordingly, to comply with NACHA's expectations, we routinely monitor your administrative and overall returns to ensure your return rates do not exceed our established acceptable rate levels. If your return rates are excessive, we will require you to reduce your return rates to our established acceptable level or face termination of your Service in accordance with the provisions in Section 16 of the General Terms.

We will notify you of the receipt of a returned Entry, Notification of Change ("NOC"), or Corrected Notification of Change ("Corrected NOC") with an Alert in BOB Advantage. You are responsible for enabling the "ACH Return/Notification of Change" eDocument Alert under the "Alerts" tab in BOB Advantage. We will transmit the notice to you no later than one (1) Business Day after the Business Day on which we receive the returned Entry or NOC. We will provide you with information relating to an NOC or Corrected NOC as required by the ACH Rules. You must promptly correct your records to reflect the information contained in an NOC or Corrected NOC prior to initiating another Entry to the Receiver's account. Except for an Entry you retransmit in accordance with the ACH Requirements, we have no obligation to retransmit a returned Entry provided we complied with the ACH Requirements with respect to the original Entry.

**5.8 Inconsistency of Name and Account Number.** You acknowledge and agree that (i) we and the financial institution that receives an Entry initiated by you may rely on the account number of the Receiver supplied by you with the Entry, and may process and apply the Entry on the basis of that account number, even if the account number is inconsistent with the Receiver's name or if it identifies a party different from the named Receiver, and (ii) your obligation to pay us for the amount of the Entry is not excused in such circumstances.

**5.9 International ACH Transactions (“IATs” or “IAT Entries”).** An IAT is an Entry that is part of a payment transaction “involving a Financial Agency’s office” that is not located in the territorial jurisdiction of the United States. A Financial Agency is an entity authorized by applicable law to accept deposits or to conduct the business of issuing money orders or transferring funds. An office of a Financial Agency is involved in a payment transaction if it (i) holds an account that is credited or debited as part of the payment transaction; (ii) receives payment directly from a party or makes payment directly to a party as part of the payment transaction, or (iii) serves as an intermediary in the settlement of any part of the payment transaction. **The Bank does not provide the ability to originate IATs, and such Entries will reject and not process. You agree not to originate any IATs without our explicit approval.** Violation of this rule could result in penalties and/or termination of the Service.

**5.10 Unauthorized Entries.** You are strictly responsible for establishing and maintaining your own internal procedures to safeguard against unauthorized Entry transmissions. NACHA expects all ACH Network participants to work towards reducing the return rate for unauthorized debit Entries. Accordingly, to comply with NACHA’s expectations, we regularly monitor your return rate levels for unauthorized Debit Entries, and these levels must remain below our established acceptable rate and the threshold rate set forth in the ACH Rules. If your return rate levels exceed our established acceptable rate for a period greater than 60 days, we may terminate your Service in accordance with the provisions in Section 16 of the General Terms. You represent and warrant that no individual will be allowed to initiate Entries without full legal authority and/or in the absence of proper supervision and safeguards. The occurrence of unauthorized access will not affect any Entries that we receive from you and transmit in good faith prior to our receipt of notification and within a reasonable time after Bank’s receipt of such notice to allow Bank to prevent unauthorized transfers. If we receive an Entry that purports to have been transmitted or authorized by you, it will be deemed effective as your Entry, and you are obligated and legally bound to pay us the Entry amount even if the Entry was not in fact authorized by you unless we were notified in sufficient time to allow us to stop our processing and transmittal of the Entry.

## 6. PAYMENT FOR ENTRIES

**6.1 Credit Entries.** You agree to pay us the amount of each Credit Entry on or before the date we transmit the Entry and before the Settlement Date and at such time as we, in our discretion, may require.

**6.2 Credit Entries Requiring Prefunding.** We, in our discretion, may require you to prefund Entries. “Prefunding” means you ensure that when you transmit a File to us, you have, sufficient available funds in your Account to cover that File. If we require you to Prefund, we will not process any File containing Credit Entries when your Account does not contain sufficient available funds to cover the file, regardless of whether we may have done so in the past. Files presented against your Account with insufficient available funds will be suspended, and an NSF fee will be charged. If your Account is not funded within two (2) days of the Effective Date, the suspended file will be automatically deleted. You agree to pay all fees charged by us in connection with Prefunding, and authorize us to debit such fees from your Account.

**6.3 Returned Debit Entries; Forecasted Returns.** If a Debit Entry we process for you is returned, rejected or reversed for any reason (“Returned Debit Entry”), you will promptly pay us the amount of the Returned Debit Entry. We may hold funds in your Account in anticipation of receiving Returned Debit Entries if the level of previous Returned Debit Entries exceeds limits determined by us in our sole discretion (“Forecasted Returns”). You will pay us for any Returned Debit Entry or Forecasted Returns that have been previously credited to your Account, and such amounts are immediately due and payable on the day the Returned Debit Entry is posted to your Account. We will notify you as required by the ACH Requirements that a Debit Entry has been returned unpaid. We may offer other reports from time to time.

**6.4 Charges and Credits to Your Account.** You authorize us to debit your designated Account without further notice or demand for all amounts due and payable to us in connection with the Service, including, without limitation, amounts for Entries, returns, reversals and/or fees. We generally will debit your Account on the Settlement Date for the amount of the applicable Entry, unless we require Prefunding in which case we will debit your Account on the date your file is presented. If an Entry is returned after we have received payment from you for the Entry, we will credit your Account for the amount we receive in connection with the return on the Business Day we receive such amount.

**6.5 Account Balance.** You will at all times maintain a balance of available funds in your Account sufficient to cover your payment obligations in connection with the Service. If funds are not available in your Account to pay the amount of the File in full at such time as Bank attempts to debit your Account, an insufficient funds fee will be charged to your Account. If there are not sufficient available funds in your Account to cover all of your obligations in connection with the Service, you agree that we may, and you authorize us to, debit any account maintained by you with us or set off the amount you owe us against any amount we owe you, in order to obtain payment of amounts you owe in connection with the Service.

## 7. REVIEW OF ACCOUNT STATEMENT

Entries will be reflected on your periodic Account statement. You agree to review your Account statement promptly upon receipt and notify us immediately of any discrepancy between your records and the information shown on your Account statement. If you fail to notify us of any discrepancy immediately after receipt of a periodic statement containing such information, you will be precluded from asserting the discrepancy against us.

## 8. RECORDING OF COMMUNICATIONS

You agree that all telephone conversations or data transmissions between you and us or our respective agents may be electronically recorded and retained by either party by use of any reasonable means.

## 9. YOUR REPRESENTATIONS AND WARRANTIES; INDEMNITY

**9.1 Representations and Warranties.** With respect to each and every Entry you initiate, you represent and warrant to us that: (i) each person shown as the Receiver on an Entry has authorized the initiation of the Entry and the crediting or debiting, as applicable, of the Receiver’s account in the amount and on the Effective Entry Date shown on such Entry; (ii) such authorization is operative at the time of our transmission or crediting of the Entry as provided herein; (iii) you have transmitted the Entry to us in accordance with the ACH Requirements; (iv) you will perform your obligations in accordance with all applicable federal and state laws and regulations applicable to the providers of ACH payment services, and all laws, regulations and orders administered by the Office of Foreign Assets Control (“OFAC”) and the Financial Crimes Enforcement Network (“FinCEN”) and shall not initiate any Entry in violation of sanctions enforced by OFAC, and shall not act on behalf of, or transmit funds to or from, any party subject to OFAC sanctions; and (v) you will be bound by and comply with the ACH Rules and the ACH Requirements in effect from time to time.

**9.2 Provisional Payment.** You agree to be bound by and comply with the provision of the ACH Rules that payment of a Credit Entry by a Receiving Depository Financial Institution ("RDFI") to the Receiver is provisional until receipt by the RDFI of final settlement for the Entry. You specifically acknowledge that you have hereby received notice of the foregoing rule regarding provisional payment and of the fact that if settlement for the Credit Entry is not received by the RDFI, the RDFI shall be entitled to a refund from the Receiver of the amount credited and you shall not be deemed to have paid the Receiver the amount of the Entry.

**9.3 Indemnity.** You agree to and hereby indemnify us against any loss, liability or expense (including reasonable attorney's fees and expenses) resulting from or arising out of: (i) any breach of any of the foregoing representations or agreements or any other provision of this Service Schedule, the ACH Rules or the ACH Requirements; and (ii) any claim of any person that we are responsible for any act or omission by you or any person, including, without limitation, any Federal Reserve Bank, Automated Clearing House or transmission or communications facility, any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed our agent.

#### 10. RELIANCE; LIMITATIONS

**10.1 Reliance.** In the performance of the Service, we are entitled to rely solely on the information provided by you and your agents for Entries, and we will not be responsible for the accuracy or completeness of the information. We will not be responsible for acts or omissions with respect to Entries, including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of Entries, that we receive from you or any other person, including, without limitation, a Federal Reserve Bank, automated clearing house or transmission or communications facility, Receiver or RDFI, and no such person shall be deemed our agent.

**10.2 Limitations.** In addition to the limitations on our liability for performance of the Service stated in the General Terms, we will be excused from failing to transmit or from a delay in transmitting an Entry if the transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise violates any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other United States governmental regulatory authority.

#### 11. DATA RETENTION

You agree that you will retain on file sufficient data to permit remaking of Entries for at least one (1) Business Day after the Settlement Date, and you will provide such data to us at our request. Without limiting the generality of the foregoing provision, you specifically agree to be bound by and comply with all applicable provisions of the ACH Rules regarding the retention of documents or any record, including, without limitation, your responsibilities to retain all items, source documents and records of authorization in accordance with the ACH Rules.

#### 12. RECORDS

All Entries, Security Procedures and related records, data and information ("Records") used by us in connection with the Service are and will remain our property. We may, in our sole discretion, make available to you such Records upon your request. You agree to reimburse us for any expenses we incur in making such Records available to you. Nothing in this Schedule obligates us to retain Records beyond any retention period we establish in our discretion.

#### 13. EVIDENCE OF AUTHORIZATION

You agree to obtain all consents and authorizations required under the ACH Rules and to retain such consents and authorizations for two (2) years after they expire. If an Entry you originate is disputed, and the applicable RDFI demands proof that such Entry was authorized by the Receiver, you shall provide to us an original or a copy of the authorization or consent authorizing the Entry.

#### 14. SPECIAL SECTION FOR THIRD PARTY SERVICE PROVIDER CUSTOMERS, INCLUDING THIRD PARTY SENDERS

**14.1 Audit Requirements.** If your business is a Third Party Sender or other type of Third Party Service Provider under ACH Rules, and you perform a function of ACH processing on behalf of an ODFI or RDFI, you must comply with NACHA's Third Party Service Provider audit requirements, which are set forth in Appendix Eight of the NACHA Operating Rules. Specifically, you must conduct an annual audit of your compliance with the ACH Rules by December 31 of each year, and retain proof of your completed audit as well as supporting documentation for six (6) years from the date of each audit, and such proof must be available for provision to NACHA upon request. Failure to comply with this requirement could result in NACHA-imposed fines and penalties against you and will result in termination of the Service.

**14.2 Third Party Sender Obligations with Respect to Transmitting ACH Entries.** If you are a TPS and act as an intermediary between an Originator and us for the origination of ACH transactions, you must provide to us, within two Business Days of our request, any information or documentation we consider reasonably necessary to identify each Originator for which you transmit Entries.

**14.3 Third Party Sender Warranties and Indemnifications.** When you transmit Entries to a Receiver's account on behalf of an Originator, you warrant to us that the Originator has agreed to assume the responsibilities of an Originator as required under the ACH Rules. In any case where an Originator fails to perform its obligations as an Originator under the ACH Rules, you agree to indemnify us against any resulting loss.

**14.4 Retention of Records.** When acting as a Third Party Sender, you and the Originators on whose behalf you act are responsible for the retention and delivery of any records, documentation, copies of source documents and records of authorization.

#### 15. CUSTOMER SERVICE

For questions about the Service, or assistance with use of the Service, please call Business Support at 1.866.FCB.4BIZ (1.866.322.4249) Monday through Saturday between the hours of 7 a.m. and 11 p.m. Eastern time.

## GENERAL TERMS

### 1. ENROLLMENT; AUTHORIZATION; USE

**1.1** You have requested that we provide you with Automated Clearing House ("ACH") services ("Service"). We agree to provide the Service subject to these General Terms ("General Terms" or TMS Agreement") and the conditions of this TMS Agreement. Your use of the Service and your obligations under the Online ACH Agreement begin on the date we activate the Service for you on our systems.

**1.2** Your use of the Service is subject to: (i) our approval, (ii) your fulfillment of our enrollment requirements, (iii) our receipt of all required and properly executed forms, authorizations and such other information as we reasonably may request from time to time in connection with the Service, including, without limitation, such information about your financial condition, including your credit standing, as we reasonably deem necessary to evaluate and mitigate our risks with respect to your use of the Service, and (iv) your compliance with this Online ACH Agreement, all of our Service-related requirements and all laws, regulations and rules applicable to the Service and your use of the Service. In connection with our right set forth in subsection (iii) above to obtain information about your credit standing, you agree that we may, from time to time, investigate your credit and the credit of your principals with any credit bureaus, including consumer reporting agencies.

**1.3** You represent and warrant that all information you provide us in connection with your enrollment and use of the Service is accurate and complete as of the time it is provided. You will promptly notify us of any material changes to information you have provided.

**1.4** You will access and use the Service only as permitted by this TMS Agreement and for the intended purpose of the Service, and only for the legitimate business purposes of your business. You will not use the Service in any manner or for any purpose that violates applicable law, including, without limitation, any federal, state or local laws or regulations or the rules or regulations of any clearing house or third party system or network.

Without limiting the generality of the foregoing: (i) you agree to comply with and be bound by the rules of the National Automated Clearing House Association ("NACHA") in effect from time to time with respect to all ACH transactions conducted in conjunction with the Service ("ACH Rules"); (ii) you will not initiate any transactions through the Service in violation of the requirements or sanctions of the federal Office of Foreign Assets Control ("OFAC") or act on behalf of, or transmit funds to or from, any party subject to OFAC sanctions; and (iii) unless you have disclosed to us that your business is engaged or involved in Internet gambling and provided us with all required documentation in that regard, you will not use the Service in connection with an Internet gambling business or to process restricted transactions under the federal Unlawful Internet Gambling Act and/or its implementing regulations. You agree to indemnify, defend and hold us harmless for all fines, penalties, sanctions or other liability imposed on us as a result of your violation of any federal, state or local laws or regulations or the rules or regulations of any clearing house or third party system or network. We reserve the right to review and monitor your use of the Service for security, legal, compliance, fraud and any other legitimate purpose as permitted by law.

**1.5** Your enrollment in and/or use of a Service constitutes your authorization of us and our agents and Third Party Service Providers to provide the Service in accordance with this TMS Agreement, perform all necessary functions related thereto and act as your agent and on your behalf in our performance of the Service.

### 2. THIS ONLINE ACH AGREEMENT

**2.1** This Online ACH Agreement consists of the ACH Service Schedule, these General Terms and other instructions, requirements, forms, documents or materials we may make available to you from time to time (whether in paper or electronic form) in connection with your use of the Service (collectively, "User Guides"). These documents contain important information concerning the Service and your use of the Service. Your acceptance of this Agreement by clicking "I Accept" and your enrollment in and/or use of the Service constitute your agreement to comply with and be legally bound by this Agreement and each of the Agreement documents, as they may be amended from time to time. Please retain the Agreement documents with your records for future reference.

**2.2** In the event of a conflict between these General Terms and the Service Schedule, the Service Schedule will control but only as to the extent of the conflict. In the event of a conflict between a User Guide and these General Terms or the Service Schedule, the User Guide will control but only as to the extent of the conflict.

**2.3** This ACH Agreement automatically replaces and supersedes all prior agreements between you and us for ACH services, notwithstanding any provisions to the contrary in such agreements including, without limitation, provisions regarding amendments, notices, termination or signatures.

**2.4** We reserve the right to change or terminate the Service at any time. Our termination of the Service is subject to the Termination section below. We will notify you in advance of changes to the Service or our Service requirements that will materially affect your use of the Service. You will comply with such changes promptly and in accordance with any specific time periods we may reasonably require subject to your right to terminate the Service as provided in the Termination section below. You are solely responsible for all costs you may incur in connection with changes to the Service.

**2.5** As used in this Agreement, the term "Business Day" means a week day (Monday through Friday) when we are open for regular business activity, excluding the following federal holidays: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day. For federal holidays falling on a Saturday, we will be open for business on the preceding Friday. For federal holidays falling on a Sunday, we will be closed the following Monday.

### 3. SERVICE ACCOUNTS

**3.1** We provide the Service in connection with certain deposit accounts you maintain with us ("Service Account(s)" or "Account(s)"). Service Accounts are subject to our approval. We will advise you of any restrictions or limitations that apply to Service Accounts. You will comply with

such restrictions or limitations and will not use or attempt to use any account with the Service that we have not expressly approved as a Service Account for the Service.

**3.2** Your acceptance of this Online ACH Agreement by clicking "I Accept" and your enrollment in and/or use of the Service constitutes your authorization of us and our agents to take any and all actions with respect to your Service Accounts as reasonably necessary for our performance of the Service, including, without limitation, the authority to credit, debit and transfer funds in your Service Accounts, and to process and generally act on your behalf in performing Service-related transactions involving your Service Accounts.

**3.3** Your Service Accounts, including Service-related transactions in your Accounts, are governed by and subject to the First Citizens Bank Deposit Account Agreement, as amended from time to time ("Deposit Account Agreement"). The Deposit Account Agreement is incorporated herein by reference. In the event of a conflict between this Agreement and the Deposit Account Agreement, this Agreement will control but only as to the particular Service, Service Account or Service feature involved and only to the extent of the conflict, provided, however, that nothing contained in this Agreement shall be interpreted to limit our rights and remedies under the Deposit Account Agreement with respect to your Service Accounts. You remain obligated to pay all fees and charges required under the Deposit Account Agreement with respect to your Service Accounts, including fees and charges arising from Service-related transactions in your Accounts.

**3.4** We will process and post Service transactions in your Service Accounts as described in the applicable Service Terms or User Guides. In the absence of specific provisions in the Service Schedule or User Guides, we will process and post Service transactions in your Service Account in accordance with our normal deposit account processing and posting procedures and times. Funds credited to your Service Account as a result of Service transactions will be available for your use in accordance with our Funds Availability Policy as set forth in the Deposit Account Agreement, as amended from time to time. Debits, credits and other activity in your Service Account will be reflected in the regular deposit account statement you receive for the Service Account, and are also available to you online using BOB Advantage.

**3.5** You will maintain sufficient available funds in your Service Account to cover debits, withdrawals or transfers of funds from the Account at the time such debits, withdrawals or transfers are reasonably anticipated to occur under the Service. We may at any time and without prior notice to you refuse, delay or suspend performance of all or a portion of the Service if the Service Account does not contain sufficient funds.

**3.6** You may request that we include deposit accounts titled in the name of your affiliated entities ("Affiliate") as Service Accounts. We may agree to do so or not within our sole discretion and subject to our conditions. At our request, you must provide us with (i) written authorization from an Affiliate that to our satisfaction authorizes us to include the Affiliate's accounts as Service Accounts and to act solely on your instructions with respect to such accounts, and (ii) such other Affiliate information or authorizations as we may reasonably request. You represent and warrant to us that all Affiliate information you provide is current and accurate and that all Affiliate authorizations are genuine and are the official and legally binding acts of the Affiliate. You will notify us immediately of any changes to Affiliate information or authorizations you have provided us. You and your Affiliates shall be bound by the terms of this Agreement, and you agree to defend, indemnify and hold us harmless from any claim of any nature whatsoever by an Affiliate or any other third party arising out of your instructions and/or our performance of the Service in connection with the Affiliate's accounts.

#### 4. SERVICE FEES

You agree to pay us our fees and charges for the Service, as amended from time to time ("Service Fees"). Service Fees will be published in our BOB Advantage Fee Schedule. You may obtain a copy of our BOB Advantage Fee Schedule at <http://www.firstcitizens.com>. We may increase the Service Fees or add new Service Fees from time to time and will provide you prior notice of such changes. We may require that the Service Fees be paid (i) by debit from a deposit account that you have with us and that we agree will be designated for that purpose, (ii) through account analysis billing as applied to your designated account or (iii) by such other method as we may agree. You authorize us to collect the Service Fees from your designated account in the method agreed upon without prior notice to you. You will maintain at all times sufficient available funds in your designated account to cover all Service Fees due and owing. You must notify us prior to closing a designated account for Service Fees. Failure to pay Service Fees when due, may result in immediate suspension or termination of one or more services without prior notice. You authorize us to deduct unpaid and owing Service Fees that we are unable to collect from the designated account from any other accounts you have us without prior notice as permitted by law and the Deposit Account Agreement. If we take legal action to collect owed and unpaid Service Fees, you agree to pay our legal expenses and costs, including, without limitation, our attorneys' fees. You are responsible for any non-Bank charges you incur in connection with the Service, including, without limitation, telephone charges, equipment costs, Internet fees, taxes and any other charges that are assessed and billed to you separately.

#### 5. AUTHORIZED REPRESENTATIVES AND AGENTS

**5.1** You agree that each person identified in our records as your authorized representative with respect to the Service, or who we otherwise reasonably and in good faith believe has legal authority to act for you with respect to the Service (collectively, "Customer Representative") is your duly authorized representative and agent and has full legal authority to act on your behalf with respect to all aspects of the Service, including, without limitation, the authority to (i) accept this Online ACH Agreement, enroll in and terminate the Service, (ii) execute set-up forms and other documents that we may require from time to time for the Service, (iii) initiate, amend, cancel, confirm or verify instructions to us regarding the Service, (iv) conduct all transactions permitted by the Service, including, without limitation, withdrawals from, deposits to and transfers to and from your Service Accounts, (v) authorize payment for the Service, and (vi) provide us with such financial, operational or other information about you and your business as we may reasonably request from time to time in connection with the Service. We may rely on the Customer Representative(s) information reflected in our records until we receive written notice from you of changes and have had a reasonable time to act upon such changes, but in no event less than two (2) Business Days. Your Customer Representatives are subject to all requirements and obligations applicable to you under this Agreement regarding use of the Service.

**5.2** We may rely on and act in accordance with your Customer Representative's written or verbal instructions, authorizations, consents, acts or failures to act with regard to all aspects of the Service and all Service-related activity in your Service Accounts, and all information and data provided to us by a Customer Representative relating to you, your Service Accounts and your access to and use of the Service. If more than one Customer



Representative is designated, we may rely on the instructions of, and information from, any one of them without consultation with or notice to you or the other Customer Representative(s). Your Customer Representatives are deemed to be your agents and acting on your behalf and with your authority even if they initiate transactions you do not want or act outside of their authority. We have no obligation or duty to you to monitor, detect or report any errors, omissions or unlawful actions by your Customer Representatives. You assume sole responsibility for any actions or failures to act by your Customer Representatives and agree to defend, indemnify and hold us harmless, and our agents and Third Party Service Vendors, for the acts or failures to act of your Customer Representatives.

## 6. CUSTOMER SYSTEM

**6.1** To access the Service, we may require that you have certain systems, equipment, computers, hardware, software, telecommunications equipment and services, Internet access and services, and/or Service Equipment and Service Software (as defined below) (collectively, "Customer System"). We may require that you purchase one or more components of the Customer System from us or our Third Party Service Vendor as specified in the User Guides.

**6.2** You are responsible at your sole expense for: (i) obtaining the Customer System, (ii) maintaining the Customer System in good working order and ensuring that the Customer System continuously meets all of our applicable requirements as stated in these General Terms and the User Guides or as otherwise provided to you ("Customer System Requirements"), (iii) the performance, functionality, input, output and connectivity of the Customer System, (iv) any damage to the Customer System, whether in connection with use of the Service or otherwise, and all necessary repairs and/or replacements, and (v) implementing reasonable measures to protect the security of the Customer System against unauthorized access to and/or use of the Service or Service data and information entered or delivered through the Customer System. At our request, you will allow us or our designated representative to inspect or review the Customer System to ensure compliance with the Customer System Requirements. Such inspections or reviews will be conducted during normal business hours and in a reasonable manner so as not to disrupt your normal business operations.

**6.3** We may make changes to the Customer System Requirements from time to time as we deem reasonably necessary to facilitate our performance and/or your use of the Service or as required by law. We will give you reasonable prior notice of such changes and such time to make the changes as we may reasonably determine in our sole discretion. You are responsible at your sole expense for making changes to the Customer System as required by changes in the Customer System Requirements.

**6.4** We may at any time, and without liability to you or any third party, suspend, delay, limit or terminate the Service if we know or have reason to believe that (i) the Customer System fails to comply in any or all respects with the Customer System Requirements, as amended from time to time, or (ii) you have failed to adequately maintain and ensure the security of the Customer System. Neither we nor any of our agents or Third Party Service Vendors has any responsibility or liability under any circumstances for any claims or losses to you or any third party resulting from or related to the Customer System and/or your failure to comply with the Customer System Requirements.

## 7. SERVICE EQUIPMENT, SOFTWARE, WEB SITES

**7.1** We will notify you if the Service requires that you purchase Service-related hardware or equipment and/or license Service-related Software provided by us or our Third Party Service Vendor ("Service Equipment and Software"). If required, you agree to purchase or license, as applicable, the Service Equipment and Software at the then current applicable fees and charges. You are responsible for all fees, charges and taxes in connection with the purchase, license, delivery, installation, repair or replacement of the Service Equipment and Software and for all risk of loss of or damage to the Service Equipment and Software from time of shipment to delivery to you. You are responsible for the installation of the Service Equipment and Software in accordance with the instructions made available to you. You will use the Service Equipment and Software solely for the purposes intended in connection with the Service and in accordance with applicable requirements. We have the right, in our discretion, to make future changes to the Service that may result in the incompatibility or unsuitability of the Service Equipment or Service Software for the Service and in that event we will have no duty to update or replace the Service Equipment or Service Software. You will comply with any restrictions or limitations as we may require for the location or use of the Service Equipment and Service Software.

**7.2** With respect to Service Software, you agree that: (i) your use of Service Software constitutes your acceptance of and agreement to be legally bound by the terms of the Service Software end-user license agreement made available to you and all subsequent amendments thereto; (ii) you will not decompile, disassemble, reverse engineer, copy, rip or duplicate the Service Software or any part thereof; (iii) your license to use the Service Software will terminate at the earlier of termination of the Service, or termination of the Service Software end-user license agreement; and (iv) you have no rights in the Service Software other than those specifically granted by us and the Service Software end-user license agreement. From time to time, we may, but are not obligated to, provide Service Software updates and upgrades, whether in the same or a different format as the original Service Software. If required, you will purchase and install such updates and upgrades at your expense. We may configure the Service Software or the Service to automatically update or upgrade the Service Software on your systems upon connection to our network or systems. You will promptly install all required updates and upgrades. We will only provide support for the Service Software as we agree and are not obligated to provide any support if you have not timely installed all updates and upgrades we provide you.

**7.3** We may provide you access to the Service via a web site hosted by us or our Third Party Service Vendor ("Service Web Site"). If so, you will access and use the Service Web Site only for use of the Service and will comply with all requirements made available to you regarding such access and use, including, without limitation, all security and access code requirements. You are solely responsible for all costs you incur related to or arising from your access to a Service Web Site. You agree to implement and maintain commercially reasonable security precautions to protect your computer(s) used to access the Service Web Site and/or other Service systems, as applicable. We are under no obligation to determine if any computer by which you access the Service Web Site or other Service system is secure or if it is or may be compromised or insecure. You will conduct routine scanning of hardware and software using reliable and current virus, firewall and spy-ware protection products of your choice to protect from, detect and remove any viruses and spy-ware found. The content and information on Service Web Sites are owned by us or by our Third Party Service Vendors and are subject to all federal and state copyright protection laws and regulations. The unauthorized reproduction, use or distribution of any portion of such content or information is prohibited.

**7.4** You will not disable, circumvent, impair, or interfere with any security devices in Service Equipment, Service Software or Service Web Sites and will follow all applicable security-related instructions. In no event will we be liable to you or any third party for any claim or damages of any nature, including, without limitation, lost profits, lost savings or other direct, indirect, incidental, special or consequential damages, arising out of the installation, use, or inability to use the Service Equipment, Service Software or Service Web Site. THE SERVICE EQUIPMENT, SERVICE SOFTWARE AND SERVICE WEB SITE ARE PROVIDED "AS IS," AND WE MAKE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, ON OR REGARDING THE SERVICE EQUIPMENT OR SERVICE SOFTWARE. Neither we nor our Third Party Service Vendors will be responsible or liable to you or any third party for: (i) any errors or failures relating to any malfunction of the Service Equipment, Service Software or Service Web Site, (ii) any computer virus or related problems that may be associated with the use of the Service Equipment, Service Software or Service Web Site, (iii) the servicing, repair or replacement of the Service Equipment or Service Software, or (iv) any damages to the Customer System or any third party's equipment, software, systems or other property relating in any way to the Service Equipment, Service Software or Service Web Site.

## **8. SECURITY PROCEDURES; ACCESS CODES; PROTECTION OF YOUR COMPUTER**

**8.1** You will comply with all security measures and procedures for access to and use of the Service as specified in these General Terms, the Service Schedule, the User Guides or as we may otherwise require ("Security Procedures"), including, without limitation, the use of user IDs, passwords, tokens and other access devices (collectively, "Access Codes"). Your use of the Service constitutes your agreement that the Security Procedures for the Service are commercially reasonable with respect to the Service, all Service-related data and the size, type and frequency of Service transactions. We may replace and/or change the Security Procedures at any time. We will notify you in advance of such changes, and you will promptly implement the changes upon receipt of our notice. We may suspend your use of the Service until you have implemented the changes. Your use of the Service after we provide notice of changes will constitute your acceptance of the new Security Procedures.

**8.2** You are solely responsible for: (i) ensuring that Access Codes are only assigned and accessible to persons who are authorized on behalf of your business to access the Service and your Service Accounts or information about your Service Accounts; (ii) training authorized persons in the proper use of the Security Procedures and access to the Service; (iii) the ongoing and regular oversight and monitoring of the use of your Access Codes and other Security Procedures; and (iii) ensuring proper and authorized use of Access Codes and other Security Procedures and access to and use of the Service. You acknowledge that the Security Procedures are confidential to you and us and are for your protection as well as ours; however, they are not designed to detect errors, inaccuracies, inconsistencies or irregularities in your use of the Service. You will establish and maintain your own internal security procedures and controls to ensure the protection and confidentiality of the Security Procedures and access to and use of the Service only by authorized persons for authorized purposes. You will be solely responsible for any loss or damage suffered by you or a third party resulting directly or indirectly from your failure to comply with all applicable Security Procedures, as amended from time to time.

**8.3** All use of the Service in accordance with the Security Procedures and/or by use of your Access Codes is deemed authorized by you and legally binding on you, including, without limitation, all instructions we receive relating to the Service and Service transactions and all debits and credits to your Service Accounts in accordance with those instructions, even if such access and use is not authorized, exceeds the authority you have given or results in losses to you from your Service Accounts or otherwise. We may honor all instructions, Service transactions and access to and use of the Service that are initiated and/or conducted through the use of the Security Procedures without further investigation, inquiry or verification and without liability to you or a third party for doing so. Notwithstanding the foregoing, we reserve the right to require separate verification for any reason.

**8.4** At your request, we may, under circumstances we deem appropriate in our sole discretion, waive a Security Procedure from time to time; however, such waiver must be in writing to be effective, shall be limited in time and scope as set forth in the writing, and shall not (i) be deemed a continuing waiver on our part, (ii) otherwise affect our rights or your obligations with respect to the Service or Service Transaction, or (iii) modify the terms of this Agreement.

## **9. CUSTOMER DATA REQUIREMENTS**

**9.1** Your use and our performance of the Service may require that you provide us with certain data, images, authorizations, instructions and information as specified in the Service Schedule and User Guides (collectively, "Customer Data"). You will provide Customer Data to us in compliance with our requirements for content, formatting and delivery (whether by electronic transmission or otherwise) of the Customer Data as set forth in these General Terms and the Service Schedules and User Guides, and any other requirements we may reasonably impose for our performance of the Service ("Customer Data Requirements").

**9.2** We may limit or restrict the number, type and dollar amount of Service transactions (either per Service Transaction or in the aggregate) as we in our sole discretion may determine from time to time or as required by applicable law. We will advise you of such limits or restrictions in the Service Schedule, the User Guides or otherwise. You will comply with such limits or restrictions when providing us Customer Data for Service transactions.

**9.3** The Service Schedule or User Guides will specify particular times on a Business Day by which we must receive Customer Data in order to process the data and perform the Service in a timely manner ("Cut-Off Times"). If we have not received the applicable Customer Data from you on a Business Day by the applicable Cut-Off Time, we will consider the Customer Data as having been received by us on the next Business Day and will perform the Service and Service transactions on that next Business Day or as otherwise specified in the Service Schedule.

**9.4** All obligations applicable to you regarding Customer Data under these General Terms, the Service Schedule and the User Guides apply to third parties providing Customer Data to us on your behalf. You are solely responsible for ensuring that Customer Data is provided to us in compliance with our Customer Data Requirements.

## **10. TRANSMISSIONS**

**10.1** You will transmit or deliver Customer Data to us in accordance with the Customer Data Requirements. You acknowledge that transmission via third party telecommunications or data lines, including via the Internet, may not be secure, and you accept all risk of interception or loss of Customer Data while in transmission. We will use commercially reasonable efforts to cause our systems to accept proper transmissions during a Business Day; however, we are not responsible for any failures or faults in transmission for reasons outside our control, whether caused by equipment, software, interruption of Internet services, third party conditions, or otherwise. We may not accept Customer Data transmissions when we are maintaining our systems, due to unexpected outages or issues, or for reasons beyond our control.

**10.2** We generally will accept transmissions of Customer Data from you that comply with the Customer Data Requirements as to content, formatting and transmission methods; however, if the Customer Data you submit is incomplete, not in our required format, contains one or more errors, violates this Agreement or is otherwise unacceptable to us, we may reject the Customer Data and/or delay or suspend performance of the applicable Service until you correct, complete or resubmit the Customer Data. We will endeavor to use commercially reasonable efforts to notify you if we reject a transmission of Customer Data or otherwise are unable to process the Customer Data, complete the Service transactions or otherwise perform the Service; however, we are not obligated to do so unless expressly stated otherwise in the Service Schedule. A delay or suspension may be for such time as is reasonable under the circumstances and does not excuse your payment obligations for Service Fees.

**10.3** You are responsible for verifying our receipt and acceptance of Customer Data transmissions. Neither your input of Customer Data on your Customer System nor your transmission of Customer Data to us constitutes receipt by us. Our records regarding time of receipt and contents of a transmission will be conclusive, even if they differ from your records. We will not be liable for any Customer Data, Files or transmissions not received by us. We will acknowledge receipt of Customer Data only if and to the extent provided in the Service Schedule or User Guides or if otherwise done in the normal course of our performance of the Service. Our acknowledgment of receipt of Customer Data does not constitute an acknowledgment by us that the Customer Data is acceptable to us or error-free.

**10.4** You are solely responsible for the content, accuracy, completeness, authenticity and readability of Customer Data. We will process the Customer Data and perform the Service on the basis of the Customer Data furnished by you. We may rely and act upon Customer Data as provided by you and have no obligation or responsibility to, and will not, audit, check or otherwise verify Customer Data. You authorize us to perform the Service and process transactions under the Service in accordance with the Customer Data as received from you. After we have completed processing Service transactions, you will not re-transmit the same Customer Data to us or otherwise attempt to duplicate the Service transactions except as necessary to correct errors subject to the requirements herein.

**10.5** If you discover an error in, or wish to amend or cancel, the Customer Data after transmitting it to us, you will notify us promptly. We will endeavor to use commercially reasonable efforts to suspend or reprocess transactions as appropriate based on your notification; however, we are not obligated to do so and will not be liable to you or any third party if we refuse to suspend or reprocess transactions or are unsuccessful in doing so.

**10.6** You will retain all Customer Data and other information as may reasonably be required to reconstruct your Customer Data submissions or any services or transactions based on your submissions (regardless of the form in which the Customer Data was submitted) for no less than ten (10) Business Days following completion of the related Service or transactions or for such longer retention period as required in the Service Schedule or by applicable law. You will provide us such information as we may reasonably request for reconstruction purposes. In the event of a conflict between our records and your records, our records will be presumed to accurately reflect the content, form, formatting and time of our receipt of Customer Data received by us and will be deemed binding and conclusive in the absence of obvious error.

**10.7** You will implement commercially reasonable measures to protect the confidentiality and security of (i) Customer Data in your possession and will comply with any specific requirements in that regard set forth in the Service Schedule, and (ii) the Customer Data we return to you and other confidential data and information we provide you in connection with the Service. You will destroy or dispose of Customer Data after expiration of applicable retention periods in a reasonably secure manner and in accordance with any specific requirements in the Service Schedule. You assume full and sole responsibility for any unauthorized use of or access to, or misuse of, Customer Data and/or Service data and information in your possession and control.

## 11. SERVICE ERRORS

**11.1** You agree to regularly and promptly review all records, controls, notices, reports, statements, communications and other information available to you with respect to Service transactions to confirm and verify the completion and accuracy of the transactions and any related debits, credits or transfers involving your Service Accounts. You will notify us immediately of any actual or suspected error, discrepancy or unauthorized transaction (collectively, "Service Error") within the notification period stated in the applicable Service Schedule, or, if no notification period is stated in the applicable Service Schedule, no more than five (5) Business Days from the date you knew or reasonably should have known of the Service Error.

WITHOUT REGARD TO CARE OR LACK OF CARE ON OUR PART, YOUR FAILURE TO DISCOVER AND REPORT TO US ANY SERVICE ERROR AS SOON AS REASONABLY POSSIBLE AND WITHIN THE APPLICABLE NOTIFICATION PERIOD AS REQUIRED HEREIN WILL BAR ANY CLAIM BY YOU AGAINST US OR OUR THIRD PARTY SERVICE VENDORS WITH RESPECT TO SUCH SERVICE ERROR.

The notification periods stated in this section apply to all Service Errors affecting your Service Accounts and supersede any longer notification periods that may be stated in the Deposit Account Agreement with respect to deposit accounts in general; provided, however, that if a longer notification period is required by applicable law, such longer notification period will apply.

**11.2** If you notify us of Service Errors in accordance with the requirements stated in these General Terms or the Service Schedule, our only obligation and responsibility to you is to make commercially reasonable efforts to correct the errors and reprocess the erroneous data. You will pay the applicable Service Fees for such reprocessing unless the error resulted directly and solely from our gross negligence or willful misconduct.

**11.3** Immediately upon discovery of a Service Error, you will take all reasonable steps to prevent or mitigate any losses to you, us or a third party as a result of the Service Error. You will fully cooperate with and assist us at your expense with our investigation of, and efforts to resolve, any Service

Errors or other problems, including, without limitation, providing us with such information, records and other documentation as we may reasonably request.

## 12. OWNERSHIP; CONFIDENTIALITY

**12.1** You acknowledge and agree that you have no rights in any of the software, systems, forms, instructions, documentation, Service Schedules, User Guides, procedures and similar materials, or any modifications thereto, that we or our Third Party Service Vendors make available to you related to the Service ("Service Materials") except as necessary for your use of the Service. The Service and Service Materials constitute our proprietary and confidential information or that of our Third Party Service Vendors. You do not acquire any rights in the Service by your use of the Service. You will not disclose information about the Service or the Service Materials to any third party except as reasonably necessary for your use of the Service or to comply with applicable law. The content and information on a Service Web Site are copyrighted by us or by our Third Party Service Vendors and the unauthorized reproduction or distribution of any portion thereof is strictly prohibited.

**12.2** We will maintain and safeguard the confidentiality of your Customer Data and other confidential information about you that we obtain in the course of performing the Service, and will only use and share such information, in accordance with (i) our privacy policies and procedures respecting confidential customer information and (ii) applicable law. Our privacy policies and procedures are described in our brochure, "Important Information about Privacy," which you may request from us at any time or view on our web site at <http://www.firstcitizens.com>.

## 13. OUR RESPONSIBILITIES AND LIABILITY

**13.1** We will perform the Service in accordance with our obligations under this Agreement and the Deposit Account Agreement and in a commercially reasonable manner exercising ordinary care. We assume no obligations or responsibilities with respect to our performance of the Service other than those expressly stated in this Agreement.

**13.2** In processing and performing Service transactions based on your Customer Data, we are entitled to rely solely on the Customer Data as you provided it and will have no liability to you for our acts or omissions in reliance on the Customer Data you provide to us. If we provide data or information to you, we will use commercially reasonable efforts to provide the data and information in a timely and accurate manner; however, except as required by applicable law, we will not be liable to you or any third party for delays in delivering the data or information or for inaccuracies in the data or information. Our sole liability and your exclusive remedy for errors or delays in the data and information we provide you are limited in all circumstances to our correction of the errors made.

**13.3** We will not be liable for any liability, loss or damage sustained by you (collectively, "Loss") except to the extent that such Loss is caused solely and directly by our gross negligence or willful misconduct and only to the extent our liability is not otherwise excused or further limited as provided in these General Terms, the Service Schedule, the Deposit Account Agreement or applicable law. All exclusions of liability hereunder shall apply regardless of the form in which a claim of Loss is asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds. Our liability for all losses hereunder shall in no event exceed in the aggregate the amount of service fees you paid us for the six (6) months prior to the date the claim accrued for the service giving rise to the claim. Our liability, if any, for a Loss in connection with the payment or transfer of funds will be limited to the amount of the error and interest that would have accrued on such amount if the error had not occurred, such interest to be based on the then current interest rates we pay on our interest-bearing checking accounts.

IN NO EVENT AND UNDER NO CIRCUMSTANCES WHATSOEVER SHALL WE BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND YOU HEREBY WAIVE ALL SUCH DAMAGES.

**13.4** We may delay, suspend or fail to perform the Service or our responsibilities under this Agreement, and will not be responsible for any Loss resulting therefrom, if such delay, suspension or failure to perform is not caused solely and directly by our gross negligence or willful misconduct, or results directly or indirectly in whole or in part from: (i) the occurrence of events beyond our reasonable control, including, without limitation, wars, riots, actual or threatened terrorist acts, civil insurrection, strikes, natural disasters, pandemics, power outages or communications, equipment, software/hardware, networks or systems failures, malfunctions or interruptions, or any other event beyond our reasonable control; (ii) use of the Internet or any virus, spy-ware, or similar device that affects your computers; (iii) your violation of any of this Agreement or the Deposit Account Agreement, (iv) your negligence or intentional misconduct, (v) your violation of any applicable laws, regulations, clearing house rules or other requirements applicable to your use of the Service, (vi) our reasonable concerns about your financial condition as it relates to your ability to meet your obligations under this Agreement, (vii) questions or disputes regarding the ownership of funds in your Service Accounts or authorization to access or use the Service; (viii) an actual or suspected breach of Security Procedures; (ix) use or suspected use of the Service or your Service Accounts for illegal or fraudulent purposes; or (v) our reasonable belief that a use of the Service is prohibited by applicable law. Our sole obligation to you arising out of the non-availability of the Service or an interruption or delay in the Service shall be to use commercially reasonable efforts to resume the Service.

**13.5** In providing the Service, we may use the services, software, hardware, systems, networks and web sites of our affiliated entities, agents or other third parties (collectively, "Third Party Services"). The term "Third Party Service Vendors" as used herein refers to the providers of Third Party Services. Your obligations hereunder with respect to your access to and use of the Service apply to Third Party Services and Third Party Service Vendors, as applicable. Third Party Service Vendors will not be liable to you hereunder in connection with the Service provided to you, including Third Party Services, except as expressly agreed by the Third Party Service Vendor in its agreement with us.

**13.6** Nothing in this Agreement shall be construed to limit any rights or defenses available to us, or any warranty, indemnity or liability obligations imposed on you, under Applicable Law or any other agreements applicable to services, accounts or other products you obtain from us.

#### 14. WARRANTY DISCLAIMER

EXCEPT AS EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT, WE MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICE AND/OR ANY EQUIPMENT, HARDWARE, SOFTWARE, INTERNET SERVICES OR OTHER SERVICES PROVIDED BY US OR A THIRD PARTY SERVICE VENDOR, INCLUDING, WITHOUT LIMITATION, THAT THE SERVICE AND/OR ANY EQUIPMENT, HARDWARE, SOFTWARE, INTERNET SERVICES OR OTHER SERVICES PROVIDED BY US OR A THIRD PARTY SERVICE VENDOR WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE, AND WE DISCLAIM ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, YOU ACKNOWLEDGE THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND/OR TELECOMMUNICATION LINES OR CIRCUITS, AND YOU HEREBY ASSUME ALL SUCH RISKS. IF ANY OF THESE DISCLAIMERS ARE LIMITED OR PROHIBITED BY APPLICABLE LAW, WE MAKE ONLY THE WARRANTIES SPECIFICALLY PERMITTED BY APPLICABLE LAW. ANY DISCLAIMERS OF WARRANTIES STATED IN THE SERVICE SCHEDULE SHALL BE IN ADDITION TO, AND NOT IN LIEU OF, THE DISCLAIMERS STATED HEREIN.

#### 15. INDEMNIFICATION

In addition to any other specific indemnity obligations under these General Terms and the Service Schedule, you agree to defend, indemnify and hold harmless us, our affiliates, subsidiaries, employees, officers, directors, agents, representatives and Third Party Service Vendors from any claim, loss, damage, liability, deficiency, penalty, cost and expense (collectively, "Loss") we or our Third Party Service Vendor may incur, including, without limitation, reasonable attorneys' fees, arising out of or in connection with (i) your breach or default of any of your obligations under or the requirements of this Agreement, (ii) the negligence, willful misconduct, fraud or criminal activity of you or any of your employees, agents or representatives, (iii) incorrect, incomplete, or inaccurate Customer Data furnished by you, (iii) any action taken by us at the direction of you, your Customer Representatives or agents, (iv) any direction authenticated in accordance with the Security Procedures or otherwise acted upon us in good faith (unless we have direct knowledge that such direction is unauthorized prior to our acting on the direction).

#### 16. TERMINATION

**16.1** You may terminate the Service by calling us at the number provided below under Customer Service and Support, contacting your Treasury Management Services representative, or notifying us in writing at the address provided below under Customer Service and Support. We will process your request as soon as practical after our receipt of your notice.

**16.2** We may terminate the Service at any time with or without cause. We will use commercially reasonable efforts to provide prior notice as we deem reasonable for the specific Service unless you are in violation of this Agreement or other circumstances exist that reasonably require us to take immediate action, including, without limitation, (i) actual or potential fraudulent, unlawful or disputed acts and/or acts which may subject us or a third party to an actual or potential loss or risk of any kind, (ii) actual or threatened compromise of security, or (ii) if your Service Account is closed or is no longer linked to the Service on our records without our approval of another Service Account for the Service.

**16.3** Notwithstanding termination of the Service, this Agreement will remain in full force and effect as to services and Service transactions in process or that occurred prior to the date of termination, including, without limitation, any debits or credits to your Service Account occurring prior to termination that are rejected, returned or reversed for any reason or for which we receive a claim or suffer a loss. You agree to pay all Service Fees for services rendered up to the termination date and thereafter for Services that, by their nature, are required to be performed following termination.

#### 17. COMMUNICATIONS; NOTICES

**17.1** We may communicate with you regarding the Service verbally, in writing or electronically. We may deliver written or electronic communications to you by, as applicable: (i) electronic message to your external email address, (ii) messages on or with the regular deposit account statement for your Service Accounts; (iii) personal delivery, regular mail or overnight courier service; or (iv) any of the methods for providing notices and communications to you as provided in the BOB Advantage Customer Agreement. You consent to receive communications from us by these methods. We will send, post or email notices prior to their effective date when required by applicable law or as provided in these General Terms or the Service Schedule. Notices are effective on the effective date stated in the notice or, if no effective date is stated, on the date sent, posted or emailed. Your use of the Service after the effective date of any notice or communication related to the Service means that you have accepted the notice or communication. A notice that alerts you to the availability of a communication on an Internet web site, in lieu of sending you the entire communication, is deemed sufficient notice.

You will provide us with your current external email and U.S. mail addresses and update us immediately with any changes. You agree that we may send communications to the current address shown in our records, whether or not that address includes a designation for delivery to the attention of any particular individual. You also agree that we will not be liable or obligated to you in any way if a communication is intercepted by an unauthorized person after it leaves our exclusive control, whether in transit or at your place of business. We may ask you to designate one person as our main contact for receipt of communications and information relating to your use of the Service.

You agree that your electronic delivery of Customer Data and other information, and your electronic consents, authorizations and instructions are legally binding and enforceable against you and are the legal equivalent of your handwritten signature.

**17.2** You must communicate with us regarding the Service in accordance with these General Terms, and instructions or requirements provided in the Service Schedule or User Guides. If there are no such instructions, you may communicate with us electronically regarding the Service using the "messages" link in BOB Advantage and subject to the provisions of the BOB Advantage Customer Agreement. You agree not to use electronic messages or external email if you need an immediate response or are requesting that we take immediate action, including, without limitation, to report a material problem with a Service, errors in Customer Data or Service transactions, unauthorized Service transactions or Security Incidents. Notices sent to us are the property of the Bank, and we reserve the right to delete such messages from our records or systems from time to time. For security reasons, we may not act on notices sent from an external email address. Do not use external email to send confidential or sensitive information about you, your use of the Service, Service transactions or your Service Accounts, as the email may not be secure.

Notices you send to us by regular mail, overnight delivery or hand delivery are effective no earlier than the first Business Day after our receipt of the notice, unless otherwise required by law or otherwise specified in this Agreement. You must use the following address when mailing us written notices or such other address as provided in a specific Service Schedule:

First Citizens Bank  
Treasury Management Services - CLN45  
P.O. Box 27131  
Raleigh, NC 27611-7131

## 18. ARBITRATION PROVISION

PLEASE READ THIS ARBITRATION PROVISION CAREFULLY: IT PROVIDES THAT CERTAIN DISPUTES MAY BE RESOLVED BY BINDING ARBITRATION AT THE ELECTION OF EITHER PARTY. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY TRIAL AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR RATHER THAN A JUDGE OR JURY. THE RIGHT TO APPEAL THE ARBITRATOR'S DECISION MAY BE LIMITED OR UNAVAILABLE.

Except as provided below in "EXCEPTIONS TO APPLICABILITY OF ARBITRATION," either you or we may require that any "Claim" (as defined below) be resolved exclusively and finally by binding arbitration, even if suit already has been filed in court. "Claim" means any claim, controversy or dispute (whether pre-existing, present, or future) based on any theory of law or remedy, made by you or anyone connected with you or claiming through or for you (including a co-owner, representative, or trustee in bankruptcy) that arises from or relates to: (i) the TMS Agreement, any prior agreements relating to the Services, or the relationships that result from the TMS Agreement; (ii) the Services provided to you under the TMS Agreement and transactions conducted in connection with the Service; (iii) this Arbitration Provision; (iv) any products, services or benefit programs related to or offered in connection with the Service whether or not we offered, introduced, sold or provided them; and (v) any disclosures of information about you or your use of the Service.

This Arbitration Provision does not limit your or our right to seek temporary injunctive relief from a court pending any arbitration proceeding. We also retain the right and option to exercise our right of set off under applicable law or contract and to exercise judicial remedies to enforce any monetary obligations incurred in connection with your use of the Service. No Claim may be arbitrated on a class action basis. Arbitration shall proceed on an individual basis, including Claims made and remedies sought as part of a class action, private attorney general or other representative action. No Claim may be consolidated with the dispute of any other person. With arbitration, you cannot act as a class representative or participate as a member of a class, even if the Claim has been asserted in court.

Any Claim subject to arbitration shall be resolved by binding arbitration administered by the American Arbitration Association ("AAA") before a single neutral arbitrator in the state where we maintain your Service Account. Judgment on the arbitrator's award may be entered by any court having jurisdiction. The AAA's applicable rules and any supplementary procedures in effect on the date arbitration is filed, shall govern the arbitration, subject to this Arbitration Provision. The arbitrator may allow discovery of relevant non-privileged documents. The arbitrator does not have authority to award punitive, exemplary, statutory or consequential damages or damages for lost profits. The party initiating arbitration pays the initial filing fee. Expenses and fees of the arbitrator are shared equally by the parties unless the arbitrator specifically assesses all or part of the expenses and fees in the award. Award or denial of a Claim must be made in writing and generally state the reasons for the decision.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This Arbitration Provision survives (i) termination of or changes to the TMS Agreement, the Service, or your relationship with us concerning the Service, and (ii) bankruptcy of any party to the TMS Agreement.

## 19. CUSTOMER SERVICE AND SUPPORT

If you are experiencing difficulty with the Service and contact us during business hours, we and/or our Third Party Service Vendor (collectively, "we," for purposes of this paragraph) will use commercially reasonable efforts to assist you with resolving the problem based on the nature of the Service and scope and type of the problem, and provided that resolution of the problem is within our reasonable control and you give us such information and assistance as we may reasonably require to investigate and resolve the problem. Our ability to assist you may require that we remotely connect to your computer for a joint support session with you and that we either have view-only access to your computer or that we temporarily take control of your computer during the joint support session. Prior to beginning such session, we will request that you electronically provide us with the appropriate authorization, which you may revoke at any time during the session. Upon completion of the support session, we will not be able to re-access your computer without again being granted access by you

For questions about the Service or this Agreement, or for assistance with the Service, please call Business Support at 1.866.FCB.4BIZ (1.866.322.4249) Monday through Saturday between the hours of 7 a.m. and 11 p.m. Eastern time.

## 20. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina and applicable federal law.

## 21. ASSIGNMENT

You may not assign any or all of your rights or obligations under this Agreement to any person or entity without our prior written consent. We may assign this Agreement without your consent. We may also assign or delegate certain of our rights or responsibilities under this Agreement and/or the Service to our affiliates, agents, independent contractors or other third parties.

## 22. GENERAL

This Agreement is the complete and exclusive statement of the agreement between you and us with respect to the Service and supersedes any prior agreement(s) between you and us with respect to the Service. Waiver of strict performance of any provision of this Agreement shall not be deemed a continuing waiver or affect your or our rights with respect to any other transaction or modify the terms of this Agreement. Any waiver by us must be in writing in order to be enforceable against us. We will not be deemed to have waived any of our rights or remedies under this Agreement unless we do so in writing or by electronic Notice. No delay or omission on our part in exercising any of our rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies we may have. A waiver on one occasion will not be construed as a bar or waiver of any of our rights or remedies on future occasions. This Agreement shall be binding upon and inure to the benefit of you and us and your and our respective legal representatives, successors and assigns. This Agreement is solely for your and our benefit, and no other person or entity shall have any rights under this Agreement except as expressly stated otherwise in these General Terms. Headings in this Agreement are used for reference purposes only. In the event of a conflict between this Agreement and applicable law, the applicable law will govern with respect to the conflict. If any provision of this Agreement is determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.