

# **E-Services Procedures, Terms and Conditions**

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# Texas First Bank

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## **E-Services**

Ach Origination Payroll, Payments, Collections  
Remote Deposit Capture, Mobile RDC  
Positive Pay (Check and ACH)  
Wire Transfer Initiation  
Tax Payments  
Internet Banking Features  
Stop Payments/Check Order/Address Changes  
Funds Transfer/ Credit Card, and Bill Payments

## **Online Banking Services**

Texas First Bank grants access to the Internet Banking System to perform transactions in accordance with customers request for Stop pay, change of address, funds transfer, bill pays and check orders and to help manage Customers everyday business activities with E-Service products.

Many of the services are available for use through traditional means of financial commerce as well as through the use of Internet Banking Service offered by the Bank. The execution of the E-Service Agreement obligates the parties with regard to the general terms and conditions related to use by the Customer of any Service or Services offered by the Bank, regardless of whether such Service is performed traditionally, online or through some combination thereof. Nonetheless, before the Customer begins using any Services, the Customer must mail or deliver a duly authorized executed copy the Agreement to the Bank for review and approval.

## **Enrollment in a Service or Services.**

Enrollment in any individual Service requires the completion of the E-Service Request and related authorization forms. Enrollment in a Service or Services is accomplished by obtaining, completing and signing the Request and related forms, granting authorization for the bank to obtain credit report on individuals and/or company as applicable for service(s) selected and by submitting all completed documents to the Bank in person, through regular mail or by facsimile.

## **Authorizations:**

By providing the Authorization, the Customer authorizes the individual(s) name therein to be Authorized signers and Authorized Administrators (collectively, the Authorized Parties). Authorized signer(s) / Authorized Administrator(s) have the authority to sign the agreement and any addenda thereof; to accept on behalf of the Customer the terms and conditions governing the use of Services, including acceptance of the Security Procedures, to enroll in Services: to appoint and remove Authorized Administrators to appoint and remove Contacts, to provide the required information to set up and administer Services; to perform the functions of a Contact; to authorize and remove the authorization of individual(s) Transactional Users whom perform transactions related to a Service or Services; to grant access to specific deposit accounts and service functions; to reset passwords; to audit Service Activities and to perform transactions related to any Service hereunder.

The Customer agrees that in the event the Customer desires to name additional Authorized Administrators or remove the authority of any existing authorized administrator, the Customer must provide the Bank with written instructions advising the bank of the change in authority signed by a person names as authorized signer on the most current authorization. The Customer agrees that the most current Service -Related users authorization supplied by the Customer and to the fullest extent permitted by applicable law, the Bank shall have no Liability for unauthorized actions taken or transactions performed by those individuals named as authorized parties on the current authorization agreement.

The Customer understands and agrees the authority granted to Authorized Parties under this agreement or who may be granted the authority for handling Customer financial affairs including processing, writing or receiving checks or electronic transfers, handling account statements or other financial information, Conducting Remote Deposit Capture Services such as scanning or storing original checks, or creating, transmitting or storing substitute Check images, or acting otherwise in a responsible manner regarding Customer financial affairs and that a system of reasonable financial controls are in place and the Customer has instituted a program that encourages Customer's employees to report fraudulent or dishonest activities to Customer's management.

## **Funds Transfer**

The bank will honor the Customer's transaction and instructions only when the Customer has complied with the Agreement. The service requires the Customer to maintain sufficient, good, collected and available funds in the accounts to cover the Customer requests from which the funds are to be withdrawn. If there are sufficient funds in the designated Deposit account to cover the required withdrawal(s), transfer(s) or related fees, the bank will honor. The Bank may at its sole discretion, on occasion provide a Service against insufficient, good, collected and available funds in Deposit account, but it's not under any obligation to do so, and any action by the Bank of this nature will not constitute an obligation to provide the Service in the future. The Bank may dishonor any request that may result in a negative balance and has no duty to notify the Customer prior to dishonoring any overdraft even if the bank has paid overdraft on behalf of the customer in the past.

Should the Bank have reason to believe it may not be authorized by the customer, involves funds subject to hold, dispute or legal process preventing withdrawal or for the protection of the Bank and/or the Customer, the bank has reasonable cause not to honor.

## **Funds Transfer-Account Limitations**

The Customer's ability to initiate bank transfers between deposit accounts may be limited by federal laws or by the terms of the applicable deposit account agreement or the loan account agreement. The bank transfers from savings or money market accounts are limited as required by federal regulation in effect at the time a bank transfer is initiated. The Customer agrees that the bank may, without notice or other obligation to the Customer, for security reasons or otherwise expressly provided in this Agreement, the deposit account agreement or Loan account agreement, a) refuse to make any bank transfer, or b) refuse to accept a transferred deposit to an account.

## **Posting Funds and Availability**

Transactions (such as deposits and funds transfers) will be posted to applicable deposit account as provided for in the Bank's then current Schedule of Funds Availability. The Bank may change any cutoff deadline at any time giving notice, as required by law, of change to the Customer. The availability of funds generally provided on next business after day of deposit or transfer. The availability Schedule is subject to change from time to time in accordance with applicable laws.

## **Business Days**

Any day on which a majority of the Bank's offices are open to the public for conducting substantially all business functions shall be a "Business Day"; provided however, that Saturdays, Sundays and federal holidays are not Business days even if a majority of the Bank's offices are open.

## **Stop-Payments**

The Customer agrees to abide by the rules and regulations governing stop-payment orders. Properly signed stop-payment orders are effective for 6 months after date received and will automatically expire after that period unless renewed in writing. To be effective, the stop-payment request must be received in time to give the Bank a reasonable effort to act. The Bank will not be responsible for any errors or omissions due to inaccurate information being provided by the Customer nor if the check or other negotiable instruments have already been presented for payment at the time the order were received by the bank.

## **Change of Address**

Texas First Bank grants access to the Customer to provide address changes through Internet Banking System. Customer agrees to provide accurate information to the Bank. The Bank reserves the right to take additional steps to verify such change as required by laws and regulations. The Customer agrees to contact the Bank if it suspects the address on the account have been changed without knowledge or consent.

Customer acknowledges and agrees that all information provide to the Bank through Online Banking will be solely dependent upon to effect such orders. The bank will make every effort to expedite the request but under no circumstance will the bank be liable for any error or omission caused by inaccurate information.

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## **Bill Payments**

Texas First Bank grants access to the Customer to provide bill payment through Internet Banking System. Customer agrees to the terms and conditions herein. The Customer's use of service is solely the responsibility of the Customer. The Bank has no liability as to whom, where or how much the customer pays to its vendors except to extent of the limit available through the bill payment function. The Customer represents, warrants and agrees that the execution, delivery and instructions provided by the Customer under this agreement are within the Customer's power. Customer authorizes the Bank to obtain payments for the Customers obligations in initiating Debit or Credit entries to any and all vendor used by Customer in accordance with the use of bill payment. Such obligation includes, without limitation, fees owed to the bank in conjunction with the service provided.

The Customer agrees to maintain sufficient, available, good and collected funds in deposit account to cover the request for bill payment on and up to the date of withdrawal. The Bank is under no obligation to release or pay any authorized or preauthorized payment in the event the funding account is insufficient, unavailable, uncollected, being held or under legal restraint.

The Bank may at its sole discretion , on occasion provide a Service against insufficient, good, collected and available funds in Deposit account, but it's not under any obligation to do so, and any action by the Bank of this nature will not constitute an obligation to provide the Service in the future. The Bank may dishonor any request that may result in a negative balance and has no duty to notify the Customer prior to dishonoring any overdraft even if the bank has paid an overdraft on behalf of the customer in the past.

## **Use of Third Party Vendor**

The Banks use of third party vendor to provide certain Services depends on its ability to provide access to third party networks and other third party services. In the event the Bank determines , in its sole discretion , that it's unable to provide third party network or service access , the bank may discontinue the related Service or may provide the Service through an alternative third party network.

## **Internet Banking Security Procedures**

Texas First Bank grants access to the Internet Banking System to perform transactions in connection with Services offered by the Bank as described herein and in documentation related to the applicable services. The Customer agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs and Passwords that are assigned to the Customer for initiating transactions using this system. Any transaction initiated or authorized using a valid combination of a Login ID and the Customer and Financial Institution will consider Password authentic, valid and binding. Texas First Bank agrees to provide reasonable assistance to establish Login IDs and Passwords, training, and support to the Customer for properly using the services.

Customer and Texas First Bank shall comply with the security procedure requirements described in these documents attached hereto with respect to Entries by Customer to Financial Institution. Customer acknowledges that the purpose of such security procedure is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between Texas First Bank and Customer.

Customer is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Customer warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any logons, passwords, codes, security devices and related instructions provided by Texas First Bank in connection with the security procedures described for the access rights granted under Authorization To Obtain E-Services. If Customer believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Customer agrees to notify Texas First Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Texas First Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

If the Customer suspects or believes any such information has been compromised, it shall immediately contact Texas First Bank at the following:

Emergency Contact	<u>Customer Service</u>	Telephone Number <u>(409) 948-1993</u>
Financial Institution	<u>Texas First Bank</u>	
Street Address	<u>3000 FM 1764</u>	
City, St, Zip Code	<u>La Marque, Texas 77568</u>	

## **Automated Clearing House (ACH)**

Customer wishes to initiate Credit / Debit Entries by means of the Automated Clearing House Network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association and the local ACH Association (the "Rules"), and Texas First Bank is willing to act as an Originating Depository Texas First Bank with respect to such Entries. **Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Agreement/Rules. The terms "Entries" shall have the meaning provided in the Agreement /Rules and shall also mean the data received from Customer hereunder from which the Bank receives Entries. The terms "Customer" shall have meaning as Customer doing business under this agreement. The terms "Bank" shall have meaning as the Financial Institution, Texas First Bank.**

### **Transmittal Of Entries By Customer.**

Customer shall only transmit Debit and/or Credit Entries to Texas First Bank using standard entry class codes and in compliance with the formatting and other requirements set forth in Schedule A and E attached hereto. The total dollar amount of Entries transmitted by Customer to the Bank in any one month shall not exceed the amount specified in the Maximum Limit or Seasonal Maximum limit section on Schedule E. Customer shall only transmit debit and/or credit entries to Bank that comply with State and Federal Law. Customer shall only transmit ACH debit and/or credits according to NACHA Rules as provided in agreement. The operating rules book and /or CD can be obtained at [www.nacha.org](http://www.nacha.org).

### **Restricted Transactions**

Originators (Customer) are restricted from transacting business that may be unlawful. UIGEA- The act prohibits persons engaged in the business of illegal gambling from accepting or originating ACH payments for unlawful Internet gambling.

The act terms such payments "Restricted Transactions".

**OFAC** - The act prohibits accepting or originating ACH payments from sanctioned countries, companies and/or individuals. It shall be the Customer responsibility to obtain information regarding such OFAC enforcement sanctions. (This information may be obtained directly from the OFAC website [www.ofac.gov](http://www.ofac.gov) or compliance Hotline at (800) 540-OFAC.)

**IAT** -International ACH debit or credit originations are not permitted under this agreement.

### **Security Procedure**

Customer and Texas First Bank shall comply with the security procedure requirements described in these documents attached hereto with respect to Entries transmitted by Customer to Financial Institution. Customer acknowledges that the purpose of such security procedure is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between Texas First Bank and Customer.

Customer is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Customer warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any logons, passwords, codes, security devices and related instructions provided by Texas First Bank in connection with the security procedures described for the access rights granted under Authorization To Obtain E-Services. If Customer believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Customer agrees to notify Texas First Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Texas First Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

### **Compliance with Security Procedure.**

- (a) If an Entry (or a request for cancellation or amendment of an Entry) received by Texas First Bank purports to have been transmitted or authorized by Customer, it will be deemed effective as Customer's Entry (or request) and Customer shall be obligated to pay Texas First Bank the amount of such Entry even though the Entry (or request) was not authorized by Customer, provided Texas First Bank accepted the entry in good faith and acted in compliance with the security procedure referred to in this agreement with respect to such entry. If signature comparison is to be used as a part of that security procedure, Texas First Bank shall be deemed to have complied with that part of such procedure if it compares the signature of Customer on file. Entries (or request for cancellation or amendment of an Entry) received with the signature of an authorized representative of Customer (an "Authorized Representative") and, on the basis of such comparison, believes the signature of Customer on file to be that of such authorized representative.

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- (b) If an Entry (or request for cancellation or amendment of an Entry) received by Texas First Bank was transmitted or authorized by Customer, Customer shall pay Texas First Bank the amount of the Entry, whether or not Texas First Bank complied with the security procedure referred to in Schedule B with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Texas First Bank had complied with such procedure.
- (c) Texas First Bank reserves the rights to audit Customer for compliance with agreement and operating rules.

## **Recording and Use of Communication.**

Customer and Texas First Bank agree that all telephone conversations, emails or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. The Bank, however, has no duty to record or monitor such telephone conversations or online transmissions and communications, and the election to record and /or monitor is with the Bank's sole discretion.

## **Processing, Transmittal And Settlement By Financial Institution.**

- (a) Except as provided in Section for On-Us Entries and Section for Rejection of Entries, Texas First Bank shall (I) process Entries received from Customer to conform with the file specifications set forth in Rules, (II) transmit such Entries as an Originating Depository Texas First Bank to Federal Reserve Bank of Dallas "ACH" acting as an Automated Clearing House Operator, and (III) settle for such Entries as provided in the Rules.
- (b) Texas First Bank shall transmit or complete the necessary batch authorization of such ACH Entries by the Delivery Date deadline of the ACH specified by the Federal Reserve. The files must be received prior to cut off times and contain an Effective Entry Date shown in such file and provided (1) such Entries are received by Financial Institution's related cut-off time set forth on Schedule B on a business day, (2) the Effective Entry Date is at least 1 day for Debit entry and at least 2 days for credit entry on such business day, and (3) the ACH is open for business on such business day. For purposes of this Agreement a "business day" is a day on which Texas First Bank is open to the public for carrying on substantially all of its business [other than a Saturday or Sunday]. Entries shall be deemed received by Texas First Bank when the applicable security procedures with respect to submission as set forth herein have been complied with and the submission is completed in accordance with the Agreement. (4) In the cases of emergency conditions, entries shall be deemed received when delivered to the Bank at the location set forth in Schedule B, on business day and before Financial Institution's related cut-off times by CD Diskette, Encrypted email, or File diskette.
- (c) If any of the requirements of clause, (1), (2), (3), or (4), of this Section are not met, Texas First Bank shall use reasonable efforts to transmit such Entries to the ACH by the next deposit deadline of the ACH following that specified in Schedule B which is a business day and a day on which the ACH is open for business.

## **On-Us Entries.**

Except as provided in Rejection of Entries, in the case of an Entry received for credit to an account maintained with Texas First Bank (an "On-Us Entry"), Texas First Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (1) and (2) of Processing, Transmittal and Settlement by Financial Institution section are met. If either of those requirements is not met, Texas First Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.

## **Rejection Of Entries.**

Texas First Bank may reject any Entry which does not comply with the requirements of Transmittal Of Entries By Customer, or Security Procedure, or which contains an Effective Entry Date more than one 1 days after the business day such Entry is received by Financial Institution. Texas First Bank may reject an On-Us Entry, for any reason for which an Entry may be returned under the Rules. Texas First Bank may reject any Entry if Customer has failed to comply with its account balance obligations under The Account. Texas First Bank may reject any entry if Customer does not adhere to security procedures as described in Schedule B. Texas First Bank shall notify Customer by phone or electronic transmission, including email or in writing of such rejection no later than the business day as such Entry would otherwise have been transmitted by Texas First Bank to the ACH or, in the case of an On-Us entry, its Effective Entry Date. Notices of rejection shall be effective when given. Texas First Bank shall have no liability to Customer by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

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## **Cancellation Or Amendment By Customer.**

Customer shall have no right to cancel or amend any Entry after its receipt by Texas First Bank. However, if such request complies with the security procedures described in Schedule B for the cancellation of Data, Texas First Bank shall use reasonable efforts to act on a request by Customer for cancellation of an Entry prior to transmitting it to the ACH operator or, in the case of an On-Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. Customer shall reimburse Texas First Bank for any expenses, losses, or damages Texas First Bank may incur in effecting or attempting to affect Customer's request for the reversal of an entry.

## **Notice Of Returned Entries.**

Texas First Bank shall notify Customer by phone or electronic transmission, including email of the receipt of a returned entry from the ACH no later than one business day after the business day of such receipt. Except for an Entry retransmitted by Customer in accordance with the requirements of [Transmittal of Entries By Customer](#), Texas First Bank shall have no obligation to retransmit a returned Entry by ACH if Texas First Bank complied with the terms of this Agreement with respect to the original entry.

Effective October 3, 2016, Unauthorized ACH return Item(s) will incur a fee. The bank reserves the right to pass this fee to its originator. Reason codes R05,R07,R10,R29 and R51 will be charged a fee for each occurrence. The fee will pass to the originator as indicated in Schedule A.

## **Payment by Customer for ACH Prefunding Services.**

Customer and/or related Entities shall pay Texas First Bank the amount of each Entry transmitted by the bank pursuant to this Agreement at such time received for transmission. The Financial Institution at its discretion may require prefunding ACH Services. Customer of Prefunding Ach Services shall be required to submit the ach credit entry file two (2) business days in advance of the desired settlement date. If the customer account has funds that are at least equal to the amount of the ach credit file, the file will be processed as normal on the desired settlement date. However, if the ach credit file is unfunded for reasons of unavailable funds and/or insufficient funds on the date of receipt, the credit file may not be processed on the settlement date desired. If customer does not comply with the prefunding requirements provided by the bank, then such noncompliance shall be grounds for immediate termination of Customer's Ach Services. Such termination is at the banks sole discretion.

## **Ach Operations Credit and Risk Criteria**

Bank's ACH operations credit and risk analysis shall be based on certain factors deemed relevant by the bank in its sole discretion, including, but not limited to, the following factors: 1. the credit worthiness i.e. Credit Report, financial condition and financial performance of the Customer, the Customers capital adequacy relative to the Customer's ACH business activities and volume, 2. The nature, conduct and geographic location of the customers business, including whether certain Standard Entry Class Codes are used and the bank either deems them higher risk or codes that the bank does not allow are present in Customers activity, the levels of customers return items or dollar amounts in excess of generally acceptable ACH returns parameters as defined by the bank at its sole discretion. Customer agrees to cooperate with bank regarding any ongoing risk analysis activities by the bank, including providing financial or other documents in a timely manner upon bank's request. In the event it is the opinion of the bank that the customer has failed to maintain the minimum risk criteria as required by the bank, the customer undergoes a material change in operations, and the bank believes it represents a material change in the customers financial performance or financial condition, upon learning of this condition the Bank will inform the customer of the issue and the bank may exercise its right to temporary suspend the Ach activities upon further investigation. The bank may impose its rights to take the appropriate actions to require the customer to open a Reserve Account or require customer to prefund ach activities. The bank may at its sole discretion and generally upon written notice from the Bank, immediately terminate if necessary to comply with NACHA rules.

## **The Account**

Texas First Bank may, without prior notice or demand, obtain payment of any account due and payable to it under this Agreement by debiting the account(s) of Customer identified in E- Services Agreement and/or Related Entities attached hereto (the "Account"), and shall credit or debit the Account for any amount received by the Bank by reason of the return of an Entry transmitted by The Bank for which Bank has previously received payment or credit from Customer. Such credit or debit shall be made as of the day of such receipt by Bank. Customer shall at all times maintain a balance of available funds in the Account sufficient to cover its payment obligations under this Agreement. In the event there are not sufficient available funds in the Account to cover Customer's obligations under this Agreement, Customer agrees that the Bank may debit any account maintained by Customer and/or Its related Entities with Texas First Bank to satisfy such payment or the Bank may set off against any amount it owes to Customer, in order to obtain payment of Customer's obligations under this Agreement. Customer agrees that upon termination of Ach origination activities by either the Bank or Customer; the bank may require customer to maintain an open account with sufficient funds to accommodate any ACH Entries returned, or any other cost associated with

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ACH Origination Activities occurring prior to termination for a minimum period of 60 days or at the banks discretion to accommodate ACH return entries or other associated cost.

## **Account Reconciliation.**

Entries transmitted by Texas First Bank or credited to a Receiver's account maintained with Texas First Bank will be reflected on Customer's periodic statement issued by the Bank with respect to the Account pursuant to the agreement between Texas First Bank and Customer. Customer agrees to notify Texas First Bank promptly of any discrepancy between Customer's records and the information shown on any periodic statement. If Customer fails to notify Texas First Bank of any discrepancy within ten (10) days of receipt of a periodic statement containing such information, Customer agrees that Texas First Bank shall not be liable for any other losses resulting from Customer's failure to give such notice or any loss of interest or any interest equivalent with respect to any Entry shown on such periodic statement. If Customer fails to notify Texas First Bank of any such discrepancy within sixty (60) days of receipt of such periodic statement, Customer shall be precluded from asserting such discrepancy against Financial Institution.

## **Customer Representations And Agreements: Indemnity.**

With respect to each and every Entry initiated by Customer, Customer represents and warrants to Texas First Bank and agrees that (a) each person shown as the Receiver or any Entry received by Texas First Bank from Customer has authorized the initiation of such Entry (**Schedule C forms for sample only. Not to be used with Texas First Bank Heading**) and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting/debiting by Texas First Bank as provided herein, (c) Entries transmitted to Texas First Bank by Customer are limited to those types of Credit or Debit Entries set forth in Transmittal of Entries By Customer, (d) Customer shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC, and (e) Customer shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision payment of an Entry by the Receiving Depository Texas First Bank to the receiver provisional until receipt by the Receiving Depository Texas First Bank of final settlement for such Entry. Customer specifically acknowledges that it has received notice of the Rule regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Texas First Bank shall be entitled to a refund from the Receiver of the amount credited and Customer shall not be deemed to have paid the Receiver the amount of the Entry. Customer shall indemnify Texas First Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements. The Customer shall comply with all provisions of the Electronic Funds Transfer ACT ("EFTA", including the requirements of Regulations E promulgated by the U.S. Federal Reserve Board in accordance with EFTA, if applicable, and the provisions of the Texas Uniform Commercial Code Section 4A, If applicable.

## **Evidence of Authorization.**

The Customer will obtain written authorizations for consumer entries in accordance with the ACH Rules and U.S. law and shall retain the original or store the records for two (2) years after termination or revocation of such authorization. Retention records may vary by State. Comply with your own State laws. The authorization must be clear and readily understandable and must be made available at the request of the bank or any RDFI, in accordance with the NACHA rules.

## **Banks Responsibilities: Liability: Limitations On Liability: Indemnity.**

- (a) In the performance of the services required by this Agreement, Texas First Bank shall be entitled to rely solely on the information, representations, and warranties provided by Customer pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Texas First Bank shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its negligence or willful misconduct in performing those services. Texas First Bank shall not be responsible for Customer's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Customer) or those of any other person, including without limitation any Federal Reserve Financial Institution, Automated Clearing House or transmission or communications facility, any Receiver or Receiving Depository Texas First Bank (including without limitation the return of an Entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed Financial Institution's agent. Customer agrees to indemnify Texas First Bank against any loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any claim of any person that Texas First Bank is not responsible for; and any act or omission of Customer or any other person described in this Section (a).
- (b) Texas First Bank shall be liable only for Customer's actual damages; in no event shall Texas First Bank be liable for any consequential, special, incidental, punitive or indirect loss or damage which Customer may incur or

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suffer in connection with this Agreement, whether or not the likelihood or such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which Customer may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Financial Institution's acts or omissions pursuant to this Agreement.

- (c) Without limiting the generality of the foregoing provisions, Texas First Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Financial Institution's control. In addition, Texas First Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Financial Institution's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Financial Institution's reasonable judgment otherwise violation any provision of any present or future risk control program of the Federal Reserve or any rule or regulation or any other U.S. governmental regulatory authority.
- (d) Subject to the foregoing limitations, Financial Institution's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Texas First Bank of New York for the period involved. At Financial Institution's option, payment of such interest may be made by crediting the Account resulting from or arising out of any claim of any person that Texas First Bank is responsible for any act or omission of Customer or any other person described in this Section part (a).

### **Inconsistency of Name And Account Number.**

Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Texas First Bank to the Receiving Depository and /or may be made by the Receiving Depository to Texas First Bank (or by Texas First Bank in the case of an On-Us Entry) on the basis of the account number supplied by the Customer, even if it identifies a person different from the named Receiver, and that Customer's obligation to pay the amount of the Entry to Texas First Bank is not excused in such circumstances.

### **Notifications Of Change.**

Texas First Bank shall notify Customer of all notifications of change received by Texas First Bank relating to Entries transmitted by Customer by mutually agreeable means, including email, no later than 2 business days after receipt thereof.

### **Fees and Charges.**

As provided for in this agreement between Texas First Bank and Customer with respect to fees and charges. Customer shall pay the Bank the charges for the services provided in connection with this Agreement, as set forth in Schedule A, attached hereto. Fees in connection with providing these services will be charged against account and /or analysis with exception of stop payment fee and wire transfer fees. All fees and services are subject to change upon 30-calendar day's prior written notice from the Bank. Such charges do not include, and Customer shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any charges and fees from Bank's third party service providers or vendors relating to services provided over which bank has no control; and for all telephone charges, internet access service charges, tolls and other cost for Internet Banking services initiated by the customer or the customers authorized users.

### **Amendments.**

From time to time Texas First Bank may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any business day, and any part of Schedules attached hereto. Such amendments shall become effective upon receipt of notice by Customer or such later date as may be stated in Financial Institution's notice to Customer. The Bank may amend any terms of the Agreement without prior notice or obligation to the Customer: If (a) service provider changes any terms without providing the bank sufficient prior notice to enable the bank to timely notify the Customer: (b) for security reasons: (c) to comply with applicable laws. Use by the customer following the effective date of any amendments constitutes the Customer acceptance of and agreement to the amendments.

### **Notices, Instructions, Etc.**

Texas First Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in Authorization Agreement. Customer may add or delete any Authorized Representative by written notice to Texas First Bank signed by at least one Authorized Representatives other than that being added or deleted. Such notice shall be effective on the second business day following the day of Financial Institution's receipt thereof.

# Texas First Bank

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Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States registered or certified mail, email certified by PGP or a digital signature, postage prepaid, or by express carrier, and, if to Financial Institution, addressed to:

Texas First Bank  
3000 FM 1764  
La Marque, TX 77568  
Attn: Internet Banking Operations

Except as otherwise expressly provided or substituted by notice delivered or sent to the address provided above. Any such notice sent to Customer and/or Related Entities shall be deemed received when delivered to the Companies business address as provide in the E- Service Agreement.

## **Data Retention.**

Customer shall retain data on file adequate to permit remaking of Entries for 2 year following the date of their transmittal by the Bank as provided herein, and shall provide such Data to the Bank upon its request.

## **Files and Records.**

All Email, Attachments, Entries, security procedures and all related records used by Texas First Bank for transactions contemplated by this Agreement shall be and remain Financial Institution's property. Texas First Bank may, at its sole discretion, make available such information upon Customer's request. Any expenses incurred by Texas First Bank in making such information available to Customer shall be paid by Customer.

## **Cooperation in Loss Recovery Efforts.**

In the event of any damages for which Texas First Bank or Customer may be liable to each other or to a third party pursuant to the services provided under this Agreement, Texas First Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

## **Termination.**

Customer may terminate this Agreement at any time. Such termination shall be effective on the [e.g., second business day] following the day of Financial Institution's receipt and acknowledgement of written notice of termination or such later date as is specified in that notice. Texas First Bank reserves the right to terminate or suspend this Agreement immediately upon providing written notice of such termination to Customer based on a breach of operating rules. Any termination of this Agreement shall not affect any of Financial Institution's rights and Customer's obligations with respect to Entries initiated by Customer prior to such termination, or the payment obligations of Customer with respect to services performed by Texas First Bank prior to termination, or any other obligations that survive termination of this Agreement. Refer to item "**Account**" stipulation.

## **Entire Agreement.**

This Agreement (including the Schedules attached hereto) together with the E- Service Agreement, and all addenda, separate attachments, reference materials and exhibits is the complete and exclusive statement of the agreement between Texas First Bank and Customer with respect to the subject matter hereof and supersedes any prior agreement(s) between Texas First Bank and Customer with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Texas First Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Texas First Bank shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between Texas First Bank and Customer will constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between Texas First Bank and Customer regardless of whatever practices and procedures Texas First Bank and Customer may use.

# Texas First Bank

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## **Schedule B: Security Procedures and Transaction Settlement/Delivery Timeframes**

### **Security Procedures**

Texas First Bank grants access to the Internet Banking System to perform ACH transactions requested by customer in E- agreement and per schedule E. The Customer agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs and Passwords that are assigned to the Customer for initiating transactions using this system. Any transaction initiated or authorized using a valid combination of a Login ID and the Customer and Financial Institution will consider Password authentic, valid and binding. Texas First Bank agrees to provide reasonable assistance to establish Login IDs and Passwords, training, and support to the Customer for properly using the services. If files or entries need to be delivered to Texas First Bank, the information must be delivered to the address below. If the Customer suspects or believes any such information has been compromised, it shall immediately contact Texas First Bank at the following address:

Emergency Contact	<u>Tech Support</u>	Telephone Number	<u>(409) 948-3005</u>
Financial Institution	<u>Texas First Bank</u>	E-mail	<u>techsupport@texasfirstbank.com</u>
Street Address	<u>3000 FM 1764</u>		
City, St, Zip Code	<u>La Marque, Texas 77568</u>		

### **Transaction Settlement/Delivery Timeframes**

All ACH Credit Entries should be completed/authorized at least two (2) business days prior to the "Effective Date" of the transactions. All ACH Debit Entries should be completed/authorized at least one- (1) business days prior to the "Effective Date" of the transactions. If the transactions are not completed/authorized by the required timeframe, Texas First Bank cannot guarantee the transactions will be accepted by ACH processors, or be received/posted on the "Effective Date" by the recipient's financial institution. Texas First Bank may accept these items and they will be forwarded to the ACH processor no later than Texas First Bank's next regularly scheduled delivery time.

For Settlement/Delivery purposes, a business day is defined as legal banking days where both Texas First Bank and ACH processor is open for business. The end-of-day cutoff time is shown below:

End-of-day Cut-off Time 5:00 P.M. Time zone; Central Standard Time

All ACH Credit originations represent financial obligations for the Customer and Financial Institution. Texas First Bank may reject any Entry if Customer has failed to comply with its account balance obligations under **Payment By Customer For ACH Prefunding Services** and **The Account**. The balance showing in the Internet Banking system associated with the account designated as the settlement account for the Entries must be sufficient to cover the total originations on the Delivery date as described above. If the settlement account does not have sufficient funds at that time, Texas First Bank may, without any liability, deny, reject or process the Entries. If the entries are processed, the Customer is still obligated to pay Texas First Bank for the Entries.

### **Limitation On Liabilities.**

Customer understands, acknowledges and agrees that the bank is not responsible for any loss or damages resulting from any errors or failures of the Customer's computer or data processing systems, including, but not limited to any computer virus or malware attach (such as keystroke logging program or similar malware), any attack by a person attempting or actually gaining unauthorized access to Customer's owned Data, or any Internet-related problems that may be associated with the Customer's access and use of the Services.

### **Serious Potential Threat to Customer's Business; Notification to Bank.**

Customer acknowledges and agrees that the threat of fraud resulting from theft of electronic data is serious potential threat to customer's business and, accordingly, Customer will take all reasonable steps to make certain that its Computers and data security systems are protected from unauthorized access or use, and in an event of any unauthorized access or use, Customer will take all reasonable steps to immediately inform Bank of the security breach.

### **Responsibility for Loss.**

If, despite Customer's efforts, Customer suffers any damages or loss as a result of Customer's failure to comply with its data security obligations and regardless of whether such damage or loss results from the activities of Customer's employees, agents, subcontractors or any unaffiliated third party, any such loss or damage shall be the sole responsibility of Customer.

# Texas First Bank

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## **Non-Assignment.**

Customer may not assign this Agreement or any of the rights or duties hereunder to any person without Financial Institution's prior written consent.

## **Waiver.**

Texas First Bank may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Financial Institution's rights with respect to any other transaction or modify the terms of this Agreement.

## **Binding Agreement; Benefit.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Texas First Bank or Customer hereunder.

## **Headings.**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

## **Severability.**

In the event that any provision of this Agreement shall be 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.

## **Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of     Texas    .

## **ACH Originator Responsibilities**

1. **Originators are required to send a pre-note on all new entries.**
2. **Pre-notes are sent at least (3) three banking days prior to origination of the first live entry.**
3. **To correct returned pre-notes prior to the origination of the new entry.**
4. **Upon receipt of a return relating to a pre-note indicating that the RDFI cannot accept such entry, the Originator will cease initiation of any further live entry until the reason for the return has been corrected.**
5. **Originator must make requested changes to account information within six banking days of receipt of a NOC.**
6. **The originator must notify the Receiver when reversing an entry no later than the settlement date of the reversing entry and must provide the reason the original entry is being reversed.**
7. **Upon receipt of returns coded R05, R07, R10, R29 and R51 known as unauthorized and R08 known as stop payment, the originator will cease initiating entries unless the receiver has reinstated the entry authorization or corrective action has been taken.**
8. **Safeguard access and protect passwords.**
9. **Monitor account activities on regular basis. Perform audit and/or reviews of ACH originations. Report any unusual activities immediately.**
10. **Keep up to date on NACHA operating rules.**

**Not Exclusive of ACH Agreements and other NACHA Operating Rules.**

# Texas First Bank

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## **Schedule C: ACH Sample Authorization Agreements**

### AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS)

Customer Name \_\_\_\_\_ Customer ID Number \_\_\_\_\_

I (we) hereby authorize \_\_\_\_\_, hereinafter called CUSTOMER, to initiate debit entries to my (our)  Checking Account/  Savings Account (select one) indicated below at the depository named below, hereinafter called DEPOSITORY, and to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository  
Name \_\_\_\_\_ Branch \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Routing Account  
Number \_\_\_\_\_ Number \_\_\_\_\_

This authorization is to remain in full force and effect until CUSTOMER has received written notification from me (or either of us) of its termination in such time and in such manner as to afford CUSTOMER and DEPOSITORY a reasonable opportunity to act on it. The terms of this agreement are clear and readily understandable.

Name(s) \_\_\_\_\_ ID Number \_\_\_\_\_  
Date \_\_\_\_\_ Signature \_\_\_\_\_

NOTE: ALL WRITTEN DEBIT AUTHORIZATIONS MUST PROVIDE NOTICE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.

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### **Headings.**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

# Texas First Bank

## **Schedule C: ACH Sample Authorization Agreements**

AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS (ACH CREDITS)

Customer Name \_\_\_\_\_ Customer ID Number \_\_\_\_\_

I (we) hereby authorize \_\_\_\_\_, hereinafter called CUSTOMER, to initiate credit entries to my (our)  Checking Account/  Savings Account (select one) indicated below at the depository named below, hereinafter called DEPOSITORY, and to credit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository Name \_\_\_\_\_ Branch \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Routing Number \_\_\_\_\_ Account Number \_\_\_\_\_

This authorization is to remain in full force and effect until CUSTOMER has received written notification from me (or either of us) of its termination in such time and in such manner as to afford CUSTOMER and DEPOSITORY a reasonable opportunity to act on it. The terms of this agreement are clear and readily understandable.

Name(s) \_\_\_\_\_ ID Number \_\_\_\_\_  
Date \_\_\_\_\_ Signature \_\_\_\_\_

NOTE: ALL WRITTEN CREDIT AUTHORIZATIONS MUST PROVIDE NOTICE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.

### **Headings.**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

## Remote Deposit Capture

**1. The Service.** The Bank agrees to provide “Remote Deposit Capture Services” to Customer for the purpose of electronically depositing from Customer’s premises Original Checks received in the ordinary course of business for improved collections and increased availability of funds in selected Deposit Accounts identified to the Bank. Bank will provide the Processing Equipment and Processing Software on a month-to-month license (as set forth below) to permit Customer to perform Remote Deposit Capture activities.

Customers are permitted to truncate the Original Checks received in payment and subsequently destroy such checks after a period of time.

**2. Definitions.** The meanings of the defined terms set forth below are also applicable to this Agreement and to the Remote Deposit Capture User Guide. If any capitalized term is used in Regulation CC (Vol. 12 of the U.S. Code of Federal Regulations, part 229) promulgated by the Board of Governors of the Federal Reserve Board (the “FRB”), as it may be amended, substituted for, or recodified from time to time (“Reg. CC”), then such term generally shall have the meaning assigned to it in Reg. CC. To the extent that any of the defined terms use a term not defined herein but otherwise defined in Reg. CC, then such definition also incorporates the meaning assigned to the applicable term as set forth in Reg. CC. Other non-grammatical capitalized terms used in the Agreement, if defined herein or in the Agreement, are given the meaning assigned to such terms the first time the term is used. All other non-grammatical capitalized terms used that are not otherwise defined herein shall have the meaning given to such term in Article 3 or Article 4 of the Uniform Commercial Code effective in Texas as amended from time to time (“UCC”).

- a) “ANS X9.13” means the standard promulgated by ANSI entitled “Specifications for Placement and Location of MICR Printing” for Original Checks, or any amended or successor standard designated by the FRB.
- b) “ANS X9.37” means the standard promulgated by ANSI entitled “Specifications for Electronic Exchange of Check and Image Data” or any amended successor standard designated by the FRB for all forward and return image cash letter files.
- c) “ANS X9.100-140” means the image quality standard promulgated by ANSI entitled “Specifications for an Image Replacement Document – IRD” or any amended or successor standard designated by the FRB.
- d) “ANSI” means the American National Standards Institute.
- e) “Check 21” means FRB Reg. CC, Subpart D, promulgated to implement the provisions of the Check Clearing for the 21st Century Act.
- f) “CTA” means the Check Clearing for the 21st Century Act, which became effective October 28, 2004.
- g) “Claimant Bank” means a bank that submits a claim for a re-credit for a Substitute Check to an Indemnifying Bank under Section 229.55 of Check 21.
- h) “Collecting Bank” means any bank handling a check for forward collection, except the paying bank.
- i) “Documentation” means the electronic files or written materials that provide the description, methods of operation, and required environmental and maintenance procedures of the Processing Equipment and Processing Software, including any online or manual help files.
- j) “Electronic Deposit” means a file that contains information regarding each Sufficient Image Copy to be transmitted by Customer to Bank in the same batch as the Electronic Deposit and that meets all of the requirements imposed from time to time by Bank in the Procedures.
- k) “Indemnifying Bank” means a bank that provides an indemnity under Section 229.53 of Check 21 with respect to a Substitute Check.
- l) “Magnetic Ink Character Recognition Line” or “MICR Line” mean the numbers, which may include the routing number, account number, check number, check amount and other information, that are printed near the bottom of a check in magnetic ink in accordance with the Standards.

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- m) "Original Check" means the first paper check issued to or endorsed in favor of Customer with respect to a particular payment transaction.
- n) "Processing Equipment" means the personal computer central processing unit (CPU), keyboard, mouse and scanner and other equipment provided by Bank to permit its commercial banking customer to engage in Remote Deposit Capture activities.
- o) "Processing Software" means the software loaded on the Processing Equipment by the Bank that administers the Remote Deposit Capture process, captures check images and transmits captured images for deposit.
- p) "Reconverting Bank" means (1) the bank that creates a Substitute Check; or (2) with respect to a Substitute Check that was created by a person that is not a bank, the first bank that transfers, presents, or returns that Substitute Check or, in lieu thereof, the first paper or electronic representation of that Substitute Check.
- q) "Standards" means the applicable standards set forth in CTA, Check 21 or as promulgated by ANSI for image quality and transmission protocols, including but not limited to, ANS X9.13 and ANS X9.100-140 (or any amendment or substitute for such standards as may be promulgated from time to time), whether such standard pertains to the MICR Line, the image quality of the Original Check, the placement of an image of the Original Check on the Substitute Check, or the manual or electronic transfer of a Sufficient Image Copy or other electronic representation of an Original Check or a Substitute Check, unless the FRB, by rule or order determines that a different standard is to apply.
- r) "Substitute Check" means a paper reproduction of an Original Check that (1) contains an image of the front and back of the Original Check; (2) bears a MICR line that, except as provided under the applicable Standard, contains all the information appearing on the MICR line of the Original Check at the time that the Original Check was issued and any additional information that was encoded on the Original Check's MICR line before an image of the Original Check was captured; (3) conforms in paper stock, dimension, and otherwise with ANS X9.100-140 (unless the FRB by rule or order determines that a different standard applies); and (4) is suitable for automated processing in the same manner as the Original Check.
- s) "Sufficient Copy" and "Copy" means (1) A sufficient copy is a copy of an Original Check that accurately represents all of the information on the front and back of the Original Check as of the time the Original Check was truncated or is otherwise sufficient to determine whether or not a claim is valid. (2) A copy of an Original Check means any paper reproduction of an Original Check, including a paper printout of an electronic image of the Original Check, a photocopy of the Original Check, or a Substitute Check.
- t) "Sufficient Image Copy" means an electronic image of an Original Check or Substitute Check that is capable of printing a Sufficient Copy of such Original Check or Substitute Check.
- u) "Truncate" means to remove an Original Check from the forward collection or return process and send to a recipient, in lieu of such Original Check, a Substitute Check or, by agreement, information relating to the Original Check (including data taken from the MICR line of the Original Check or an electronic image of the Original Check), whether with or without the subsequent delivery of the Original Check.

### 3. Business Days; Posting; Funds Availability.

- a) Business Days. Any day on which a majority of the Bank's offices are open to the public for conducting substantially all business functions shall be a "Business Day"; provided, however, that Saturdays, Sundays and federal holidays are not Business Days even if a majority of the Bank's offices are open.
- b) Posting. Transactions (deposits, funds transfers, instructions and entries) related to any Service will be posted to the applicable Deposit Account as provided for in the Bank's current Funds Availability Policy. The Bank may change any cutoff deadline at any time by giving notice, as required by law, of the change to the Customer.
- c) Funds Availability. Any funds transferred pursuant to a transaction hereunder will be available for withdrawal or advance as provided for in the Bank's then current Funds Availability Policy, as amended from time to time, and in accordance with applicable law.

### 4. Procedures

- a) Bank has established a manual to be furnished to Customer with respect to Remote Deposit Capture activities ("User Guide"). The User Guide provides operating instructions and in conjunction with the services-

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specific provisions herein prescribes the administration and use of Remote Deposit Capture activities. A copy of User Guide shall be furnished to each physical processing site of Customer by E-team contact, e-mail or by U.S. mail to the address provided. Subsequent updates to the User Guide will be provided by either of the same means.

- b) At all times the images captured and transmitted by Customer through Remote Deposit Capture shall be sufficient for Bank or any subsequent Reverting Bank, to print and distribute a Substitute Check in compliance with the Standards.

## **5. Bank Responsibilities.**

- a) Bank will deliver to Customer, or otherwise provide access to, the Processing Software.
- b) Bank will deliver to Customer, or otherwise provide, the Processing Equipment that will reasonably accommodate the Customer's anticipated requirements.
- c) Bank will provide the required User ID and password to the Customer's authorized Administrator or Remote Deposit Capture Service Contact in order to engage in Remote Deposit Capture activity.
- d) Bank will provide Documentation as well as installation and training support reasonably required for Customer's implementation of Remote Deposit Capture services.
- e) Bank will accept for deposit and collection to the Customer's designated account(s) the electronic images of Original Checks that are transmitted to Bank in compliance with the Standards. Electronic images shall be deemed received by Bank based upon time of receipt as well as successful receipt of the transmission of such images that are complete, usable, and adhere to the Standards. If electronic images are not complete, are not usable, or do not adhere to the Standards, the images may not be processed by Bank, in which event Customer's deposit will be adjusted and notification provided.
- f) Bank will process the Customer's electronic images that are Sufficient Image Copies after it has received Customer's transmission of electronic images. Bank will use commercially reasonable efforts to present the Sufficient Image Copies for collection under the Check 21 framework. Unless Bank notifies Customer otherwise, Bank will provide same day ledger credit to Customer's deposit account for all Sufficient Image Copies transmitted by Customer and received by 5:00 P.M. each banking day. However, Bank shall not be responsible for providing ledger credit on the same day a file has begun to be transmitted to Bank by Customer unless the file containing the electronic deposit is fully received by Bank prior to the 5:00 P.M. depository cut-off time.
- g) If a Drawee Financial Institution returns an image representing an item to Bank unpaid, Bank will charge Customer's respective deposit account for such returned item and may either (i) return the item to Customer, or (ii) re-present it to the Drawee Financial Institution before returning it to the Customer. Items may be returned as Image Exchange Items, rather than Substitute Checks. If a Drawee Financial Institution or other third party makes a claim against Bank or seeks recredit with respect to any electronic item, Bank may provisionally freeze or hold aside a like amount in the Customer's deposit account pending investigation and resolution of the claim.

## **6. Customer Responsibilities.**

- a) Customer will only use Remote Deposit Capture to truncate Original Checks it has received in the ordinary course of business, to transmit images of such Original Checks to Bank for credit to its deposit account maintained at Bank. Customer may not perform Remote Deposit Capture services for any third party, and any attempt to do so shall automatically terminate this Remote Deposit Capture Service, except for any provisions regarding this Remote Deposit Capture Service that are expressly to survive such termination.
- b) Customer will only perform Remote Deposit Capture on the Processing Equipment unless specifically approved otherwise by Bank in writing in accordance with the provisions of Section 12 below, such approval to be in the sole discretion of Bank.
- c) Customer will only use the Processing Software provided by Bank with the Processing Equipment or such other software as specifically approved in writing by Bank in accordance with the provisions of Section 12 below to perform Remote Deposit Capture.
- d) Customer shall store and process all Original Checks in a manner reasonably likely to not demagnetize the MICR Line, including using care not to store or process checks near sources of measurable electro-magnetic radiation.

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- e) Files that contain electronic images for deposit that purport to come from a Transactional User of the Customer will be deemed by Bank to have been lawfully transmitted by the Customer with full authorization. Accordingly, Bank recommends that Customer limit Transactional Users to its trusted or bonded employees that routinely handle cash and deposit checks for Customer, plus a limited number of supervisory personnel.
- f) Customer will transmit to Bank only a Sufficient Image Copy of Original Checks for electronic deposit. No image transmitted by Customer to Bank using Remote Deposit Capture represents an Original Check that has already been collected.
- g) Customer shall retain each Original Check that is truncated through any Remote Deposit Capture activity for a reasonable period of time, but in no event fewer than forty-five (45) Calendar days from the date of deposit or such longer time as Bank may request from time to time with respect to any specific Original Check, and shall be made available to Bank promptly upon the request of Bank. In the absence of retaining the relevant Original Check for the time period specified, Customer shall be solely responsible for the cost of any claim brought by the Drawer of the check that for resolution would reasonably require access to relevant Original Check.
- h) Customer understands that in all cases it is solely responsible for safeguarding all items it retains as required or permitted by this service from destruction, alteration or theft in accordance with the provisions of this Agreement and Section 6(l) below.
- i) Customer will destroy Original Checks after the Forty-five but no longer than 60 days by shredding the Original Checks. If shredding capabilities are not available, customers may bring the Original Checks to the bank for shredding.
- j) Customer will restrict physical access to each Original Check to those employees as would ordinarily have access to Customer's own cleared checks, or other personnel designated to specifically have access to such items pursuant to Customer's system of internal control.
- k) The Original Checks shall be securely stored by the customer and shall be retained in order from date of deposit and sequence number for a reasonable period of time, but in no event for less than (45) Calendar days from the date of deposit or such longer as may be requested by the bank from time to time,
- l) Customer agrees that it will be able to retrieve and produce for Bank any Sufficient Image Copy (or, at the Customer's option, the Original Check) in question within thirty-six (36) hours of a written (including e-mail) request by Bank. In the absence of retaining the relevant Sufficient Image Copy for the time period specified, Customer shall be solely responsible for the cost of any claim brought by the Drawer of the check that for resolution would reasonably require access to the relevant Sufficient Image Copy, and shall indemnify Bank in accordance with the terms of both Section 25 of this Agreement and the "Customer Indemnity" Section 11 (set forth below) of this Remote Deposit Capture Services Section.
- m) Prior to transmittal to Bank of any electronic file that contains an image of any Original Check, Customer shall conduct an analysis of such images (and such analysis may be through the use of the Processing Software) that will evaluate the image quality, image placement and image usability of each image transmitted, to insure that such image complies with the requirements of the Procedures and the Standards. In the event such analysis reveals that the image quality, image placement or image usability is below that required by the Procedures and Standards, then Customer shall reprocess such Original Check until a Sufficient Image Copy is produced in compliance with the Procedures and Standards or Customer may manually submit the item for deposit at a financial center of Bank. Customer shall also manually prepare a total of the amount of the expected Electronic Deposit and shall compare that amount to the amount the Processing Software indicates is the total for the batch of images associated with that Electronic Deposit and systematically corrects any discrepancies.
- n) Customer understands that Bank is relying on the truth and veracity of all electronic records transferred by Customer to Bank, and warrants that such records accurately reflect original documents that are, or at the time of the creation of the electronic records, were in the possession of Customer. Accordingly, Customer agrees that Bank may, upon one (1) Business Day notice, have its personnel or auditors and examiners appointed by Bank or a banking regulatory authority, inspect Customer's premises, the Processing Equipment, the Processing Software, and any of Customer's records pertaining to the matters set forth in this Agreement or this Remote Deposit Capture Services Section. Bank shall make all commercially reasonable efforts to avoid significant disruption of Customer's business operations in conducting such audit or inspection, and shall comply with Customer's reasonable workplace rules that have been communicated to the audit or inspection personnel in

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writing. Customer understands that Bank is a federally insured financial institution that is subject to examination by the Federal Deposit Insurance Corporation (FDIC), the Texas Department of Banking or other banking agencies, and to the extent that any such examination request access to any audit or inspection report of Bank, or access to the records, Processing Equipment, Processing Software or other documents that are the subject of this Agreement, Customer shall fully cooperate with such examiners.

- 0) You are required to establish and maintain internal Security Devices and Procedures sufficient to prevent any Unauthorized Use, including but not limited to (a) running antivirus software before transmitting data to us (b) maintaining the security of your internal communications networks, and (c) ensuring a secure physical environment when using Remote Deposit Capture Services. You understand and agree that your failure to do so may result in Unauthorized Use. You may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for you to **execute** virus scanning for each file manually. You are required to update your antivirus software regularly, and at all times, to act in accordance with Applicable Law. You are further required to conduct an annual audit to ensure that your procedures include adequate levels of: (1) physical security to protect against theft, electronic tampering or damage, (2) personnel and access controls to protect against Unauthorized use and/or access to information by unauthorized individual, and (3) network security to ensure secure capture, storage, transmission, and distribution of financial information. In addition to protecting your Security Devices, you should also take precautions to protect personal identification information, such as driver's license, social security number, or tax identification number. This information by itself or together with account information may allow unauthorized access to accounts. You should also protect and secure all information stored in any personal computer or other equipment you use to access our Remote Deposit Capture. Tell us AT ONCE if you believe your login information, passwords, or other Security Devices and Procedures have been lost, stolen or otherwise compromised or used without your authorization.

## 7. Processing Equipment.

- a) To enable Customer to perform Remote Deposit Capture, Customer must use the Processing Equipment provided by Bank on a month-to-month license. Title to the Processing Equipment shall remain with Bank at all times, and the Processing Equipment shall at all times be and remain personal property of Bank, even if installed in or attached or affixed to real property. Customer shall have no right, title or other interest therein, except the right to use the Processing Equipment in the normal operation of the business of Customer only at the locations designated to Bank and then only on the express condition that all payments due to Texas First Bank hereunder shall have been paid and Customer shall be in compliance with all other terms of this Agreement. Customer may request in writing a change in such location at least ten (10) Business Days prior to the date of any such change, and Bank shall reasonably consent to such request provided that Customer bears all costs of such move, including any costs associated with protecting Bank's ownership interest in the Processing Equipment. Customer at its expense shall protect and defend Bank's title to the Processing Equipment and shall keep the Processing Equipment free and clear from all liens, claims, levies, encumbrances and legal process of Customer's creditors or other persons. Customer shall give Bank immediate notice of any attachment or other judicial process affecting the Processing Equipment, or which might so affect the Processing Equipment. Bank shall be permitted to display notice of its ownership of the Processing Equipment by affixing to each item of Processing Equipment an identifying plate or any other identification of ownership, and Customer will not alter, deface, cover, or remove the plate, serial number or other identification of the item.
- b) Customer shall not load or attempt to load any software on the Processing Equipment that is not provided by Bank without the express written permission of Bank, given in its sole discretion. The Processing Equipment shall be used solely for the performance of Remote Deposit Capture, and solely for the benefit of Customer and no third party.

## 8. Processing Software:

- a) Customer shall receive a limited, non-exclusive, non-transferable license to use the Processing Software solely for the term of this Service, and solely for the purposes set forth herein.
- b) Customer may only use the Processing Software on Processing Equipment supplied or specifically approved in writing by Bank and at the location designated by Customer located in the United States (or such other location as approved by Bank) and reasonably approved by Bank in writing or in an electronic communication.
- c) Customer understands that it shall only receive an object code version of the Processing Software, and not a source code version and Customer further agrees that in no event shall it reverse engineer or decompile the object code of the Processing Software, or otherwise attempt to discover the source code.

# Texas First Bank

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- d) Customer shall have no right to transfer the Processing Software or to make it available, in any format, to any third party, nor shall Customer have the right to copy, publish or make derivative works of the Software except as expressly permitted by Bank in writing. In addition, Customer is not permitted to make any copies of the Processing Software for any purpose, including backup or archival. In the event that the Processing Software becomes corrupted or is otherwise deleted, disabled or damaged, then only Bank personnel or its authorized agents may reload or restore the Processing Software to the Processing Equipment. Customer may not load the Processing Software on to any computer except the Processing Equipment without the express written permission of Bank, which shall be given in Bank's sole discretion. Customer may make only the number of copies of the Documentation as is necessary for each Transactional User, Remote Deposit Capture Service Contact and Authorized Administrator to have one copy.
- e) Customer shall not remove, alter or destroy any form of copyright notice, proprietary marking or confidential legend placed upon or contained within the Documentation, the Processing Software or any screen that the Processing Software causes to be displayed. All such notices, markings and legends must be included or reproduced on or in any copies made.
- f) Bank warrants to Customer that it has no knowledge that any intellectual property rights of any third party shall be infringed or diluted by Customer's use of the Processing Equipment and Processing Software, and that Bank has either ownership of Processing Equipment and the Processing Software, or has a right to grant the licenses herein. Customer recognizes that Bank has acquired most or all of the Processing Software under license from a third party and all Processing Equipment was manufactured by a third-party without any specifications or customization by Bank. Customer acknowledges that Bank is unable to warrant the performance of the Processing Equipment and Processing Software, but Bank shall use commercially reasonable efforts to enforce warranties from any third party licensor to the extent that Customer's use of the Processing Equipment and Processing Software is impeded because of defects. Customer understands and acknowledges that the Processing Software is not warranted to be error free, and Customer shall promptly bring to Bank's attention any errors in the Processing Software it discovers.

**9. License.** Subject to the terms and conditions of this Agreement and this Section regarding Remote Deposit Capture Services, Bank hereby grants Customer a non-exclusive, non-transferable, limited license to: (i) access and/or use the Processing Software for Customer's own business operations but only to the extent that such software resides on the Processing Equipment and (ii) to use the Documentation in support of Customer's authorized use of the Processing Software. Customer agrees to abide by the provision of this Agreement, and this Section in particular, with respect to all Processing Software and Documentation.

**10. Provisions Applicable to Customer Related Entity Use.** If a Customer elects to receive the Remote Deposit Capture Services, such Services also includes the ability and license for Customer and its Related Entities to use the Processing Equipment and Processing Software to perform Remote Deposit Capture Services to transmit an Electronic Deposit to Bank, including a file of Sufficient Image Copies of checks that total to the amount of the Electronic Deposit. Customer must list such Related Entities on Bank's appropriate authorization form. If a Customer's Related Entity maintains its normal check processing activity in a location remote from the Processing Equipment and Processing Software licensed by Bank to Customer, then such Related Entity shall also complete any forms required by Bank, and shall so license additional Processing Equipment and Processing Software, at the same fees, unless other duly authorized compensation arrangements have been made in writing between Customer and Bank. Each Related Entity, by using the Processing Equipment and Processing Software either licensed indirectly through Customer or licensed directly to the Related Entity, hereby agrees to abide by each and every term of this Agreement, including governing law, for each and every Electronic Deposit transmitted by the Related Entity.

**11. Representations and Warranties.** It is the intention of the parties to this Agreement that the warranties deemed given by a depositor of a check to a bank under the UCC as applicable from time to time in the State of Texas shall also apply to any image or electronic representation of an Original Check transferred by Customer to Bank as if such image or electronic representation were a paper check within the meaning of the UCC. Accordingly, except to the extent that any warranties deemed given under the UCC are expressly superseded by CTA or Check 21, Customer understands that Customer shall be deemed to have given Bank all of the warranties that Customer would have given under the UCC for the deposit of an Original Check by transferring to the Bank any electronic file that contains or purports to contain a Sufficient Image Copy of an Original Check. The above warranties are deemed given to Bank and any person, Customer or bank to which Bank transfers, presents or returns any of the images included in such electronic file as a Sufficient Image Copy or that purports to be a Sufficient Image Copy, or a Substitute Check created by Bank or any subsequent bank receiving a copy of such image. Customer represents that it shall permit no entity to use the Processing Equipment and Processing Software, whether licensed to Customer directly, or licensed to one of its Related Entities, other than a Related Entity listed on the Bank's appropriate authorization form. For the purpose of avoiding doubt, and

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not as a limitation of the generality of the foregoing statement, Customer acknowledges that the indemnification obligations of Customer set forth in Section 11 below apply equally to the activities of each Related Entity of Customer, so that Bank may call upon Customer and its assets to satisfy such indemnification obligations, even if the conduct that gave rise to the indemnity obligation were conducted by a Related Entity of Customer.

**12. CUSTOMER INDEMNITY. IF CUSTOMER ELECTS TO USE THE BANK'S REMOTE DEPOSIT CAPTURE SERVICE THEN CUSTOMER ASSUMES LIABILITY FOR, AND HEREBY AGREES TO INDEMNIFY, PROTECT AND HOLD HARMLESS BANK AND ITS AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS AND ASSIGNS ("BANK INDEMNITEES"), FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, OF ANY KIND OR NATURE ("DAMAGES") ARISING OUT OF THE USE OF, CONDITION (INCLUDING LATENT AND DEFECTS AND WHETHER OR NOT DISCOVERABLE BY CUSTOMER OR BANK), OPERATION, OWNERSHIP, SELECTION, DELIVERY, INSTALLATION OR LICENSING OF ANY ITEM OF PROCESSING EQUIPMENT.**

**13. Limitation on Bank Liability for Remote Deposit Capture Services.** Bank shall not have any liability for any breach of any representation, warranty or covenant of this Agreement to the extent caused by: (i) the unavailability of the external connection services and other Internet network functions; (ii) any modifications, alterations of or additions to the Processing Software or Processing Equipment performed by anyone other than Bank or Bank's designated service providers; (iii) the use of the Processing Software or the Processing Equipment by Customer in a manner not as set forth in this Agreement or any procedures or Documentation, in a manner for which it was not designed, or in combination with systems, products or components not supplied or approved in writing by the Bank; or (iv) Customer's use of software, equipment or other systems not supplied by Bank. **SUBJECT TO THE EXPRESS LIMITATIONS ON LIABILITY SET FORTH IN THIS AGREEMENT, IF BANK BREACHES THIS REMOTE DEPOSIT CAPTURE SERVICES SECTION, IT SHALL BE LIABLE TO CUSTOMER FOR DIRECT CONTRACT DAMAGES ARISING OUT OF SUCH BREACH OF ITS OBLIGATIONS UNDER THIS SECTION LIMITED IN THE AGGREGATE AMOUNT TO THE GREATER OF FIFTY-THOUSAND DOLLARS (\$50,000.00) OR THE FEES PAID BY CUSTOMER TO BANK FOR REMOTE DEPOSIT CAPTURE SERVICES.**

**14. Customer Use of Other File Formats, Processing Equipment and Processing Software.** Customer may request that Bank allow Customer (and any of its Related Entities) to transmit files in ANS X9.37 file format or another file format not listed in this Agreement or in the User Guide, with such transmission to be accomplished via non-Bank issued equipment or software. Bank may approve Customer's request for deviation from file format, equipment or software upon written approval, which Bank may give in its sole discretion and subject to Bank's approving the details of the proposed file transmission, related security procedures and other particular details of transmission and Remote Deposit Capture. **IF A CUSTOMER REQUESTS TO USE A FILE FORMAT NOT LISTED IN THIS AGREEMENT OR IN THE USER GUIDE, OR ANY EQUIPMENT OR ANY SOFTWARE OTHER THAN THAT PROVIDED BY BANK, CUSTOMER HEREBY EXPRESSLY DISCLAIMS ANY EXPLICIT OR IMPLIED WARRANTIES OR ANY OTHER EXPLICIT OR IMPLIED GUARANTIES REGARDING FILE SECURITY, INCLUDING SECURITY DURING TRANSMISSION.**

**15. Survival.** Notwithstanding, anything in this Agreement to the contrary, the obligations created by Sections 9 (License), 11 (Representations and Warranties), and 12 (Customer Indemnity) of this Remote Deposit Capture Services Section shall survive termination, expiration or cancellation of this Service or this Agreement.

**16. Termination.** This contract may be terminated if any of these reasons prevail. (1) a material adverse change occurs in the Client's business or financial conditions; (2) Client fails to maintain balances in accounts sufficient to cover overdrafts; (3) Client violates the terms of this Agreement or any financing arrangement with Texas First Bank; (4) Client fails to provide financial information reasonably requested by Texas First Bank; or (5) Texas First Bank determines it is impractical or illegal to provide the service because of changes in laws, rules or regulations.

**CONFIDENTIALITY.** All users guides, manuals, data, software, processes, and other information provided to Business in connection with the Service and all fee and pricing information with respect to the Service ("Information") is the proprietary and confidential property of Financial Institution and /or its relevant licensors or suppliers. Business agrees to use the Information only in the manner specified by Texas First Bank and in the ordinary course of Business's commerce, to return it to Texas First Bank upon termination of the relevant Service, and to keep the Information confidential and limit access thereto only to its agents and employees who inquire access in the normal course of their duties, except to the extent the information is already in the public domain or Business is required to disclose the Information by law.

## Commercial Mobile Remote Deposit

Your use of the Texas First Bank Mobile Remote Deposit Service is governed by the terms of the E-Bank Service Agreement and Online User Agreement, (herein referred to as OUA). You may review the Online User Agreement by visiting [www.texasfirstbank.com](http://www.texasfirstbank.com). If we make changes to these terms and conditions, we will update them on our website. We will notify you of changes as specific to your E-Bank Service Agreement.

Your enrollment in the Texas First Bank Mobile Remote Deposit Service constitutes your agreement with the terms of the E-Bank Service Agreement and the Online User Agreement (OUA). Terms used herein but not defined shall have the meaning assigned to them in the OUA. You acknowledge that you have read this entire agreement and will retain a copy for your records.

In this agreement, the words "you" and "your" refer to you as the person and your business entity entering into this Agreement. The words "you" and "your" also include any user you authorize to use the *Texas First Bank Mobile Deposit Service* on your behalf as identified in the E-Bank Service agreement. The words "we," "us," and "our" refer to Texas First Bank and its employee(s).

### **Texas First Bank Mobile Remote Deposit Service:**

The Service enables you to use Texas First Bank Mobile Banking application and certain hardware (such as a smartphone or other mobile device) approved by us to (a) create electronic items of the front and back of certain Paper Items and (b) transmit those items and other information, including, without limitation, information captured from the magnetic ink character recognition ("MICR") line, to us for review and processing in accordance with this Agreement. "Electronic Item" means the electronic image of each Paper Item and other information captured from the Paper Item. After we receive your transmission, we will review each Electronic Item. For each Electronic Item that we determine is eligible for processing as described below, we will perform the following:

1. Create a substitute check that we will present directly or indirectly to the bank (a) on which the original Paper Item to which the Electronic Item relates is drawn, or (b) at or through which the Paper Item is payable (each, the "Paying Bank");
2. Include the Electronic Item in an electronic file for presentment directly or indirectly to the Paying Bank; or
3. Present and post any Electronic Item for which we are the Paying Bank.

### **Qualification:**

In order to enroll in the Service, you must be designated as an authorized signer or owner of a Texas First Bank Account (the "Account") that is eligible for this Service, meet the credit standards for this service, complete the E-Service agreements and be approved by Texas First Bank.

### **Conditions to Provision of the Service:**

As conditions to Bank's provision of the Service, you shall (a) maintain the Account in good standing, (b) subscribe to Texas First Bank Business Online Service, and (c) comply with such restrictions on the Service as we may communicate to you from time to time. In order to use the Service you must use the type of hardware that we support. Hardware is not provided by Texas First Bank and is your sole responsibility including any and all fees/ charges incurred for its use. Upon termination of the account and/or its Mobile Services, you must promptly remove the application from your hardware.

### **FEES:**

**The Service is provided to you at charge. The charges for this service are outlined in Schedule A: E-Services and Fee Disclosure. We may, upon prior notice to you, to the extent required by applicable law, increase or change the fees for use of the Service. If you continue to use the Service after the fee becomes effective, you agree to pay the service fee(s) that has been disclosed to you, as may be amended from time to time. Further, you will be required to designate an account at Texas First Bank from which fees for the Service will be debited (your "Billing Account").**

**Any applicable fees for the Service may be changed by us at our discretion at any time upon prior notice to you, to the extent required by applicable law. If the Billing Account is closed, or if the Billing Account does not have**

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**sufficient available funds to cover the fees, you authorize us to charge any such fees to any other deposit account you maintain with us, to include insufficient fee, if applicable.**

## **Creating and Transmitting Electronic Item(s) to Texas First Bank:**

You shall use the mobile app approved and provided by Texas First Bank to create electronic images of checks that you wish to deposit to your account by means of the Service. The following items may not be deposited through the Service: international checks, remotely created checks (whether in paper form or electronically created), checks drawn against a line of credit, or cash. Except as noted in the preceding sentence, only checks, money orders, cashier's checks, or traveler's checks, drawn on or payable at or through a U.S. bank, can be transmitted through the Service. Additionally, only Items that are made payable to your business and indorsed by you or those you authorize to act on your behalf and your business may be transmitted through the Service.

## **Processing Your Electronic Item(s):**

If you transmit your Electronic Item(s) to Texas First bank before the cut-off time we disclose to you (the "Cut-Off Time") on any Business Day<sup>2</sup>, we shall review and process your Electronic Item(s) on that Business Day. If you transmit your Electronic image(s) to us after the Cut-Off Time on any Business Day, we shall review and process your Electronic item(s) on the next Business Day. Your Electronic item(s) is deemed to have been received by the Bank when the Service generates a confirmation message.

## **Fund Availability:**

Funds you transmit pursuant to an electronic image generally will be made available for withdrawal as provided for in the Bank's then current Funds Availability Policy. The Bank, at its sole discretion may place holds for reasons outlined in the Exceptions Items listed below and for any other cause as deemed necessary. Notice of hold may be made available to you the same day (when processed before cut -off time) but no later than the next end of business day. The means for which the notice is conveyed /delivered to you is at the sole discretion of the bank.

## **Exception Items:**

Each Business Day on which we review and process your Electronic Item(s), we will use commercially reasonable efforts to review the Electronic Item(s) and to reject any Electronic item(s) that we in our sole discretion determine to be ineligible for the Service (each, an "Exception Item"). "Exception Item" includes, without limitation, an Electronic Item that (a) is illegible or contains MICR data that is not machine-readable, (b) was previously processed as an Electronic Item, or (c) is drawn on banks located outside the United States and is not payable at or through a bank located within the United States (d) Item(s) we have reason to believe may not clear. We will notify you of each Exception Item through communication channels decided by Texas First Bank. If you wish to attempt to deposit any Exception Item to your Account, you shall do so only by depositing the original Paper Item(s) for which the Exception Item is based or as otherwise agreed between us. This may be done in person at anyone of our banking center locations. Even if we do not initially identify an Electronic Item as an Exception Item when we review and process the Electronic Item to which the Exception Item relates, the Electronic Item, substitute check, or the purported substitute check created by us from it may nevertheless be returned to us because, among other reasons, the Paying Bank determines that such item or check is illegible or missing an image. Our failure to identify an Exception Item shall not preclude or limit the obligation of you to Texas First Bank.

## **Deposits to the Account:**

Subject to our right to identify and reject Exception Items, we shall be deemed to have accepted each Electronic Item that is not an Exception Item for deposit to the Account on the Business Day that we process the Electronic Item, provided its transmission to us is prior to the Cut-Off Time. In addition, an Electronic Item will be deemed to have been deposited at the office where the Account is maintained.

## **Security Procedures:**

Any individual authorized by you to access the Service (a "User") shall do so by entering a user name and a password, or other unique identifier that may be required (collectively referred to herein as "Security Credentials"). No person employed by Texas First Bank shall have access to any Security Credentials you or your Users create. From time to time, we may require you to use additional security and authentication procedures, as specified in the OUA. You agree to take

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security precautions by logging out of mobile banking application when not in use. You are responsible for securing your cellular device with password protection, screen locks or similar safe guards. You should not store your user name and/or password on the device being used for mobile banking.

**Warranties: You represent and warrant to Texas First Bank that:**

FAILURE TO PROTECT YOUR HARDWARE AND SECURITY CREDENTIALS MAY ALLOW AN UNAUTHORIZED PARTY TO ACCESS THE SERVICE AND TRANSMIT AN ELECTRONIC ITEM FOR DEPOSIT. ALL USES OF THE SERVICE THROUGH YOUR SECURITY CREDENTIALS WILL BE DEEMED TO BE USES AUTHORIZED BY YOU AND BE BINDING UPON YOU. YOU ASSUME THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF YOUR SECURITY CREDENTIALS. YOU AGREE TO (i) EXERCISE RESPONSIBLE BEHAVIOR WHEN USING THE SERVICE, (ii) FOLLOW THE INSTRUCTIONS AND RECOMMENDATIONS THAT TEXAS FIRST BANK PROVIDES YOU WITH RESPECT TO THE SERVICE AND (iii) USE MAXIMUM CAUTION IN PROTECTING YOUR HARDWARE AND SECURITY CREDENTIALS FROM UNAUTHORIZED ACCESS. YOU AGREE TO NOTIFY TEXAS FIRST BANK IMMEDIATELY IF YOU BECOME AWARE OF ANY LOSS OR THEFT OF, OR ANY UNAUTHORIZED USE OF THE SERVICE OR YOUR SECURITY CREDENTIALS.

You will use the Service only for Paper Items that are payable to, and indorsed by, you and/or your business.

You will properly secure all hardware you use in connection with the Service (including, but not limited to, securing the hardware with Security Credentials to prevent unauthorized use). You will maintain control over and be responsible for secure retention, storage, and destruction of original Paper Items for which you have created an Electronic Item. After transmitting the Electronic Item to us, you will retain the original Paper Items for a minimum of five (5) calendar days, but no longer than forty Five (45) calendar days, from the transmission date ("Retention Period"). You will retain and store the original Paper Items in a secure and locked container that is only accessible by persons needing access to such Paper Items. During the Retention Period and upon our request, you agree to provide us with the original Paper Item(s). Once you have verified the item(s) have been credited to the account and the Retention Period has expired, you will securely and irretrievably destroy original Paper Items from which you have previously created and submitted to us an Electronic Item.

You will not submit any duplicate Electronic Items to us.

You will not deposit to your Account or otherwise negotiate any original Paper Item from which you have previously created and submitted to us an Electronic Item, unless we have notified you that the Electronic Item is an Exception Item.

You will transmit to us only Electronic Items that are suitable for processing, including, but not limited to, Electronic Items that are legible and contain machine-readable MICR data.

You will review and verify for accuracy the information contained in the Electronic Item(s) before you transmit it to us.

You will only transmit Electronic Item(s) that are drawn on or payable at or through banks located within the United States.

You will not store or make a back-up copy of the Electronic Item(s).

**Agreement to Indemnify Texas First Bank:**

You will indemnify, defend, and save harmless Texas First Bank, its parent company and its affiliates and each of their respective directors, officers, employees, and agents (collectively in this Paragraph, "Indemnitees") from and against all liabilities, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to the following (except for Losses and Liabilities arising directly or indirectly from or related to our own gross negligence or willful misconduct):

1. Any negligent or intentional act or omission by you in the performance of your obligations under this Agreement, including, but not limited to, (a) duplicate scanning of the same original Paper Item, (b) transmission of duplicate Electronic Items, (c) calculation errors of deposit totals, (d) numerical errors on deposit data entry, (e) fraudulent or unauthorized use of your hardware or Security Credentials, (f) fraudulent, counterfeit, forged and/or stolen items.

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2. Any material breach in a representation, warranty, covenant, or obligation of you contained in these Term and Conditions;
3. The violation of any applicable law, statute, or regulation in the performance of your obligations under this Agreement;
4. Texas First bank acting as a "reconverting bank" under the Check Clearing for the 21st Century Act through the creation of "substitute checks" or purported substitute checks using an Electronic Item or an illegible Electronic Item;
5. Our presenting to Paying Bank an Electronic Item for payment; and
6. Your failure to (a) securely maintain your hardware or the original Paper Items, or (b) properly and timely dispose of original Paper Items in accordance with best practices, in which event such Losses and Liabilities shall include without limitation consequential damages.

Termination: You or we may terminate the Mobile Remote Deposit Service at any time. In the event your use of the Service is terminated, The above paragraph shall survive the termination of the Service.

Right to Audit: We may periodically audit and verify your compliance with this Agreement. You agree to cooperate and provide information or documents, at your expense, as may be reasonably requested by Texas First Bank in the course of such audit.

**Entire Agreement; Conflicting Terms:**

This agreement forms part of and is incorporated by reference into the OUA. Except as amended by this agreement, the OUA remains in full force and effect, in the event of any conflict between this Agreement and the OUA, this Agreement shall govern with respect to the Mobile Remote Deposit Service.

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## Positive Pay

### **The Service.**

The Bank agrees to provide various Positive Pay Services to the customer for the purpose of increasing the chance of identifying and preventing fraudulent or unauthorized checks and /or electronic transfers drawn on selected Customer deposit account(s) as identified to the bank.

- a) Positive Pay Customer sends a file of issued checks to the bank. The Bank only pays checks that match the issue file. Customer makes pay or not decisions on rejected/non matched items.
- b) ACH Reverse Positive Pay. Bank intercepts in coming ACH debits and the Customer makes the pay or not decision. "Decision."
- c) Customer Blocks all ACH debit transactions or sets Maximum limit on ACH transaction, Customer makes the pay or not decision. "Decision".

### **Procedure.**

Files prepared and transmitted to the bank in compliance with the formatting requirements as provided. Transmissions received after 12:01 am Central time may not post to the issue file until the next business day.

### **Check Processing for Positive Pay.**

For applicable Deposit accounts identified whereby the Customer has requested the bank to verify checks against an issued check file, the Customer agrees to transmit the serial numbers, amount, date and status of each check by deposit account number in which it is drawn. The cumulative data is sent to the bank in the format agreed by the bank and the Customer. With exception of checks presented for immediate payment in person (Teller Checks), issued check file data received before 12:01 am Central time each business day will be used to verify any checks or electronic Check presentment(ECP) items posting to applicable Deposit account that next business day. For items presented through ECP, the serial number on the MICR line of the Customers checks as shown on the ECP item must match. The Customer acknowledges that any stop payment issued on check will supersede any data transmitted hereunder.

### **ACH External Debits and ACH Reverse Positive Pay.**

As requested by the Customer, ACH external debits (items not originated by or at the bank) will be completely blocked or will be matched against the stated maximum dollar limit as provided by the Customers selection. Those debits in excess of the stated Maximum limits will be rejected. All transactions originated by or at the Bank (including direct deposit settlement transactions) are considered internal items and may not be matched against the Customers maximum and may be processed, regardless of the amount.

### **Exception Reporting.**

At or before 9:00 am Central Time of each business day, for each deposit account for which the Customer has requested the service, the bank will make available to the Customer. An exception report ("the Exception Report") for the prior business day for each deposit account for which the customer has requested the service. The exception reports/screen will list all checks, substitute checks and ECP items which are not on the issued check file and or the amount differs from that on the issued check file. Where the Customer chooses the set maximum limit and /or all ACH debits where the Customer chooses to block ACH debits.

### **Payment Authorization for Exception Report Items.**

In the event the customer wants to authorize payments for any item on the exception report, the Customer must make the decision of its intent to authorize by 11:00 am Central time of the business day that the customer receives the exception report. Any item not authorized for payment by the Customer as provided for herein, will be marked "REFER TO MAKER" and returned. The bank does not check items on the exception report against the previously cleared items.

### **Updating Issued Check File(s)**

For each deposit account for which the Customer requests Services hereunder, the Bank will only pay items presented for payment against such deposit accounts in accordance with the terms of the Agreement. It is the responsibility of the Customer to routinely and regularly update the Issued Check Files. The Bank is not liable to the Customer or any third party for the payment or rejection of any time due to any encoding error or posting error. Should the Customer fail to routinely update Issued Check Files(s), the Bank may terminate this Service immediately upon written notice to the Customer.

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## **Positive Pay Security Procedure.**

Texas First Bank grants access to the Internet Banking System to perform transactions as per customer request for Positive Pay in E- Agreement. The Customer agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs and Passwords that are assigned to the Customer for initiating transactions using this system. Any file transmission initiated or authorized using a valid combination of a Login ID and the Customer and Financial Institution will consider Password authentic, valid and binding. Texas First Bank agrees to provide reasonable assistance to establish Login IDs and Passwords, training, and support to the Customer for properly using the services. If the Customer suspects or believes any such information has been compromised, it shall immediately contact Texas First Bank at the following:

Emergency Contact	<u>Customer Service</u>	Telephone Number	<u>(409) 948-1993</u>
Financial Institution	<u>Texas First Bank</u>		
Street Address	<u>3000 FM 1764</u>		
City, St, Zip Code	<u>La Marque, Texas 77568</u>		

The Customer and the bank shall comply with following Security Procedures with regard to the delivery/transmittals of files by the Customer to the bank.

- (a) Customer and Texas First Bank shall comply with the security procedure requirements described in these documents attached hereto with respect to Files transmissions by Customer to Financial Institution. Customer acknowledges that the purpose of such security procedure is for verification of authenticity and not to detect an error in the transmission or content of any such files. No security procedure for the detection of any such error has been agreed upon between Texas First Bank and Customer.
- (b) Customer is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Customer warrants that no individual will be allowed to transmit files in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any logons, passwords, codes, security devices and related instructions provided by Texas First Bank in connection with the security procedures described for the access rights granted under Authorization To Obtain E- Services. If Customer believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Customer agrees to notify Texas First Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any file transmissions made in good faith by Texas First Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transmissions.

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## Wire Transfer

The Bank agrees to provide for origination of funds transfer by Wire Transfer through the use of the Banks Internet Banking product by way of the Customers personal computer. The Bank will act upon the Customers instructions to debit one or more specified deposit accounts of the Customer and will transfer funds from such account(s) for credit to customer and /or other persons or companies or specified accounts in accordance with the terms hereof.

Definitions:

Online Wire Transfer means a Wire Transfer initiated by a Customer via the banks internet Banking Services.

Domestic Wire means a Wire Transfer that will not go outside of the United States and will be in U.S. dollars.

Repetitive Transfers means funds transfer request made routinely with instructions remaining constant except for the date and dollar amount.

Non Repetitive Transfers mean funds transfer request made routinely with only the debit account remaining constant.

**The customer understand and agrees that the customer and not the bank will control the beneficiary information for all wire transfers, including repetitive wire templates, and that if any wire transfer instructions by the customer describes the intended recipient of funds inconsistently by name and account number that payment by the receiving bank (which may be the Bank) may be made on the basis of account number alone even if that account is not owned by the person or entity named in the Wire Transfer instructions. Bank will not be liable for any errors or losses resulting from any errors in or changes to the beneficiary information provided by the Customer. Customer hereby agrees and acknowledges that the Bank is not responsible for detecting any customer error contained in any individual wire transfer.**

**In the event that a wire transfer is unauthorized but effective pursuant to the security procedures and other procedures agreed to herein, Bank is entitled to enforce and retain payment for the wire transfer from the Customers unless the Customer can prove that the Wire transfer was not caused, directly or indirectly, by a person either 1. Entrusted at any time with duties to act on customers behalf with respect to such wire transfer or the security procedures other procedures herein, or 2. Who obtained access to customers transmitting facilities or who obtained access from a source controlled by the Customer and without authority of the bank, information facilitating breach of the procedures, regardless of how the information was obtained or whether customer was at fault.**

### **Submission of Transfers**

In order for an Online transfers to be sent same day, domestic wires must be submitted and approved before 4:30 pm. Central time on a business day. Wire Transfers shall be deemed delivered to the Bank when the applicable security procedures have been complied with and the submission to the bank is completed In accordance with the agreement.

### **Acceptance and Execution of Transfer Request**

Bank acceptance of request from a Customer shall be considered accepted by the bank when the bank executes it.

### **Deadline**

The Customer acknowledges that the Bank maintains deadlines for accepting Wire Transfer request. Such deadlines are subject to change from time to time at the sole discretion of the Bank. If a wire transfer request from the Customer is received after the deadline, it may be executed the next Business day.

### **Transmission**

In executing any Wire Transfer request, the Bank may utilize such means of transmission as it may reasonably select. The bank may initiate Wire transfer request in any order convenient to it.

### **Revocation of Transfer**

The Customer has no right to reverse, adjust, or revoke a Wire transfer request after the Bank has executed the Wire Transfer. If the Customer requests the reversal, adjustment or revocation of a wire Transfer request, the Bank may (but shall not be obligated to) attempt to recover the funds form the transferee using whatever steps the Bank deems appropriate. **The Customer expressly agrees to indemnify the bank against any cost, expenses, damages and liabilities, including attorney's fees, which the Bank may incur in attempting to effect such recovery of Funds. The Bank makes no representations or warranty as to its ability to revoke or cancel a wire transfer once made.**

**Fees:** In addition to paying such fees for the service as may be imposed from time to time, pursuant to the agreement, the customer shall reimburse the Bank for any direct or indirect transfer charges or expenses incurred by the Bank in connection with the service. This includes but is not limited to any access charge from a communications system, telex transmission charges, transfer commissions, and correspondence charges.

# Texas First Bank

## Schedule A: E- Services and Fee Disclosure.

This schedule will define the Customer's allowed transactions using Texas First Bank's Internet Banking System to Originate, create and/or deliver standard entry class codes as assigned and agreed upon by both Financial Institution and Customer . Allowing for 940 Block Format/NACHA Format ACH files for further processing in accordance with the attached agreement. Allowing for various file delivery options as agreed upon by both the Financial Institution and the Customer in processing Positive Pay Products (check and ACH). Remote Deposit Capture (RDC). Entries shall be conducted via Texas First Bank's Internet Banking system, Vendor tools and or website along with information provided in accordance to the instructions provided either by the system or institution representatives. The allowed services granted to the Customer may consist of multiple features; such as web-enabled data entry screens, file transfers and uploads. This Schedule itemizes the features, fees for each type of service.

Description of Fees	Types	Fee Amount
Charge All Fees to	<input type="checkbox"/> DDA <input type="checkbox"/> Savings	
Monthly Base Fee	Flat Fee	Amount \$9.95
Wire Item	Per Transaction	Amount \$15.00
Tax Item	Per Transaction	Amount \$0.10
A la Carte ACH Credits	Flat Fee	Amount \$10.00
Payroll Item	Per Transaction	Amount \$0.10
ACH Payment Item	Per Transaction	Amount \$0.10
A la Carte ACH Debits	Flat Fee	Amount \$10.00
ACH Receipt Item	Per Transaction	Amount \$0.10
ACH Collection Item	Per Transaction	Amount \$0.10
**ACH Returns** Unauthorized Transaction R5,R7,R10,R29 and R51	Per Transaction	Amount \$10.00
Stop Payment	Per Transaction	Amount \$26.50
<b><u>Positive Pay Product</u></b>		
Positive Pay	Monthly	Amount \$45.00
PP (Secondary Account)	Monthly	Amount \$30.00
Reverse Positive Pay	Monthly	Amount \$35.00
PP Suspect (timely)	Per Occurrence	Amount \$3.00
PP Suspect (Untimely)	Per transaction	Amount \$29.50
Exception Items	Per Transactions	Amount \$0.10
ACH Exception Items	Per Transactions	Amount \$1.00
<b><u>Remote Deposit Capture</u></b>		
Scanner Rental	Monthly	One Time Training and Implementation Fee \$100.00
Maintenance	Monthly	Varies (see equipment pricing) Amount \$25.00
<b><u>Mobile Remote Deposit Capture</u></b>	Per Transaction	Amount \$1.00

All Charges will be billed at the end of the month for E- Services and all fees pertaining to the Internet Banking System except as noted using \*\*, these fees are passed on as received. All Fees subject to change.