

# DEPOSITS ON COMMAND SERVICES AGREEMENT

*We recommend that you print a copy of this agreement for your records.*

This Agreement is between First Command Bank (“FCB”) and “Client”, collectively the “Parties.” It is agreed:

## 1. Service and Service Terms

- 1.1. This Agreement states the terms and conditions by which First Command Bank will deliver to Client the Deposits On Command Services (the “Services”). Client acknowledges and agrees the Services or any portion of the Services may be provided by one or more subcontractors. The provisions of FCB’s Depository Agreement and Disclosure and applicable service terms are incorporated by reference into this Agreement. In event of a conflict between this Agreement and any other agreements between FCB and Client, including the Depository Agreement and Disclosure, the provisions of this Agreement shall control.

## 2. Definitions

- 2.1. The capitalized terms used in this Agreement shall have the following meanings:

- “Authorized User” means Client or agent of Client.
- “Banking Day” means any day which FCB is open to conduct substantially all of its banking services, but shall not include Saturday, Sunday or bank holidays.
- “Capture Device” means any device acceptable to FCB, which provides for the capture of images from original Items and for transmission through clearing process.
- “Check” shall have the definition set forth in Check 21.
- “Check 21” means the Check Clearing for the 21st Century Act, as well as a Subpart D of Federal Reserve Board Regulation CC, and to the extent applicable, Subpart A.
- “IRD” or “Image Replacement Document” means (a) a Substitute Check as defined in Check 21; or (b) the paper reproduction created when an Item cannot be converted to an ACH Transaction.
- “Item” means a Check, money order, cashier’s check, official check, U.S Treasury check, or any other payment instrument drawn on a financial institution within the United States from a Payor to Client transmitted as either data or image and where applicable in the context, includes the electronic image of the front and back of an Item, in addition to other required information as specified by FCB from time to time, in the format specified by FCB from time to time. Notwithstanding the foregoing, it is understood the Client will only be transmitting electronic imaged of the front and back of items and not any paper items. In order for an Item to be processed for deposit, it must be restrictively endorsed in the proper location on the back of the Item with the following words: “For deposit only FCB Account #, with the correct account number and signed by the payee. Item could be delayed or

returned if missing proper endorsements as listed in the following words above.

- “Payor” means consumers or businesses who make payments to clients by means of Items.
- “Service(s)” mean the specific service(s) provided by FCB, including electronic check conversion and image archive systems which allow the use of a Capture Device to obtain and transmit the front and back images of Items and accompanying transaction data for the purpose of delivery to FCB for clearing as an IRD. Services also include any applicable support services. The Service shall only be provided for Items received for personal, family or household purposes deposited into a consumer account at FCB.
- “Service Start Date” means the date the Services are first utilized by the Client.
- “Technology” means FCB’s or its subcontractor’s deposit capture applications processes designed to facilitate the electronic clearing of Items. Said applications are accessed through Capture Devices, utilizing software and hardware provided by or acceptable to FCB, and are proprietary access points to payment processing networks and systems used to complete the clearing of Items. Technology may include but is not limited to Client service support, reports, software, software tools, user interface designs, documentation and any derivatives, improvements, enhancements or extensions thereof developed or provided by FCB or its subcontractors and used in the provisions of Services hereunder. Any software provided by FCB or its subcontractors pursuant to the Service shall be considered Software as defined in the Software License Agreement.
- “Term” shall mean the term of this Agreement beginning as of the Services Start Date until termination as provided herein.

### 3. Client Obligations, Suspension and Cancellation of Service

- 3.1. **Client Responsibilities.** Client authorizes FCB to convert Items to IRDs or transmit as an image and further authorizes FCB or any other bank to which an Item is sent to handle the Item. Client agrees to, at its sole expense: a) provide connectivity between the Capture Device and the Technology; b) maintain the Capture Device in accordance with the instructions provided by FCB, its subcontractors and/or any other Capture Device provider; c) if applicable, utilize Member’s software, or FCB software to scan, load, and format Items as needed for transmission to FCB prior to the communicated cutoff time; d) process return date and any remittance data delivered by FCB for the purpose of updating Client internal systems (which may include electronic and paper return Items); e) implement and maintain security measures, including firewall protection, in compliance with its obligations under this Agreement; and f) Client further agrees that it will comply with any instructions and/or procedures regarding the Services and submission of Items which may be issued by FCB from time to time.
- 3.2. **Withdrawal of Access/Suspension of Service.** FCB reserves the right, in its sole discretion, to deny, suspend or revoke access to the Services immediately, in whole or in part, without notice, if FCB believes Client and or its Authorized Users are in breach of this Agreement or are otherwise using or accessing the Services inconsistent with the terms and conditions hereof. Further, FCB or its subcontractor shall have the right to suspend the Service immediately in the event of an emergency or in the event force majeure as set forth in the Service Agreement.
- 3.3. **Handling of Transmitted Items.** Client shall be responsible for the proper disposal of all Items following an emailed approval notification sent to the Client to ensure item is not represented.

- 3.4. **Account Statement Examination.** Unless Client notifies FCB of any errors to deposits made through the Services within 60 days after the applicable account statement is mailed or otherwise provided to Client, such statement regarding all deposits made through the Services shall be deemed to be correct.

#### 4. Payment Processing

- 4.1. **IRD Processing.** Items may be transmitted for electronic processing by other Financial Institutions or converted to IRDs and transmitted to a printing facility for printing and clearing through traditional paper processing channels as FCB may decide in its sole discretion. The IRDs will be created in accordance with Check 21; alternatively, FCB may process Items as photocopies in lieu of originals. Under guidelines established between FCB and Clients and applicable industry standards. Items which fail to satisfy the warranties made to FCB by Client, or which fail to meet the requirements of FCB or Check 21, or are otherwise not able to be processed may be charged back to Client's account or returned to Client. Client agrees to be bound by any clearinghouse agreements, operating circular, image exchange agreements to which FCB is a party. In no event shall FCB be liable for any interest on an item which is rejected.
- 4.2. **Processing of Items.** Images of Items transmitted by Client are not considered received by FCB until the Client has received an electronic confirmation of the receipt of the deposit from FCB. However, receipt of the confirmation from FCB does not mean the transmission was error free or complete. Items transmitted by the Client and received by FCB or its subcontractors by 7:00 p.m. Central Time Monday through Friday (excluding holidays), shall be credited to the Client's applicable account on the same Banking Day. Items received by FCB after 7:00 p.m. Central Time on any Banking Day shall be credited to the Client's applicable account on the next successive Banking Day. Funds from Items deposited

under the terms of this Agreement will be available to the Client pursuant to FCB's Funds Availability Policy.

- 4.3. **Client Liability.** Client shall be solely responsible if any IRD for which Client has been given provisional credit is subject to return or reversal, and neither FCB nor its subcontractors shall be liable or responsible for same. Client acknowledges all credits received for deposit are provisional, subject to verification and final settlement. Any dishonored Items will be returned as an image of the original or a substitute check as the charged-back item. Information and data reported hereunder: (a) may be received prior to final posting and confirmation and is subject to correction and (b) is for informational purposes only and may not be relied upon. Client agrees that FCB shall have no liability for the content of payment-related information.

#### 5. Intellectual Property Ownership

This Agreement does not transfer to Client any ownership or proprietary rights in the Technology or any work or any part thereof, and all right, title and interest in and to the Technology will remain solely with FCB or its subcontractors.

#### 6. Warranties and Disclaimers

- 6.1. **Client warranty.** Client represents and warrants to FCB: (a) Client has the authority to enter into this agreement and perform its obligations hereunder and all information supplied by Client to FCB is accurate and true.; (B) Client will provide all reasonable assistance to FCB and its subcontractors in providing the Services set forth herein; (c) Client and any authorized users will only use the Services for lawful purposes and in compliance with all applicable rules and regulations and with FCB's reasonable instructions, rules, policies, specifications, terms and conditions, and operation procedures and will not violate any law of any country or the intellectual property rights of any third party; (d) Client has only transmitted acceptable items for deposit to an account on which client is a signatory

or account holder and has handled the original items following transmission to FCB as agreed, directed by FCB and in accordance with applicable law; (e) Client is a person authorized to enforce each item or is authorized to obtain payment of each item on behalf of a person entitled to enforce an item; (f) the items have not been altered; (g) each item bears all applicable endorsements in a restricted format as directed by FCB; (h) all the warranties set forth in and subject to the terms of 4-207 of the uniform commercial code as adopted in the State of Texas; (i) (1) the electronic image portion of each item accurately and legibly represents all of the information on the front and back of the original check as of the time the original check was truncated, (2) the information portion of the item contains a record of all applicable micro-line information required for a substitute check, and (3) the item conforms to the technical standards for an electronic item as specified by FCB from time to time; (j) Client will submit only one accurate and clear image of the front and back of each items to FCB only one time; (k) Client will not deposit the original items and no person will receive a transfer presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid; (l) the amount of an item entered by Client or any authorized user for transmission to FCB is accurate; and (m) Client and any authorized users will not (1) sell, lease, distribute, license or sublicense the Technology or Services; (2) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Technology or Services in any way for any reason; (3) provide, disclose, divulge or make available to, or permit use of the Technology or Services by, any third party; (4) copy or reproduce all or any part of the Technology or Services; (5) interfere, or attempt to interfere, with the Technology or Services in any way;

(6) engage in spamming, mailbombing, spoofing, pharming, phishing, or any other fraudulent, illegal or unauthorized use of the Services; (7) introduce or transmit through the Technology or Services, or otherwise, any virus, worm, software lock, drop dead device, trojan-horse routine, trapdoor, back door, timer, time bomb, clock, counter or other limiting routine, instructions or design or any other codes or instructions which may be used to access, modify, delete, damage, disable or prevent the use of the Technology, Services or other computer systems of FCB or its subcontractors; (8) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within the Technology or Services; or (9) engage in or allow any action involving the Technology or Services inconsistent with this agreement.

- 6.2. Should Client receive notice of any claim regarding the Services, Client shall promptly provide FCB with a written notice of such claim. Client agrees that FCB is legally entitled to a valid and unqualified endorsement of Client and Client gives FCB the irrevocable right to place such an endorsement on the item. Client agrees to reimburse FCB for all losses related to Client's failure to properly endorse a check as exactly drawn or related to Client's deposit of an item containing multiple endorsements or a missing or improper endorsement.
- 6.3. **FCB Warranty.** FCB warrants (a) FCB has the authority to enter into this agreement and perform its obligations hereunder; and (b) it has developed each Service (other than any portion furnished by a subcontractor third party vendor) and owns and/or has the right to furnish the same (including any portion furnished by a subcontractor or third party vendor).
- 6.4. **Disclaimer.** Except as set forth above in section 6.2, FCB and its subcontractors make no representations or warranties, whether express, implied or statutory regarding or relating to any of the technology provided to Client hereunder

FCB and its subcontractors specifically disclaim any and all implied warranties of merchantability, fitness for a particular purpose and noninfringement. FCB and its subcontractors also do not guarantee that Clients' access to the Services provided under this agreement will be uninterrupted or error free. FCB and its subcontractors do not guarantee the accuracy of, and specifically disclaim liability for, information or data supplied or key-entered by Client or agents. FCB and its subcontractors do not warrant the accuracy, reliability, completeness or timeliness of the content of internet websites or other data received by Client or payors via the internet.

## 7. Limitation of Liability/Indemnification

- 7.1. **Limitation of Liability.** In no event shall FCB be liable for delays which happen for reasons beyond its control, including without limitation, acts of civil, military, or banking authorities, national emergencies, riots, weather, unavoidable difficulties with equipment, the unavailability of the internet, any errors in information provided, any difficulties caused by an internet or other service provider or any hardware or software failure, whether caused by a virus or otherwise.
- 7.2. **Limitation of Amount.** Notwithstanding anything to the contrary herein, in no event will FCB's liability under this agreement for any damages of any kind exceed an amount equal to the amount of items received by FCB from Client for services during the month preceding the date on which the claim first accrued. FCB shall not be liable for any special, indirect or consequential damages, even if it has been advised of the possibility of these damages.
- 7.3. **Indemnification.** In addition to its indemnification obligations in this agreement, and except for losses or expenses attributable to FCB's own lack of good faith or failure to exercise ordinary care, Client agrees to indemnify FCB for any loss or expense sustained (including interest, costs, attorney's fees and expenses of litigation) resulting from (i) Client's

lack of authority to make the warranty in subsection 6.1(E); (ii) any action taken or not take by FCB within the scope of its authority in handling an item; (iii) any warranty required to be made by FCB with respect to an item under applicable law or regulation; and (iv) breach of the warranties in subsections 6.1(A) through 6.1(M).

## 8. Termination

- 8.1. **Termination.** In addition to the denial, suspension, revocation and termination provisions in this Agreement, FCB may immediately terminate the Service or any portion of the Service if FCB determines such Service or portion of any Service is in violation of any other law or regulation, or in its sole discretion and without notice, decides to cease providing this Service. Client may terminate the Service with written notice to FCB.

## 9. Confidentiality

- 9.1. **FCB Information.** Client acknowledges that the Technology and Services contain valuable trade secrets, which are the sole property of FCB or its subcontractors ("Bank Confidential Information"), and Client agrees to hold same in strict confidence and disclose only to those agents whose duties reasonably require access to same, provided all such agents are informed of such use or disclosure restrictions as set forth herein. Client agrees to use no less than reasonable care to prevent other parties from learning of these trade secrets. Client will take no less than all reasonable steps to prevent the unauthorized use, disclosure, duplication or access to the Bank Confidential Information.
- 9.2. **Unauthorized Use.** Client acknowledges that the unauthorized use, disclosure or duplication of any FCB Confidential information shall constitute a material breach of the Agreement and is likely to cause irreparable injury to FCB, for which there is no adequate remedy at law. Accordingly, Client hereby agrees that FCB may seek injunctive relief against Client to prevent or remedy any breach of Client's confidentiality obligations described herein

without FCB required to post bond, or if bond is required, only nominal bond. Client agrees to indemnify FCB and hold it harmless from and against any and all losses, liabilities, claims, damages and expenses (including reasonable legal fees and expenses) arising from or relating to the disclosure of any FCB Confidential Information or the failure to keep the Technology secure. Client understands and agrees that the use of the Technology and Services is confidential and agrees to assume all risks or accidental disclosure, inadvertent use of unauthorized use by any party whatsoever, whether or not such disclosure or use is on account of Client's negligence.

## 10. Miscellaneous Provision

- 10.1. **Relationship of Parties.** FCB and Client are independent parties and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between FCB and Client. Neither FCB nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.
- 10.2. **Notices.** Client agrees that any notices required or permitted under this Agreement or the Service Agreement may be given electronically.
- 10.3. **No Waiver.** The failure of either party to enforce at any time any provision of this Agreement or to exercise any right herein provided shall not in any way be construed to be a waiver of such provision or right and shall not in any way affect the validity of this Agreement or any part hereof, or limit, prevent or impair the right of either party to subsequently enforce any provision or exercise any right hereunder.
- 10.4. **Severability.** The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision.
- 10.5. **Governing Law.** This Agreement is entered into in Fort Worth, Texas and shall be governed by the laws of the State of Texas, without regard to its choice of law provisions, and of the United States, and any rule or regulation of the State of Texas or a federal agency having jurisdiction over FCB. A determination that any provision of the Agreement unenforceable or invalid. The rights of FCB under this Agreement are cumulative of all other rights FCB may have by law or otherwise.
- 10.6. **Amendments.** Unless applicable law provides otherwise, this Agreement may be amended by notice sent electronically or by mail to Client at Client's last address known to FCB to be effective not less than thirty (30) days after the day transmitted or mailed. FCB shall not be bound by any modification of the Agreement unless it expressly agrees to the modification in writing. This agreement supersedes all prior agreements. Client shall have the right to terminate. From time to time, FCB may request Client to provide additional information concerning Client, including without limitation, additional financial information and FCB may terminate this Agreement if satisfactory information is not received.
- 10.7. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all existing agreements and all other related communications, written or oral.