



FRBservices.org

Federal Reserve Bank Electronic Check Presentment and Image Information Service (Attachment II)

Servicing FRB Office: _____

Effective Date: _____

1.0 GENERAL

1.1

This Agreement sets forth the terms of our Electronic Check Presentment and Image Information Service.

1.2

The Electronic Check Presentment and Image Information Service is subject to the terms and conditions set forth in Federal Reserve Bank Operating Circular 3, entitled "Collection of Cash Items and Returned Checks," as amended from time to time, except to the extent that the terms and conditions of this Agreement differ from the provisions of Operating Circular 3. To the extent that the terms of this Agreement differ from the provisions of Operating Circular 3, the terms of this Agreement shall apply to the Electronic Check Presentment and Image Information Service.

2.0 SERVICE DESCRIPTION

2.1

A Reserve Bank captures certain Electronic Information obtained from each Eligible Item and we transmit or deliver the information to the Paying Bank in a non-imageable electronic cash letter. "Electronic Information" includes, at a minimum, the MICR line information from an Eligible Item. The Electronic Information may also include an image of the Eligible Item. We transmit or deliver non-imageable electronic cash letters in accordance with our time schedule on each of our banking days that we receive an Eligible Item. If the Paying Bank is closed on a day that is a banking day for us, we make the information available for transmission on that day in accordance with Section 210.9(b) of Regulation J.

2.2

The Paying Bank shall establish a cut-off hour no earlier than 2:00 p.m. (local time for the location associated with the Paying Bank's transit number) for presentment of non-imageable electronic cash letters. The Paying Bank shall manage its electronic connection so as to permit us to present non-imageable electronic cash letters to it in a timely manner throughout the day. It is the responsibility of the Paying Bank to exercise due diligence to retrieve files that have been presented and to identify and notify the Reserve Bank immediately in any instance in which the Paying Bank would reasonably expect to receive a presentment but does not receive a presentment file. The Paying Bank shall give us prompt notice of its failure to receive a non-imageable electronic cash letter on a day that is a banking day for both the Paying Bank and us.

2.3

For purposes of Regulation J, Regulation CC and our Circular, the receipt of a non-imageable electronic cash letter by the Paying Bank constitutes presentment of the Eligible Items reflected in the MICR line information contained in the cash letter. The Paying Bank waives any right it may have to condition presentment on the exhibition or production of an Eligible Item presented under this Agreement.

2.4

In addition, the Reserve Bank will:

- (a) Return an Eligible Item at the Paying Bank's request (paragraph 5);
- (b) Retain an Eligible Item for forty-five days or a longer period agreed to by us and the Paying Bank (paragraph 6);
- (c) Retain an image copy of the Eligible Item (subject to the disclaimers set forth herein regarding image quality) for seven years (paragraph 6); and
- (d) Respond to a request from the Paying Bank that we send the Paying Bank an Eligible Item or information about an Eligible Item (paragraph 7).

2.5

The Electronic Information related to an Eligible Item that is transmitted or delivered to a Paying Bank under this Agreement is not an "electronic item" as that term is used in Regulation J.

2.6

Presentment of an Eligible Item occurs when the MICR line information related to that Eligible Item contained in a non-imageable electronic cash letter is (i) transmitted to the Paying Bank, or (ii) written on the Reserve Bank's data storage device and in a form that is available for retrieval by the Paying Bank. Receipt of the non-imageable electronic cash letter file occurs when the file is (i) transmitted to the Paying Bank, or (ii) written on the Reserve Bank's data storage device and in a form that is available for retrieval by the Paying Bank. Presentment is deemed to have occurred at the time of transmission if the MICR line information is not actually received because of the failure of the Paying Bank to manage its electronic connection as required by paragraph 2.2 of this Agreement.

2.7

The Reserve Bank does not warrant that the Electronic Information will include an image of an Eligible Item. If the Electronic Information does include an image of an Eligible Item, the Reserve Bank does not warrant that the image is legible or usable, or that it contains all of the information from the front and/or the back of the Eligible Item. Because the Electronic Information related to an Eligible Item does not constitute an electronic item, the Reserve Bank does not make any of the warranties or indemnities provided in Regulation J specifically with respect to an electronic item, including but not limited to a warranty that: (i) the Electronic Information contains an accurate representation of the Eligible Item, (ii) the Electronic Information, including the MICR line information, can be used by a Paying Bank to create a substitute check, or (iii) the Electronic Information conforms to any technical standard that applies to an electronic item.

3.0 DEFINITIONS

3.1

For purposes of this Agreement,

- (a) **Instruction to return** means a notice of dishonor or nonpayment; and
- (b) **Non-imageable electronic cash letter** means an electronic file that conforms to American National Standard Institute's Draft Standard for Trial Use X9.37-2003 (Specifications for electronic exchange of check and image data), as interpreted and applied by the Federal Reserve publication "DSTU X9.37 (2003) FRB User Document," as amended from time to time, that is specifically designated as a "non-image presentment" file.
- (c) **Eligible Item** means a cash item drawn on, or payable at or through, the Paying Bank that (i) contains in the MICR-line the routing number of the Paying Bank, (ii) was sent to a Reserve bank in paper form, not as an electronic item, (iii) when captured for electronic processing, fails our edits or tests for image quality, and (iv) otherwise complies with all other eligibility requirements that we may specify. A photocopy can be an Eligible Item. **Eligible Item** includes Electronic Information related to an Eligible Item that we receive from another Reserve Bank.

Electronic Check Presentment and Image Information Service (Attachment II)

(d) **MICR-line information** means the information included in the MICR-line on an Eligible Item.

(e) **Paying Bank** means a Paying Bank that subscribes to the Electronic Check Presentment and Image Information Service, and includes its agent for receiving presentment.

4.0 COPIES

4.1

A Reserve Bank attempts to capture an image copy of the front and back of each Eligible Item. The Reserve Bank does not warrant that any such image of an Eligible Item is legible or usable or that any such image contains all of the information from the front or back of the Eligible Item.

5.0 RETURN OF ELIGIBLE ITEMS

5.1

The Reserve Bank may not be able to provide the original of an Eligible Item or a usable copy of the Eligible Item to the Paying Bank prior to the time at which the Paying Bank must make its decision whether to dishonor and return an item. Thus, the Paying Bank may have to make its decision to honor or dishonor an item on the basis of the Electronic Information alone.

5.2

If the Paying Bank wishes to return an Eligible Item that we presented under this Agreement, it may deliver to us an instruction to return the item. The return instruction must be delivered using a method that we prescribe and must be received by us within the deadline for return set forth in the Uniform Commercial Code and Regulation J or Regulation CC. The instruction must contain the Electronic Information that we transmitted to the Paying Bank with respect to the item, the date the information was recorded, our sequence number for the item, and the reason for return, but in no event will such an instruction be effective if it is received after our cut-off hour for such instructions. **THE ELECTRONIC INFORMATION IS NOT INTENDED TO BE ABLE TO BE RECONVERTED INTO A SUBSTITUTE CHECK.** With respect to any item that the Reserve Bank presented to the Paying Bank pursuant to this Agreement, if the Paying Bank returns the item in any manner other than requesting the Reserve Bank to return the item, then, as between the Paying Bank and the Reserve Bank, the Paying Bank shall be solely responsible for any resulting liability.

5.3

For purposes of the Uniform Commercial Code, Regulations J and CC, and our Circular, our receipt of an instruction to return an Eligible Item constitutes return of the Eligible Item by the Paying Bank. As a returning bank, the Reserve Bank will then return the item. A Reserve Bank will give credit in accordance with our availability schedules, to the account maintained or used by the Paying Bank for such purpose.

5.4

An instruction to return an Eligible Item of \$2,500 or more presented under this Agreement also serves as a request for a Reserve Bank to give notice of nonpayment to the depository bank under Section 229.33 of Regulation CC. For us to meet the deadline imposed by Section 229.33, we must receive the instruction no later than the hour and the day that we specify as our cut-off for receiving such instructions.

5.5

A Reserve Bank assumes no responsibility for determining whether the Paying Bank has acted in a timely fashion in returning an item or providing notice of nonpayment to a depository bank.

6.0 RETENTION OF PAID ITEMS

6.1

A Reserve Bank retains an Eligible Item that has not been returned for forty-five calendar days from the date on which we first transmit or deliver the non-imageable electronic cash letter, or a longer period agreed to by us and the Paying Bank ("Retention Period"). During the Retention Period, we make the Eligible Item available to the Paying Bank as provided herein. A Reserve Bank destroys the Eligible Item after expiration of the Retention Period, unless the Paying Bank requests us to deliver the Eligible Item or a copy of the Eligible Item to the Paying Bank at its own expense because the Paying Bank desires to retain the copy for a longer period.

6.2

Because the items presented in this service are "non-imageable," the image of an Eligible Item may not be legible or usable for any purpose, may not contain all of the information, or any of the information, from the front and/or the back of the Eligible Item, and may be blank. Subject to these disclaimers, the Reserve Bank retains an image copy of an Eligible Item for seven years (or a longer period required by law and set forth in our procedures) from the date on which we first transmit the non-imageable electronic cash letter ("Storage Period"). During the Storage Period, we make an image copy available to the Paying Bank as provided herein. A Reserve Bank destroys the image copy after the expiration of the Storage Period.

6.3

Upon termination of services hereunder, a Reserve Bank, at our discretion, either:

- (a) Retains all items and image copies of items then being held for the Paying Bank for the remainder of the Retention or Storage Period; or
- (b) Delivers all such items and copies to the Paying Bank.

7.0 REQUESTS FOR ELIGIBLE ITEMS OR FOR INFORMATION

7.1

During the Retention Period for an Eligible Item, the Paying Bank may request that the Reserve Bank send an Eligible Item to the Paying Bank. During the Retention Period or Storage Period for an Eligible Item, the Paying Bank may submit a request for information with respect to the item. The request must contain the recorded MICR-line information, the date the information was recorded, and our sequence number for the item.

7.2

A Reserve Bank makes available an Eligible Item or a copy only as provided in the preceding paragraph, or in response to the order of a court of competent jurisdiction, a grand jury subpoena, or other legal process. If we believe that a Reserve Bank may be compelled to provide an item or a copy to other than the Paying Bank, we will notify the Paying Bank unless we are prohibited by law from doing so. It is the Paying Bank's responsibility to assert any defense to production. The Paying Bank is responsible for the cost of producing any item or copy as well as the cost of defending against such production.

7.3

To request an Eligible Item or a copy of an Eligible Item a Paying Bank must use the Reserve Bank's procedures for submitting an adjustment request using the "Original or Sufficient Copy" investigation type.

8.0 TERMINATION

8.1

We or the Paying Bank may terminate the services provided under this Agreement by giving not less than twenty banking days prior written notice to the other party. In addition, we may immediately terminate the services provided hereunder by notice to the Paying Bank, if we, in our sole discretion, determine that the financial condition of the Paying Bank poses a risk to us.

Electronic Check Presentment and Image Information Service (Attachment II)

9.0 SETTLEMENT

9.1

A Reserve Bank debits the account maintained or used by the Paying Bank for the total dollar amount of Eligible Items whose Electronic Information we have transmitted to the Paying Bank pursuant to this Agreement on that day, as provided in Regulation J and our Circular. If a Reserve Bank does not receive payment in actually and finally collected funds for an Eligible Item and exercises its right of charge-back under Section 210.13 of Regulation J, a Reserve Bank may remove the item from its retention files and return it.

10.0 RELATION TO REGULATIONS J AND CC AND OPERATING CIRCULARS

10.1

This Agreement constitutes a special collection agreement as authorized by Regulation J and an electronic presentment agreement as authorized by Regulation CC. The services we provide under this Agreement are performed in conjunction with the services we provide pursuant to our Operating Circular 3, and are also governed by Regulation J, Regulation CC, and our Operating Circular 5, entitled "Electronic Access," as amended from time to time.

11.0 RESERVE BANK WARRANTIES AND LIABILITY

11.1

We warrant that MICR-line information we transmit to the Paying Bank under this Agreement accurately represents the information inscribed on the MICR-line of the Eligible Item, except as provided in this paragraph. If a Reserve Bank repairs or key enters MICR-line information for an Eligible Item because it has difficulty in recording the information, we warrant only that such MICR-line information accurately represents the amount and routing number information as it appears on the item. Notwithstanding any provision of Regulation CC or state law, we do not warrant the accuracy of the account number or check number information that we transmit to the Paying Bank. The Paying Bank is encouraged to validate the accuracy of the account number and check number information it receives from us. If another Reserve Bank records the MICR-line information that we transmit to the Paying Bank, the other Reserve Bank makes the same warranty to us.

11.2

A Reserve Bank's recording, transmitting, repairing or key entering MICR-line information shall not constitute a breach of any warranty imposed by law with respect to alteration of an item. In addition, a Reserve Bank is not responsible for determining whether an Eligible Item is properly payable, including but not limited to determining:

- (a) The genuineness of the signature of any drawer appearing on an Eligible Item;
- (b) Whether any or all required signatures appear on an Eligible Item;
- (c) Whether an Eligible Item is stale;
- (d) Whether an Eligible Item is postdated;
- (e) Whether an Eligible Item is properly indorsed or bears genuine indorsements;
- (f) Whether a stop payment order has been issued for an Eligible Item; and
- (g) Whether an Eligible Item is a photocopy and, if so, whether it has been prepared and submitted in proper fashion.

11.3

With respect to any claim arising out of a Reserve Bank's recording and transmission of Electronic Information to a Paying Bank, the Reserve Bank's liability is governed by Regulation J. With respect to any other action taken or service performed pursuant to this Agreement, a Reserve Bank acts only as agent or subagent of the Paying Bank. The Reserve Bank that transmits the Electronic Information to the Paying Bank is liable only to the Paying Bank and only for its breach of the warranties expressly set forth herein, or for the lack of good faith or failure to exercise ordinary care of another Reserve Bank that records the Electronic Information. If another Reserve Bank records the Electronic Information that we transmit to the Paying Bank, the other Reserve Bank is liable only to us, and only for its breach of the warranties expressly set forth herein, or for its own lack of good faith or failure to exercise ordinary care. If the Reserve Bank fails to retain or to provide Electronic Information related to an Eligible Item as provided in paragraph 6 or 7 of this Agreement, the Reserve Bank's liability to the Paying Bank for such failure shall be limited to the amount of the fees paid by the Paying Bank to the Reserve Bank specifically for the Electronic Check Presentment and Image Information Service during the thirty day period immediately prior to the date of the alleged failure. The Paying Bank shall give us prompt written notice of any claim by or against it that may give rise to a claim against us.

11.4

A Reserve Bank warrants that an Eligible Item processed hereunder will be held by it in accordance with this Agreement and will not be sent to the Paying Bank except as provided herein.

12.0 REJECT REPAIR SERVICES

12.1

The Reserve Bank will perform repair services with respect to the data contained in the MICR-line of Eligible Items presented to the Paying Bank. The Reserve Bank may repair or key enter MICR-line information because: (i) the MICR line on an item is difficult to read; or (ii) the MICR data from an item causes the item to fail a standard Reserve Bank edit routine.

12.2

In performing MICR repair or key entry services, the Reserve Bank acts as the Paying Bank's agent. The Reserve Bank makes no warranties of any kind with respect to such services and hereby expressly disclaims any warranties or indemnities that arise by operation of law, except to the extent that any such warranty or indemnity cannot be disclaimed as a matter of law.

12.3

The Reserve Bank's repairing or key entry of MICR line information related to an Eligible Item pursuant to this paragraph does not constitute an alteration of an item and does not breach any warranty with respect to alteration of an item.

12.4

With respect to any action that the Reserve Bank takes to carry out a Paying Bank's instruction with respect to MICR repair or key entry services under this paragraph, the Reserve Bank shall be liable only to the Paying Bank, only for the Reserve Bank's lack of good faith or failure to exercise ordinary care, and only for the amount of damage actually caused by the Reserve Bank's failure to perform the requested service with good faith or ordinary care, but in no event shall the Reserve Bank's liability exceed the amount of any fees paid to the Reserve Bank by the Paying Bank specifically for the MICR repair or key entry service during the one month period immediately preceding the transaction or occurrence that gives rise to the claim for damages.

13.0 INDEMNIFICATION BY PAYING BANK

13.1

The Paying Bank shall indemnify, hold harmless and defend a Reserve Bank from any claim, demand, loss, liability, or expense (including attorneys' fees and expenses of litigation) made against it by any person, or incurred by it, in connection with its performance of services hereunder as agent or

Electronic Check Presentment and Image Information Service (Attachment II)

subagent of the Paying Bank, but excluding any claim, demand, loss, liability or expense that results from the Reserve Bank's failure to exercise ordinary care or act in good faith. The Paying Bank's indemnification obligation specifically extends to, but is not limited to, claims, demands, loss, liability or expense arising in connection with any allegation that a Reserve Bank has acted as a collecting bank in handling an over-the-counter item, and shall survive the termination of services provided under this Agreement.

14.0 FEES

14.1

Fees for our Electronic Check Presentment and Image Information Service are set forth in a fee schedule that we publish and amend from time to time. A Reserve Bank charges the fees to the Paying Bank.

15.0 MISCELLANEOUS

15.1

If the Paying Bank or a Reserve Bank is delayed in acting beyond the time limits under this Agreement because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, the time for acting is extended for the time necessary to complete the action, if the party exercises such diligence as the circumstances require.

15.2

It is the responsibility of the Paying Bank to ensure that it has obtained all necessary resolutions, signature cards and authorizations from customers whose items will be processed pursuant to this Agreement. The Paying Bank is also responsible for obtaining all necessary approvals from its board of directors and from the appropriate governing or regulatory bodies before receiving services hereunder.

16.0 TERM OF THE AGREEMENT

16.1

This Agreement becomes effective after the Paying Bank has signed and submitted the Agreement, on the date on which the Reserve Bank begins to provide the Electronic Check Presentment and Image Information Service. The Agreement will remain effective until the earlier of the following: (i) the date on which Operating Circular 3 is amended to include the Electronic Check Presentment and Image Information Service; or (ii) the date on which the Paying Bank or the Reserve Bank terminates the Agreement in accordance with paragraph 8 above.

Unless this Agreement is terminated prior to the date on which Operating Circular 3 is amended to include the Electronic Check Presentment and Image Information Service, the Reserve Bank will continue to provide, and the Paying Bank will continue to receive, the Electronic Check Presentment and Image Information Service pursuant to the terms and conditions set forth in Operating Circular 3 as amended.

By executing this Agreement, the depository institution agrees to the terms and conditions set forth above.

Section 1 – Financial Institution Information

Required to be completed by the requesting financial institution

*** Required Fields**

Requested Effective Date*			
Financial Institution Routing Transit Number (RTN)*			
Financial Institution Name*			
Financial Institution Address*			
Financial Institution City*			
Financial Institution State*			
Financial Institution Zip Code*			
DI Officer Name*	<i>First</i>	<i>Middle Initial</i>	<i>Last</i>
Title of DI Officer*			
Authorized Signature*			
Date*			