



Federal Reserve Bank Agreement for Electronic Return Notification Service for Non-Imageable Returned Checks (Attachment II)

FRBservices.org

Servicing FRB Office: _____

Effective Date: _____

1.0 GENERAL

1.1

This Agreement sets forth the terms of our Electronic Return Notification Service.

1.2

The Electronic Return Notification 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 Return Notification 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 Bank of First Deposit in a nonimageable electronic return 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 return cash letters in accordance with our time schedule on each of our banking days that we receive an Eligible Item. If the Bank of First Deposit 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 Bank of First Deposit shall establish a cut-off hour no earlier than 2:00 p.m. (local time for the location associated with the Bank of First Deposit's transit number) for receipt of non-imageable electronic return cash letters. The Bank of First Deposit shall manage its electronic connection so as to permit us to transmit or deliver non-imageable electronic return cash letters to it in a timely manner throughout the day. It is the responsibility of the Bank of First Deposit to exercise due diligence to retrieve files that have been transmitted or delivered and to identify and notify the Reserve Bank immediately in any instance in which the Bank of First Deposit would reasonably expect to receive a non-imageable electronic return cash letter file but does not receive such a file., The Bank of First Deposit shall give us prompt notice of its failure to receive a nonimageable electronic return cash letter on a day that is a banking day for both the Bank of First Deposit and us.

2.3

The receipt of a non-imageable electronic return cash letter by the Bank of First Deposit constitutes a Return Notification with respect to each of the Eligible Items reflected in the MICR line information contained in the cash letter. Upon receipt of a Return Notification, the Bank of First Deposit shall take appropriate actions to avoid financial loss, for example, by placing a hold, if possible, on the funds representing the proceeds of the returned item, and shall also notify its depositor promptly of the facts by midnight of the banking day following the banking day on which the bank received the Return Notification or within a longer reasonable time.

2.4

In addition to providing a Return Notification for each returned Eligible Item, the Reserve Bank will physically return each Eligible Item to the Bank of First Deposit, using a means of delivery chosen by the Reserve Bank, but in no case a means less expeditious than the U.S. Postal Service's first class mail.

2.5

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

2.6

Return of an Eligible Item occurs when the Bank of First Deposit receives a returned check that the Reserve Bank has sent to the Bank of First Deposit as provided in paragraph 2.4 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 Bank of First Deposit 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) **Return Notification** means electronic information with respect to each Eligible Item provided by the Reserve Bank to the Bank of First Deposit in accordance with the terms of this Agreement. A Return Notification is not a notice in lieu of return as described in section 229.30 of Regulation CC or a notice of non payment that a paying bank provides in accordance with section 229.33 of Regulation CC.

(b) **non-imageable electronic return 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) For purposes of this Agreement, **Eligible Item** means a returned check that is being routed to the Bank of First Deposit that (i) contains in the MICR-line the routing number of the Bank of First Deposit, (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.

Agreement for Electronic Return Notification Service for Non-Imageable Returned Checks (Attachment II)

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

(e) **Bank of First Deposit** means a Bank that subscribes to the Electronic Return Notification and Image Information Service, and includes its agent for receiving returns.

4.0 TERMINATION

4.1

We or the Bank of First Deposit 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 Bank of First Deposit, (i) if we, in our sole discretion, determine that the financial condition of the Bank of First Deposit poses a risk to us; or (ii) if we, in our sole discretion, determine that the Bank of First Deposit's Electronic Access should be suspended or terminated in accordance with Operating Circular 5..

5.0 SETTLEMENT

5.1

A Reserve Bank debits the account maintained or used by the Bank of First Deposit for the total dollar amount of all Eligible Items whose Return Notifications we have transmitted to the Bank of First Deposit pursuant to this Agreement on the day on which we transmit the Return Notifications.

6.0 RELATION TO REGULATIONS J AND CC AND OPERATING CIRCULARS

6.1

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.

7.0 RESERVE BANK WARRANTIES AND LIABILITY

7.1

We warrant that MICR-line information we transmit to the Bank of First Deposit 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 Bank of First Deposit. The Bank of First Deposit 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 Bank of First Deposit, the other Reserve Bank makes the same warranty to us.

7.2

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.

7.3

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 Bank of First Deposit. The Reserve Bank that transmits a Return Notification to the Bank of First Deposit is liable only to the Bank of First Deposit and only for its breach of the warranties expressly set forth herein, or for its lack of good faith or failure to exercise ordinary care. If the Reserve Bank fails to provide a Return Notification related to an Eligible Item as provided in this Agreement, the Reserve Bank's liability to the Bank of First Deposit for such failure shall be limited to the amount of the fees paid by the Bank of First Deposit to the Reserve Bank specifically for the Return Notification Service during the thirty day period immediately prior to the date of the alleged failure. The Bank of First Deposit shall give us prompt written notice of any claim by or against it that may give rise to a claim against us.

8.0 REJECT REPAIR SERVICES

8.1

The Reserve Bank will perform repair services with respect to the data contained in the MICR-line of the Return Notification for each Eligible Item. 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.

8.2

In performing MICR repair or key entry services, the Reserve Bank acts as the Bank of First Deposit'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.

8.3

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.

8.4

With respect to any action that the Reserve Bank takes to carry out a Bank of First Deposit's instruction with respect to MICR repair or key entry services under this paragraph, the Reserve Bank shall be liable only to the Bank of First Deposit, 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 Bank of First Deposit 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.

9.0 INDEMNIFICATION BY BANK OF FIRST DEPOSIT

9.1

The Bank of First Deposit 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 subagent of the Bank of First Deposit, 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 Bank of First Deposit's indemnification obligation shall survive the termination of services provided under this Agreement.

Agreement for Electronic Return Notification Service for Non-Imageable Returned Checks (Attachment II)

10.0 FEES

10.1

Fees for our Electronic Return Notification are set forth in a fee schedule that we publish and amend from time to time. A Reserve Bank charges the fees to the Bank of First Deposit.

11.0 MISCELLANEOUS

11.1

If the Bank of First Deposit 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.

11.2

It is the responsibility of the Bank of First Deposit 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 Bank of First Deposit 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.

12.0 TERM OF THE AGREEMENT

12.1

This Agreement becomes effective after the Bank of First Deposit has signed and submitted the Agreement, on the date on which the Reserve Bank begins to provide the Electronic Return Notification 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 Return Notification Service; or (ii) the date on which the Bank of First Deposit or the Reserve Bank terminates the Agreement in accordance with paragraph 4 above.

Unless this Agreement is terminated prior to the date on which Operating Circular 3 is amended to include the Electronic Return Notification Service, the Reserve Bank will continue to provide, and the Paying Bank will continue to receive, the Electronic Return Notification 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*			