

**AUTOMATED CLEARING HOUSE ("ACH") SERVICES AMENDMENT TO THE  
MERCHANT TRANSACTION PROCESSING AGREEMENT**

**201604 ACH SERVICES AMENDMENT MTPA STAND ALONE**

THIS Amendment ("AMENDMENT"), by and between FIRST NATIONAL BANK OF OMAHA ("BANK"), TSYS MERCHANT SOLUTIONS, LLC ("TMS"), and "MERCHANT," shall become effective on the date the Products and Services Amendment to the Merchant Transaction Processing Agreement is executed or approved by a duly authorized representative of BANK. BANK, TMS, and MERCHANT shall be collectively known hereafter as the "PARTIES." The words "you" and "your" refer to MERCHANT. The words "we," "us" and "our" refer to BANK.

WHEREAS, the PARTIES are parties to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), under which the MERCHANT receives transaction processing and other services regarding credit and debit card sales transactions ("SALES"), subject to the terms and conditions more fully set out in AGREEMENT; and

WHEREAS, the PARTIES desire to amend the AGREEMENT to add Automated Clearing House ("ACH") Services.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

**1. GENERAL**

- 1.1 Capitalized terms that are not defined herein shall have the same meaning as when defined in the AGREEMENT or the REGULATORY RULES (as defined herein).
- 1.2 To the extent TMS is not already a PARTY to the AGREEMENT, the PARTIES agree to amend the AGREEMENT to make TMS a party to the AGREEMENT. BANK will continue to sponsor MERCHANT into the CARD BRANDS, retain the responsibility of settling MERCHANT's SALES, and all other obligations that are required to be retained at BANK by the CARD BRANDS. TMS will be responsible for all other responsibilities and obligations to MERCHANT under the AGREEMENT, including but not limited to processing SALES and handling customer service.
- 1.3 The PARTIES agree to add ACH Services (as set forth below) to the definition of SALES and SERVICES as defined in the AGREEMENT.

**2. ACH SERVICES TERMS AND CONDITIONS**

2.1 Services. We agree to support the ACH entry types designated in the applicable Enrollment Form, which is incorporated herein by this reference. The "ACH Services" contemplated by this Agreement will be either: (i) our standard ACH services, which we will provide to you and which will consist of, but may not be limited to, processing ACH transactions based on information you provide; or (ii) if you have engaged a third party service provider (your "TPS"), our services will consist of serving as the Originating Depository Financial Institution ("ODFI") for ACH entries submitted to us by your TPS and debiting and/or crediting the amount thereof to the DESIGNATED ACCOUNT. We agree to comply with the terms of this AMENDMENT and agree to use ordinary care in performing ACH services hereunder. So long as we exercise such diligence as the circumstances may require, our failure or delay in performance will be excused if due to interruption of communications or computer facilities, failure of equipment, emergency conditions, or other circumstances beyond our control. You are responsible for any implementation required on your end, including but not limited to systems and personnel required to collect and transmit the files to us or your TPS in the required format, as well as fraud detection tools, and any other obligations designated by the REGULATORY RULES, as defined herein.

2.1.1 Your Use of a Third Party Sender. If you are using a TPS, then that TPS must have an agreement with us. The TPS shall be considered your agent with full power and authority to act on your behalf until we receive written notice from you to the contrary and have had a reasonable opportunity to act thereon. **YOU UNDERSTAND AND AGREE THAT YOUR TPS HAS FULL POWER AND AUTHORITY TO PROVIDE US WITH INSTRUCTIONS PERTAINING TO ACH ENTRIES FOR WHICH YOU WILL BE RESPONSIBLE AND THE AUTHORITY TO INITIATE ACH DEBITS AND CREDITS TO THE DESIGNATED ACCOUNT. WE HAVE NO OBLIGATION OR LIABILITY WHATSOEVER WITH RESPECT TO: (1) ACTS, ERRORS, OMISSIONS OR DELAYS BY YOUR TPS; (2) REPRESENTATIONS OR**

**WARRANTIES MADE BY YOUR TPS; (3) LOSSES TO YOU ARISING OUT OF YOUR TPS'S INSOLVENCY; OR (4) MISAPPROPRIATION OF YOUR FUNDS BY YOUR TPS. YOUR TPS IS NOT AN AGENT OR REPRESENTATIVE OF OURS AND HAS NO POWER OR AUTHORITY TO ACT OR MAKE COMMITMENTS ON OUR BEHALF. WE DO NOT INTEND TO AND HAS NO OBLIGATION TO MONITOR THE TRANSACTIONS YOUR TPS INITIATES IN RESPECT OF YOUR FUNDS.**

- 2.2 Debits and credits. All debits and credits made pursuant to this AMENDMENT shall be posted to the DESIGNATED ACCOUNT. All ACH and credit card transaction debits and credits must be deposited into one DESIGNATED ACCOUNT per Merchant Identification Number ("MID"). You agree to maintain sufficient balances in available funds in the DESIGNATED ACCOUNT to cover all credit transactions you submit to us. If the DESIGNATED ACCOUNT does not have a sufficient balance, we may, at our option, either debit any other account of yours to provide such balances or decline to forward such transactions. We may require you to pre-fund certain types of ACH transactions. You agree to immediately reimburse us for any overdrafts created by transactions initiated for you, whether through originating credit transactions for which there were not sufficient funds, or for returns received by us in respect of originating debit transactions or otherwise.
- 2.3 Operating Procedures. You agree to follow and require your TPS to follow the Operating Procedures that we establish for use of the services, including, without limitation, required input formats and delivery deadlines (including restrictions on the types of ACH transactions that may be initiated). We may at any time place a hold on, and if necessary interplead, funds if we receive a request to do so or other demand or claim from the Receiver of one of your ACH entries with respect to such funds. We are not responsible for canceling or amending any ACH entry once sent, dishonoring returns, refusing notifications of change or for any other matter not specifically provided herein. We reserve the right to modify or discontinue the ACH Services and/or modify the Operating Procedures at any time.
- 2.4 Your Responsibility. Except as otherwise provided herein, you are responsible for the accuracy and adequacy of the input data provided to us and the ACH entries transmitted on your behalf. We are not responsible for collecting on items we are unable to process through our system. If a third party claim is made against us arising out of your ACH entries, breach of the AGREEMENT or AMENDMENT, or breach of any warranty under the REGULATORY RULES, you agree to defend, indemnify and hold us harmless against such claim, including without limitation claims by Receivers of entries. We may defend on our own any such claims or demands or request you to take up such defense. In either case as set out above you will further indemnify us for reasonable attorney fees or other necessary expenses incurred by us by reason of such defense or claims. The provisions of this section are in addition to and not in lieu of any existing provisions in the AGREEMENT.
- 2.5 Fees.
- 2.5.1 Unless you are using a TPS, you agree to pay us the FEES for the ACH Services set forth in the applicable Enrollment Form. These FEES may be amended upon thirty (30) days notice to you.
- 2.5.2 If you are using a TPS, we may, on behalf of your TPS, debit from your DESIGNATED ACCOUNT the TPS's FEES for the ACH Services set forth in the applicable Enrollment Form. These FEES may be amended upon thirty (30) days notice to you. All disputes with regard to these FEES shall be resolved solely between you and your TPS.
- 2.5.3 In either case, you agree to pay any additional FEES, fines, or charges levied against us by any regulatory agencies or NACHA due to your actions or inactions associated with the ACH Services, which include, but are not limited to, your compliance with the REGULATORY RULES.
- 2.6 Compliance with Law.
- 2.6.1 Regulation E; National Automated Clearing House Association ("NACHA") Rules. You agree to comply with the Electronic Fund Transfer Act, the Unlawful Internet Gambling Enforcement Act, Federal Reserve Regulation E, and other applicable federal and state laws and regulations, to the extent that the same may be applicable to the transactions processed hereunder. You represent that all ACH entries initiated on your behalf are the result of bona fide business transactions between you and your customer and no such entries are, directly or indirectly, for

the benefit of any third party, whether in a service bureau or other context. You understand that you will be considered the Originator of all ACH entries submitted hereunder, and agree to comply with all rules and operating guidelines of the NACHA Rules and other relevant clearing house associations which are applicable to Originators, as the same may be applicable to transactions processed hereunder. Collectively, the Electronic Fund Transfer Act, the Unlawful Internet Gambling Enforcement Act, Federal Reserve Regulation E, other applicable federal and state laws and regulations, and all NACHA rules and operating guidelines and other relevant clearing house associations, are hereinafter referred to as the "REGULATORY RULES." You understand that Sections 2.6.1.1 through 2.6.1.10 are not a complete or exclusive summary of NACHA Rules, and agree that we may provide you with revised summaries of REGULATORY RULES from time to time in the future. If you continue to initiate entries after we provide such an update, you will be considered to have agreed to the terms set forth in that update (except that if you cease initiation of entries within 45 days after the date of such an update, initiation of entries during that 45-day period will not constitute your agreement). You are responsible for obtaining and being in compliance with the most current REGULATORY RULES.

**2.6.1.1 Compliance with NACHA Rules and Law.** By providing or permitting your TPS to provide information about ACH entries to us, you authorize us to transmit, and to debit or credit the amount of those entries (referred to below as "your entries") to the Receiver's account. You agree not to initiate entries that violate the laws of the United States.\* (*\*IMPORTANT: These laws include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It is your responsibility to obtain information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800) 540-OFAC.*) BANK and TMS reserve the right to review, monitor, and audit your ACH transactions, processes, and procedures for your compliance with the AGREEMENT and the REGULATORY RULES and you agree to cooperate as requested by BANK and/or TMS.

**2.6.1.2 Receiver Authorization.** You represent that you are and shall remain in compliance with all REGULATORY RULES, including but not limited to rules regarding ACH Authorizations from and notifications due to Receivers. As to each of your entries you represent that: (1) The Receiver has authorized you to initiate your entries to the Receiver's account; (2) In the case of CBR, CCD and CTX entries, the Receiver has an agreement with you to be bound by these rules as in effect from time to time; (3) In the case of debit entries to Consumer Accounts (including, but not limited to, TEL and WEB entries), you have obtained the consumer's authorization in the form, content and manner required by the Rules; (4) In the case of WEB entries, you have implemented a commercially reasonable fraudulent transaction detection system to screen entries, you have taken commercially reasonable steps to verify the routing number, you establish secure Internet sessions utilizing commercially reasonable technology prior to consumer key entry of banking information, and you have complied with the security audit requirements set forth in the REGULATORY RULES (and you agree to provide us with copies of such audit reports promptly after they are completed); and (5) In the case of TEL entries, you have given the consumer the notices required by the Rules and you have taken commercially reasonable steps to verify the consumer's identity and routing number. You agree to retain and promptly provide copies or other evidence of such authorizations, notifications, and other materials within one (1) business day from request by us or as required by the REGULATORY RULES or as otherwise requested by us.

**2.6.1.3 Prenotifications.** If you initiate prenotifications, you agree to send them as required by the REGULATORY RULES. If the RDFI indicates it cannot accept such entries, you agree not to initiate the entries.

**2.6.1.4 Credit Entries.** In the case of credit entries subject to UCC Article 4A (in general, this means non-consumer credit entries), you are hereby notified that: (1) these entries may be transmitted through the ACH; (2) your rights and obligations concerning these entries shall be governed by and construed in accordance with New York law (in all matters between you and us, however, Nebraska law shall govern); (3) credit given by

the Receiving Depository Financial Institution (“RDFI”) to Receivers is conditional until final settlement or payment in accordance with UCC 4A; and (4) if an RDFI does not receive such payment, the RDFI is entitled to a refund from the Receiver and you will not be considered to have paid the Receiver.

- 2.6.1.5 **Rejection of Entries; Originating Depository Financial Institution (“ODFI”) Exposure Limits.** We may refuse to transmit entries that would violate the general or special exposure limits that we have adopted with respect to you or your TPS. We also reserve the right to refuse entries in our discretion, including but not limited to, entries which we determine may expose us to a risk of loss, including, but not limited to, insufficient funds in your account.
- 2.6.1.6 **Your Entries.** We make numerous warranties and indemnities to third parties concerning your entries and files, as specified in the REGULATORY RULES. You agree to reimburse us for any payments we are required to make to these third parties with respect to your entries or files. You also agree to comply with all of your obligations in Article Three of the NACHA Rules (Obligations of Originators). If we are fined due to your infractions of the REGULATORY RULES, you are responsible for reimbursing us for the amount of that fine and any other associated costs related thereto. You agree not to reinitiate entries except as permitted by the REGULATORY RULES. You agree that reversing entries and reversing files must be transmitted on a timely basis as required by the REGULATORY RULES and in accordance with our instructions.
- 2.6.1.7 **Notifications of Change.** You agree to make changes requested in a Notification of Change within the timeframes identified by the REGULATORY RULES or prior to initiating another entry to the Receiver’s account (whichever is later).
- 2.6.1.8 **Returns, Adjustments, Etc.** All credits we send to your DESIGNATED ACCOUNT are considered provisional until we receive final settlement, and we reserve the right to reverse those entries or initiate correcting debit entries for SPECIAL HANDLING CLAIMS (as defined herein). To the extent that any credits to your DESIGNATED ACCOUNT are revoked or affected by any third party claim or demand or any other process recognized by the REGULATORY RULES (such as, but not limited to, returns, reversals, adjustments, reclamations, notifications of change, or claims based on breach of any warranty made by Originators or ODFIs under the REGULATORY RULES) or to the extent that we are required to indemnify any Receiver, RDFI or other third party in respect of your entries (collectively, “SPECIAL HANDLING CLAIMS”), you agree to reimburse us through the DESIGNATED ACCOUNT or other method as designated by us. Our right of reimbursement is absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment, or right of recoupment. If SPECIAL HANDLING CLAIMS become excessive (in our judgment) we may adjust fees, require reserves and/or modify or discontinue services.
- 2.6.1.9 **Entries based on Paper Items.** If your entries are based on paper items (for example, XCK, POP or ARC entries), you are responsible for compliance with all requirements of the REGULATORY RULES that pertain to those entries. This responsibility includes, but is not limited to, responsibility for requirements pertaining to initiation of entries (including rules regarding eligibility of the underlying items), required notices to Receivers, opt out rights, separation of fees, and requirements regarding keeping, destroying or providing copies or originals of the underlying items. You also have the responsibility specified in the preceding paragraph with respect to any special warranties or indemnities that we make under the rules as to these entries. If we are processing ARC entries for you and also providing lockbox services: (1) you must provide the identifying information that we request to identify those of your customers that have opted out of ARC entries, in which case we will use reasonable efforts to match incoming items to those customers and process those customers’ items as paper items not ARC entries; and (2) in the event that our ability to process ARC entries is

interrupted, we will process the affected items as paper items until the interruption is eliminated.

2.6.1.10 **Information Security.** You agree to comply with all relevant data security requirements (including, but not limited to, those requiring the use of encryption technology where ACH information is transmitted over unsecured networks such as the internet).

2.6.2 Other Compliance. You are prohibited from using our services in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us or our vendors to investigation, prosecution, or legal action. You further agree: (1) to receive, resolve and respond to consumer alleged errors under applicable laws, regulations and the REGULATORY RULES; and (2) you are responsible for promptly handling and, if necessary, responding to and resolving at your own expense any SPECIAL HANDLING CLAIMS we refer to you.

2.7 Risk Management. You are solely responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, contractors, and third party service providers (such as third party payroll administrators), including your TPS, any persons granted signature authority on your accounts and any persons who are permitted to initiate and/or give us instructions in respect of your entries (collectively, "YOUR PERSONNEL"). We are entitled, without further inquiry or investigation, to assume that the actions of YOUR PERSONNEL are appropriate and authorized by you. This authorization will remain in effect unless we receive written notice to the contrary from you and have had a reasonable opportunity to react thereto. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls that will prevent (or at least allow the early detection of) fraud or other unauthorized activity by YOUR PERSONNEL. As between you and us, you agree to accept sole responsibility for losses attributable to any and all acts and omissions of YOUR PERSONNEL.

2.9 Fraud. You are responsible for all unauthorized or fraudulent transactions of or pertaining to the ACH Services. You agree to reimburse and/or pay us the principal amount of the transaction, plus any corresponding losses, damages, or other amounts associated with said transaction.

2.10 Notices with Respect to Credit Transactions. Under the operating rules of NACHA, which are applicable to ACH transactions involving your account, we are not required to give notice to you of your ACH activity. However, we may notify you of ACH exception items (receipt of payments, notification of change, and the debiting of your account for returns via an automated e-mail notification. You must provide us with your e-mail address on the applicable Enrollment Form, and advise us of any updates to that e-mail address on a timely basis. We will not notify you of exception items if we do not have a valid e-mail address on file. If you prefer to receive reporting for ACH via TSYS InfoCenter, which displays information related to your ACH services and your credit card transaction processing activity via a web interface, you must be currently enrolled for access to TSYS InfoCenter. You may obtain such access by completing the applicable amendment and the TSYS InfoCenter Access Application form, which will be made available upon request.

2.11 Warranty. You warrant that the information you provided in the applicable Enrollment Form is complete and accurate, and contains material facts, which may be used to calculate FEES and establish transaction parameters. If any of this information is incorrect or inaccurate, you agree that we may, among other actions, immediately amend FEES, revise transaction parameters, and/or terminate your ACH services, as we deem necessary in our sole discretion.

2.12 **Disclaimer.** **CUSTOMER UNDERSTANDS AND AGREES THAT BANK'S SOLE LIABILITY WITH RESPECT TO SERVICES PROVIDED HEREUNDER SHALL BE AS SET FORTH HEREIN. IN THE EVENT THAT BANK FAILS TO PERFORM SERVICES PROPERLY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND BANK'S SOLE OBLIGATION SHALL BE FOR BANK TO REPERFORM THE SERVICES AT ITS OWN EXPENSE. BANK DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL IN RESPECT OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICES ARE NOT WARRANTED TO BE FREE FROM ERROR OR INTERRUPTION. BANK SHALL HAVE NO LIABILITY, WHETHER ARISING IN CONTRACT, TORT**

**(INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR BANK'S SERVICES. IN NO EVENT WILL BANK BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER BANK WAS INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER'S REMEDIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES IN LAW OR EQUITY.**

- 2.13 Term. This AMENDMENT shall remain in effect until the earlier of: (i) termination by any PARTY, with or without cause, upon thirty (30) days notice to the other; (ii) termination or expiration of the AGREEMENT; or (iii) immediate suspension or termination by BANK based on our assessment of the risk posed to BANK and/or your failure to comply with the AGREEMENT or the REGULATORY RULES. Terminations shall be effective as to prospective transactions only, and shall not alter the rights of the PARTIES as to transactions prior to the effective date of termination.
- 2.14 Privacy. Provision of services hereunder may require that we receive certain information concerning your consumers (e.g., their checking account numbers). We agree to use reasonable efforts to maintain the confidentiality of such information and agree not to use or disclose the same except as necessary in connection with the provision of services to you. Disclosures of the type described in 12 C.F.R. Sections 40.11, 40.13, 40.14 and 40.15 shall not be deemed prohibited by the foregoing. You are solely responsible for obtaining and maintaining any and all necessary rights, power, and authority to provide this information to us and for providing applicable privacy disclosures, if any, to your consumers.
- 2.15 ACH User Guide. TMS shall make its ACH User Guide (the "Guide") available to MERCHANT at [www.tsysttransactionssummary.com](http://www.tsysttransactionssummary.com). It is at MERCHANT'S sole discretion whether MERCHANT will review and/or use the Guide. The PARTIES understand that TMS' provision of the Guide to MERCHANT is solely as a guidance tool for MERCHANT, and neither BANK nor TMS take any responsibility for MERCHANT'S use of the Guide.

### **3. MISCELLANEOUS**

- 3.1 This AMENDMENT, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing and ACH Services, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
- 3.2 Except as amended hereby, BANK, TMS and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.
- 3.3 **CHANGES TO THESE TERMS AND CONDITIONS MUST BE APPROVED BY AN AUTHORIZED OFFICER OF FIRST NATIONAL BANK OF OMAHA. SALES REPRESENTATIVES ARE NOT PERMITTED TO MAKE ANY REPRESENTATION OR WARRANTY NOT CONTAINED HEREIN AND CANNOT WAIVER, ALTER OR AMEND THE PRINTED TERMS AND CONDITIONS HEREOF.**

#### **NOTICE**

Credit given by BANK to you with respect to an ACH credit entry is provisional until BANK receives final settlement for such entry through a Federal Reserve Bank. If BANK does not receive such final settlement, you are hereby notified and agree that BANK is entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not be deemed to have paid you in the amount of such entry. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your Account, BANK is not required to give next day notice to you of receipt of an ACH item and BANK will not do so. However, BANK will continue to notify you of the receipt of payments via TSYS InfoCenter. BANK may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and BANK, Nebraska law shall govern.