

## External Transfers Terms and Conditions

### Effective 11/2/2016

#### **PLEASE READ THIS AGREEMENT CAREFULLY BEFORE REGISTERING FOR THIS SERVICE.**

These Terms and Conditions govern your use of NBH Bank's (the "Bank") External Transfers service ("External Transfers"). You may use External Transfers to send payments via the Automated Clearing House network ("ACH") to a deposit account that is held at a financial institution other than the Bank. You may request External Transfers and designate certain types of consumer accounts, including checking, savings and certain money market accounts, from which these payments will be made (the "ACH Account"). By completing and submitting an External Transfer via Online Banking or Mobile Banking, or permitting anyone to initiate a payment via ACH from the ACH Account, you agree to these Terms and Conditions. These Terms and Conditions supplement the Applicable Agreements (as defined below), all of which also govern your use of External Transfers.

These Terms and Conditions incorporate: (a) the designations and other information you provide when completing and submitting each External Transfer request via Online Banking or Mobile Banking; and (b) any instructions or additional information that may be provided to you regarding External Transfers by us or through Online Banking or Mobile Banking. Unless otherwise defined in this Agreement, all capitalized terms shall have the meaning given to them in the NACHA Operating Rules and Guidelines. These Terms and Conditions cover only ACH credit entries (which are transfers from your ACH Account to a deposit account held at another financial institution), and does not apply to the processing and transmission of ACH debit files, batches or items or other ACH credit entries, which may not be initiated through External Transfers under this Agreement.

#### **DEFINITIONS**

**"ACH Software"** means the software that we use to provide External Transfers.

**"Applicable Agreements"** means these Terms and Conditions, the Bank's Deposit Account Agreement and Disclosure, the Bank's Online Banking Agreement, and the End User Agreement for the Bank's Mobile Banking service.

**"Authorized ACH User"** means an individual who is an owner of or signer on the ACH Account and has access to the ACH Account via the Bank' Online and Mobile Banking services.

**"Collected Funds"** means available funds in the ACH Account.

**"Corrected Entry"** means an Entry submitted to correct an Incorrect Entry.

**"Entry"** means an ACH credit entry file (including any batches contained within a file) which is submitted to us for processing under your subscription to Online or Mobile Banking services.

**"Entry Window"** means those specific times in each Business Day during which we may collect and process Entries via our ACH systems.

**"Fed"** means the Federal Reserve Bank, to which all Entries for Recipients to be paid through other financial institutions must be sent.

**"Incorrect Entry"** means an Entry for which the ACH file, as determined by us in our sole discretion, fails to conform to the requirements of any and all applicable NACHA Operating Rules and Guidelines or contains a mistake.

**"In-Process Entry"** means an Entry initiated through your subscription to Online or Mobile Banking services and in process on any date for which settlement has not occurred.

**"Intended Transmission Date"** means the last date on which we may transmit an Entry to the Fed in order for the Entry to settle with the Recipient on the Requested Settlement Date.

**"Last Fed Entry Window"** means the last Entry Window during which we may transmit Entries to the Fed. This Entry Window currently is scheduled for 6:00 PM Central Time.

**"NACHA"** means the National Automated Clearing House Association.

**"Overlimit Entry"** means an Entry that would exceed the daily or monthly aggregate limits that are set by the Bank in the Bank's sole discretion.

**"Participating Depository Financial Institutions"** means, collectively, the Bank and all other financial institutions holding accounts held by you and Recipients which are accessible through an applicable regional clearing house association.

**"Recipient"** means the person, entity or other organization holding the account to be credited at a Participating Depository Institution pursuant to an Entry.

**"Requested Settlement Date"** means the date you initially request as the date for an Entry to settle with its Recipient.

**"Rules"** mean the operating rules and operating guidelines of the applicable regional clearing house association and NACHA.

**"Settlement Date"** means, with respect to any Entry, the date on which such Entry is reported to the account of the Bank by the applicable Federal Reserve Bank in accordance with the Rules.

## **AUTHORIZATION FOR EXTERNAL TRANSFERS**

You authorize and direct us to process each Entry submitted through External Transfers and in compliance with the Security Procedures described below. You are responsible for generating and authorizing all Entries and delivering the same to us in the form and format specified in this Section and by the system providing External Transfers.

## **SECURITY PROCEDURES**

In addition to complying with the security procedures required by the Bank's Online Banking Agreement, you and each Authorized ACH User also must use the security techniques that the Bank has established specifically for External Transfers. These additional security techniques, together with the security procedures required by the Online Banking Agreement, are referred to in these Terms and Conditions as the **"ACH Security Procedures."** The Bank may change the ACH Security Procedures as provided herein, and will provide instructions to you about the requirements of the ACH Security Procedures in effect from time to time. You agree that you and each Authorized ACH User will take all actions required to comply with the ACH Security Procedures, including maintaining the confidentiality and security of your passwords and personal identification numbers ("PINs"), changing your passwords and PINs from time to time, and immediately reporting any suspected loss or unauthorized use of passwords or PINs. You agree to assume the risk of loss with respect to any ACH transfer initiated by any Authorized ACH User who has failed to comply with the ACH Security Procedures, and you agree to hold the Bank harmless from and against any loss caused by this failure.

## **YOUR AGREEMENT TO SECURITY PROCEDURES**

You agree that the ACH Security Procedures constitute a commercially reasonable security procedure for you and your transactions. You agree to be bound by any Entry (or any request to reverse or cancel an Entry) for a transfer initiated on your account through Online Banking or Mobile Banking and accepted by us in compliance with the ACH Security Procedures, regardless of whether or not you or any Authorized ACH User actually authorized the Entry. If an Entry is accepted by us in compliance with the ACH Security Procedures, and the Entry contains any error, to the full extent allowed by law you shall be liable for, and shall indemnify us against, the amount of the Entry and all claims and all of our losses and expenses, including attorneys' fees,

relating to the erroneous Entry. Our records demonstrating compliance with the ACH Security Procedures with respect to any Entry will be deemed conclusive proof that the Entry received by us was authorized and you are bound by that Entry.

If an Entry (or any request to reverse or cancel an Entry) received by us was transmitted or authorized by you or any Authorized ACH User, you shall be obligated to pay the amount of the Entry regardless of (i) whether or not we complied with the ACH Security Procedures with respect to that Entry, (ii) whether or not that Entry was erroneous in any respect, and (iii) whether or not that error would have been detected if we had complied with the ACH Security Procedures.

You acknowledge and agree that in the event you, whether acting directly or through an Authorized ACH User, request us to accept any Entry made using any security procedures other than the ACH Security Procedures (which we may accept or refuse at our discretion), then you will be deemed to have chosen other security procedures after we offered and you refused security procedures that were commercially reasonable for you, and you expressly agree to be bound by any Entry, whether or not authorized, issued in your name in accordance with such other security procedures.

### **PREPAYMENT FOR ENTRIES**

You authorize us, immediately upon our receipt of any Entry, to debit the ACH Account for the Collected Funds required by that Entry. You understand that, because of the automated systems used to provide ACH services, we automatically will debit the ACH Account for that Entry, even if the Entry subsequently will be suspended, as described below in the provision regarding Incorrect Entries, in the provision regarding Entries that contain an ACH debit file, batch or item, and in the provision regarding Overlimit Prepaid Entries and In-Process Entries. You agree that, whenever you submit an Entry to us for processing and transmission, you must have Collected Funds in the ACH Account in an amount equal to or greater than the Entry, or, if more than one Entry is submitted, the aggregate amount of the submitted Entries. You understand that we may debit the ACH Account either by actually deducting funds from the ACH Account or by placing a hold on funds in the ACH Account. In either case, once we have debited the ACH Account for the funds required by the Entry, those funds will not be available to you for any other purpose, including the payment or settlement of other items from that ACH Account.

### **TIMING FOR PREPAYMENT OF ENTRIES**

You acknowledge that we transmit Entries to the Fed only during certain Entry Windows. You agree that, regardless of your requests or instructions to us, we have no obligation to transmit any Entry to the Fed on a particular day unless there are Collected Funds in the ACH Account for that Entry before the Last Fed Entry Window for that day. You agree that, in the event the Collected Funds required for any Entry do not become available in the ACH Account until after the Last Fed Entry Window on the Intended Transmission Date, we are authorized to debit the ACH Account for the Collected Funds required for that Entry on the Intended Transmission Date, even though we may not transmit the Entry until an Entry Window on the next Business Day.

**You acknowledge and agree that, if the Collected Funds required for any Entry do not become available in the ACH Account until after the Last Fed Entry Window on the Intended Transmission Date, then the Entry may not settle with its intended Recipient until a date after the Requested Settlement Date.**

**PROHIBITED PAYMENTS**

You agree not to use External Transfers to make any payment IAT entries including, but not limited to, using funds that were sent to you from outside the United States if the funds were accompanied by instructions specifying one or more payments to be made with those funds or to make a payment outside the United States or for any payments that violate applicable law or any other agreements with the Bank.

**INSUFFICIENT COLLECTED FUNDS**

If you do not have sufficient Collected Funds in the ACH Account for any Entry, we have no obligation to process or to transmit that Entry, and may suspend processing of that Entry. If you have submitted more than one Entry, we may process and transmit only those Entries for which you have Collected Funds. If we receive an Entry for which there are insufficient Collected Funds in the ACH Account, we may attempt to notify you, but you agree that we shall have no liability to you for failure to notify you regarding the insufficiency of Collected Funds. We will maintain the suspended Entry in our ACH system until the Requested Settlement Date, checking at each Entry Window to see if sufficient Collected Funds have become available in the ACH Account for that Entry. If sufficient Collected Funds are not available in the ACH Account for the suspended Entry by 6:00 PM Central Time on the Requested Settlement Date, that Entry automatically will be deleted from our ACH system.

**You acknowledge and agree that, if you submit an Entry for which there are insufficient Collected Funds in the ACH Account at the time of submission, then the Entry may be deleted from our ACH system and never settle with its intended Recipient or, even if Collected Funds should become available in the ACH Account at a later time, the Entry may not settle with its intended Recipient until a date after the Requested Settlement Date.**

**ENTRIES UNDER THIS ADDENDUM MAY NOT CONTAIN DEBIT FILES, BATCHES, OR ITEMS**

You agree to include only ACH credit files, batches and items within an Entry submitted under this Agreement. You agree that, if any Entry submitted under this Agreement contains an ACH debit file, batch or item, we have no obligation to process or to transmit that Entry and we may suspend that Entry, even if you have Collected Funds available in the ACH Account for that Entry, and we already have debited those Collected Funds from the ACH Account. If we receive an Entry that contains an ACH debit file, batch or item, we may attempt to notify you regarding the suspension of that Entry, but you agree that we shall have no duty to correct the Entry by deleting the ACH debit file, batch or item, and no liability to you for failure to provide this notice. Any Entry that contains an ACH debit file, batch or item will be considered an Incorrect Entry. You understand that any hold on Collected Funds covered by an Entry that contains an ACH debit file, batch or item will remain until earlier of: (i) the Entry Window occurring after you have submitted to us an authorization to delete the Incorrect Entry, and after we have had a reasonable period of time to act on that authorization; or (ii) our completion of nightly system processing on the Requested Settlement Date. You acknowledge that, if you submit another Entry to replace an Entry that contains an ACH debit file, batch or item, and we receive the Corrected Entry before receiving your authorization to delete the original Entry or we receive both the Corrected Entry and the authorization to delete during the same Entry Window, the Corrected Entry will be processed first, and the Collected Funds required for the Corrected Entry will be debited from the ACH Account before the amount of Collected Funds debited for the original Entry can be credited to the ACH Account. We make no representation or warranty with respect to the amount of time that may pass before a credit posts to the ACH Account upon the deletion of any Entry. You acknowledge that, depending on when we receive the authorization to delete an Entry, the credit to the ACH

Account for the deleted Entry may not be posted until the next business day following your submission of that authorization.

**You acknowledge and agree that, because ACH services are provided through automated systems, if you submit any Entry that contains an ACH debit file, batch or item, the Entry will be considered an Incorrect Entry and the Entry may be deleted from our ACH system and never settle with its intended Recipient.**

#### **OVERLIMIT ENTRIES**

The Bank reserves the right to set daily and monthly aggregate limits on the dollar amount of External Transfers you may send. If you submit an Overlimit Entry, we may suspend or reject the Overlimit Entry, even if you have sufficient Collected Funds available in the ACH Account to cover the Overlimit Entry.

**You acknowledge and agree that, because ACH services are provided through automated systems, if you submit any Overlimit Entry, then: (i) we may reject the Overlimit Entry; (ii) the Overlimit Entry and any related In-Process Entry may be suspended and we will determine whether to approve the processing of all of those Entries; and (iii) even if we determine to approve the processing of Entries in excess of daily or monthly aggregate limits, the Overlimit Entry and related In-Process Entries may not settle on the Requested Settlement Date.**

#### **REVERSING ERRONEOUS FILES, BATCHES OR ITEMS AND NOCs**

If you send an Incorrect Entry, batch or item, you must contact us to request us to initiate a reversal of that file, batch or item. You agree and acknowledge that if we receive a Notice of Correction ("NOC") file from another financial institution that results from an Entry you submit, the Entry that caused the NOC will be modified to reflect the corrected information received in the NOC and retransmitted. If the Entry that caused the NOC is a recurring Entry, all subsequent transmissions will be modified to reflect the corrected information received in the NOC.

#### **MULTIPLE ENTRIES**

If you submit multiple Entries during a single Entry Window, we may process those Entries in any order as determined by us in our sole discretion. If there are insufficient Collected Funds in the ACH Account to pay any Entry, we may suspend that Entry and process any remaining Entries. If you submit one or more additional Entries while a previous Entry remains suspended, we will process the additional Entries, and then will re-process each suspended Entry to determine whether there are sufficient Collected Funds in the ACH Account for that Entry.

#### **YOUR ADDITIONAL OBLIGATIONS**

- A. Delivery.** You shall be solely responsible for submitting all Entries within the time periods specified in the Instructional Material and, upon our request, for delivering to us any other data, information, instruments, and documents relating to each Entry submitted through External Transfers. We may reject any Entry determined by us, in our sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline.
- B. Training Authorized ACH Users.** You are solely responsible to assure that each Authorized ACH User shall be trained on and familiar with the systems used to provide External Transfers and the Rules.

**SCOPE OF EXTERNAL TRANSFERS**

We will process and transmit the Entries submitted through External Transfers to the Participating Financial Depository Institutions, subject to the Rules and this Agreement. We have no obligation to act on, correct, reverse, adjust, or stop payment or posting of Entries or Entry data that does not comply with the requirements or deadlines of the Bank or the Rules. We have no obligation to detect errors with respect to any Entry. However, if we detect an error with respect to an Entry, we will attempt to give you notice of the error, and you agree to furnish to us corrections promptly via the systems that provide External Transfers or as we shall direct. If you discover that any Entry is in error, you immediately shall give telephonic notice to us of the complete nature of the error and each affected Entry, and immediately thereafter shall confirm your telephonic notice in writing. You agree to provide all such notices to the Bank at the telephone numbers and addresses specified in the Online Banking Agreement. You have no right to reverse, adjust or stop payment or posting of any Entry after the Entry has been transmitted by us or subsequent to any earlier time as the Rules or we may prescribe from time to time, except in accordance with procedures contained in the Rules, or any other applicable agreement. We reserve the right to limit the nature and amount of the Entries processed under this Agreement and to refuse to process any Entry if, in our sole judgment (a) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (b) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (c) an Entry would create an overdraft of an ACH Account. If any of the foregoing actions are taken by us with respect to a particular Entry, we will notify you as promptly as practicable, but in no event later than two (2) business days after our decision. We have no obligation at any time to process any Entry that exceeds the Collected Funds in the ACH Account at the time that you initiate the Entry. We have the right, but not the obligation, to refuse to process any Entry for the purpose of determining whether you authorized the Entry, and shall incur no liability for any delay caused by exercising this right. We have no obligation whatsoever at any time to verify any Entry or to confirm that the Entry is initiated to make employee, tax or vendor payments, and we will have no liability for failing to verify any Entry or confirm the purpose of any Entry.

**EFFECT OF RULES**

You agree to comply with and be bound by the Rules, as they may be amended from time to time, including all limitations and requirements imposed upon you as an "Originator" under the Rules. Any changes in the Rules shall be deemed automatically to amend this Agreement, effective as of the date the changes in the Rules become effective. You agree that no Rule shall be deemed to diminish our rights under this Agreement, except in the case of direct conflict, in which event the Rules shall control. Without limiting the foregoing, we may issue from time to time operating rules and procedures to you describing the operating procedures for External Transfers. From time to time, we may also issue updates to the operating rules and procedures. You agree that you will access and utilize External Transfers in accordance with our operating rules and procedures.

**FEES**

The Bank reserves the right to charge a fee for External Transfers. The Bank will notify you of the implementation and amount of any such fee. You agree to pay any and all applicable fees, and you authorize us to deduct the amount of each fee from the applicable ACH Account. You also agree to pay and reimburse us for all governmental and third party fees or taxes arising out of or related to our providing External Transfers to you.

**RELIANCE ON YOUR INSTRUCTIONS**

You understand and agree that, unless we, in our sole discretion, elect to do so (and even then we will be acting in our own interest and not on your behalf), we will not verify the terms of any Entry submitted through External Transfers. You are solely responsible for the accuracy and completeness of all data, instructions or other information regarding any Entry that is provided to us. You authorize us to process each Entry submitted through External Transfers in accordance with the information that we receive from you in accordance with the ACH Security Procedures. We shall have no responsibility for any erroneous information you provide, and no liability for any losses you may suffer that arise from or relate to any erroneous information you provide for any Entry submitted through External Transfers.

**LIMITATION OF LIABILITY**

Except as otherwise required by applicable law, neither we nor our affiliates, third party service providers or their affiliates shall be liable, and you release and waive any and all claims against us, our affiliates, third party service providers or their affiliates for any and all losses, damages, claims, judgments, costs and expenses incurred by you or by any other person or entity, whether or not acting as your agent or employee, that arise from or relate to your use of External Transfers. The limitations on the liability of the Bank, our affiliates, third party service providers or their affiliates provided in this Section are in addition to, and shall not diminish, any limitations on this liability contained the Applicable Agreements or any other agreement between you and us.

**INDEMNITY**

- A. You agree to indemnify, protect and hold harmless the Bank, our service providers and affiliates (including their respective directors, officers, employees and agents) from and against any and all losses, damages, claims, judgments, costs and expenses (including reasonable attorneys' fees) arising from or relating to: (i) your use of External Transfers; (ii) any errors, negligence, action, inaction, or involvement by you, the Bank, our service providers and affiliates, or their actual or apparent officers, employees, and agents in connection with External Transfers, or otherwise; (iii) submission of: (A) any Entry for which there are insufficient Collected Funds at the time of submission; (B) any Incorrect Entry; (C) any Entry submitted under these Terms and Conditions that contains an ACH debit file, batch or item; or (D) any Entry that later is delayed or suspended for any other reason.
- B. Actual receipt by us of proper notice or delivery of any information (e.g., stop payment, return, processing, dishonor and similar notices required by law or under these Terms and Conditions, the Applicable Agreements, the Rules, or any other applicable agreement) from you before the deadline required by us in our sole discretion is an express and non-waivable condition precedent to our related obligation to perform any service or to meet any deadline imposed by law, any agreement or any person. You bear the burden of proof of the time and manner of our actual receipt of any notice or transmittal of information.

**TERMINATION**

We may terminate External Transfers at any time upon 30 days' notice to you. Further, we may, in our sole discretion, suspend or terminate your access to External Transfers if we believe that such access poses an unacceptable risk to you or to us. We shall use reasonable efforts to communicate notice of the termination to you promptly, and will provide written confirmation of the termination if the initial notice of termination was not communicated in writing.

**REPRESENTATIONS AND WARRANTIES**

You represent and warrant that each electronic communication submitted through External Transfers, including without limitation each Entry, shall comply with these Terms and Conditions, the Applicable Agreements, the Rules, and all applicable law. You also represent and warrant that each Entry shall be in the form of an unbalanced file. As used in this provision, an unbalanced file means an Entry that contains only the originating items for that Entry without any corresponding offset or settlement transaction. All Pre-notifications and Entries shall be submitted through External Transfers prior to the opening of business on the applicable Settlement Date in computer readable media as provided under the Rules, and in the record format specified by us from time to time. We may reject any Entry which we determine in our sole discretion not to be in compliance with our then applicable format requirements, the Rules, any federal or state laws or regulations, or the Applicable Agreements. You agree that we have no responsibility to determine whether you have complied with any federal or state law or regulation. You agree to provide any additional information and to execute any additional documents or agreements that we may request in connection with your use of External Transfers.

**EXCEPT AS REQUIRED BY LAW, THE BANK MAKES NO REPRESENTATIONS, WARRANTIES, AGREEMENTS, OR GUARANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (I) ANY REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO EXTERNAL TRANSFERS PROVIDED BY THE BANK TO YOU; (II) ANY WARRANTIES ARISING UNDER THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE IN WHICH THE BANK MAINTAINS YOUR ACCOUNTS; (III) ANY WARRANTIES WITH RESPECT TO COMPLIANCE WITH THE ELECTRONIC FUNDS TRANSFER ACT OR REGULATION E OF THE FEDERAL RESERVE BOARD; (IV) ANY RULE OR REGULATION OF ANY AUTOMATED CLEARING SYSTEM; OR (V) ANY STATE ELECTRONIC FUND TRANSFER STATUTE OR REGULATIONS.**