

FINANCIAL SERVICES AGREEMENT

This Financial Services Agreement ("FSA") is made as of _____, 20____, (the "Effective Date") between ICBA Payments, Inc. doing business as ICBA Payments ("Payments") and _____ ("Bank").

WHEREAS, Payments is a corporation engaged primarily in the provision of payment services to Banks; and

WHEREAS, Bank desires to issue credit cards and provide other payment services to its customers; and

WHEREAS, Payments has entered into an INFORMATION TECHNOLOGY SERVICES AGREEMENT with Fidelity Information Services, LLC (together with its Affiliates, "FIS") which includes General Terms and Conditions ("General Terms") and all Order Forms and Addenda, as well as all schedules, exhibits, and pricing attachments, as may be amended, restated, and/or supplemented from time to time between Payments and FIS (the "Agreement") whereby FIS has agreed to provide certain programs ("Program") to those Banks on whose behalf Payments acts as agent; and

WHEREAS, as part of the Program, FIS shall provide certain processing services ("Services" or "Program Services") as provided in the Agreement; and

WHEREAS, Bank wishes to receive the Services and the benefit of the Program;

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 Appointment of Payments

1.1 Bank hereby appoints Payments its agent ("Agent") and authorizes Payments, its officers, directors, employees and agents, to take such action as Agent on its behalf including, but not limited to, enter into and execute the Agreement with FIS as Bank's Agent, to take actions pursuant to obligations and responsibilities in the FSA or the Agreement, and to exercise such powers as are necessary, together with such powers as are reasonably incidental thereto, to include Bank in the Program and to administer the Program so that Bank may receive the Services provided by FIS pursuant to the FSA and the Agreement; provided, however, that Payments shall not be required to take any action which exposes Payments, its shareholders, officers, directors, employees and agents to liability in their individual capacities or which is contrary to this FSA, the Agreement or applicable law.

2.0 Agreement

2.1 Bank acknowledges receipt of a copy of the Agreement and the amendments and schedules thereto (all of which are attached hereto as Exhibit A). The Agreement contains a description of the Services to be provided to Bank by FIS, and the various costs and fees for such Services. Bank hereby agrees to pay FIS all costs and fees for all Program Services provided by FIS to Bank in accordance with the Agreement. The Agreement, as now or hereafter in effect, and as from time to time amended, restated, supplemented, extended or renewed, is hereby incorporated herein and made a part of this FSA as if fully set forth herein, and terms in this FSA are used as defined in the Agreement. Bank hereby specifically accepts and agrees as part of this FSA to be bound by each and every provision of the Agreement, as now or hereafter in effect, and as from time to time amended, restated, supplemented, extended or renewed. Bank further agrees to comply with and be bound by all bylaws, rules, regulations, operating manuals, operating letters, Operating Regulations, procedures and policies of FIS, VISA, Mastercard, the Program and Payments as now or hereafter in effect and as from time to time amended, restated or supplemented. FIS is a third- party beneficiary of this FSA with respect to those obligations of Bank in this FSA in favor of FIS.

3.0 **Settlement and the Settlement Account**

3.1 **TBS Platform and Payments One Credit Platform with Network Sponsorship**

(a) Bank receiving FIS Services under Schedule A. Bank agree to maintain at all times a demand deposit account (the "Settlement Account" or "SA") exclusively for the Program. Bank hereby authorizes Payments and/or FIS, through an Automated Clearing House, wire transfer, or otherwise, at Bank's expense, to access such Settlement Account on a daily basis to transfer to a Program Clearing Account ("PCA") such sums as are necessary to maintain a minimum balance ("Minimum Balance") equal to the product of the following equation:

$$\begin{aligned} & [\text{Bank's anticipated cardholder base for the next ninety (90) days, or two hundred (200), whichever is greater}] \times \\ & 4.0 (\text{anticipated transactions per cardholder account per month}) \times 85 (\text{anticipated average transaction amount}) \\ & / 22 (\text{average business days per month}) \times 3 (\text{average number of days required for clearance of transfers from} \\ & \text{Program Banks into the PCA}). \end{aligned}$$

(i) The elements of the equation shall be adjusted quarterly by FIS, or more often if deemed necessary by FIS and Payments, based on the actual volume of the previous month, and seasonal factors. Payments and/or FIS shall provide written notice of any such adjustments to Bank. Bank agrees to pay interest to Payments at the Base Rate charged by an FDIC insured Bank acceptable to Payments and FIS, plus one (1%) percent, to reimburse Payments for the payment of interest by Payments to FIS for funds advanced by FIS on behalf of Bank as a consequence of Bank's failure to maintain sufficient funds in the SA.

(ii) Payments reserves the right to modify the formula and to make other changes with respect to the requirements of this Article 3 in accordance with Payments' Operating Regulations as now or hereafter in effect and as from time to time amended, restated or supplemented.

(b) Payments shall have the right to receive directly from cardholders all payments to be made by cardholders to Bank and to apply the cardholder payments against the Settlement and other obligations of Bank at any time.

(c) The PCA shall be under the sole control of Payments and/or FIS and Bank shall have no right of access thereto.

3.2 **BASE 2000 Platform and Payments One Credit Platform without Network Sponsorship**

(a) Banks receiving FIS Services under Schedule K shall each establish a Settlement Account in the Bank's name to enable VISA and/or Mastercard to settle transactions, dues, fees, assessments, and other amounts directly to the Bank Settlement Account. The Bank shall maintain sufficient balances in the Settlement Account to enable such VISA and/or Mastercard settlements. Neither Payments nor FIS shall bear any responsibility or liability for funding of the Bank's Settlement Account.

4.0 **Term and Termination**

4.1 (a) The Term of this FSA shall be coterminous with the Term(s) of the Agreement and any extensions or renewals thereof. This Agreement shall terminate upon the occurrence of any of the events enumerated in Article 11 of the Agreement.

(b) In the event Bank desires to terminate this Agreement, Bank shall provide Payments and FIS written notice of its decision to terminate one hundred eighty (180) days prior to the last day of the Initial Term or the then current Renewal Term without Liquidated Damages, and Bank shall promptly pay to Payments all amounts enumerated in Article 11 of the Agreement, prior to termination.

(c) Upon termination of this Agreement, whether by occurrence of any of the events enumerated in Article 11 of the Agreement or pursuant to this Article 4, Bank agrees to maintain the required funds in the PCA and to maintain its Settlement Account until the later of six calendar months following termination or thirty (30) days following the last activity in Bank's account, in such amount as may be determined by Payments as necessary to cover unbilled fees, chargebacks, and other items which may be charged against such account. Bank hereby authorizes Payments and/or FIS to access such Settlement Account according to the provisions of Article 11 herein for such period and agrees to pay to Payments such interest charges as may be required by the provisions of Article 11 herein.

(d) Upon the occurrence of any of the events enumerated in Article 11 of the Agreement, the party first having knowledge of such event shall notify the other.

(e) Payments shall have the right to terminate this Agreement upon the occurrence of any of the following events:

(i) Any material breach by Bank of its obligations under this Agreement if such breach is not cured within thirty (30) days of Bank's receipt of notice of the breach;

(ii) Failure by Bank to comply with applicable State or Federal laws or regulations, any statements of policy, bulletins, notices, or guidance issued by Bank's primary Federal or State regulator or the Federal Deposit Insurance Corporation that would affect Bank's performance of the obligations set forth herein, or any bylaws, rules, regulations, operating manuals, operating letters, Operating Regulations, procedures or policies of FIS, VISA, Mastercard, the Program or Payments if such failure is not cured within thirty (30) days of Bank's receipt of notice of such failure;

(iii) Failure by Bank to provide and maintain the Minimum Balance in the PCA or the minimum funding of the SA as required by Article 3 hereof. In such event, Payments may terminate this Agreement immediately without prior notice to Bank;

(iv) Ineligibility of Bank for membership in the ICBA or its withdrawal or termination of active membership in ICBA;

(v) In the event that any commercial bank or other financial institution or any bank holding company, or any Company, as defined in 12 U.S.C. § 1841(b), or any organization, or any other person, including any corporation, limited liability company, partnership, limited liability partnership, or individual, or group thereof (all of which are hereinafter referred to as "Acquiror") acquires control over Bank or Bank's parent company, and such Acquiror, or all financial institutions controlled by Acquiror, is not or are not eligible to become active members of ICBA. For purposes of this section, "control" shall mean that (a) the Acquiror, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of Bank or its parent company; or (b) the Acquiror controls in any manner the election of a majority of the directors or trustees of Bank or its parent company; or (c) the Acquiror directly or indirectly exercises a controlling influence over the management or policies of Bank or its parent company;

(vi) In the event that a) Bank's primary federal or state regulator or the Federal Deposit Insurance Corporation appoints a conservator or receiver for Bank; b) a petition in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings is filed by or against Bank; c) Bank makes a general assignment for the benefit of creditors; d) Bank makes application for or acquiesces in the appointment of a trustee or receiver for all or substantially all of its assets or liabilities; e) Bank sells or transfers to a third party all or substantially all of its assets or liabilities; f) Bank ceases to be an insured depository institution; or g) Bank ceases to do business for any reason;

(vii) In the event the Agreement is terminated for any reason;

(viii) In the event Payments determines, in its sole judgment, that there has been a material adverse change in Bank's rating, as listed in a national rating service selected by Payments, or if Bank is placed on a "watch list" by its primary state or federal regulatory agency;

(ix) Failure by Bank to make any payment provided for in this Agreement when due.

(f) Upon the occurrence of any of the events enumerated in Section 4.1(e)(i) through (ix), Payments shall have the right to terminate this Agreement or, at its option, without prejudice to its right to subsequently terminate this Agreement pursuant to this subparagraph or require Bank to increase the Minimum Balance in the PCA.

(g) In the event FIS terminates the Agreement due to Payments' breach, Bank shall have the right to terminate this FSA and enter into an agreement with FIS under the terms of which FIS shall continue to provide the Services to Bank

5.0 Legal Compliance

5.1 Bank shall be solely responsible for compliance with all laws, rules and regulations applicable to the operation of its VISA and/or Mastercard programs, and the Program, including, without limitation, usury laws, the Truth-in-Lending Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Electronic Funds Transfer Act, the CARD Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, all rules and regulations promulgated thereunder, and all state laws and regulations.

6.0 Interchange and Other Fees

6.1 Payments shall retain a portion (as per Appendix 1 to this Agreement) of all Interchange Fees payable to Payments in respect of VISA and Mastercard transactions arising from credit cards issued by Bank on the TBS Platform or Payments One Credit Platform and the balance shall be paid to Bank according to the provisions of Appendix 1. Appendix 1 may be changed from time to time by Payments. Payments may receive additional compensation from FIS in return for performance of certain of Payments' obligations in this Agreement. For the avoidance of doubt, this section 6.1 does not apply to banks operating on BASE 2000.

7.0 Grant of License, Rights and Privileges

7.1 Pursuant to an agreement by and between the Independent Community Bankers of America (ICBA) and Payments, Payments has been granted the right to use the name and logogram "ICBA" as part of the Program. Subject to the terms of such agreement, Payments hereby grants to Bank a non-transferable, non-assignable, non-exclusive, indivisible license, right and privilege to use the name and logogram "ICBA" as part of the Program.

7.2 Nothing contained herein shall be construed as conferring a license or right to use "ICBA" for any purpose other than in connection with the Program. Bank shall not use the license, rights and privileges granted herein in any manner in which ICBA, in its sole discretion, may consider misleading or otherwise objectionable. Bank shall not use the words "agent", "consultant" or "authorized representative" or any other designation that might imply that ICBA is in any way responsible for Bank's actions or omissions.

8.0 Bank's Obligations and Responsibilities

8.1 Bank assumes sole financial responsibility for all VISA and Mastercard transactions which are processed through its Business Identification (BID), Interbank Card Association ("ICA"), and/or its Base Identification Number ("BIN") and, including all noncredit (counterfeit and fraudulent) transactions. Bank assumes sole financial responsibility for all charges, costs and expenses in connection with its participation in the Program. Bank agrees to reimburse Payments promptly on demand for any and all costs, charges, fees, expenses, losses, damages, or disbursements of any kind or nature whatsoever which may be incurred by, paid by, imposed upon, or asserted against Payments in any way relating to, in connection with, or arising out of Bank's participation in the Program, this FSA, the Agreement, any merchant deposit or fraud, any chargeback, or any other document or instrument delivered or issued pursuant hereto or thereto, other than any such costs, charges, fees, expenses, losses, damages, or disbursements arising from or related to Payments' breach of the Agreement, negligence, willful misconduct or violation of law ("Wrongful Acts").

9.0 Payments' Obligations and Responsibilities

9.1 Neither Payments nor any of its shareholders, directors, officers, employees or agents shall be liable for any action taken or omitted to be taken by it or them under or in connection with this FSA, the Agreement, or the Program, except for its or their gross negligence or willful misconduct. Without limitation of the generality of the foregoing, Payments may consult with legal counsel, independent accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts and shall incur no liability by acting upon any draft, notice, consent, certificate or other instrument or writing believed by it to be genuine assigned or sent by the proper party or parties acting upon any representation or warranty made in any document or instrument delivered or issued pursuant to the Program. Further, Payments (i) makes no warranty or representation to Bank, and shall not be responsible to Bank for the accuracy or completeness of any statements, warranties, or representations made by any third party including, but not limited to, FIS in connection with this FSA, the Agreement, or any document or instrument delivered or issued pursuant to the Program; and (ii) shall not be responsible to Bank for the due execution, legality, validity, negotiability, enforceability, genuineness, sufficiency, or value of any document, draft or part thereof, delivered or issued in connection with or pursuant to the Program, other than this FSA and the Agreement.

10.0 Agent Bank Agreements

10.1 In the event that Bank enters into agreements with other financial institutions ("Agent Banks") whereby, among other things, such Agent Banks agree to make Bank's VISA and/or Mastercard card available to its customers, Bank agrees that: (a) it will execute an Agent Bank Agreement with Payments prior to commencing any Agent Bank distribution of credit cards in the Program; and (b) it is, and shall remain, solely responsible for the selection, monitoring and financial responsibility of all of its Agent Banks and for their compliance with the terms of this FSA and the Agreement, as applicable, in the same manner and to the same extent as for Bank.

11.0 Credit Decisions

11.1 It is understood and agreed by Bank that it is solely responsible for making independent appraisals of, and determinations concerning, the financial condition, creditworthiness, status and nature of its customers, merchants, Agent Banks, and holders of the credit cards issued by it in connection with the Program.

12.0 FIBA Sponsorship

12.1 The Financial Institution Benefit Association, Inc. ("FIBA") provides various credit card and checking enhancement services to its Sponsoring Members (as defined in the Agreement) for the benefit of their customers. Payments has provided for Bank to join FIBA as a Sponsored Member. Upon signing this FSA, Bank applies for and becomes a Sponsored Member of FIBA, subject to approval by FIBA and subject to the then current terms of the FIBA Membership Agreement, a copy of which is attached as an Exhibit to the Agreement and incorporated herein and made a part of this FSA as if fully set forth herein. FIBA is a third-party beneficiary of this Agreement with respect to those obligations of Bank in this FSA in favor of FIBA.

13.0 General Indemnification

13.1 (a) Bank agrees to indemnify and hold Payments and FIS, their shareholders, directors, officers, employees, agents, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, damages, losses, expenses, including attorneys' fees, which arise out of, or in connection with, the transfer of any data or the performance of any vendor, and any failure of Bank to comply with applicable laws, rules, and regulations, including, without limitation, the Federal Truth-in-Lending Act and other state and federal laws applicable to the Program, which indemnity shall be effective regardless of whether Bank uses any forms or other materials supplied by FIS or Payments; provided, however, that in respect of such applicable laws, rules and regulations, Bank shall have no liability for negligent acts or omissions by FIS, its employees, agents or representatives.

(b) Bank further agrees to indemnify Payments, its stockholders, officers, directors, employees, agents, subsidiaries, affiliates, successors and assigns, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, including reasonable attorneys' fees, or disbursements of any kind or nature whatsoever, which may be imposed on, incurred by, or asserted against Payments in any way relating to, or arising out of, this FSA, the Agreement, the Program, any merchant deposit or fraud, any chargeback, or any other document delivered or issued pursuant hereto or thereto, or any action taken or omitted by Payments in connection with the Program, except for its gross negligence or willful misconduct.

(c) Bank agrees to reimburse Payments promptly on demand for its ratable share of all actual expenses (including attorneys' fees) incurred by Payments in connection with the Program in the preservation of any rights of Payments or Bank under, in the enforcement of, or legal advice in respect of, rights or responsibilities under this FSA, the Agreement, or any other document or instrument delivered or issued pursuant to the Program.

14.0 **Limitation of Liability**

14.1 Bank acknowledges and agrees to limitation of liability, including the maximum liability, of Payments as set forth in Section 23.6 of the Agreement, which is incorporated by reference herein.

15.0 **Notice**

15.1 Any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to the other party if served personally or deposited in the United States mail or by electronic delivery to the email address provided below or on file with Payments for Bank, or any other method allowed by law. If such notice, demand, or other communication is served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail, service shall conclusively be deemed made forty-eight (48) hours after deposit thereof in the United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the party to whom such notice, demand, or other communication is to be given as hereinafter set forth:

To Bank:

Email Address:

To ICBA Payments:

1615 L Street, NW
Suite 900
Washington, DC 20036
Attention: Chrystina Giorgio, AAP, President & CEO

Email Address:

Tina.Giorgio@icba.org

16.0 **Assignment**

16.1 Payments may freely assign its rights and obligations hereunder. In no event shall such an assignment or transfer be deemed a termination for purposes of Article 4 hereof or otherwise. Bank may not assign its rights or obligations hereunder without the prior written consent of Payments, such consent not to be unreasonably withheld. This FSA shall be binding upon the parties hereto, their assignees, executors, trustees, receivers, administrators, and successors in interest.

17.0 **Governing Law**

17.1 This FSA shall be governed by and construed in accordance with the Governing Law provision of the Agreement.

18.0 **Confidentiality**

18.1 Each of the parties to this FSA agrees to hold as secret and confidential, information, reports, plans, customer lists, documents, drawings, writings, samples, knowhow, and other proprietary material ("Confidential Information") received from the other party. All such Confidential Information provided from one party to the other shall remain the property of the disclosing party. For purposes of this section, Confidential Information shall not include information: which becomes available to the public through no wrongful action of the receiving party which may be published prior to the date hereof; which is already in the possession of the receiving party and not subject to an existing agreement or confidence between the parties; which is received from a third party without restriction and without breach of this FSA; which is independently developed by the receiving party; or which is disclosed pursuant to a requirement or request from a government agency. This FSA shall in no way be construed to grant any right, license, or authorization to either party to use Confidential Information except as permitted in this FSA. Each party shall restrict Confidential Information received from the other party to those employees and persons in the receiving party's organization with a need to know such Confidential Information in order to perform services hereunder. Such employees or persons shall be under the same obligations to hold secret and confidential such Confidential Information provided herein. The obligations of the parties hereunder shall survive the expiration or earlier termination of this FSA.

18.2 Customer NPI. Nonpublic Personal Information ("NPI") will be used and protected by FIS as a third-party service provider, in accordance with their obligations set forth in Article 14 of the Agreement.

19.0 **Representations and Warranties by the Parties**

19.1 (a) Bank represents and warrants to Payments that, on and as of the date hereof, (i) Bank is a national bank organized, validly existing and in good standing under the laws of the United States, or a state chartered bank duly organized, validly existing and in good standing under the laws of the State of _____, and has the requisite power and authority to carry on its business as now being conducted; (ii) Bank has the power and authority to execute and deliver this FSA and to consummate the transactions involving Bank contemplated hereby in accordance with the terms and subject to the conditions set forth herein; (iii) the execution and delivery of this FSA and the consummation of the transactions involving Bank contemplated hereby have been duly and validly authorized by the Board of Directors of Bank, and no other corporate proceedings on the part of Bank are necessary to authorize this FSA or for Bank to consummate the transactions involving Bank contemplated hereby; (iv) this FSA has been duly and validly executed and delivered by Bank and constitutes a valid and binding agreement of Bank, enforceable against Bank in accordance with its terms; and (v) Bank is unaware of any basis on which the primary Federal or State regulator of Bank or the Federal Deposit Insurance Corporation could object to Bank's entry into this FSA or Bank's performance of the obligations set forth herein.

(b) Payments represents and warrants to Bank that, on and as of the date hereof, (i) Payments is a corporation duly organized, validly existing and in good standing under Delaware law, and has the requisite power and authority to carry on its business as now being conducted; (ii) Payments has the power and authority to execute and deliver this FSA and to consummate the transactions involving Payments contemplated hereby in accordance with the terms and subject to the conditions set forth herein; (iii) the execution and delivery of this FSA and the consummation of the transactions involving Payments contemplated hereby have been duly and validly authorized by the Board of Directors of Payments, and no other corporate proceedings on the part of Payments are necessary to authorize this FSA or for Payments to consummate the transactions involving Payments contemplated hereby; (iv) this FSA has been duly and validly executed and delivered by Payments and constitutes a valid and binding agreement of Payments, enforceable against Payments in accordance with its terms.

20.0 **Fraud Loss Protection Plan**

20.1 (a) Unless Bank executes the attached Notice of Declination, Payments hereby agrees to assume liability for certain fraud losses of Bank pursuant to the terms and conditions of the Payments Fraud Loss Protection Plan (the "Plan") which is fully described in the Fraud Loss Protection Plan Terms and Conditions, upon payment by Bank of the required service fees.

(b) Bank (i) has received, read and understands the Plan as described in the Fraud Loss Protection Plan Terms and Conditions; (ii) hereby accepts the Plan and agrees to the terms and conditions described in the Fraud Loss Protection Plan Terms and Conditions Document; and (iii) agrees to participate in the FIS card activation system, unless it executes the Notice of Declination attached hereto.

21.0 **Counterparts and Electronic Signature**

21.1 This FSA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This FSA may also be executed by facsimile, email, or other electronic means, and so executed shall have the full force and legal effect as an original.

22.0 **Amendments.**

Bank may not amend, restate, replace, or supplement this FSA without written consent of Payments. Payments may amend, restate, replace, or supplement this FSA or the Agreement by providing thirty (30) days' notice to Bank.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers or representatives to execute and deliver this FSA as a legally binding obligation of such party.

ICBA Payments

By: _____

Authorized Signature

Name

Title

Date

Bank

By: _____

Authorized Signature

Name

Title

Date

Fraud Loss Protection Plan Notice of Declination

I have received, read, and understand the Terms & Conditions and hereby DECLINE to participate in the Payments **Fraud Loss Protection Plan**. I understand that by declining I will be responsible for fraud losses resulting from issuance of credit cards through the Payments Program.

IN WITNESS WHEREOF, I have duly executed this NOTICE OF DECLINATION.

Bank: _____

By: _____
Authorized Signature

Name: _____

Title: _____

EXHIBIT A

INFORMATION TECHNOLOGY SERVICES AGREEMENT

Copy Only