

# First State Bank

## Positive Pay Services Agreement

This Positive Pay Services Agreement ("Agreement") is between First State Bank ("Bank") and Tyler County ("Customer"). The Bank and the Customer agree that the provision by the Bank and the use by the Customer of the Agreement described below shall be subject to the terms and conditions set forth in the Agreement. In the event of inconsistency between a provision of the Agreement and the Texas (TX) Commercial Code, the provisions of this Agreement shall prevail.

This Agreement is part of the Bank's Cash Management Agreements, ("Initial Agreements"). The terms of the Initial Agreements are hereby ratified, affirmed and incorporated herein and shall continue to apply in all respects. As used herein, the term "Agreement" shall mean both the Initial Agreements and the Positive Pay Services Agreement, collectively.

Unless otherwise defined in this Agreement, words or phrases shall have the meanings set forth in Universal Commercial Code Division 3 - "Negotiable Instruments" and Division 4 - "Bank Deposits and Collections."

### **POSITIVE PAY SERVICES**

**Issued Check File.** The Customer shall submit an Issued Check File to the Bank. The check Issue File provided to the bank, constitutes a signature and full and irrevocable authorization and direction of The Customer for the purposes of determining whether a check is properly payable.

The Issued Check File shall accurately state the check number, date, and the exact dollar amount of each check drawn on an Authorized Account since the last Issued Check File was submitted. Each Authorized Account shall require an Issued Check File for all checks issued.

The Customer shall send the Issued Check File for each authorized account to the Bank in the format and medium, as specified by the Bank and agreed to by the Customer. Issued Check Files must be uploaded one business day (24 hours) prior to disbursement. Failure to adhere to these time frames may result in checks being dishonored.

In the event of system failure, either that of the Customer's or of the Bank's, and the Issued Check File cannot be received by the Bank, or the Bank cannot process the file, the file shall be considered as not received, even if the Bank has possession of the file.

**Payment of Presented Checks and Reporting of Exception Checks.** The Bank shall compare each Presented Check by check number and amount against each Issued Check File received by the Bank.

## Exhibit "B"

On each banking day the Bank:

- May pay and charge to the Authorized Account each Presented Check that matched by check number and amount a check shown in any Issued Check file.
- The Bank shall provide the Customer with an electronic notification of any exception. Checks presented for payment that do not exactly match the Check Issued File items. and in a form and time as is outlined in Schedule C, titled "Exception Check Report."

**Pay Default.** If Company misses the deadline as outlined in Schedule D, Bank will make final payment of the check(s) and charge the account the checks are drawn against.

**Not Covered.** This Agreement does not cover a check if the Bank has already cashed the check or is already committed to honor or pay the item under applicable laws, regulations or rules governing checks.

### **CUSTOMER and BANK COMMUNICATIONS**

The Customer or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Agreement. The revised communication must (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent (ii) identify the original communication, and (iii) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.

The Customer is responsible for the review of the Exception Check Report for all item exceptions. Decisions must be communicated using the Bank's Cash Management, all exception items must be reviewed and processed by 5:00 pm Central Standard Time. If you miss the deadline or fail to respond, the Bank will reject final payment of the exception item, and the item(s) will be returned unpaid. The provisions of this agreement do not cover a check if the Bank has already cashed, negotiated or paid or which the Bank is already committed to honor or pay under applicable laws, regulations or rules governing such items.

The Bank is not responsible for detecting any Customer error contained in any Issued Check File or Pay Request or Return Request sent by the Customer to the Bank.

You agree to use the Services carefully and notify us immediately if you discover; (a) any error or discrepancy between your records and the information the Bank provides to you about your accounts or transactions (e.g. in a statement, confirmation or electronic report); (b) unauthorized transactions involving your account; (c) a breach in the confidentiality of the password; or (d) other problems related to the Service.

### **USE OF SERVICES**

The Company accept responsibility for making sure that you understand the terms and conditions of this Agreement. Without limiting your responsibilities under the Initial Agreement and this Agreement, you are responsible for obtaining, installing, maintaining, and operating all software,

## Exhibit "B"

hardware, or other equipment necessary to access and use Positive Pay. This responsibility includes, without limitation, utilizing up to date web-browsers and access devices and the best commercially available encryption, antivirus, anti-spyware, and Internet security software. The Bank will not be liable for any losses caused by the Company's failure to properly use the Service or equipment.

The Company shall at all times indemnify, defend and hold the Bank harmless from and against all actions, proceedings, claims or loss, damage, costs and expenses (including reasonable attorney fees) which may be brought against the Bank or incurred by the Bank which arise in connection with the instructions received by the Bank's Cash Management Online System relating to your account.

### **AUTHORIZED REPRESENTATIVES**

The Company agrees to abide by the Service rules as set forth in Bank policy and procedures, as now in effect and as they may be changed from time to time. The party authorizing the Service must have full signing authority on the designated accounts (each, an "Authorized Signer"). The party authorizing the Service will be responsible for giving specific authority to other users (who may or may not be authorized signers on the account). The authorities granted to an Authorize Representative are to remain in full force and effect until revoked by the Company or until the Bank has received written notification from the Company of rescinded authority in such a time and manner as to provide a reasonable opportunity to act on the instructions.

### **SERVICE CHARGES AND FEES**

The Company agrees to pay the Bank the fees and charges for the services the Company uses, as reflected on the written fee schedule as published by the Bank from time to time. The Bank may change the fees and charges by giving the Company thirty (30) days' written notice of the changes. If the Company objects to the changes, the Company may terminate the services prior to the effective date of the changes. The Bank will collect the fees and charges by debiting any of the Company's accounts with the Bank. The Company authorizes the Bank to debit its Accounts to pay monthly fees assessed in connection herewith.

### **GOVERNING LAW**

This Agreement shall be governed by the laws (excluding the law of conflicts) of the State of Texas and applicable Federal law.

### **GENERAL PROVISIONS**

**Payment for Services.** The Bank may, on a monthly basis, debit a customer account maintained at and selected by the Bank for payment of charges due.

**Amendments.** The Bank may make amendments to this Agreement with a thirty (30) calendar day notice.

Exhibit "B"

**Termination.** Either party may terminate this Agreement by notice to the other sent at least thirty (30) calendar days prior to the termination date specified in such notice. Notwithstanding such termination, this Agreement shall remain in full force and effect as to all Presented Checks that have been presented to the Bank prior to the date of termination.

**INDEMNIFICATION/LIMITATION OF LIABILITY**

Company will indemnify and hold the Bank, its officers, directors, agents and employees harmless from and against any and all liability, claims, losses, damages, suits, costs or expenses, including, attorney's fees, incurred by the Bank arising from the acts or omissions of Company in connection with this Agreement, the Service Agreements or the Services. If the Company fails to perform according to these terms, the Bank will not be liable for any loss that could have been avoided if the Company had performed according to such terms. The sole duty of the Bank is to exercise ordinary care in the performance of the obligations under the Service Agreements and this Agreement. The company agrees that the Bank, its officers, directors, agents, and employees will not be liable for events or circumstances beyond their reasonable control, and the liability of the Bank, its officers, directors, agents, and employees will be limited to correcting errors caused by the Bank. Company and Bank agree that clerical errors and mistakes in judgment do not constitute a failure to exercise ordinary care or to act in good faith. IN NO EVENT SHALL THE BANK, ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES BE LIABLE OR RESPONSIBLE FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS (WHETHER THE CLAIM IS IN CONTRACT, TORT, OR OTHERWISE, AND WHETHER OR NOT THE BANK WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES). THE BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, IN LAW OR IN FACT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY OF ANY OF THE SERVICES OR SOFTWARE PRODUCTS FOR A PARTICULAR PURPOSE, OR AS TO THE SUITABILITY OR COMPATIBILITY OF OUR SOFTWARE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE USED BY COMPANY, PROVIDED UNDER THE SERVICE AGREEMENTS.

**Definitions. In the Agreement**

**Agreement** means this Positive Pay Services Agreement, including attached Schedules A through E, as it may be amended from time to time.

**Authorized Account** means the account(s) of the Customer, maintained at the Bank to which the positive pay services rendered by the Bank will apply.

Exhibit "B"

**Available Funds** means funds on deposit in an Authorized Account and available for withdrawal pursuant to Federal Reserve Regulation CC (12 CFR 229), and the Bank's applicable funds availability schedule and policies as described in the current Deposit Account Agreement.

**Exception Check** means a Presented Check that does not match a check included in an Issued Check File.

**Exception Check** means a record describing Exception Checks, which is provided by the Bank to the Customer.

**Issued Check File** means a record describing checks written by the Customer on an authorized Account, provided by the Customer to the Bank.

**Pay Request** means the instructions of the Customer to the Bank requesting the Bank to pay an Exception Check.

**Presented Check** means a check drawn on an Authorized Account and presented to the Bank for payment through the check collection system.

**Return Request** means the instructions of the Customer to the Bank instructing the Bank not to pay an Exception Check.

By signing below, the Company hereby accepts and agrees to the terms and conditions of this Agreement.

Customer: **Tyler County**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Exhibit "B"

First State Bank

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Email Address:  
\_\_\_\_\_

**SCHEDULE A**

Authorized Accounts

The Customer designates the following accounts as "Authorized Accounts."

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Account Number \_\_\_\_\_

Account Title \_\_\_\_\_

Exhibit "B"

**SCHEDULE B**

Issued Check File

The Issued Check File received by the Bank from the Customer must be submitted online in the mutually agreed upon format.

**SCHEDULE C**

Exception Check Report

The Bank shall make available Exception Check information by 9:00 a.m. Central Standard Time each business day allowing the Customer sufficient time to review such exceptions and processes, if necessary, by the deadline in Schedule D. In the event of system problems and Bank cannot have the Exception Check information in sufficient time for Customer to respond by deadline, deadline will be extended accordingly. The extended deadline will be communicated to the Customer via e-mail.

**SCHEDULE D**

Pay requests and Return Requests

The Customer shall review and process all exceptions by 1:00 p.m. Central Time.

\*Bank may, at its sole discretion, extend the deadline. Any such extension of the deadline will be communicated to the client by e-mail.

**SCHEDULE E**

Authorized Representatives

The Customer authorizes the following persons to perform the following functions:

**Submit Issued Check Files:**

Name \_\_\_\_\_

Title \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Exhibit "B"

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

**Process Exceptions:**

Name \_\_\_\_\_

Title \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

**View Account/Check Reports:**

Name \_\_\_\_\_

Title \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

**Add Users:**

Name \_\_\_\_\_

Title \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_