

## INDEMNITY AGREEMENT<sup>1</sup>

1. This Indemnity Agreement (this “**Agreement**”) is made and entered into by and between [insert name of indemnifying bank] (the “**Indemnifying Bank**”), and [insert name of indemnified bank] (“**Indemnified Bank**”) (each, a “**Party**,” and collectively, the “**Parties**”).
2. The following transaction(s) (the “**Transaction**”), which the Indemnifying Bank’s customer has asserted to be fraudulent, occurred on [insert date of transaction] and resulted in funds (the “**Funds**”) being credited to a deposit account (the “**Account**”) at Indemnified Bank:
  - Transaction type:
  - Amount of Funds (“**Requested Amount**”): [insert type and amount of currency transferred]
  - Indemnifying Bank’s customer name: [insert ordering customer’s name]
  - Indemnifying Bank account number: [insert number of ordering customer’s account]
  - Indemnified Bank’s customer name: [insert name of customer that received the Funds]
  - Indemnified Bank Account number: [insert number of account of customer that received the Funds]
3. Indemnifying Bank hereby requests Indemnified Bank to block access to the Funds for (A) the lesser of (i) the Requested Amount or (ii) the amount of the Funds still on deposit in the Account or in any other bank account to which any portion of the Funds have been transferred; *plus* (B) the amount of any still outstanding instrument purchased with the Funds, including, but not limited to, cashier’s checks and money orders (“**Outstanding Instrument**”); *plus* (C) the amount of any payment made with any portion of the Funds to Indemnified Bank on any obligation due to Indemnified Bank (“**Credit Payment**”). The amount of the Funds to which access is blocked by Indemnified Bank pursuant to this Agreement shall be referred to as the “**Restrained Amount**.” Indemnifying Bank further requests Indemnified Bank to cancel any Outstanding Instrument, reverse any Credit Payment and debit the Account or any other bank account in which any portion of the Funds stand, up to the Requested Amount, whichever is less, and deliver the Restrained Amount to Indemnifying Bank.
4. In consideration of Indemnified Bank complying with Indemnifying Bank’s requests as described in paragraph 3, Indemnifying Bank agrees to indemnify, defend and hold harmless Indemnified Bank, its affiliates, and the respective shareholders, directors, officers, employees, agents, successors, and permitted assigns of each of Indemnified Bank and its affiliates (collectively, the “**Indemnified Bank Parties**”) from and against any and all losses, liabilities, costs, and expenses (including reasonable fees and expenses for attorneys, experts, and consultants, reasonable out-of-pocket expenses, interest and penalties, and the cost of enforcing any right to indemnification hereunder and of pursuing any insurance providers), settlements, equitable relief, judgments, executions, damages, claims (including counter and cross-claims, and allegations whether or not proven), demands, offsets, defenses, actions, or proceedings (“**Indemnified Losses**”), to the extent such Indemnified Losses arise out of, are connected with, or result from complying with Indemnifying Bank’s requests as described in paragraph 3 or from complying with Indemnifying Bank’s requests in any other manner, including any disclosure of customer information to Indemnifying Bank. However, if Indemnified Bank would, apart from this Agreement, be liable to Indemnifying Bank under presentment warranties in law, regulation, or clearinghouse rules, this Agreement does not waive that liability.
5. The obligations under this Agreement shall commence immediately and shall remain in full force and effect indefinitely.

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<sup>1</sup> Best practice is for the Indemnifying Bank to enter into a separate indemnity agreement with its ordering customer. Although the terms of the separate indemnity agreement are subject to negotiation between the Indemnifying Bank and the ordering customer, the separate indemnity agreement should contain an attestation by the ordering customer that the Funds were fraudulently transferred and the consent of the ordering customer to the Indemnifying Bank’s disclosure of all relevant transaction information (including the account number from which the Funds were transferred) to third parties in the Indemnifying Bank’s efforts to have the funds returned.

6. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed in accordance with the state/territory/province (“**Local**”) or national (“**National**”) laws of the jurisdiction that governs the Account (“**Jurisdiction**”), without regard to its conflict of laws provisions. Each Party hereby irrevocably and unconditionally submits, for itself, its successors, and permitted assigns, and its property, to the jurisdiction of any Local or National court of Jurisdiction sitting in Jurisdiction, and each Party hereby irrevocably and unconditionally agrees that all claims in respect of any action or proceeding may be heard and determined in any such Local court, or, to the extent permitted by law, in any such National court. Each Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection, including the defense of an inconvenient forum or any claim that such court does not have personal jurisdiction over it, that it may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Agreement in any Local or National court sitting in Jurisdiction.
7. This Agreement may be executed in counterparts, which taken together shall constitute a complete and binding agreement. This Agreement may be executed by facsimile signatures. Delivery of this Agreement bearing a facsimile signature or signature reproduced by Portable Document Format (.pdf) or other reproductive format shall have the same force and effect as if this Agreement bore an inked original signature.
8. This Agreement is freely and voluntarily given by the undersigned on behalf of each Party, without any duress or coercion.
9. The undersigned represent that they have taken all action required by each respective Party’s organizational documents to authorize the signature and delivery of this Agreement and that the provisions hereof are in conformity with such organizational documents and are duly authorized by each respective Party.

[Remainder of Page Intentionally Left Blank]

Agreed To and Accepted By:

\_\_\_\_\_ (Indemnifying Bank)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Agreed To and Accepted By:

\_\_\_\_\_ (Indemnified Bank)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_