

# First National Bank

405 5<sup>th</sup> St. Ames, IA 50010

## Check Positive Pay Agreement

### Company Information

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

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP \_\_\_\_\_

### Account Information

**1. Service** The positive pay service ("Service") as described in this Agreement is to be performed by First National Bank for Company until such time as, by mutual negotiation, this Agreement is modified, or until such time as this Agreement is terminated pursuant to the terms herein, for the following account number(s) ("Account").

Account Numbers \_\_\_\_\_

**2. Delivery Arrangements and Timing Delivery Arrangements.** Each time Company issues checks or items, Company shall provide to First National Bank, in the manner specified herein, an electronic file, ("Electronic File"). The Electronic File shall include information identifying the issue date of each check, each check number so issued, the Account on which each check was issued, and the exact amount (including dollars and cents) of each check so issued (this information is hereinafter referred to as the "Established Criteria"). The Electronic File shall be submitted to First National Bank no later than 6:00 p.m. on the day on which such checks(s) are issued, for current day processing. If a check or item drawn on Company's Account is later presented to First National Bank for payment against a Company Account, which check or item does not for any reason meet the Established Criteria, such check or item shall be deemed an exception ("Exception"). First National Bank shall deliver to Company via email notification when it becomes available by approximately 7:00 a.m. each business day, except for First National Bank holidays, a listing of such Exceptions ("Exceptions Report"). Company shall expeditiously review the Exceptions Report and identify those Exceptions which First National Bank should dishonor and return ("Return Report") and those Exceptions which First National Bank should pay ("Pay Items"). The Return Report will inform First National Bank which Exceptions Company does not want paid, but instead wants dishonored and returned up the collection stream. Pay Items will not be affected. Company shall complete the pay or return identification process no later than 10:00 AM on the same day First National Bank makes the Exceptions Report available to company. First National Bank shall dishonor and return all items listed on the Return Report, but not Pay Items. If Company fails to complete the identification process by 10:00 AM, all items listed on the Exceptions Report shall be dishonored and returned up the collection stream by First National Bank. Company and First National Bank acknowledge the importance of deadlines in this Agreement and acknowledge that these deadlines imposed herein are legitimate and valid being necessary to allow each party to perform effectively under the terms of this Agreement and that a party's failure to so perform by said deadline will result in the other party being unable to perform.

### 3. Errors or Unauthorized Transactions; Notice of Claims

a. Company or its designated agent will be notified of credits and debits to Company's Account via periodic Account statements either electronically, by telephone, in some other writing or medium or otherwise (collectively, "Account Confirmation"). Company or designated agent agrees to regularly and promptly review and verify each Account Confirmation. If Company or its designated agent suspects an error, forgery, alteration, discrepancy or unauthorized transaction ("Unauthorized Transaction") on an Account, Company or its designated agent shall immediately report the Unauthorized Transaction to First National Bank. The report shall be oral and followed up with a written report detailing the Unauthorized Transaction as soon as practically possible, but in any event within 10 calendar days of the earlier of (i) closing date of the Account statement(s) which first reflected the Unauthorized Transaction, or (ii) the day First National Bank first electronically notified Company or its designated agent or otherwise made available (other than via an Account statement(s)) to Company or its designated agent an Account Confirmation.

b. If Company or its designated agent fails to notify First National Bank of the Unauthorized Transaction on the Account as stated in Paragraph 3.1 herein, Company will be precluded from asserting subsequent Unauthorized Transactions by the same wrongdoer. Without regard to care or lack of care, Company's failure to discover and report any Unauthorized Transaction in connection with any Company's Account(s) within thirty (30) calendar days after an Account Confirmation or other documentation was provided to or made available to the Company or its designated agent, will bar any claim by Company against First National Bank with respect to any such Unauthorized Transaction. Company will notify First National Bank immediately of any claim against Company or First National Bank made by a third party or that any act or omission by First National Bank in connection with the Service has caused such third party to sustain any damage. Company acknowledges that the reconstruction of an event causing Company to suffer damages becomes difficult to research, establish and/or discern and may be inaccurate more than one (1) year following the occurrence of such event. Accordingly, Company agrees that any claim, action or proceeding against First National Bank for damages arising from or in any way related to an act or omission of First National Bank in connection with the Service or the performance of the Service, including any claim based on negligence, must be brought within six (6) months from the date of such act or omission, and if it is not brought (i.e., is not formally submitted to a court of competent jurisdiction) prior to said time, said claim shall be forever barred. Company and First National Bank will cooperate with the other in any loss recovery effort related to the performance of the Service and will assist the other in the defense or prosecution of any claim, action or proceeding brought by or against a third party related to the Service.

#### **4. Liability of First National Bank; Limitations of Liability**

**a. Performance of First National Bank.** First National Bank shall be responsible only for performing the Service it expressly agrees to perform in this Agreement, and shall be liable only for direct damages caused by First National Bank's negligence in performing the Service. First National Bank shall not be responsible for any acts or omissions of Company, including without limitation the amount, accuracy, timeliness of delivery of Company authorization of any item or instruction received from Company, or any act or omission of any other person, including without limitation any transmission or communications facility, and data processor of Company, and no such person shall be deemed First National Bank's agent.

**b. Limit on Damages.** In no event shall First National Bank be liable for any consequential, special, punitive, or indirect loss or damage which Company may incur or suffer in connection with this Agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from First National Bank's acts or omissions in performing the Service under this Agreement.

**c. Force Majeure.** First National Bank shall not be responsible for any failure to act or delay in acting if such failure is caused by legal constraint, the interruption of transmission or communication facilities, computer malfunction or equipment failure, war, emergency conditions, or other circumstances beyond First National Bank's reasonable control. In addition, First National Bank shall be excused from failing to transmit or any delay in transmitting an Exceptions Report if such transmittal would result in First National Bank's having violated any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other governmental regulatory authority.

**d. Interest.** Subject to the foregoing provisions of this Section 4, any liability which First National Bank may have for loss of interest for an error or delay in performing the Service hereunder shall be calculated pursuant to the Account terms and conditions.

**5. Indemnification** Company shall defend, indemnify, and hold harmless First National Bank, and its officers, directors, agents and employees, from and against any and all actions, costs, claims, losses, damages or expenses, including reasonable attorneys' fees and expenses, resulting from or arising out of (i) any breach of any of the agreements, representations, or warranties of Company contained in this Agreement, or (ii) any act or omission of Company or any other party acting on Company's behalf, including but not limited to parties described in Section 4 above.

**6. Payment for First National Bank Services.** Company shall pay First National Bank fees for the Service provided by First National Bank under this Agreement in accordance with Appendix B attached hereto ("Service Fees"). Such charges do not include, and Company shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to the Service provided for in Company's agreement between First National Bank and Company with respect to the Company Account (the "Account Agreement"). The fees for the services provided by First National Bank under this Agreement in accordance with Appendix B.

**7. Termination.** First National Bank may terminate this Agreement immediately by notice to Company, or without notice if Company breaches any of its obligations under this Agreement. Termination shall not affect any of First National Bank's rights or Company's obligations under this Agreement prior to such termination.

**8. Confidentiality.** Company acknowledges that it will have access to certain confidential information regarding First National Bank's execution of the Service contemplated by this Agreement. Company shall not disclose any such confidential information of First National Bank and shall use such confidential information only in connection with the transactions contemplated by this Agreement.

## **9. General Provisions**

**a. Entire Agreement.** This Agreement, the schedules attached hereto and the Account Agreement constitute the entire agreement between First National Bank and Company and supersede all prior agreements. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which First National Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and First National Bank shall incur no liability to Company as a result of such violation or amendment. No course of dealing between First National Bank and Company and usage of trade shall constitute a modification of this Agreement regardless of whatever practices or procedures First National Bank or Company may use.

**b. Amendment.** First National Bank may amend any part of this Agreement, including any schedule hereto, from time to time immediately upon notice to Company.

### **c. Instructions and Notices.**

(i) Except as otherwise expressly provided herein, First National Bank shall not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter.

(ii) First National Bank shall be entitled to rely on any oral or written notice, response, or other communication believed by it to be genuine and to have been provided by an authorized representative of Company, and any such communication shall be deemed to have been provided by such person on behalf of Company.

(iii) Any Electronic File, Exception Report, Return Exceptions Report or other data or information received by First National Bank from or transmitted by First National Bank to the following data processor selected by Company shall be deemed to have been received from or transmitted to Company, and such processor shall be deemed the agent of the Company. Company may change such processor by written notice to First National Bank signed by two Authorized Representatives. Such notice shall be effective on the second business day following First National Bank's receipt thereof. First National Bank shall not be liable in any way for the acts or omissions, whether intentional or negligent, of such processor.

**d. Assignment.** Company may not assign its interest or rights under this Agreement without the prior written consent of First National Bank, and any purported assignment in violation of this section shall be void.

**e. Successor and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and permitted assigns. The Agreement is not for the benefit of any other person, and no other person shall have any right against First National Bank or Company hereunder.

**f. Headings.** Headings used in this Agreement are for convenience only, and shall not be deemed a part of this Agreement.

**g. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Iowa.

**h. Counterparts.** This Agreement may be signed in counterparts, all of which shall constitute one agreement.

**i. Waiver.** A waiver by First National Bank or Company of any term or provision hereon shall not be construed as a waiver of such term or provision at any other time, or of any term or provision.

In witness whereof, the parties hereto have executed this Agreement as of the date first above set forth.

Company:	_____	Bank:	First National Bank
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Signature:	_____	Signature:	_____
Date:	_____	Date:	_____

## Appendix A -Example Electronic File Delivery Methods & File Layout

**Electronic File Delivery Methods:** Each Electronic File shall be submitted through First National Bank Positive Pay. The Customer will need to have a User Name and Password in order to access Positive Pay. The Electronic File will be uploaded to First National Bank through the secure website.

**Positive Pay File Format Layout Example: (.csv, .xls)**

Check number

Dollar amount, right-adjusted and zero-filled, 2 decimals assumed

Date issued

Account Number, right-adjusted and zero-filled

Void indicator V=Void, D=Delete, otherwise blank

Payee Name

## Appendix B – Check & ACH Positive Pay Fee Schedule

Positive Pay Maintenance Fee:	<hr/> \$ 35 monthly per account <hr/>
Positive Pay Per Check:	<hr/> \$0.00 per item <hr/>
Exception Items:	<hr/> \$.00 per item <hr/>
	<hr/>

# First National Bank

## ACH Positive Pay Agreement

405 5<sup>th</sup> St. Ames, IA 50010

Date: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Tax ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### Disclosure

ACH Positive Pay Service assists Customer in detecting fraud by electronically matching incoming ACH transactions to authorizations and blocks that Customer provides in the Appendix A. If ACH Positive Pay Service is utilized by Customer, Customer shall designate the account(s) maintained at Bank that are to be used with the ACH Positive Pay Service ("Account"). Customer shall create authorizations or blocks for incoming ACH Credit and/or Debit Entries that it desires to allow to post or block posting to the Account. Customer shall be responsible for the accuracy and completeness of all information. Bank will allow incoming ACH Entries that match Customer's authorizations to post to Customer's Account. Bank will block incoming ACH Entries that match Customer's blocks from posting to Customer's Account.

Incoming ACH transactions that do not match Customer's authorizations will post to the account but Customer will be notified of the items as exception through the Positive Pay system, and Customer agrees to monitor, review and make payment decisions on the exception items prior to Bank's established deadline (10:00 AM Central Time on the day of the Exception). Customer's default setup is for Bank to block all exception items, thus Bank is authorized to return all exception items unless Customer instructs Bank to post one or more exception items prior to the established deadline. Bank shall have no liability, loss or damage resulting from: (i) payment in accordance with this section of any exception item that is authorized; (ii) the return of any exception item to the Originator in accordance with this section; or (iii) Customer's failure to meet Bank's established deadlines. Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any item, and shall not obligate Bank to return any item if it is otherwise authorized.

Company: _____	Bank: First National Bank
Name: _____	Name: _____
Title: _____	Title: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

