IMAGE CASH LETTER SERVICE AGREEMENT

BANK OF NORTH DAKOTA
OPERATIONS
SFN 59926 (9-2014)

This Image Cash Letter Service Agreement is made between THE STATE OF NORTH DAKOTA doing business as the BANK OF NORTH DAKOTA (BND) with offices in Bismarck, North Dakota and the following Correspondent:

Correspondent (Financial Institution)	Principal Office (City)

WHEREAS, BND has developed a new product named “Bank of North Dakota Image Cash Letter Services”. The Product allows financial institutions to deposit imaged checks at BND.

WHEREAS, the following bank, a financial institution that makes cash letter deposits, desires to utilize BND's Product and its capabilities.

Correspondent

NOW, THEREFORE, the parties agree as follows:

1. Definitions

a. **“Agent”** means any director, officer, employee, representative, affiliate, third-party vendor, or any other person acting on behalf of Correspondent with the actual, implied, or apparent authority of Correspondent. BND may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice.

b. **"Bank”** means Bank of North Dakota that provides Image Cash Letter Services to Correspondent.

c. **“Business Day”** means any day on which a majority of Banks' offices are open to the public for substantially all banking functions. Saturdays, Sundays, federal or state holidays, or any day recognized by a Federal Reserve Bank as a holiday shall not be considered a Business Day, even if BND's offices are in fact open.

d. **“Check Image”** means an electronic or digital image of an original paper check or an electronic or digital image of a Substitute Check that is created by Correspondent, Bank, or another bank or depository institution in the check collection system.

e. **“Correspondent”** means a customer of BND's Image Cash Letter Service.

f. **“Correspondent System”** means the computer hardware and software located at Correspondents site or Correspondent's third-party vendors site, that is used by Correspondent to prepare Image Cash Letters.

g. **“Image Cash Letter”** means an electronic file (containing electronic information including Check Images and MICR Data obtained from original paper checks) with respect to Image Cash Letter Items to be transmitted to BND for deposit, processing and collection, directed to location(s) designated by BND, and prepared by Correspondent per BND's instructions as described in BND's Image Cash Letter User Guide.

h. **“Image Cash Letter Item(s)”** means Correspondents forward Check Images and returned Check Images that are grouped together for collection purposes.

i. **“Image Cash Letter Services”** means the image cash letter services provided by BND to Correspondent as described in this Agreement.

j. **“MICR Data”** means all Magnetic Ink Character Recognition fields printed on the bottom of a paper check or a Substitute Check.

k. **“Substitute Check”** means a paper check document that meets the definition of a “substitute check” in the Check Collection for the 21st Century Act as implemented by Regulation CC (12 CFR §229.51 et seq.).

l. **“Transaction Data”** means any information obtained from Correspondent's checks, Check Images, or information entered by Correspondent into Correspondent System, including without limitation check amount or check number.

2. Rules

a. BND and Correspondent will transmit and process the electronic entries initiated by the Correspondent in accordance with the rules of Check 21 Act, FRB Regulation CC - 12 CFR 229, American National Standards X9 specification, Federal Reserve Bank, UCC Article 3 and 4, and any network association agreements as are currently in effect and as amended from time to time (the “Rules”). The Correspondent agrees to be bound by and held subject to the Rules as well as the provisions contained in the Agreement.

b. Correspondent agrees to maintain permanent and electronically accessible records of all transactions in accordance with published state and federal requirements and include check images, front and back, posting date, amount, serial number and routing and transit numbers and any endorsements and marks.

3. Image Cash Letter Services

BND shall provide Image Cash Letter Services to Correspondent (including acting as collecting bank [as defined in Regulation CC] for Correspondent's forward Check Image and as returning bank [as defined in Regulation CC] for Correspondents returned Check Images). In providing Image Cash Letter Services, including receiving Image Cash Letter Items for deposit, BND shall act only as Correspondent's collecting bank and/or returning bank and assumes no responsibility beyond the exercise of ordinary care. BND will not be liable to Correspondent for any act, omission, or negligence of any of its affiliates, branches, correspondents, or agents, and will not be liable for any losses in transit. Image Cash Letter Items and their proceeds shall be processed by BND in accordance with its customary practices and consistent with applicable law (including Regulation CC and the other rules and regulations promulgated by the Board of Governors of the Federal Reserve System) and applicable automated clearinghouse operating rules (including the ECCHO Rules).

4. Uncollected Items

The amount of any Image Cash Letter Item drawn on another financial institution and cashed for Correspondent, or cashed for others on the endorsement of Correspondent, shall be treated as an uncollected item and held against an account until final payment is received on such item in cash or unconditional credit acceptable to BND, and payment may be refused on any such item or withdrawal made by Correspondent against funds so held for collection.

5. Image Cash Letter Item Transmissions

Image Cash Letter items shall be transmitted for deposit, processing, and collection in Image Cash Letters by Correspondent or Correspondent's Agent(s). Each Image Cash Letter shall conform to the specifications set forth in the BND Image Cash Letter User Guide. Each Image Cash Letter shall include the Check Image and MICR Data associated with each original paper check. Correspondent and/or its Agent(s) shall upload Image Cash Letter transmissions (containing one or more Image Cash Letters) to BND at the location(s) designed by BND prior to the daily deposit cut-off time established by BND from time to time. Any Image Cash Letter transmission received and validated by BND after its daily cut-off time shall be deemed to have been received by BND at the opening of its next Business Day. BND shall not be considered to have received an Image Cash Letter until BND has actually received delivery of the Image Cash Letter at the designated location(s), validated the entire Image Cash Letter transmission, and acknowledged successful receipt of the Image Cash Letter. If only a portion of an Image Cash Letter transmission is received by BND for any reason, including without limitation a failure during the transmission to BND, such Image Cash Letter transmission shall be deemed to have been not received by BND with respect to any Image Cash Letter contained in that Image Cash Letter transmission (including any Check Image contained in the portion of that Image Cash Letter transmission that was received).

6. Dishonored Image Cash Letter Items

Correspondent shall return all dishonored Image Cash Letter Items directly to the applicable “depositary bank” (as defined in 12 C.F.R. Section 229.2(o)) and Correspondent, not BND, shall be solely responsible for all late returns. Any Image Cash Letter Item deposited at BND by Correspondent that is not paid for any reason when presented to the party obligated to pay it will be returned to the applicable “depositary bank”. With respect to converting returned checks and other items to electronic files, Correspondent shall be considered to be the “depositary bank“ for all purposes such that such items that are converted to electronic files that are returned unpaid or dishonored shall be delivered to Correspondent.

7. Endorsements

BND may, at its sole discretion, accept any Image Cash Letter Item endorsed for deposit and such endorsements may be made manually, with type, by stamp, or otherwise and any such endorsement will be treated as genuine in all respects and as warranting and guaranteeing all prior endorsements thereon. Payment of any Image Cash Letter Item may, at BND's sole discretion, be refused if the endorsement is improper, illegible, or if the item contains a double endorsement. All endorsements to Image Cash Letter Items shall be consistent with the requirements of Regulation CC, Appendix D, and the BND Image Cash Letter User Guide. Any Image Cash Letter Item payable to Correspondent may be deposited in and credited to Correspondents account(s) without being endorsed by the payee (s). BND shall have no liability to Correspondent in connection with the late return of any Image Cash Letter Item when the late return is caused by markings on any item made by or on behalf of Correspondent or a prior endorser in the space reserved on the item for the depository banks endorsement. Correspondent agrees, to the extent consistent with the ECCHO Rules, to indemnify and hold BND harmless from and against all claims, demands, expenses, losses, liabilities, and damages of third parties of any nature whatsoever, including, without limitation, reasonable attorney fees and court costs, where delay or error is caused by markings placed by or on behalf of Correspondent or any prior endorser that obscure the endorsement of the depository bank.

8. Encoding Liability; Third Party Indemnity

BND shall not be responsible for any losses caused by Correspondent's incorrect or improper encoding of Image Cash Letter Items and incorrectly/improperly encoded Image Cash Letter Items shall be processed by BND pursuant to the terms of the BND Image Cash Letter User Guide. In addition, BND shall not be responsible for repairing any damaged MICR lines on any Image Cash Letter Items. Correspondent agrees, to the extent consistent with the ECCHO Rules, to indemnify, defend, and hold BND harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages of Correspondent, any customer of Correspondent, any Federal Reserve Bank, or any other third parties of any nature whatsoever, including, without limitation, reasonable attorney fees and court costs at trial or appeal, arising directly or indirectly from any Image Cash Letter Item delivered by BND (either in paper form or electronically) to any Federal Reserve Bank, any other financial institution, any check clearinghouse, or any other third-party for processing pursuant to this Agreement, or from any other service provided any Federal Reserve Bank, any other financial institution, any check clearinghouse, or any other third-party to BND, Correspondent, or any customer of Correspondent.

9. Capture of Checks and Check Information

a. Correspondent shall be responsible, with respect to each Image Cash Letter Item, for accurately capturing both a front and rear image of each paper check, all preexisting, preprinted MICR Data, and the correct dollar amount of the check. Correspondent shall be responsible for the inspection of all Check Images to ensure the presence and legibility of both the front and rear Check Images (including without limitation the dollar amount and signature of the drawer), for the repair of any MICR Data, and to ensure that any and all information on a paper check is accurately captured and legible in the resulting Check Image and MICR Data and otherwise to comply with any Check Image or MICR Data quality standards set forth in the BND Image Cash Letter User Guide and as BND may otherwise provide to Correspondent from time to time. In the event the condition of a paper check precludes a complete automated read, Correspondent shall be responsible for visually inspecting the check and repairing all preexisting preprinted MICR Data fields and the dollar amount field. If Correspondent chooses not to repair the MICR Data on any check, then Correspondent may not submit the check to BND as an Image Cash Letter Item.

b. BND shall not be liable to Correspondent for the failure to process an Image Cash Letter or individual Check Images, or any error that results in processing or collecting an Image Cash Letter or individual Check Images, for which Correspondent has not provided BND with full and legible Check Image representation of the original paper check. BND may in its sole discretion report on or provide notification of inaccurate and/or illegible Check Images submitted in an Image Cash Letter in accordance with general banking and check collection practices, but BND shall have no obligation to effect a repair or other alteration to Check Images, or to verify the accuracy, legibility, or quality of any Transaction Data prior to processing an Image Cash Letter. In addition, BND shall not be liable to Correspondent for processing, or failing to process, any Image Cash Letter Item that is delivered to BND as an original check.

10. Collection of Check Images, Substitute Checks and MICR Data

BND may in its sole discretion determine the manner in which BND will seek to collect a Check Image, Substitute Check, and/or MICR Data deposited by Correspondent with respect to any Image Cash Letter. Without limiting the generality of the preceding sentence, BND may, at its option: (i) present or transfer the Check Image or MICR Data to the paying bank, a Federal Reserve Bank, image exchange network, check clearinghouse, or other collecting bank (in such cases, the Check Image or Substitute Check shall be subject to the rules of the applicable paying bank, Federal Reserve Bank, image exchange network, check clearinghouse, or other collecting bank); or (ii) create a Substitute Check from the Check Image and/or MICR Data and collect such item.

11. Retention and Destruction of Original Paper Checks

With respect to original paper checks that were imaged and included in any Image Cash Letter, Correspondent may determine how long to hold such original paper checks prior to destruction. At the request of BND, Correspondent shall provide the original paper check to BND if the original paper check has not been destroyed by Correspondent, and BND requires the original paper check to process a payment or resolve a dispute arising from an Image Cash Letter.

12. Representations and Warranties

With respect to each Check Image and Image Cash Letter that Correspondent transmits to BND, Correspondent and any Agent of Correspondent is deemed to make to BND any representation or warranty that BND makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when BND transfers, presents or originates any Check Image or Substitute Check created from that Check Image or any MICR Data.

13. Correspondent Responsibility

With respect to each Check Image and Image Cash Letter that Correspondent transmits to BND, Correspondent agrees, to the extent consistent with the ECCHO rules, to indemnify and hold BND harmless from and against any and all claims, demands, damages, losses, liabilities, penalties, and expenses (including, without limitation, reasonable attorneys fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Correspondent's breach of a representation or warranty as set forth in Section 12 above, (b) as a result of any act or omission of Correspondent in the capturing, creation, or transmission of any Check Image, including without limitation the encoding of MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Image Cash Letter, Check Image, or Substitute Check; or (d) from any other act or omission arising out of BND's action or inaction taken pursuant to any request by Correspondent or pursuant to this Agreement. This Section 13 shall survive termination of the Agreement.

14. Accuracy and Timeliness of Image Cash Letter Services

BND will use reasonable efforts to provide the Image Cash Letter Services in a prompt fashion, but shall not be liable for temporary failure to provide the Image Cash Letter Services in a timely manner. In such event, Correspondent shall be responsible for carrying out banking business through alternative channels. BND shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to BND's deposit or payments system prior to being made available pursuant to the Image Cash Letter Services. Information with respect to all transactions is provided solely for Correspondents convenience, and Correspondent shall have no recourse to BND as to use of such information. After BND has received information from Correspondent, BND will be responsible for processing the file.

15. BND Image Cash Letter User Guide

BND will provide Correspondent with a user guide (the “BND Image Cash Letter User Guide”) in paper or electronic format that will set forth the Image Cash Letter Services procedures with which Correspondent agrees to comply. BND may, without prior notification, make amendments to any Image Cash Letter User Guide. BND owns or has obtained all proprietary rights to the BND Image Cash Letter User Guide and Correspondent agrees not to duplicate, distribute, or otherwise copy the BND Image Cash Letter User Guide without BND's prior written consent. The BND Image Cash Letter User Guide will at all times remain the property of BND, and BND reserves the right to request Correspondent to return or destroy all printed copies of the BND Image Cash Letter User Guide within thirty (30) days of termination of the Image Cash Letter Services; provided, that in the case of destruction, Correspondent shall provide BND with an affidavit that all printed copies of the BND Image Cash Letter User Guide have been destroyed.

16. Security Procedures; Connectivity

a. Correspondent shall comply with all security procedures for the Image Cash Letter Services that are established by BND or set forth in the BND Image Cash Letter User Guide. Correspondent is solely responsible for (i) maintaining its own internal security procedures, (ii) safeguarding the security and confidentiality of Transaction Data, Check Images, and other information that is either stored on Correspondent System, or downloaded to Correspondent's other computer/data systems, and (iii) preventing errors or unauthorized access to Correspondent System. It shall be Correspondent's responsibility and its Agent(s) to establish security and controls sufficient to assure that Agent(s) properly identifies and handles Image Cash Letter Items, information and instructions of Correspondent.

16. Security Procedures; Connectivity (continued)

b. Correspondent is responsible for obtaining, installing, and maintaining the computer and communications equipment (including, without limitation, personal computers and modems), software, web browsers, Internet access, and communications services necessary to transmit Image Cash Letters to BND hereunder, all at Correspondent's sole cost and expense. Correspondent is responsible for taking appropriate precautions against damage to the Correspondent System which could be caused by delays, interruptions, or malfunctions of any Internet or web site, or any other mode of electronic connectivity, and assumes the risk of such occurrences. BND shall not be liable for any delays, interruptions, or malfunctions relating to Correspondent's Internet access or use.

c. BND has processing contingency plans in place in the event of a disaster, including communications, equipment, or software outages.

17. Liability

BND hereby expressly disclaims any warranties, express or implied, including merchantability and fitness for a particular purpose with respect to the product.

18. Effective Date and Term

a. Effective Date. This Agreement is effective when executed by BND and Correspondent.

b. Term. This Agreement will begin on the Effective Date and, unless terminated earlier under Section 19, will continue for a period of two years. Thereafter, this Agreement will automatically renew for successive terms of two years each (the “Renewal Terms”) unless either party gives the other party written notice at least six months prior to the expiration date of the Initial Term or the Renewal Term then in effect that the Agreement will not be renewed beyond such term.

19. Termination

BND may terminate this Agreement effective on delivery of written notice to the Correspondent, or on any later date stated in the notice, if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the services provided for in the Agreement, if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or no longer eligible for the funding proposed for payment of this Agreement, or if any license, permit, or certificate required by law or rule, or the terms of the Agreement, is for any reason denied, revoked, suspended, or not renewed.

20. Entire Agreement

This agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this agreement. This agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

21. Severability

If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

22. Confidentiality

Correspondent agrees not to use or disclose any information it receives from BND under this Agreement which BND has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by BND. BND agrees not to disclose any information it receives from Correspondent which the Correspondent has previously identified as confidential and which BND determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code §440418. The duty of BND and Correspondent to maintain confidentiality of information under this section continues beyond the term of this Agreement, including any extensions or renewals.

23. Governing law

This Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Agreement must be brought in the District Court of Burleigh County, North Dakota.

24. Assignment

Correspondent may not assign or otherwise transfer or delegate any right or duty without the express written consent of BND. However, the Correspondent may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. Correspondent agrees to be solely responsible for the performance of any subcontractor. Correspondent shall not have the authority to contract for or incur obligations on behalf of BND.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

This Agreement executed by the parties hereto as of _____, 20 _____.

Correspondent
By
Printed Name
Title

BANK OF NORTH DAKOTA

By
Printed Name
Title