Vertifi Check Archive Tool (VCAT)

VERTIFI SERVICES

SOFTWARE END USER LICENSE AGREEMENT

IMPORTANT NOTICE TO END USERS: This Vertifi Services End User License Agreement (the "Agreement") is an Agreement between Vertifi Software, LLC ("Vertifi") and You to use certain software pursuant to this Agreement to access and utilize certain check archive services provided by Vertifi. (You and Vertifi are each herein described as a "Party.") The Agreement is effective as of the **Effective Date** shown with the signatures below.

- 1. **DEFINITIONS.** In this Agreement, "Licensed Software" means the Vertifi Check Archive Tool ("VCAT") computer programs, in machine-readable, interpreted, compiled or other form, and related documentation, furnished to You by Vertifi, for services associated with accessing and utilizing check images and MICR data archived by Vertifi Software, LLC, including: (i) computer programs residing on any medium and all materials contained in any download supplied by Vertifi; (ii) related user manuals and explanatory written materials or files ("Documentation"); and (iii) upgrades, modified versions, updates, additions, and copies thereof, if any, provided to You by Vertifi (collectively, "Updates").
- 2. LICENSE. As long as You comply with all terms of this Agreement and You hold a valid digital certificate issued by Vertifi (the "Certificate"), Vertifi grants You a non-exclusive and non-transferable site license to use the Licensed Software (in object code form only) for Your own internal use at Your business locations for the purpose of downloading check images and MICR data from Vertifi.
- **SECURITY.** As further described in the Documentation, Vertifi shall take the following steps to safeguard the delivery of data through the Licensed Software: (i) VCAT users must have an authentic license key issued by Vertifi; (ii) data download authentication and authorization are provided by the license key and a Vertifi-issued digital certificate with proper entitlements; and (iii) downloaded data is encrypted in transit using 128-bit SSL encryption. Once the data delivery is complete, it is unencrypted. It may be stored on a local system, and You are responsible for safeguarding it and complying with applicable provisions of 12 C.F.R. Part 716 and any successor law thereto.
- 4. SOFTWARE TITLE. Vertifi is not selling You the Licensed Software. Title to the Licensed Software, including all translations, compilations, derivative works and copies thereof, remains with Vertifi, its affiliates or licensors owning the Licensed Software, as the case may be (the "Owner").
- INTELLECTUAL PROPERTY AND CONFIDENTIALITY. You acknowledge that the Licensed Software, 5. including the Documentation, contains or constitutes copyrighted material, trade secrets, and know-how proprietary to the Owner and that, except for the limited license granted in Section 2, the Owner retains all rights, title and interests in and to the Licensed Software and all patents, copyrights, trade secrets or other intellectual property rights in or underlying the Licensed Software. You further acknowledge that unauthorized use of the Licensed Software may cause serious and irreparable loss or damage to the Owner. Therefore, You agree that in the event of a breach of this Agreement, the Owner will be entitled to injunctive, declaratory or equitable relief to restrain such breach, in addition to monetary damages and reasonable attorneys' fees, charges and costs incurred by Owner in enforcing the Agreement. You will keep the Licensed Software, including the Documentation and any backup copy of the Licensed Software, strictly confidential and will not disclose or provide them (or any information relating to them) to any other person or entity. You will also take all reasonable steps to safeguard the Licensed Software to ensure that unauthorized personnel do not have access to the Licensed Software. You will notify Vertifi of any unauthorized use of the Licensed Software. You will use the Licensed Software only in connection with the services provided to you by Vertifi. Except for the limited license granted in Section 2, this Agreement does not grant You any intellectual property right in the Licensed Software and all rights not expressly granted herein are reserved by the Owner.
- **6. RESTRICTIONS.** You will not at any time, nor will you allow any other party to:
 - a) Use the Licensed Software in conjunction with any other equipment or software or for any purpose other than for downloading check images and MICR data from Vertifi;
 - b) Decompile, reverse engineer, disassemble, translate or reduce the Licensed Software to a humanperceivable form;

- c) Modify, adapt, translate or create derivative works based upon the Licensed Software in whole or in part;
- d) Lease, rent, sublicense, share, lend, distribute, disclose, network, or pledge the Licensed Software to or for the benefit of any third party;
- e) Use the Licensed Software in a client-server environment, electronically transmit the Licensed Software from one computer to another or over a network or otherwise allow a third party to access or use the Licensed Software;
- f) Transfer any of Your rights in the Licensed Software or the Documentation to another party;
- g) Use the Licensed Software: (i) other than in compliance with applicable law, (ii) for any unlawful or harmful purpose, or (iii) for any other purpose not expressly contemplated in the Documentation;
- h) Make copies of the Licensed Software, other than a reasonable number of copies of the Licensed Software for back-up or archival purposes and such other copies as are necessary for You to use the Licensed Software as described in the Documentation:
- i) Remove or alter any trademark, copyright, confidentiality or other proprietary rights notice in the Licensed Software or Documentation or any copy made by You; or
- j) Circumvent any access control mechanism that controls access to the Licensed Software for any purpose.
- 7. **LIMITED WARRANTY.** Vertifi warrants that the Licensed Software will operate substantially in compliance with the Documentation for a period of ninety (90) days after its delivery to You. Any supplements or Updates to the Licensed Software provided to You after the expiration of the ninety- (90) day limited warranty period are not covered by any warranty or condition, express or implied. In the event of a breach of the foregoing warranty, You must notify Vertifi within such 90-day period. In the event that You notify Vertifi of a breach of the foregoing warranty within such 90-day period, Vertifi will, at its option, either (i) use commercially reasonable efforts to correct any substantial non-conformity, (ii) replace the nonconforming item of Licensed Software, or (iii) return the fee paid by You for such item of Licensed Software. The foregoing will be Vertifi's entire liability and Your sole and exclusive remedy for a breach under the foregoing limited warranty. Vertifi will have no liability under this warranty to the extent that (a) the Licensed Software has been misused or exposed to environmental or operating conditions beyond those specified by Vertifi, (b) the Licensed Software has been damaged or altered by accident, neglect, misuse or other abuse, (c) the claimed defect has been caused, in whole or in part, by a person or persons other than Vertifi, by products or software not provided by Vertifi, or by circumstances not under Vertifi's control, or (d) You fail to incorporate all error fix releases that Vertifi has provided.

EXCEPT FOR THE FOREGOING, THE LICENSED SOFTWARE IS LICENSED TO YOU "AS IS."

- 8. DISCLAIMER OF PERFORMANCE WARRANTIES. VERTIFI DOES NOT REPRESENT OR WARRANT, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, THAT: THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE; OR THAT THE FUNCTIONS OR FEATURES OF THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS; OR THAT THE LICENSED SOFTWARE WILL OPERATE IN THE HARDWARE OR SOFTWARE COMBINATIONS SELECTED BY YOU. YOU ASSUME ALL RESPONSIBILITY FOR THE SELECTION OF PRODUCTS AND THE LICENSED SOFTWARE TO ACHIEVE INTENDED RESULTS, AND FOR YOUR USE OF AND RESULTS OBTAINED FROM THE LICENSED SOFTWARE.
- 9. DISCLAIMER OF IMPLIED WARRANTIES. VERTIFI EXPRESSLY DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING REPRESENTATIONS OR WARRANTIES OF NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, OWNERSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, SYSTEM INTEGRATION, OR DATA ACCURACY. VERTIFI'S EXPRESS WARRANTY WILL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, THE RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE BY VERTIFI IN CONNECTION WITH THE LICENSED SOFTWARE.
- 10. NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL EITHER YOU, VERTIFI OR ANY OTHER OWNER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF THE LICENSED SOFTWARE AND

DOCUMENTATION HOWEVER CAUSED (WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT [INCLUDING NEGLIGENCE], OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS PARAGRAPH WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE SET FORTH IN SECTION 2 OR ELSEWHERE IN THIS AGREEMENT.

- 11. LIMITATION OF LIABILITY. IN ANY EVENT, THE TOTAL LIABILITY OF VERTIFI, ANY OWNER, ANY AFFILIATED ENTITY, OR ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ANY OF THE FOREGOING ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED FROM YOU UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.
- 12. INDEMNIFICATION OF YOU. Vertifi will defend, indemnify and hold You harmless from any liability arising from any third party claim or proceeding against You to the extent that such claim or proceeding is based on an assertion that the Licensed Software infringes any issued United States patent, trade secret or copyright of any third party; provided, however, that You notify Vertifi promptly in writing of any such claim or proceeding and give Vertifi full and complete authority, information and assistance to defend such claim or proceeding at the expense of Vertifi; and <u>further provided</u> that You give Vertifi sole control of the selection of counsel and the defense of any such claim or proceeding and all negotiations for its compromise or settlement. Should any portion of the Licensed Software become, or in Vertifi's opinion be likely to become, the subject of a claim of infringement, Vertifi will have the right, at Vertifi's option and expense, (i) to procure for You the right to continue using the Licensed Software, (ii) to replace or modify the Licensed Software with a non-infringing version of substantially equivalent function and performance, or (iii) reasonably failing the above, to refund to You the amounts actually paid by You within the previous twelve (12) months under this Agreement upon Your return of such portion of the Licensed Software to Vertifi.
- 13. LIMITATION. Vertifi will have no liability to You hereunder for any infringement based upon (i) the combination of the Licensed Software with other products not provided by Vertifi; (ii) the use of other than a current, unaltered version of the Licensed Software; (iii) the use of any derivative works, modification or improvement of the Licensed Software not created by Vertifi; (iv) any use of the Licensed Software in the practice of a process not specified by Vertifi. This Section of this Agreement and the Section entitled "Indemnification of You" is the sole, exclusive and entire liability of Vertifi, and the sole, exclusive and entire remedy with respect to any claim of intellectual property infringement by the Licensed Software.

14. TERMINATION.

- a) This Agreement and the license granted to You hereunder shall terminate upon the <u>earlier</u> of (i) Your breach of this Agreement <u>or</u> (ii) expiration or cancellation for any reason of Your Certificate.
- b) If You breach any provision of this Agreement, You will promptly cease all use of the Licensed Software and will return to Vertifi or its designee all copies of the Licensed Software. In such event, at the request of Vertifi, You will certify in writing that the original and all copies of the Licensed Software have been destroyed or returned to Vertifi.
- **ASSIGNMENT.** Vertifi may freely sublicense, assign or delegate this Agreement. You may not sublicense, assign or delegate this Agreement or any interest or right granted herein without Vertifi's prior written consent, and any attempt by You to do so shall be void.
- 16. GOVERNMENT LICENSEE. The Licensed Software and accompanying Documentation were developed at private expense and no part of them is in the public domain. The Licensed Software is "Restricted Computer Software" and "Commercial Computer Software" and if You are acquiring the Licensed Software for the United States Government, then it is acquiring only "restricted rights" in the Licensed Software and its Documentation, all as defined in the applicable provisions of the Department of Defense Federal Acquisition Regulation Supplement and the Federal Acquisition Regulations. Such unit will include a "restricted rights marking" or "restricted rights legend" on the Licensed Software as may be necessary to ensure the limitation of rights acquired by the government. Notwithstanding the foregoing, this Agreement will not become effective with respect to the United States Government without Vertifi's prior written approval.
- 17. EXPORT CONTROLS. This Agreement is subject to the laws, regulations, orders, and decrees of the United States which may be imposed from time to time restricting the import/export of the Products to/from the United States. You will not export or re-export the Licensed Software, or any part of the Licensed Software, directly or

indirectly as may be prohibited by or in violation of the laws, rules or regulations of the United States or any applicable jurisdiction. You will not export or re-export the Licensed Software, or any part of the Licensed Software, directly or indirectly without first obtaining the required permission to do so from all applicable governmental agencies.

- 18. COMPLIANCE WITH LICENSES. You agree that upon request from Vertifi, You will within thirty (30) days fully document and certify in writing that Your use of the Licensed Software at the time of the request is in conformity with this Agreement or other valid license from Vertifi.
- MISCELLANEOUS. This Agreement is governed solely and exclusively by the laws of the Commonwealth of Massachusetts, United States of America, without giving effect to any law which would result in the application of a different body of law. The state or federal courts located in or having jurisdiction over Boston, Massachusetts, United States of America, will have exclusive jurisdiction over all matters pertaining to this Agreement and all suits must be brought in such courts. If any term or condition of this Agreement is or will become invalid or unenforceable, then such part will be ineffective to the extent of such invalidity only, without affecting this Agreement's remaining provisions. Sections 1, 3 through 11, 13, 14(b), 15, 16, 17, 18, and 19 shall survive any termination or expiration of this Agreement. The remedies at law of either Party in the event of default or impending default by the other Party in the performance of any terms of this Agreement will not be adequate, and such terms may be specifically enforced by a decree for specific performance, injunction or other appropriate equitable relief. The failure of Vertifi to enforce at any time any provision of this Agreement will in no way be construed to be a present or future waiver of such provision, nor will it affect Vertifi's ability to enforce any other provisions of this Agreement.

This Agreement is the sole, final and entire agreement between the Parties with respect to the subject matter set forth herein and supersedes all prior oral or written agreements between the Parties with respect thereto and may only be amended in writing by the Parties.