

**Intercredit Bank, N.A.**  
**Positive Pay Agreement**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("you" and "your") and Intercredit Bank, N.A. ("we" and "us" and "our")

**RECITALS**

- 1) You are requesting to begin using the Intercredit Bank Positive Pay service. You agree to abide by the rules set forth below now in effect or as they may be changed from time to time.

**AGREEMENT**

- 1) Positive Pay verifies your Positive Pay files or Checks you manually enter into the system against checks being presented to us for payment. Any paper or electronic item presented to us for payment that does not match the Positive Pay file will be an exception or violation. The following sets forth the description of an exception or violation:
  - a) Items presented for payment through our in-clearings process (deposited items) that do not match the checks entered into the system will be exceptions. You will have an automated option within our Positive Pay web system to work with your exceptions as they arise. It is your responsibility to resolve your Positive Pay Exceptions each business day between the hours of 7:30 am – 2:00pm (EST). For purposes of this agreement, a business day is defined as every day except Saturdays, Sundays and federal holidays.
  - b) Items presented to Intercredit Bank for immediate payment (cashing a check at the bank) not matching your issue checks will be an exception. A bank representative may contact you by phone for instruction on a Positive Pay Exception. In the event that we cannot contact an Authorized Representative for instruction on a Positive Pay Exception, The Item will not be paid. Authorized Representatives are designated below.
- 2) Uploading Files. The Positive Pay files or Checks must be uploaded to our Positive Pay web system as soon as checks are being disbursed. Positive Pay files or Checks can be uploaded to our system on a monthly, weekly, daily and/or hourly basis.
- 3) Software. You will use our Positive Pay web system to upload your files, you may create txt files in any desired application using the sample format within the system, or entering your checks one by one on the system. You must provide a list of all outstanding checks at the time you begin using this service.

**4) SYSTEM REQUIREMENTS**

The following equipment and system are required by you to access our Positive Pay Web System:

- a. Personal computer or Tablet capable of connecting to the Internet;
- b. Internet access account with an internet service provider or similar company providing internet access; and
- c. Internet browser latest version of Google Chrome, Firefox, or Internet Explorer program with 128-bit encryption support

**Liability for Inaccessibility or Loss of Service**

The ability of us to grant you access to INTERCREDITBANK.com and to provide Positive Pay to you is dependent upon your telephonic/electronic capability to access INTERCREDITBANK.com. If, for any reason, you cannot telephonically/electronically access INTERCREDITBANK.com, INTERCREDIT, its officers, employees and/or agents, shall not be liable for the failure and/or lack of such access and for any loss and/or damages resulting therefrom.

**Liability for loss or erroneous data**

You will bear the liability or the risk of any errors or loss of data, information, transactions or other losses that may be due to the failure of your computer equipment or system or third party communications provider on which you rely. We shall have no liability to you for any damage or other loss, direct or consequential, which you may incur by reason of any failure in your computer equipment or system or third party communications provider.

**Changes/interruptions in services**

We may on a regular basis perform maintenance on our equipment or system, which may result in interrupted access to INTERCREDITBANK.com Positive Pay or interrupted service or errors in Positive Pay. We also may need to change the scope of Positive Pay System from time to time. We will attempt to provide you with prior notice of such interruptions and changes but we do not guarantee that such notice will be provided. We shall have no liability to you for any damage or other loss, direct or consequential, which you may incur by reason of any such interruption.

**4. ACCESS TO ELIGIBLE Accounts**

To have access to Positive Pay System for an Eligible Account, you must be the account holder of a Primary Eligible Account at INTERCREDIT BANK. If you have more than one Eligible Account, we may link the relationships together with a Primary Eligible Account. You may expressly request in writing that certain Accounts not be linked to Positive Pay. Non-linked Accounts will not be accessible through the Positive Pay System.

## 5) SECURITY GUIDELINES

To provide restricted and protected access to INTERCREDITBANK.com Positive Pay System and to ensure secure communications within Positive Pay System, INTERCREDIT BANK utilizes a unique Digital Certificate for INTERCREDITBANK.com. INTERCREDIT BANK will also deliver to you such Login ID(s) and PASSWORD(s) to access INTERCREDITBANK.com and use Positive Pay System, as you may request. INTERCREDITBANK BANK will create the unique Login ID(s) and we will assign temporary PASSWORD(s). You (and each User) must change the temporary PASSWORD(s) to your, his/her own PASSWORD(s) during the first login session. A PASSWORD should not be associated with any commonly known personal identifier, such as a date of birth, Id number or social security number, etc. To further restrict and protect access to INTERCREDITBANK.com and Positive Pay System, INTERCREDIT BANK will also deliver to you (or to your designated Positive Pay Administrator, where applicable) as many Users IDs as are requested in the Application or through Positive Pay System ). If multiple Login IDs are requested, you are solely responsible for the delivery of the Login ID to the particular User to whom it has been assigned.

When you visit INTERCREDITBANK.com you must first verify the authenticity of the web-page by clicking on the security link (identified by the padlock) to validate the Digital Certificate. Once this step is satisfactorily completed you can proceed to log-in by entering the Login ID and PASSWORD in the established manner. Assuming the information is input correctly, the User will then be asked to input, as a second authentication factor.

Your Login IDs and PASSWORDs must be kept confidential and secure. INTERCREDIT BANK provides tools to ensure a secure banking environment. However, you are ultimately responsible for maintaining and protecting your account security. By using Positive Pay System or by signing the Application you are authorizing INTERCREDIT BANK to rely on Login IDs and PASSWORDs to identify a User when providing services to you. It is your responsibility to secure, protect and maintain in strict confidence the Login IDs and PASSWORDs. The Login IDs and PASSWORDs should never be disclosed to unauthorized persons and should not be written down.

You should never leave your account information displayed in an area accessible by others and should never leave a logged on terminal unattended while using Positive Pay System. To prevent unauthorized access, users must sign-off INTERCREDITBANK.com as soon as their task is finished.

Positive Pay System has a feature that automatically disables your Login ID and/or PASSWORD after three (3) consecutive unsuccessful log-on attempts have been made using an incorrect Login ID and/or PASSWORD. You must contact our Bank at 1.866.602.4207 to have your access restored. You will be solely responsible for actions resulting from the use or misuse of your Login ID and/or, PASSWORD. We retain the right, at our sole discretion, after a period of inactivity to automatically log you off INTERCREDITBANK.com, but we shall not be liable for our failure to do so.

We undertake no obligation to monitor access to INTERCREDITBANK.com or transactions through Positive Pay System to determine that access or services are made by an Authorized Person and we will not be liable for any loss or damage suffered by you as a result of any misuse by unauthorized persons.

We reserve the right to block access to Positive Pay System to maintain or restore security to our site and systems, if we reasonably believe your access codes have been or may be obtained or are being used or may be used by unauthorized person(s). Furthermore, if you do not log on to the Positive Pay System or have not had any transactions processed through such system over a period of 6 months, your access to Positive Pay System may be suspended or canceled by INTERCREDIT BANK at its sole discretion, but INTERCREDIT BANK shall not be liable to you for its failure to do so.

INTERCREDIT BANK will use its best efforts to ensure the security of all information input by you or provided to you in connection with your use of INTERCREDITBANK.com. However, you understand, acknowledge and agree that, because of the nature of the Internet, there can be no absolute assurance in this regard or with respect to the security of any e-mail communications between you and Bank.

You agree that INTERCREDIT BANK may download certain information, including customer identification information, to your computer or other access device using "cookies" or other technology.

- 6) ACH Entries. Positive Pay will not stop the payment of checks that have been converted to ACH entries. ACH Rules prohibit the conversion of business checks as long as they meet the standards published in the ACH Rules. You are responsible for assuring that your checks meet these standards to utilize the Positive Pay service. Tell us at once if you believe a check has been improperly converted to an ACH entry.
- 7) Ordering Checks. We encourage you to order your checks through the Bank to ensure that your business checks meet the standards in the ACH Rules. You agree to insure the MICR encoding ink is of high quality. Not using business checks with high quality MICR ink could result in a large number of Positive Pay exceptions.
- 8) Notices, Instructions, Etc.
  - a) Except as otherwise expressly provided herein, we shall not be required to act upon any notice or instruction received from you or any other person.
  - b) We shall be entitled to rely on any written notice or other written communication believed by us in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth below.

You may add or delete any Authorized Representatives by written notice to us signed by at least two (or one, if

only one exists) Authorized Representatives other than that being added or deleted. Such notice shall be effective on the second business day following the day of our receipt.

c) Except as otherwise expressly provided herein, any written notice or communication shall be delivered, or Send

to: Attn: Deposit Operations  
Intercredit Bank, N.A.  
8485 SW 40th St, Suite 307  
Miami, FL 33155

Unless another address is substituted by notice delivered or sent as provided herein. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

- 9) Periodic Statement. The periodic statement issued by us for your account will reflect entries credited and debited to your account. You agree to notify us promptly of any discrepancy between your records and the information shown on any such periodic statement. If you fail to notify us within 30 days of receipt of a periodic statement, you agree that we shall not be liable for any other losses resulting from your failure to give such notice. In addition, you can use Business Online Cash Management to view daily transactions on your account.
- 10) Disclaimer of Warranty. YOU ACKNOWLEDGE THAT THE INFORMATION FILE MUST BE PROVIDED IN A READABLE FORMAT TO INTERFACE WITH OUR COMPUTERS, AND ASSUME THE RISK THAT OUR COMPUTER MIGHT NOT BE OPERATIONAL AT ALL TIMES. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROGRAM, OUR COMPUTERS OR ITS USE AND HEREBY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 10) Liability; Limitations on Liability; Indemnity.
- a) We shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for our gross negligence in performing those services. We shall not be responsible for your acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any file received from you) or those of any other person. We are authorized by you to process transactions in accordance with the information that we receive in the issued file transmission or Checks from you. You shall be solely responsible for the information contained in the file or Checks entered, and we shall have no responsibility for erroneous data provided by you. You will indemnify and hold us harmless from and against any loss, charge, liability, cost, fee or expense (including attorneys' fees and expenses) we suffer or incur resulting from any lawsuit, claim, arbitration or other action, actual or threatened, arising under or in connection with this Agreement, excluding those lawsuits, claims, arbitrations or other actions arising out of our gross negligence.
- b) In no event shall we be liable for any consequential, special, punitive or indirect loss or damage that you may incur or suffer in connection with this Agreement, including losses or damages from subsequent wrongful dishonor resulting from our acts or omissions pursuant to this Agreement.
- c) We shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, and act of terror, emergency conditions or other circumstances beyond our control.
- 11) Amendments. From time to time, we may amend any of the terms and conditions contained in this Agreement. Such amendments shall become effective upon receipt of notice by you or such later date as may be stated in our notice to you.
- 12) Termination. You and we may terminate this Agreement at any time. Such termination shall be effective on the second business day following the day of receipt of written notice of such termination or such later date as is specified in that notice. We reserve the right to terminate this Agreement immediately upon providing written notice of such termination to you. Any termination of this Agreement shall not affect any of our rights and your obligations arising prior to such termination, or your payment obligations with respect to services performed by us prior to termination, or any other obligations that survive termination of this Agreement.
- 13) Entire Agreement. This Agreement, together with the Account Agreement, is the complete and exclusive statement of the agreement between you and us with respect to the subject matter hereof and supersedes any prior agreement(s) between you and us with respect to such subject matter. 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 we are 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 we shall incur no liability to you as a result of such violation or amendment. No course of dealing between you and us will constitute a modification of this Agreement or constitute an agreement between you and us, regardless of whatever practices and procedures you and us may use.

- 14) Assignment. You may not assign this Agreement or any of the rights or duties hereunder to any person without our prior written consent. We may assign this Agreement to an affiliate or any successor or assign.
- 15) Waiver. We may waive enforcement of any provision of this Agreement. Any such waiver shall not affect our rights with respect to any other transaction or modify the terms of this Agreement.
- 16) Binding Agreement; Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against you or us hereunder.
- 17) Severability. In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

The following account (s) will be set up with Positive Pay:

_____	_____	_____
_____	_____	_____
_____	_____	_____

Authorized Representatives:

Name	Signature	Email Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized officers, effective as of the date first above written.

Bank: **Intercredit Bank, N.A.**

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

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

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