

## User Agreement

THE FOLLOWING DESCRIBES THE TERMS ON WHICH CAPITAL CONFIRMATION INC. OFFERS YOU ACCESS TO OUR SERVICES.

Welcome to the User Agreement for Capital Confirmation Inc. This Agreement describes the terms and conditions applicable to your use of our services available under the domains and sub-domains of [www.confirmation.com](http://www.confirmation.com), and [learn.confirmation.com](http://learn.confirmation.com) (“Confirmation Website(s)”) owned and operated by Capital Confirmation, and the general principles for the websites of our subsidiaries. If you do not agree to be bound by the terms and conditions of this Agreement, do not use or access our services. Your evidence of your acceptance of the terms and conditions of this Agreement through your use of any of the Confirmation.com services (aka “Confirm™” service).

If you have any questions, please email us at [customer.support@confirmation.com](mailto:customer.support@confirmation.com).

You must read, agree with and accept all of the terms and conditions contained in this User Agreement and the Privacy Statement, which include those terms and conditions expressly set out below and those incorporated by reference, before you may become a member of Capital Confirmation. We strongly recommend that, as you read this User Agreement, you also access and read the information contained in the other pages and websites referred to in this document, as they may contain further terms and conditions that apply to you as a Capital Confirmation user. Please note: underlined words and phrases are links to these pages and websites. By accepting this User Agreement, you also agree that your use of other Capital Confirmation websites will be governed by the terms and conditions posted on those websites.

We may amend this Agreement at any time by posting the amended terms on our site. Except as stated below, all amended terms shall automatically be effective immediately upon posting on our site. You will not be notified in writing or by email of any changes in this Agreement. This Agreement may not be otherwise amended except in writing signed by you and Capital Confirmation Inc. This Agreement is effective starting March 1, 2003.

## 1. Membership Eligibility.

Our services are available only to individuals who can form legally binding contracts under applicable law. Without limiting the foregoing, our services are not available to minors or to temporarily or indefinitely suspended Capital Confirmation members. If you are a minor, you cannot use this service. If you do not qualify, please do not use our services. Further, your Capital Confirmation account (including feedback) and User Id may not be transferred or sold to another party. If you are registering as a business entity, you represent that you have the authority to bind the entity to this Agreement. If you are registered as an individual, you represent that you are the individual you purport to be.

## 2. Fees and Service.

Capital Confirmation provides a venue for digital transaction management, including but not limited to, audit confirmations, accounts receivable/accounts payable confirmations, credit inquiries, employee benefit plan audits and confirmations, and legal confirmations for accounting firms, law firms, banks, and other users (the "Service"). Joining and using our service to respond to audit confirmations is free. Our changes to the policy are effective after we provide you with at least fourteen (14) days' notice of the changes by posting the changes in this Agreement. In the event we introduce a new service, the fees for that service are effective at the launch of the service. The Service also includes the provision of ancillary services deemed reasonably necessary by Capital Confirmation to run a venue for digital transaction management, including but not limited to customer support, billing, and account management.

## 3. Capital Confirmation is a Venue.

**3.1 Capital Confirmation is not an accounting firm or client user nor are we an authorized accounting firm or client user representative.** Instead, our site acts as a venue to allow users to respond to audit confirmations. We are not involved in the actual transaction between users of and providers of the confirmation information. As a result, we have no control over the quality, accuracy, timeliness or legality of the requests and the responses, or the truth or accuracy of the requests and responses.

**3.2 Identity Verification.** We use many techniques to identify our users when they register on our site. However, because user verification on the Internet is difficult, Capital Confirmation cannot and does not confirm each user's purported identity. Thus, we have established a user-initiated communication system to help you

evaluate with whom you are dealing. We encourage you to communicate directly with individual parties through the tools available on our site.

**3.3 Release.** Because we are a venue, in the event that you have a dispute with one or more users, you release Capital Confirmation (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**3.4 Information Control.** We do not control the information provided by other users that is made available through our system. You may find other user's information to be inaccurate. Please use caution, common sense, and safe practices when using our site.

**3.5 Customer Support.** Monday through Friday between the hours of 8:00 A.M. and 5:00 P.M. Central Standard Time, customer support shall be available free of charge by telephone or by email at one or more phone numbers or email addresses to be specified on our website located at [www.confirmation.com](http://www.confirmation.com).

#### **4. Responding.**

By responding to a confirmation request you agree to be bound by the conditions of this Agreement. Responses are not retractable. If you choose to respond to a confirmation you are certifying that you have the legal right to respond to such confirmations on behalf of the company you purport to represent and work for, or in the case of an individual who is responding, you are certifying that you are the person you purport to be.

#### **5. Fraud.**

Without limiting any other remedies, Capital Confirmation may suspend or terminate your account if we suspect that you (by conviction, settlement, insurance investigation, or otherwise) have engaged in fraudulent activity in connection with our site.

#### **6. Your Information.**

**6.1 Definition.** "Your Information" is defined as any information you provide to us or other users in the registration or confirmation process, in any message area or through any email feature. You are solely responsible for Your Information, and we act as a passive conduit for your online distribution and publication of Your Information.

**6.2 Restricted Activities.** Your Information (or any items listed) and your activities on the site shall not: (a) be false, inaccurate or misleading; (b) be fraudulent; (c) infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (d) violate any law, statute, ordinance or regulation (including, but not limited to, those governing consumer protection or antidiscrimination); (e) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (f) be obscene or contain child pornography; (g) contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; and (h) create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers. Furthermore, you may not authorize and respond to any confirmation on the site (or consummate any transaction that was initiated using our service) that, by authorizing and responding to us the usage fee or the final value fee, could cause us to violate any applicable law, statute, ordinance or regulation.

**6.3 License.** Solely to enable Capital Confirmation to use the information you supply us with, so that we are not violating any rights you might have in that information, you agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in Your Information, in any media now known or not currently known, with respect to Your Information. Capital Confirmation will only use Your Information in accordance with our Privacy Statement.

## **7. Ownership of Intellectual Property.**

Capital Confirmation shall have and retain all rights, title and interest in all Intellectual Property relating to the Service or arising out of the relationship described in this Agreement. "Intellectual Property" means all ideas, discoveries, inventions, developments, designs, improvements, trademarks, service marks, trade secrets, proprietary information, programs, source code, object code, applications for patents, patents, copyrights (for the duration thereof, including

renewals, extensions, and reversions thereof), copyrightable works, and the goodwill associated therewith, including enhancements, improvements, and derivative works, either presently existing or hereinafter arising. You hereby assign and transfer to Capital Confirmation any and all rights in any such Intellectual Property, either presently existing or hereinafter arising, and agree to take such actions (at Capital Confirmation's expense) as Capital Confirmation may reasonably request to secure such rights for Capital Confirmation. While a registered user of our service, and for a period of two (2) years from the date of last login, you agree not to offer services or assist others in offering services that would compete in any way with the services offered by Capital Confirmation. Unsolicited ideas or product feedback will automatically become our property, without any compensation to you and we may use or distribute such submissions and their contents for any purpose and in any way without any obligations of confidentiality or otherwise.

#### **8. Access and Interference.**

You agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or the content contained herein without our prior expressed written permission. You agree that you will not reverse engineer, disassemble, decompile, decode, adapt, develop, or modify the website or Service, or otherwise attempt to derive or gain access to the source code of the website or Service, in whole or in part. You agree that you will not use any device, software or routine to bypass our security features, or to interfere or attempt to interfere with the proper working of the Capital Confirmation site or any activities conducted on our site. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Much of the information on our site is updated on a real time basis and is proprietary or is licensed to Capital Confirmation by our users or third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for Your Information) from our website without the prior expressed written permission of Capital Confirmation or the appropriate third party. You must ensure that all information you supply to us through our website or Service, or in relation to our website or Service, is true, accurate, complete and not misleading. You shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of this information. You shall not access all or any part of our website or Service to build a product or service which competes with the Service. You shall not attempt to obtain, or assist third parties in obtaining, access to our website or Service, other than as provided under this Agreement. You shall not

make, nor permit any party to make, any use of our website or Service other than to avail of the Service. You shall not make alterations to, or permit our website or Service or any part of it to be combined with, or become incorporated into, any other programs. You shall not provide or otherwise make available our website or the Service in whole or in part (including object and source code), in any form, to any person without our prior written consent. You shall not infringe on our licensors' intellectual property rights or those of any third party in relation to your use of our website or Service. We may make available to you certain Application Programming Interfaces (an "API" or "APIs") to achieve additional functionality for users, and provide capabilities or integrations that leverage one or more of our products or services available at [www.confirmation.com](http://www.confirmation.com) or provided by our affiliates, which you may use where applicable, subject to our then current fees (if any) for such APIs. Unless previously authorized by us, or our affiliates, you must not automatically connect (whether through APIs or otherwise) any Service to other data, software, services or networks.

#### **9. Breach.**

Without limiting other remedies, we may immediately remove you, warn our community of your actions, issue a warning, temporarily suspend, indefinitely suspend or terminate your membership and refuse to provide our services to you if: (a) you breach this Agreement or the documents it incorporates by reference; (b) we are unable to verify or authenticate any information you provide to us; or (c) we believe that your actions may cause financial loss or legal liability for you, our users or us.

#### **10. Electronic Communications; Identifiers and Passwords; Binding Effect.**

You will receive and transmit information to us over the Internet using SSL technology and 2048-bit encryption. You must use Internet browsers that will support the use of 2048-bit encryption. In order to initiate a session where information is transmitted, you will either select and use an identification code (such as a "log-in ID") and a password or will be prompted to click a link to log-in. You shall protect and safeguard identification codes, passwords, log-in links/emails, and shall only permit authorized employees or yourself to use the identification code and password, or to click the log-in link, in connection with the service. We, and all other persons receiving information from you that has been transmitted using either the identification code and password selected by you, or the log-in link/email, shall be entitled to rely in all instances that the information so transmitted has been transmitted by you, that such information is true, accurate and complete in all respects, with the same effect and intent as if such information

had been transmitted in written form bearing your written signature. If you believe that your identification code and password have been lost, stolen or compromised in any respect, please notify us immediately at 1-866-325-7201. Communications using the identification code and password received after we have had an opportunity to respond to your notice will not be valid or effective.

## 11. Privacy.

We do not sell or rent your personal information to third parties and only use your information as described in the Privacy Statement available at <https://www.confirmation.com/legal-security-privacy/index.html> . We take the protection of our users' privacy seriously. We store and process your information on computers located in Ireland and the United States that are protected with security measures.

Customer Financial information residing within Confirmation.com's processing controls will be maintained and stored according to our security and privacy policies. Confirmation.com takes no responsibility for Customer Financial information once this data is no longer within Confirmation.com's control (e.g., data downloaded by a user or mailed confirmations).

If you object to your information being collected, used, transferred, or otherwise processed in this way, please do not use our services.

**11.1 Data Protection Legislation.** When using our Services or otherwise providing Personally Identifiable Information to us, you agree to comply with all applicable laws governing or relating to the processing of that Personally Identifiable Information ("Data Protection Laws"). "Personally Identifiable Information" shall mean any information relating to an identified or identifiable natural person whose information you provide to us and that we process as part of the Service or in connection with this Agreement. You confirm that any Personally Identifiable Information that has been provided by you has been collected and disclosed in accordance with Data Protection Laws. When using the Service, you shall not input, upload, maintain or disclose any irrelevant or unnecessary information about individuals.

**11.2 Personal Data transferred outside of your home country.** Without limiting the foregoing and for clarity, you agree that we may transfer your personal information outside of your home country to another country where the laws may not provide an equivalent level of protection and you confirm that we

may so transfer any Personally Identifiable Information that has been provided by you.

Where the provision of Service by us to you involves any transfer of Personally Identifiable Information that has been provided by you outside of the European Economic Area or Switzerland (by way of direct or indirect transfer), the parties agree that the transfers will be done in accordance with Schedule 1 attached hereto. If any other Data Protection Laws require you and us to implement appropriate safeguards to legitimize the transfer of Personally Identifiable Information to a third country, you will let us know and we will negotiate in good faith to implement the required safeguards.

## **12. Supervisor, Secretary, Coordinator and Clerk Authentication.**

You certifies that any and all subject(s) set up as your supervisor(s), secretary(s), coordinator(s) and/or clerk(s) on the Confirm service are your authorized and employed representatives of the .

## **13. Audit Rights.**

Capital Confirmation may, from time to time, conduct various audits of your practices and procedures to determine your compliance with this Agreement. You will reasonably cooperate in all those audits. Capital Confirmation may conduct on-site and/or off-site audits of your facilities as Capital Confirmation determines during normal business hours, and upon reasonable notice.

## **14. No Warranty.**

WE, OUR SUBSIDIARIES, EMPLOYEES AND OUR SUPPLIERS PROVIDE OUR WEB SITE AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY APIS, ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. WE, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD-PARTIES' RIGHTS, AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. WE MAKE NO WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE SERVICES OR ANY CONTENT THEREIN. WE MAKE NO WARRANTIES THAT THE WEBSITE OR SERVICE WILL REMAIN AVAILABLE. WE RESERVE THE RIGHT TO DISCONTINUE OR ALTER ANY OR ALL OF THE WEBSITE OR SERVICE, AND TO STOP PUBLISHING OUR WEBSITE OR SERVICE AT ANY TIME AND IN OUR SOLE DISCRETION WITHOUT NOTICE OR EXPLANATION, AND YOU WILL NOT BE ENTITLED TO ANY COMPENSATION OR OTHER



PAYMENT UPON THE DISCONTINUANCE OR ALTERATION OF OUR WEBSITE OR SERVICES. FOR THE AVOIDANCE OF ALL DOUBT, WE DO NOT WARRANT, NOR WILL BE RESPONSIBLE FOR, ANY PRODUCTS, SERVICES, FUNCTIONALITY, OR INTERFACES THAT ARE PROVIDED BY YOU OR ANY THIRD PARTY.

#### **15. Liability Limit.**

IN NO EVENT SHALL WE, OUR SUBSIDIARIES, EMPLOYEES OR OUR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH OUR SITE, OUR SERVICES, INCLUDING WITHOUT LIMITATION USE OF ANY APIS, OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE). THE USER SHALL HAVE NO LIABILITY WITH RESPECT TO THE SERVICE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL WE, OUR SUBSIDIARIES, EMPLOYEES OR OUR SUPPLIERS BE LIABLE WITH RESPECT TO THE ACCURACY OR RELIABILITY OF INFORMATION PROVIDED BY THE AUDITOR, WHETHER INPUTTED INTO THE CAPITAL CONFIRMATION WEBSITE OR ANY ASSOCIATED PLATFORMS BY US CAPITAL CONFIRMATION OR BY THE AUDITOR. THE AUDITOR MAINTAINS THE SOLE RESPONSIBILITY AND LIABILITY FOR REVIEWING AND APPROVING THE INFORMATION POPULATED INTO THE CAPITAL CONFIRMATION WEBSITE AND ASSOCIATED PLATFORMS.

OUR LIABILITY, AND THE LIABILITY OF OUR SUBSIDIARIES, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU PAY TO US IN THE 12 MONTHS PRECEDING THE FIRST DATE ON WHICH SUCH LIABILITY AROSE, AND (B) \$100. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NONPERFORMANCE OF ANY APIS PROVIDED BY CAPITAL CONFIRMATION SHALL BE FOR CAPITAL CONFIRMATION TO USE COMMERCIALY REASONABLE EFFORTS TO ADJUST OR REPAIR THE NONPERFORMING APIS.

#### **16. Fair Credit Reporting Disclosure.**

The parties acknowledge that CCI is not a consumer reporting agency as such term is defined in the federal Fair Credit Reporting Act, 15 U.S.C. 1581 et seq. (“FCRA”) and therefore, is not subject to the requirements or provisions of the FCRA. Any reports accessed through the Services or Sites do not constitute consumer reports as such term is defined in the FCRA, and accordingly, such reports may not be used to determine eligibility for credit, employment, insurance underwriting, tenant screening or for any other purpose provided for in the FCRA. CCI makes no representations or warranties as to its compliance or certifications with respect to the Fair Credit Reporting Act or its regulatory requirements. However, other Users, including banking institutions, financial organizations, credit reporting agencies, and other entities with which the User may interact through the Services or Sites may be subject to the Fair Credit Reporting Act. CCI makes no representations or warranties about such other User’s compliance or certifications with respect to the Fair Credit Reporting Act or its regulatory requirements. CCI shall not be deemed a guarantor of the accuracy or completeness of information provided by other Users.

#### **17. Indemnity.**

You shall indemnify and hold Capital Confirmation and (as applicable) our parent, subsidiaries, affiliates, officers, directors, agents, and employees and the financial institutions harmless from any and all third-party claims, losses and damages, liability, and costs, including attorney’s fees, against, or incurred by, Capital Confirmation to the extent such claims, damages, liability and costs result directly or indirectly from: (a) your negligence or intentional conduct; (b) your breach of its obligations under this Agreement including, but not limited to, any breach which results in the unauthorized and/or non-permissible use of information obtained via Capital Confirmation’s Confirmation.com service or any other such service under this Agreement; (c) any claim that our website or Service or the use thereof infringes upon, misappropriates, or violates any intellectual property rights of any third party, provided that such claim results from or is related to (i) an unauthorized modification of our website or Service; (ii) the combination of the website or Service with software, hardware, or equipment not provided by us if our website or Service alone would not be the subject of such claim; or (iii) your unauthorized use of the website or Service; (d) any data breach suffered by you, your vendor or processor, or by a vendor or processor for Capital Confirmation; or (e) any claim, action, audit, investigation, regulatory action, inquiry, or other proceeding that arises out of or relates to your failure to comply with any applicable laws and regulations in

connection with the transfer of personal data to or outside the EU/EEA including any applicable data protection legislation.

### **18. Confidentiality.**

You may be given access to our confidential information or confidential information from other authorized Users in relation to your use of our website or Service. Information and knowledge related to the operation and processes of the website and Service are also considered confidential information. You shall hold confidential information in confidence and, unless required by law, not make confidential information available to any third party, or use confidential information for any purpose other than as provided for in using our website or Service. You shall take all reasonable steps to ensure that confidential information to which you have access is not disclosed or distributed by any person in violation of this Agreement. You acknowledge that details of the Service constitute our confidential information.

### **19. Legal Compliance.**

You represents and warrants that it has read, understands and shall comply with all laws, regulations and judicial actions including, but not limited to, the Identity Theft and Assumption Deterrence Act, the Fraud and False Statements Act, the USA Freedom Act, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Gramm-Leach-Bliley Act and the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), including without limitation, all amendments thereto, and all other applicable federal or state legislation, regulations and judicial actions, as now or as may become effective.

You certify that you will use the service and the information received for no other purpose than is legally permissible. You understand that if the system is used improperly by your personnel, or if its access codes are made available to any unauthorized personnel due to carelessness on your part or any other, you may be held responsible for financial losses, fees or monetary charges that may be incurred and that its access privileges may be terminated. You will not obtain, retain, use, or provide access to the Service to an affiliate or any third party in a manner that may breach any applicable export control or economic sanctions laws and regulations for any jurisdiction, including the United States of America, the United Kingdom and the European Union and its Member States. You warrant that neither you, nor any affiliate to which you provide access to the Service, is affiliated with a specially designated or sanctioned entity under any of those laws and that, in any transaction relating to Confirmation or the Service, such transactions will not

involve sanctioned parties, including without limitation through the use of bank accounts at banks that are sanctioned parties. Further, the parties represent and warrant that they have read, understand and shall comply with all applicable laws, regulations and judicial actions including, but not limited to, anti-bribery laws, anti-corruption laws, anti-slavery laws, anti-human trafficking, tax laws, any applicable law aimed at preventing the facilitation of criminal behavior.

**20. British Banker's Association, BBA Enterprises Limited plus any other group company of the British Banker's Association (Together the "BBA")**

Nothing in this agreement shall limit the BBA's liability for death or personal injury caused by its negligence or that of its personnel; fraud or fraudulent misrepresentation; or for any other liability which cannot be excluded under English law, even if any other terms of this Agreement would suggest that this might otherwise be the case.

You expressly acknowledge and agree that the BBA: (a) is not a party to this Agreement and is not involved in the design, supply or support of Capital Confirmation Inc's services including the service promoted to UK banks as "BBA Confirmations"; (b) makes no representation or warranty that the services will be adequate or appropriate for you and its requirements and any BBA trademarks or logos present in marketing materials or other documents do not represent an endorsement of the service; (c) shall not be responsible for providing any of the services; and (d) shall have no liability to you whatsoever whether direct or indirect and whether in contract, tort (including negligence), misrepresentation or for any other reason in respect of any of the services provided under this agreement.

**21. No Agency.**

You and Capital Confirmation are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

**22. Notices.**

Except as explicitly stated otherwise, any notices shall be given by postal mail to Capital Confirmation Inc. Attn: Legal Department 214 Centerview Drive, Suite 100, Brentwood, TN 37027 (in the case of Capital Confirmation) or to the email address you provide to Capital Confirmation during the registration process (in your case). Notice shall be deemed given 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the address

provided to Capital Confirmation during the registration process. In such case, notice shall be deemed given 3 days after the date of mailing.

### **23. Arbitration.**

Any legal controversy or legal claim arising out of or relating to this Agreement or our services, excluding legal action taken by Capital Confirmation to collect our fees and/or recover damages for, or obtain an injunction relating to, the Capital Confirmation site operations, intellectual property, and our services, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in Nashville, Tennessee, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Either you or Capital Confirmation may seek any interim or preliminary relief from a court of competent jurisdiction in Nashville, Tennessee necessary to protect the rights or property of you or Capital Confirmation pending the completion of arbitration. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1000.00.

### **24. Governing Law.**

This Agreement shall be governed in all respects by the laws of the State of Tennessee, without reference to conflict of laws principles. You further consent to exclusive jurisdiction by the United States District Court for the Middle District of Tennessee.

### **25. Assignment.**

You agree that this Agreement and all incorporated agreements may be automatically assigned by Capital Confirmation, in our sole discretion, to a third party in the event of a merger or acquisition. You may not, without our prior written consent, assign, transfer, sub-contract or otherwise deal with any of your rights and/or obligations under this Agreement.

### **26. Additional Terms.**

The following policies are incorporated into this Agreement by reference and provide additional terms and conditions related to specific services offered on our site:

Privacy Statement:

<https://www.confirmation.com/legal-security-privacy/index.html>

Each of these policies may be changed from time to time and are effective immediately after we post the changes on our site, except for the Privacy Statement for which we will provide you with thirty days prior notice. In addition, when using particular services on our site, you agree that you are subject to any posted policies or rules applicable to services you use through our site, which may be posted from time to time. All such posted policies or rules are hereby incorporated by reference into this Agreement.

You acknowledge and agree that: (a) members of Capital Confirmation's Group may be retained as sub-processors; and (b) Capital Confirmation and members of Capital Confirmation's Group respectively may engage third-party sub-processors in connection with the provision of the Services.

## **27. General.**

We do not guarantee continuous, uninterrupted or secure access to our services, and operation of our site may be interfered with by numerous factors outside of our control. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. English is the official language used for content on the Confirmation.com website. Through the use of a third-party provider Confirmation.com provides its users with limited English proficiency to access information on the site. Translations made through this automated process should not be considered exact particularly in cases of technical and legal terminology. Additionally, some files including graphs, photos and portable document formats (pdfs) cannot be translated through this process. Capital Confirmation Inc. does not warrant the accuracy or reliability of any information translated by this system and shall not be liable for any losses caused by such reliance on the accuracy or reliability of such information. While every effort is made to ensure the accuracy of the translation, portions may be incorrect. Any person or entity who relies on information obtained from the system does so at his or her own risk. This Agreement sets forth the entire understanding and agreement between us with respect to the subject matter hereof. Sections 2 (Fees and Services) with respect to fees owed for our services, 3.3 (Release), 6.3 (License), 8 (Access and

Interference), 15 (Liability Limit), 16 (Indemnity) and 23 (Arbitration) shall survive any termination or expiration of this Agreement.

**28. Disclosures.**

The services hereunder are offered by Capital Confirmation Inc., located at 214 Centerview Drive, Suite 100, Brentwood, Tennessee 37027. Fees for our services are described above in Section 2 (Fees and Services).

**29. Disputes.**

Disputes between you and Capital Confirmation regarding our services may be reported to Customer Support by mailing us at Capital Confirmation, Customer Support, 214 Centerview Drive, Suite 100, Brentwood, TN 37027. We encourage you to report all user-to-user disputes to your local law enforcement, postmaster general, or a certified mediation or arbitration entity.

**30. Your Acceptance of this User Agreement.**

You evidence your acceptance of this User Agreement by using the Confirmation.com service. Such acceptance shall have the same legal effect as your written signature set forth on a written document containing the terms and conditions of this User Agreement.

## **Schedule 1**

### **EUROPEAN PERSONAL DATA TRANSFERS**

We process Personally Identifiable Information outside of the European Economic Area (EEA) and Switzerland including in third countries which may not be recognized by the European Commission or the Swiss Federal Data Protection and Information Commission as providing an adequate level of privacy protection, such as in the United States.

Capital Confirmation will enter into the Standard Contractual Clauses approved by the European Commission to legitimize the transfers of Personally Identifiable Information outside of the EEA and/or Switzerland to an inadequate third country.

If we are required to enter into the Standard Contractual Clauses to legitimize the transfer of Personally Identifiable Information outside of the EEA and/or Switzerland, then the parties hereby agree to the Standard Contractual Clauses set forth in Attachment 1 (for those cases where we act as a processor with respect to personal data) below, and you evidence your acceptance of the Standard Contractual Clauses by clicking on “Accept User Agreement and Add Account” button on the Capital Confirmation website or by using the Confirmation.com service.

Notwithstanding the foregoing, if the Standard Contractual Clauses are not a valid transfer mechanism to legitimize the transfers of Personally Identifiable Information outside of the EEA to the United States (or another third country that does not provide an equivalent level of protection even with the use of such data transfer agreements), then you shall procure the appropriate consent of any data subject whose Personally Identifiable Information is transferred to us to enable us to transfer that Personally Identifiable Information to the United States (or such other third country).



## **Attachment 1: Standard Contractual Clauses (Processor)**

For the transfer of personal data outside of the EEA and/or Switzerland to processors established in third countries which do not ensure an adequate level of data protection, the data exporter and the data importer have agreed on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Notwithstanding the foregoing, if the following Contractual Clauses are not a valid transfer mechanism to legitimize the transfers of Personal Data outside of the EEA and/or Switzerland to the United States (or another third country that does not provide an equivalent level of protection even with the use of such data transfer Clauses), you shall procure the appropriate consent of any data subject whose Personal Data is transferred to us to enable the Parties to transfer that Personal Data to the United States (or such other third country).

### *Clause 1*

#### **Definitions**

For the purposes of the Clauses:

- (a) ‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) ‘the data exporter’ means the party who transfers the personal data;
- (c) ‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) ‘the sub-processor’ means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) ‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) ‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

### *Clause 2*

### **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

#### *Clause 3*

### **Third-party beneficiary clause**

- (a) The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
- (b) The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
- (c) The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- (d) The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### *Clause 4*

### **Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security

measures specified in Appendix 2 to this contract;

- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### *Clause 5*

#### **Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before

processing the personal data transferred;

- (d) that it will promptly notify the data exporter about:
- (e) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - i. any accidental or unauthorised access; and
  - ii. any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
  - iii. to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority. The data importer has included the security requirements detailed in Appendix 2 at the request of the data exporter, and the data exporter agrees that such security requirements and the audit obligations and rights under the Master Agreement will be deemed to fully satisfy the audit rights granted to the data exporter under Clauses 5(f) and 12.2;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent (whether under or in connection with the Master Agreement or otherwise);
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly, on request, a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

#### *Clause 6*

#### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred

to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

- a. The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

*Clause 7*

**Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
2. to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
3. to refer the dispute to the courts in the Member State in which the data exporter is established.
4. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

**Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

*Clause 9*

**Governing law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10*

**Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*

**Sub-processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*

**Obligation after the termination of personal data-processing services**

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

Name (written out in full): [Insert name of the authorised signatory]

Position: [Insert position of the authorised signatory]

Address: .....

Other information necessary in order for the contract to be binding (if any): (stamp of organisation)

Signature .....

**On behalf of the data importer:**

**Capital Confirmation, Inc.**

Name (written out in full): Diana Flanders

Position: VP, Business Integrations

Address: Capital Confirmation, Inc. 214 Centerview Drive, Suite 100, Brentwood, TN 37027

Other information necessary in order for the contract to be binding (if any): N/A

Signature  .....

*Appendix I*

**to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

**Data exporter**

**The data exporter is (please specify briefly your activities relevant to the transfer):**

The data exporter will export the personal data contained in the client's documentation to the requestors via the Confirmation.com platform. Exported data will concern personal data of data exporter's employees with access given to the online platform handled by the data importer. Also, data exporter's customers data for the purposes of forwarding data exporter's audits to requestors by the Importer.

**Data importer**

**The data importer is (please specify briefly activities relevant to the transfer):**

Capital Confirmation Inc.

The data importer provides an online venue for digital transaction management, including but not limited to, audit confirmations, accounts receivable/accounts payable confirmations, credit inquiries, employee benefit plan audits and confirmations, and legal confirmations for accounting firms, law firms, banks, and other users. Processed data will concern data exporter's employees for which accounts in the platform handled by the data importer will be created. Also, data exporter's customers data for the purposes of forwarding data exporters confirmations to requestors by the data importer.

**Data subjects**

**The personal data transferred concern the following categories of data subjects (please specify):**

Data exporter's employees and personal data of data exporter's client's representatives and other subjects mentioned in the documentation, which is sent to the requestor

**Categories of data**

**The personal data transferred concern the following categories of data (please specify):**

-names, surnames, names of authorized representatives of the data exporter's clients

-including but not limited to: names, surnames, addresses, account numbers, financial information, PESEL number and other personal data of the subjects mentioned in the documentation sent to the requestor.

**Special categories of data (if appropriate)**

Not applicable

**Processing operations**

**The personal data transferred will be subject to the following basic processing activities (please specify):**





The platform Confirmation.com is internet-based system, that allows the data exporter to send documentation to auditors for the needs of the audit. The documentation will be encrypted by the data importer while uploading it to the platform, so the data importer should not get access to the contents of the documentation and personal data contained in the documentation beyond the scope necessary to perform the encryption process.

DATA EXPORTER

Name: .....

Authorised Signature .....

DATA IMPORTER

Capital Confirmation, Inc.

Name: Diana Flanders

Authorised Signature  .....

*Appendix 2*

**to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

Data Importer has implemented the technical and organisation security measures set out in the Agreements and incorporated herein by reference.

DATA EXPORTER

Name:

Authorised Signature

Capital Confirmation Inc.

Name: Diana Flanders

Authorised Signature 