

**First Citizens BancShares, Inc.**  
**Outside Counsel Guidelines**  
**(Effective June 1, 2023)**



## I. ADOPTION AND APPLICABILITY OF GUIDELINES

A. General Applicability. First Citizens BancShares, Inc. (“BancShares”) is the parent company of First-Citizens Bank & Trust Company, its banking subsidiary. In early 2022, BancShares completed its largest acquisition to date with the merger with CIT Group Inc. (“CIT”) and its banking subsidiary, CIT Bank, N.A. The combined company now operates under the First Citizens name and will be referred to herein as “FCB.” FCB has adopted these Outside Counsel Guidelines (“OCG”) in order to standardize processes and procedures for legal matters involving FCB.

The main objectives of these OCG are to achieve greater consistency and efficiency in services by outside counsel, to standardize requirements and thereby streamline processes, and to facilitate cost savings. These OCG will govern Service Provider’s<sup>1</sup> services on all matters. However, nothing in these OCG is in any way intended to interfere with or diminish Service Provider’s professional judgment, duties or responsibilities as a legal counsel and advocate representing FCB’s interests.

These OCG are applicable to all work performed from June 1, 2023 forward (the “Effective Date”) for all Service Providers assigned to work on FCB legal matters. These OCG, along with an engagement letter between the Service Provider and FCB, comprise the engagement agreement between FCB and a Service Provider. In the event of a conflict between the OCG and the engagement letter, these OCG shall apply to the exclusion of such letter. Service Providers may not depart from these OCG without written approval from FCB’s Chief Counsel or the Chief Counsel’s designee. To avoid any misunderstandings or controversy, we encourage Service Providers to promptly raise any questions regarding these OCG and any billing expectations by emailing **OCG\_CounselLink\_Help@firstcitizens.com**.

FCB reserves the right to update these OCG at any time and will aim to provide reasonable notice prior to any substantive modifications. Service Providers are expected to comply with the latest version of the OCG in effect.

## II. CONFLICTS OF INTEREST

A. Client. First Citizens BancShares, Inc. (“BancShares”) (including its controlled subsidiaries) is the Service Provider’s client for the purpose of determining whether a conflict of interest exists. Please refer to the current Form 10-K for BancShares for a list of FCB’s controlled subsidiaries in order to perform an accurate conflicts check.

B. General Policy. Prior to each engagement, Service Providers must determine that no conflicts of interest exist or that the advance waiver set forth below applies. If an actual or potential conflict exists or arises in the course of the engagement, it must be disclosed in writing (e.g., by e-mail) to FCB’s Chief Counsel or the Chief Counsel’s designee. Such conflicts include, without limitation, issues conflicts and positions taken by Service Provider before administrative and regulatory agencies and bodies, as well as other tribunals. FCB expects Service Provider to bring to FCB’s immediate attention any potential new conflict and inform us of any activity which might

---

<sup>1</sup> The Parties agree that the use of the term “Service Provider” herein is not intended to, and does not, refer to the term “Service Provider” under the California Privacy Rights Act.

be viewed as a conflict of interest. Furthermore, if, in FCB's opinion, an actual or potential conflict exists, FCB will not permit the Service Provider to perform further work for FCB unless and until the conflict is disclosed and resolved.

All conflict waivers must be in writing and expressly approved by FCB's Chief Counsel or the FCB Person-In-Charge ("PIC"). Conflict waivers shall not extend to matters not specifically set forth in the written waiver or to adversarial representations.

While Service Provider may from time to time represent competitors of FCB, Service Provider will ensure that FCB's proprietary and confidential information and practices are not shared with any competitor or used in a manner adverse to FCB as part of Service Provider's representation of the competitor. The Service Provider agrees it will not represent either FCB or any party adverse to FCB in the event an actual dispute arises between FCB and such adverse party.

FCB will not pay for any time or costs incurred by Service Provider in fulfilling these obligations.

C. Advance Waiver. As an exception to the general policy on conflicts of interest, FCB agrees to waive actual and potential conflicts that the Service Provider may have or which may arise in matters involving transactions in which FCB is the lender or lessor and the Service Provider elects to represent the borrower, lessee, guarantor, other creditor to the borrower or lessee or one or more of the equity owners of borrower or lessee, and workout and bankruptcy related matters in which FCB is a creditor and the Service Provider elects to represent another similarly situated creditor, provided: (i) the Service Provider creates an ethical screen between the attorneys and staff representing any of the above referenced parties, on the one hand, and the attorneys and staff representing FCB on the retained matter, on the other; and (ii) such other party also consents to the waiver.

Notwithstanding the foregoing, the Service Provider may not assert any claim against FCB on behalf of another client, whether through litigation or otherwise in a matter that is the subject of the advance waiver. An advance waiver shall not be applicable to litigation of any kind, nor in any instance in which the Service Provider, as a result of its representation of FCB, has obtained proprietary or confidential information of a non-public nature that could be used to FCB's disadvantage in the matter. Notwithstanding this advance waiver, the Service Provider shall provide FCB notice in writing of any such transactional, workout and bankruptcy conflicts and FCB may revoke the advance waiver in its sole discretion without advance notice.

### III. RETENTION / ENGAGEMENT

A. FCB Contact. Service Provider will be engaged for FCB by the FCB PIC. The PIC will be FCB's representative(s) in the specific engagement. Other FCB officers normally will not have the authority to expand or modify the scope of the engagement, or otherwise manage the legal services required by the engagement. If someone other than the FCB PIC requests a change in the scope of services to be rendered, Service Provider must consult with Service Provider's FCB PIC and obtain his/her approval of the change. Service Provider will personally represent FCB in all matters unless otherwise requested by FCB. Service Provider will be engaged via FCB's engagement letter, unless otherwise agreed.

B. Applicability of CounselLink. FCB has selected LexisNexis CounselLink as its matter management and electronic billing provider. All Service Providers should anticipate at the time of engagement the terms of the matter for which it is engaged will be confirmed and billed through

CounselLink (a "Matter Assignment"). Service Providers must acknowledge and accept the terms of an engagement letter (typically, FCB's engagement letter) and these OCG as part of the CounselLink registration process. Service Provider will receive a CounselLink matter number for each Matter Assignment. Electronic invoices will not be accepted for submission to CounselLink for any matter until the terms of an engagement letter, these OCG, and the applicable Matter Assignment (including a Scope of Service description) have been accepted through CounselLink.

C. Payment Terms. For each ongoing Matter Assignment, Service Provider shall submit separate invoices in accordance with the terms of the Agreement for payment for its services performed and out-of-pocket expenses incurred on a monthly basis, within thirty (30) days of the close of the month during which such services have been performed and expenses incurred unless otherwise agreed between the Parties (e.g. transactional matters for which it is agreed a bill will be submitted at closing or at some other mutually agreed upon time). FCB may withhold payment of any disputed amounts until the dispute is resolved, and shall promptly pay any agreed amounts due upon resolution of the dispute. All payments hereunder shall be paid in the currency where the services were rendered, so long as said location is an approved FCB location. Current approved locations: USD (U.S. Dollar), CAD (Canadian Dollar), GBP (British Pound), EUR (Euro), AUD (Australian Dollar), MXN\* (Mexican Peso), NOK (Norwegian Krone). If the location is not approved or otherwise requires special handling, payment shall be paid in the currency as directed by FCB's Chief Counsel or the Chief Counsel's designee.

D. Paper and Other Invoicing. Where FCB is unable to process bills via electronic invoicing or applicable laws dictate certain requirements or conditions, Service Providers will provide bills to FCB via paper or such other means and methods as requested by the FCB PIC. See manual billing processes described in Appendix 01 (Invoicing Submission via CounselLink) below.

E. Alternative Fee Arrangements. FCB is receptive to alternatives to the conventional hourly billing model and encourages Service Provider to propose and discuss feasible Alternative Fee Arrangements ("AFAs") at the inception of matters. Examples of AFAs are provided in the subsections below. Please contact your FCB PIC to present any AFA proposal.

1. Regular Discounted Hourly Rates. Service Provider and FCB agree to negotiated discounts (discounts not based on the volume of annual spend). The regular/rack rate should be entered on the fee offer. The discount should be entered as a discount on the fee offer in CounselLink.
2. Volume Discounts. Service Provider and FCB agree to negotiated volume discounts across all or multiple matters based on FCB's level of annual spend with the Service Provider (not regular discounted hourly rates). In such case, the volume discount would be identified as an invoice level adjustment.
3. Flat/Fixed Fee - No Shadow Billing. Service Provider and FCB agree to a flat/fixed fee for a matter. In such case, Service Provider would not bill flat/fixed fees as individual fee line-items with required line-item information (e.g., task codes, hourly rates, narratives, etc.).
4. Flat/Fixed Fee/Retainer - Shadow Billing. Service Provider and FCB agree to a flat/fixed fee for a matter but unless otherwise instructed, the individual line items for the matter are invoiced in the same manner as a standard hourly rate matter,

including the required line-item information (e.g., task codes, hourly rates, narratives, etc.).

5. Capped Fees. Service Provider and FCB agree to a capped fee for a matter but unless otherwise instructed, the capped fee matter is invoiced in the same manner as a standard hourly rate matter, including the required line-item information (e.g., task codes, hourly rates, narratives, etc.). When the cap is reached, FCB will receive notification and unless otherwise agreed, would reduce the invoice to the cap.

F. Confidentiality. In addition to applicable ethical and professional responsibility standards, Service Provider agrees to be bound by the terms of Appendix 06 (Confidentiality and Personal Information Obligations).

G. Sarbanes Oxley. FCB expects that Service Provider will act in accord with Section 307 of the Sarbanes-Oxley Act of 2002 (requiring attorneys to report material violations of securities laws, breach of fiduciary duty or similar violations by the company or its agents to the chief legal counsel or chief executive officer) and all rules enacted pursuant to the Act. By accepting our engagement, Service Provider represents it does have an internal policy or process in place to assure compliance with these provisions. Copies of any reports prepared pursuant to this act should also be sent to FCB's Chief Counsel. All questions concerning any reporting should be directed to FCB's Chief Counsel.

#### IV. MATTER MANAGEMENT

A. Matter Management Plans. At the outset of the matter, the Service Provider should complete the appropriate Matter Management Plan ("MMP") form attached hereto in Appendix 04 (Matter Management Plan and Budget) for all litigation matters, other matters where legal fees are anticipated to exceed \$25,000 over the life of the matter and FCB is not expected to be reimbursed for its payment of such fees (e.g. "non-Borrower Pay" matters), where the FCB PIC believes that a matter is considered material, or in other instances where the FCB PIC believes that a MMP is necessary. FCB requires the MMP within thirty (30) days of outside counsel being assigned the case or of circumstances changing such that an MMP is required. The Service Provider shall upload the MMP to CounselLink using instructions in Appendix 02 (Document Attachment) unless the FCB PIC instructs otherwise.

The purpose of the MMP is to require the Service Provider to give adequate upfront consideration to staffing, budget, matter life cycle, and alignment with FCB strategic goals, to facilitate strategic dialogue with the FCB PIC, and to ensure consistent accountability across matters. The FCB PIC may tailor the contents of the MMP within reason to meet these purposes. Only FCB's Chief Counsel may waive the MMP requirement.

FCB understands that the early matter assessment and budgetary assumptions reflected in the initial MMP may change. In these instances, a modified MMP may be submitted reflecting Service Provider's best judgment as of the time it is prepared. The FCB PIC may request an updated MMP, in which case Service Provider will prepare and upload an updated MMP.

1. Litigation Matters. For litigation matters, the MMP must contain the following:
    - a. A staffing plan that includes the names, titles, tenure at Service Provider, billing rates, and areas of experience of personnel who are expected to work on the matter;
    - b. Brief summary noting key issues or areas of inquiry, including:
      - For claims against FCB, an assessment of exposure and best case / worst case dollar value range of potential damages; and
      - For claims initiated by FCB, an assessment of possible success, including the nature of available relief, the amount of potential damages that may be recovered, and an assessment of the likelihood and nature of any possible counterclaims.
    - c. A proposed budget estimating cost in legal fees and expenses for each phase of the case;
    - d. A proposed alternative fee arrangement (“AFA”), if appropriate; and
    - e. Initial ideas on a resolution strategy.
  
  2. Non-Litigation Matters. For non-litigation matters, the MMP must contain the following:
    - a. A staffing plan that includes the names, titles, tenure at Service Provider, billing rates, and areas of experience of personnel who are expected to work on the matter;
    - b. A description of the work scope, path forward, and proposed work plan;
    - c. A proposed budget estimating cost in legal fees and expenses for each phase of the matter in the form provided in Appendix 04 (Matter Management Plan and Budget); and
    - d. A proposed alternative fee arrangement (AFA), if appropriate.
- B. Litigation Case Management Standards.
1. Case updates. Status reporting for litigation matters should be provided upon the occurrence of a material event or upon intervals as directed by the FCB PIC.
  2. Review of Pleadings and Drafts. Electronic copies of all pleadings, briefs, court decisions, and other significant documents must be sent to the FCB PIC for review as soon as possible. Unless specifically requested in writing, FCB will not pay for pleading, brief, or decision summaries. Drafts of all significant documents written on behalf of FCB must be sent to the FCB PIC for review and approval at least forty-eight (48) hours prior to the deadline for filing or transmittal to third parties to allow for a reasonable review as instructed by the FCB PIC. If time is of the essence and forty-eight (48) hours is not available, the Service Provider should notify the FCB PIC of the circumstances and make arrangements for review with the FCB PIC.
  3. Coordination with FCB Staff. All interviews and conversations with, and requests for assistance from FCB personnel (including the execution of verifications, affidavits, and settlement agreements) shall be coordinated by the FCB PIC or the FCB PIC’s designee.
  4. Depositions. The FCB PIC shall receive a transcript (non-expedited and electronic) of all depositions Service Provider attends for FCB upon request. If Service Provider believes that an expedited transcript is necessary, Service Provider must obtain approval from the

FCB PIC prior to ordering on an expedited basis. Unless specifically requested in writing, FCB will not pay for deposition summaries.

5. Other Discovery. All requests for discovery and similar requests for information directed to FCB must be promptly forwarded to the FCB PIC or the FCB PIC's designee. Final versions of discovery responses should be coordinated with the FCB PIC. No documents should be produced without a thorough review by an attorney familiar with the matter and appropriate consideration of objections, stipulations, or the need for a protective order, redaction of all confidential information and a thorough review for documents protected from disclosure by the attorney/client privilege or attorney work product doctrine.

C. Work Product and Closing Documents. Copies of work product shall be delivered to the FCB PIC in a timely fashion. For all transactional matters, except loan participations in which FCB is not the agent, Service Provider shall supply the FCB PIC with at least one binder or folder with all original signed documents (if hard copies have been obtained) and a CD with .pdf (or comparable type) copies of such documents. In the case of a loan participation in which FCB is not the agent, Service Provider shall supply the FCB PIC with a CD with .pdf (or comparable type) copies of the transaction documents.

If Service Provider generated the final documents, Service Provider should also supply electronic copies in WORD format for all significant original documents and upload same to CounselLink as directed by the FCB PIC. Additional copies of such binders or other media shall be supplied upon request. For transactional matters, Service Provider must make every effort to include any anticipated charges for post-closing work in the bill Service Provider renders at closing.

D. Research. FCB expects that Service Provider selected to represent it possesses the requisite knowledge of the law associated with the issues presented by the matter as well as, with respect to litigation and bankruptcy matters, the procedural, local and court rules of the jurisdiction in which the case is pending.

Accordingly, FCB expects to benefit from previously prepared briefs and memoranda and, when such briefs or memoranda exist, FCB will pay only for actual time spent updating or tailoring them to the specific matter. Copies of all briefs, memoranda or other research analyses or summaries prepared on FCB's behalf must be provided to FCB's Legal Department via upload. Research of specific issues must be pre-approved by FCB if expected to exceed two (2) hours in total for the matter.

E. Recovery of Attorney Fees / Insurance. Where applicable law permits FCB to recover reasonable attorneys' fees and other expenses without undue risk, Service Provider should promptly advise the FCB PIC and seek such recovery upon request. Service Provider agrees to reasonably maintain adequate records to support a claim for attorneys' fees and cooperate with any insurance carrier(s) subject to applicable law, regulation, and rules of professional responsibility.

## V. STAFFING

Service Provider has been selected to represent FCB based on its expertise, rates and efficiency. Service Provider represents it will appropriately staff projects to align with the nature and complexity of the legal work, engaging the fewest knowledgeable professionals necessary to do the job well. FCB shall not pay for costs and expenses associated with equipping, training, and

retaining counsel (e.g. the services of law students working as law clerks or summer associates or first year attorneys or first year paralegals). Service Provider shall be responsible for all acts and omissions of its counsel and staff in their performance of legal services. Service Provider shall not permit staff and/or counsel under the influence of illegal drugs or alcohol to perform services for FCB and/or have access to FCB's computer resources, confidential information, or other property.

A. Employment Eligibility. U.S Service Providers represent that its staff and representatives shall be either (i) a citizen of the United States, or (ii) authorized to work in the United States pursuant to a valid work visa and in compliance with all applicable laws and regulations. Service Provider shall obtain and file all documentation required by applicable law in connection with same.

B. Duplication. FCB will not pay for tasks or services that appear duplicative. FCB recognizes that some meetings involving multiple timekeepers may be beneficial to FCB. However, we are generally not receptive to invoices containing charges for conferences between timekeepers, and we, in our sole discretion, may adjust the payment where duplication does not appear to be productive and/or in a value-added capacity. Service Provider is encouraged to discuss in advance with its FCB PIC instances where Service Provider plans to involve multiple timekeepers in the same meetings.

C. Efficiency and Effectiveness. FCB expects all timekeepers to work efficiently and avoid devoting excessive hours to a single project on any particular day. FCB will not pay for more than twelve (12) hours of time spent by any one timekeeper on any one FCB matter during a single calendar day, unless approved in advance. Service Provider should limit the number of lawyers who participate in conference calls or who attend routine meetings, depositions, or court proceedings. FCB requests that, to the extent possible without unreasonably sacrificing quality and efficiency, no more than one Service Provider resource attend or participate in matter related activities (examples include, but are not limited to: deposition, hearings, conference calls, meetings, court proceedings, site inspections, etc.).

D. Experts, Consultants, Local Counsel, Third-Party Vendors, Litigation Support Vendors. FCB must approve in writing any experts, consultants, local counsel, or any third-party vendors (e.g. Litigation Support Vendors) engaged in connection with a FCB matter prior to their retention. Service Provider agrees that, once approved, Service Provider will enter into a written agreement with any vendor or third party retained by Service Provider and that such written agreement must contain terms that are at least as protective of FCB's Confidential Information as the terms of these OCG.

Service Provider also agrees to disclose the use of its own third-party administrative or overhead vendors who have access to FCB information (e.g. word processors, data entry pool, IT help desk services, etc.); however, it is not necessary to disclose messenger or courier services (e.g. UPS, FedEx). As noted in V(A) above, all U.S. Service Providers are prohibited from using offshore (non-U.S.) contractors as part of service delivery.



## VI. BILLING AND EXPENSES

### A. Invoicing.

1. CounselLink Invoicing. As of the matter acceptance date and when directed by Service Provider's FCB PIC, invoices for legal services on designated matters will be submitted to FCB through CounselLink. Instructions on how to submit invoices to CounselLink are attached hereto as Appendix 01 (Invoice Submission Via CounselLink).

2. Other Matters. Invoices for legal services on other matters, for which CounselLink billing is not instructed, will be submitted in hard copy to the FCB PIC using the format guidelines set forth below.

B. Invoice Format. Each invoice must meet the following minimum requirements. For any alternative fee arrangements, the format will be modified, as necessary.

#### 1. Invoice-level Information

Service Provider's unique invoice number

Invoice date

Billing period

Appropriate matter name

Descriptive heading

FCB matter number

CounselLink matter number

Dates of services covered by the invoice

Timekeeper name or ID, title or level, and billing rate

Discounted hourly rates are hard to quantify. To ensure that any FCB discount is reflected, the rack rate should be submitted and the discount percentage should be reflected on the fee offer in CounselLink.

Detail of reimbursable expenses and disbursements at actual cost

#### 2. Task-level Information

Timekeeper name, initials, or ID

Date task(s) performed

A narrative description of the service(s) provided or task(s) performed for each specific task in accordance with UTBMS task codes (available in CounselLink).

Each service performed shall be separately itemized rather than billed in an aggregated line item. Descriptions of services should include sufficient detail to identify the content involved in the activity (e.g., "telephone conference with X relating to Y").

Incomplete or vague charge descriptions are unacceptable and will not be paid unless corrected. Examples include, but are not limited to: "analysis," "conference," "attention to matter," "worked on discovery," "work on file," "prepare for meeting," "miscellaneous," "other," etc.

"Block billed" descriptions (grouping multiple activities under a single time charge) is prohibited. The description should clearly state the nature of the task performed to allow the FCB reviewer to determine its necessity.

Time entries to the nearest tenth (0.1) of an hour

Total line charge (time spent x hourly rate) for the task

A summary of billing rates, the cumulative time spent for each person performing tasks, and what that budget is and how that budget compares to the amount already invoiced. There shall be a legend identifying each lawyer or other professional by name; and the legend shall identify whether the professional is a partner/member, associate, of counsel, paralegal, etc.

An itemized list of all reimbursable expenses (except for certain non-U.S. invoices in which FCB has agreed to pay a flat fee for expenses).

Invoices covering legal services provided by Service Provider personnel located outside of the United States at the request of an FCB lawyer based in the United States must include the following statement: "All legal services were rendered outside the United States."

All law firms and law offices located outside the United States providing services to FCB at the request of an FCB lawyer based in the United States must provide FCB with a completed and signed US tax form W-8BEN for FCB to make payment on such Service Provider's invoices.

If Service Provider provides services on more than one matter during a billing period, a separate invoice for each matter is required. Consolidated invoices for multiple "general" matters will not be accepted without prior approval. Block Billing will not be accepted. Please refer to [Appendix 01 \(Invoice Submission Via CounselLink\)](#) for a more detailed discussion of Block Billing and how to properly format Service Provider's charge entries.

C. Hourly Rates. Hourly rates for each of the Service Provider's partners, associates, and paralegals billing time to FCB shall be entered into FCB's e-billing system(s) by the Service Providers and are subject to FCB's approval.

Hourly rates that are in effect at the beginning of an engagement on a particular matter will continue in place until the completion of the matter regardless of the Service Provider's promotion of its lawyers or changes to its rate structure. Any suggested rate increases on subsequent matters must be requested and pre-approved by FCB.

D. Time Frames for Billing. Invoices should be submitted monthly and billed in the calendar month following the date the service is provided or cost incurred, unless otherwise agreed (e.g. transactional matters for which a bill will be submitted at closing or at some other mutually agreed upon time). Fees or costs submitted more than sixty (60) days after the service or event giving rise to such amounts are considered untimely and, in our discretion, may not be paid.

Expenses and disbursements must only be billed at actual out-of-pocket cost. No mark-ups or administrative fees may be added. Each expense or disbursement must be itemized with a description sufficient for review. FCB may refuse to pay for disbursements billed as "administrative expenses" or "miscellaneous," billed in a group (i.e., Travel expenses -- \$4,000.00), or disbursements without any description.

FCB will not reimburse overhead expenses that should be considered part of the Service Provider's cost of providing services or could have reasonably been obtained at a lower rate.

1. Non-Billable Services. FCB will not pay for the following services:
  - a. Service Provider marketing and client relations initiatives;
  - b. preparation and review of Matter Management Plans, budgets, estimates, status reports, and accrual reports;
  - c. preparation of responses to FCB's auditors regarding litigation;
  - d. investigation of conflicts for new or existing matters;
  - e. preparation of bills, responses to inquiries, preparing reports concerning bills, and other similar administrative tasks;
  - f. time related to opening, organizing, or closing files (by any staff at the Service Provider);
  - g. interoffice conferences where the bill does not adequately describe the purpose of the conference or where the conference serves primarily an administrative purpose, such as conveying an assignment;
  - h. professionals to perform clerical functions, such as organizing meetings, creating binders, copying documents, up/downloading electronic data, or paralegals to manage or supervise other paralegals;
  - i. copying or fax charges;
  - j. file review not associated with an event or which does not result in tangible work product;
  - k. travel time, unless services for FCB are actually being rendered during the travel time;
  - l. overtime;
  - m. time that is not necessary for cost-effective handling of FCB matter(s) such as proofreading another's work; and
  - n. in litigation matters, where Service Provider engages an ediscovery vendor, Service Provider shall only invoice FCB for the reasonable expenses associated with the Matter Assignment. FCB expects Service

Provider is proficient in litigation and other technology tools. If Service Provider has heavy reliance on the discovery vendor's project management team to use such tools due to lack of experience, those costs should be borne by the Service Provider. Examples include: issues up/downloading data; re-work due to incorrect Service Provider instructions as to processing, review, or productions; Service Provider's coding inconsistencies, expired production links and "rush" production fees when delay is not caused by FCB; and excessive quality control checks of Service Provider's search terms and/or search queries.

2. Overhead. FCB will not reimburse the Service Provider for the following expenses and/or disbursements:
  - a. secretarial or word processing services or overtime unless the use of such services was necessitated by time constraints imposed by FCB or required to fulfill a contractual obligation applicable to FCB;
  - b. librarian services;
  - c. non-professional charges assessed for non-professional support services where the amounts attributable to each matter cannot be determined directly from invoices, whether rendered by the law firm or third-parties;
  - d. file management;
  - e. billing related time;
  - f. facsimile transmissions;
  - g. overtime transportation or meals;
  - h. computerized research (e.g., Westlaw/Lexis and Pacer);
  - i. photocopying and document scanning, or time related to same performed by any billing timekeeper;
  - j. local, long distance, or mobile telephone calls; and
  - k. Federal Express, Express Mail, or other overnight messenger/courier charges unless the use of such services was necessitated by time constraints imposed by FCB or required to fulfill a contractual obligation applicable to FCB. If these services must be used or unless required for specific filings, packages must be sent for afternoon delivery, not morning delivery.

E. Pass Thru Billing. The fees and expenses of any approved parties referenced in Section V(D) above are to be included on Service Provider's invoice to FCB as a "pass through" expense item, with supporting documentation / invoice attached. Use the "Document Attachment" feature for invoices submitted through Counsellink. See Appendix 02 (Document Attachment).

Unless the FCB PIC has otherwise agreed in writing, FCB will not pay invoices delivered to it directly by third party vendors engaged by Service Provider on behalf of FCB. It is the Service Provider's responsibility to ensure that fees and expenses of any third party vendors are submitted on a timely basis, are properly accrued for, and otherwise comply with the OCG.

## VII. RECORDS RETENTION

Upon completion of a Matter Assignment for FCB, all original FCB records or documents must be returned to the FCB PIC. All other documents or other information gathered through the course of the engagement may not be destroyed except with written permission of the FCB PIC. If notified by FCB that any information in Service Provider's possession is subject to a litigation hold, all relevant information should be preserved unless otherwise directed by FCB's Chief Counsel.

## VIII. MEDIA CONTACT

All inquiries from the media regarding any of FCB's legal or business matters will be handled by FCB.

If Service Provider is contacted by the media, inquiries must be directed to the FCB Legal Department (Attn Chief Counsel). Service Provider should also notify his/her FCB PIC. Service Provider is not at liberty to speak to the media regarding any FCB matters without the express prior approval of FCB.

## IX. USE OF FIRST CITIZENS NAME (INCLUDING ANY SUBSIDIARIES)

Without FCB prior written approval, Service Provider shall not use FCB's name (or the name of any of its subsidiaries), trademarks, or logo of FCB (collectively, "FCB Identity"), directly or indirectly, in any manner or in any publication, including without limitation use in or on any client list, website, advertisements, news release or releases to any professional or trade publications. In addition, FCB's prior review and approval is required for any press release by Service Provider that contains FCB's Identity. FCB may at any time in its sole discretion and upon written notice to Service Provider withdraw any approval given to Service Provider under this Section whereupon Service Provider immediately shall cease using FCB's Identity.

In addition, discussion of any FCB legal matters during presentations, round tables, or seminars is strictly prohibited.

## X. CORPORATE RESPONSIBILITY

FCB requests that, whenever practicable and reasonable, its Service Providers and vendors be judicious when printing documents, use electronic means for the transmission/filing of documentation, and use technology in lieu of travel and making appearances.

## XI. INFORMATION SECURITY

Service Provider shall at a minimum establish, implement, and maintain business continuity, disaster recovery, and backup capabilities and facilities as reasonably necessary to ensure Service Provider's continuing ability to perform the Services with minimal disruptions or delays.

FCB does not generally expect to provide its outside legal counsel with Personal Information relating to FCB's customers or employees, which for clarity does not include correspondence with FCB personnel and employees related to the conduct of the Services. If disclosure and Processing of Personal Information is requested by FCB it will be mutually agreed in the Matter Assignment and thereafter Service Provider's additional obligations in Appendix 06 (Confidentiality and Personal Information Obligations) shall apply with respect to such Matter

Assignment. For clarity, no Personal Information shall be provided and the obligations in Appendix 06 regarding the Processing of Personal Information shall not apply except and to the extent each of FCB and Service Provider has agreed in the Matter Assignment with respect to the nature of the Processing to be specified therein pursuant to this section.

Service Provider shall protect FCB's Confidential Information through established controls consistent with legal and regulatory requirements and industry best practices. The effort to protect and maintain this information should be the combined effort of every lawyer, staff member, and department within the Service Provider. Each employee, regardless of responsibility, must know, implement, and follow all security procedures and protocols; and Service Provider is responsible for having adequate resources, management, and training in place.

To ensure compliance with its information security requirements, FCB reserves the right to perform due diligence and review, test, and audit the information security and data protection practices and procedures of Service Provider and any third party used by Service Provider that receives Confidential Information. Service Provider shall ensure its contracts with third parties include this audit provision.

FCB shall not be responsible for any expenses incurred by Service Provider, including for time spent by Service Provider personnel in cooperating with FCB with any such audit or due diligence, or security questionnaire in complying with this section. Such audit shall be conducted such that it does not impinge or negate any attorney-client privilege held by the Service Provider for communications with its internal and external counsel or violate any professional responsibility requirements of the Service Provider.

## XII. TAXES

FCB shall not be responsible or liable for any taxes applicable to Service Provider, including without limitation property taxes, payroll taxes, corporate franchise taxes, and taxes attributable to Service Provider's income and revenue; and Service Provider shall defend, indemnify and hold FCB harmless from any claims arising out of or related to Service Provider's payment or nonpayment of such taxes.

Service Provider is responsible for collection, reporting, and payment of sales tax as applicable for the Services. Service Provider shall reflect such sales taxes as separate line items on invoices to FCB. Service Provider shall be exclusively liable for any penalties, interest, and other charges assessed by any jurisdiction, and any other fees or costs, arising out of Service Provider's failure to assess or remit such sales taxes. FCB shall reimburse Service Provider for any sales tax as applicable for the Services, if such liability is owed by FCB in accordance with applicable law.

## XIII. ACCRUALS

Service Providers will receive an email from CounselLink and/or FCB Corporate Accounting requesting information regarding any charges that have not yet been submitted to CounselLink for the applicable time period (month and/or quarter and/or year end). FCB expects Service Providers to advise if delays are expected in the bookings to help FCB estimate the balance accordingly.

#### **XIV. ESTABLISHMENT OF LEGAL ENTITIES, BROKERAGE AND/OR BANK ACCOUNTS**

The FCB PIC must approve the formation of any entity that will be owned or controlled by FCB and will be responsible for obtaining any necessary internal approvals for the same. In most instances, FCB will form any required new entities. If FCB instead requests that the Service Provider form any new entity, please note that CT Corporation must be the registered agent for all U.S. entities.

FCB requires that FCB's Corporate Treasury Department open any brokerage or bank account in the name of FCB or one of its consolidated subsidiaries. The FCB PIC must approve the opening of any such bank account.

#### **XV. RECEIVING OF LEGAL PROCESS**

Except as specifically authorized by a FCB PIC, Service Provider shall not accept any service of legal process on behalf of FCB and its affiliates.

#### **XVI. UCC FINANCING STATEMENTS AND SEARCHES**

FCB's General Bank (which consists of legacy First-Citizens Bank business) currently does not have a preferred UCC service provider.

FCB's Commercial Bank (which consists of legacy CIT commercial finance businesses) requests that its Service Providers use its preferred UCC service provider whenever possible for all types of searches and for preparation and filing of UCC financing statements. Lien Solutions (f/k/a CT Lien Solutions) ("LS") is the current UCC service provider for FCB Commercial Bank. FCB has a preferred pricing arrangement with LS, and LS maintains a tickler system for continuation of FCB's financing statements (including Canadian PPSA filings). Use of a service provider other than LS for searching or filing financing statements requires FCB to enter the filing information manually into this tickler system, increasing both our cost and our risk of lapsed filings.

In the event that Service Provider uses a service other than LS, it is incumbent on Service Provider to promptly provide (i) the original filed statements to the FCB PIC, and (ii) copies of such financing statements to LS if possible.

The contact information for LS is:

Lien Solutions  
2727 Allen Parkway  
Suite 1000  
Houston, TX 77019  
Phone: (713) 433-4600  
Fax: (713) 942-7847  
<http://www.liensolutions.com>

## XVII. NOTICES

All notices under the Agreement shall be in writing unless expressly stated otherwise. Notices shall be (a) delivered via certified US Mail, return receipt requested, or (b) deposited with a reputable courier service which provides a date-stamped receipt. Notices to a Party shall be sent to the address below. All notices so given shall be deemed effective and received upon the earlier of actual verifiable receipt, or receipt and refusal.

To FCB:

First-Citizens Bank & Trust Company  
4300 Six Forks Road  
FCB Mail Code: FCC-22  
Raleigh, NC 27609-5718  
Attn: Chief Counsel

To Service Provider:

As provided on the Engagement Letter

Copy To:

First Citizens Bank & Trust Company  
4300 Six Forks Road  
FCB Mail Code: FCC-22  
Raleigh, NC 27609-5718  
Attn: Legal Operations

If a Party changes its address for notification purposes, it shall provide the other Party with written notice of the new address no later than thirty (30) days after the change. Such notice shall be delivered in accordance with the requirements of this provision and shall include the effective date of the change.



## TABLE OF APPENDICES

APPENDIX 01	INVOICE SUBMISSION VIA COUNSELLINK
APPENDIX 02	DOCUMENT ATTACHMENT
APPENDIX 03	UTBMS CODES (Uniform Task-Based Management System)
APPENDIX 04	MATTER MANAGEMENT PLAN AND BUDGET
APPENDIX 05	APPLICABLE DEFINITIONS
APPENDIX 06	CONFIDENTIALITY AND PERSONAL INFORMATION OBLIGATIONS
APPENDIX 07	FCB TRAVEL AND REIMBURSEMENT
APPENDIX 08	INSURANCE REQUIREMENTS
APPENDIX 09	DATA BREACH RESPONSE
APPENDIX 10	BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN (BC/DRP)
APPENDIX 11	IDENTITY THEFT / RED FLAG
APPENDIX 12	CONSUMER FINANCIAL PROTECTION
APPENDIX 13	PERFORMANCE
APPENDIX 14	GOVERNMENT CONTRACTOR OBLIGATIONS
APPENDIX 15	INDEMNIFICATION

## APPENDIX 01

### INVOICE SUBMISSION VIA COUNSELLINK

#### Service Provider Registration

Service Provider will submit a Fee Offer of current individual timekeeper rates through CounselLink for review and approval by FCB. Charges submitted at a rate that exceeds the approved CounselLink Fee Offer rate for a timekeeper will be reduced to the approved rate.

#### Invoice Submissions

To secure prompt and accurate payments to Service Provider, invoices in structured data format (LEDES) submitted via the web site [www.counselink.net](http://www.counselink.net) are preferred. When necessary, we will accept invoices, in other formats, including e-mailing a .PDF or ASCII invoice or mailing a white paper invoice. All invoices shall be submitted in English.

#### Submission of a Structured Data File To CounselLink

- Export the invoice to the LEDES (ASCII) structured data format
- Log into [www.counselink.net](http://www.counselink.net) using your assigned login and password
- Click on the Upload Invoice link on the Service Provider's home page
- Browse to the saved LEDES invoice, select it and click "Open"
- Complete any other necessary information on the Invoice Submission page and click "Submit File"

#### Creating an Invoice in CounselLink

- Log into [www.counselink.net](http://www.counselink.net) using the provided login and password. Click on the Matter Search link on the Service Provider's home page
- Search for the matter on which the invoice is to be submitted. Select "Create Invoice" from the Action bar dropdown
- Enter information on the "Edit Invoice Screen" if applicable and click on Submit. Enter fees and expenses from the invoice screen
- Submit invoice

#### Alternative Forms of Submission

**Email:** A .PDF file or ASCII format copy of the invoice may be submitted via email to [counselinkinvoices@lexisnexis.com](mailto:counselinkinvoices@lexisnexis.com). Submit only ONE INVOICE PER .PDF file, although multiple .PDF files may be attached to a single email.

**Paper:** An original copy of an invoice on white paper. If submitting paper invoices, a separate invoice must be submitted for each matter. When submitting invoices for multiple matters at one time, each invoice must begin on a new sheet of paper and must have a unique numerical

identifier. Unique invoice numbers for individual matters may be created by adding a suffix to the invoice number created by your system (e.g., 12345 1, 12345-2, 12345-3, etc.). Paper invoices should be sent to First Citizens c/o LexisNexis Examen, Inc., Attention: Counsellink Invoices, 1801 Varsity Drive, Raleigh, NC 27606.

## Invoice Returns

Invoices or charges that do not conform to this OCG may be returned to Service Provider, in whole or in part, for correction. Invoices may also be returned for the following reasons:

- Service Provider has not acknowledged these OCG
- Invoice is not in the proper format
- Invoice contains a math error
- Invoice contains block billed charges
- No invoice number
- Duplicate invoice number
- Invoice date is in the future
- Charge date is in the future
- Invoice is an exact duplicate of previous invoice
- Fee charges do not contain a date
- Fee charge does not contain date, timekeeper, units, and rate
- Time increments not in tenths of an hour
- Unknown timekeeper
- Missing UTBMS codes
- No approved rate
- Expense charge has no description
- Unknown or incorrect Matter ID
- At FCB's discretion

## Block Billing on Invoices

Invoices should set forth in detail the related professional, the distinct tasks and activities performed by each professional, the time expended in tenths of an hour and fees charged for that work in separate time entries. Additionally, the task description must be sufficiently descriptive in order to identify the facility, location or office involved. Descriptions of blocks, batches of activities or tasks under one charge (i.e., "block-billing") are unacceptable. Invoices that contain any "block" billing entries will be returned.

For example, an invoice containing the following entry will be returned:

<u>Hours</u>	<u>Description</u>
1.5	Reviewed plaintiff's interrogatory responses; prepared letter to opposing counsel regarding settlement options; continued drafting motion for summary judgment.

An acceptable method to enter the time entry would be:

<u>Hours</u>	<u>Description</u>
1.5	Reviewed plaintiff's interrogatory responses (.3); prepared letter to opposing counsel regarding settlement options (.4); continued drafting motion for summary judgment (.8).

### **CounselLink Customer Support**

CounselLink technical expertise is available to our outside counsel at no cost.

For technical support, please contact LexisNexis Examen's Customer Support Department at **800-600-2282, option 2**. If outside the United States, please contact **+1 919-378-2713**.

## APPENDIX 02

### DOCUMENT ATTACHMENT

Service Providers are able to attach case supporting documents such as pleadings, status reports and third-party invoices electronically to either an invoice or a matter. Outside counsel may be requested to upload specific documents to a matter or invoice. Documents will be permanently attached to the invoice or matter. Only the Service Provider and FCB will be able to view the documents. Most document formats are accepted including PDF files.

**Please Do Not Use Document Attachment to Submit Service Provider Invoices.**

#### **Attaching a document to an Invoice (e.g., expense receipts)**

- Log in to [www.counsellink.net](http://www.counsellink.net)
- From the Home page, click on either Created or Scheduled Invoices (dependent upon the status of your invoice)
- Click on the CounselLink Invoice Number
- To add or search for a document, click on the Documents link
- To add a document, click on the Add Document link
- Type in the document name as you want it to appear in CounselLink
- Browse your file directory for the document to add by clicking the Browse button
- Select the Category from the drop down
- Select "Yes" from the Shared drop down
- Select "Public" from the Access Level drop down
- Enter a free form description of the document in the Description box
- Enter a key word to assist in future searches in the Key Word box
- Click on Save

#### **Attaching a Document to a Matter (e.g., initial report, pleadings, summaries)**

- Log in to [www.counsellink.net](http://www.counsellink.net)
- From the Home page, click on Matter Search
- Enter the Matter Search criteria
- Click on the Matter ID or Matter Title
- Select Documents from the Action drop down
- Type in the document name as you want it to appear in CounselLink
- Browse your file directory for the document to add by clicking the Browse button
- Select the Category from the drop down
- Select "Yes" from the Shared drop down
- Select "Public" from the Access Level drop down
- Enter a free form description of the document in the Description box
- Enter a key word to assist in future searches in the Key Word box
- Click on Save

## **APPENDIX 03**

### **UTBMS CODES (Uniform Task-Based Management System)**

FCB utilizes UTBMS codes. UTBMS (the Uniform Task Based Management System) is a unified electronic billing standard in the legal industry. It is a series of codes used to classify the legal services performed for electronic invoice submission.

UTBMS codes allow for consistent enforcement of OCG and alleviate some of the burden on FCB invoice reviewers. The UTBMS codes are available in CounselLink.

**APPENDIX 04**  
**MATTER MANAGEMENT PLAN AND BUDGET**  
**(forms attached)**

**LITIGATION MATTERS: INITIATED BY OR AGAINST FCB**

**FCB requires the MMP within thirty (30) days of outside counsel being assigned the case or of circumstances changing such that an MMP is required.**

<b>Matter Name / FCB Matter Number:</b>		
<b>Date of Submission:</b>		
	<input type="checkbox"/> Check here if this is an <b>update</b> to a previously submitted plan.	
<b>FCB PIC:</b>		
<b>Names, Titles, Tenure, Billing Rate, Area of Expertise:</b>		
<b>Estimated Risk:</b>	\$	(Balance the most likely amount of an award and resolution possible)
<b>Exposure - Best/Worst Case:</b>	\$	
<b>Exposure Comments (optional):</b>		
<b>Legal Analysis / Strategy:</b>  (This should be a succinctly written case analysis assessing our litigation strategy, and the path to resolution. Address the following if applicable):  <ul style="list-style-type: none"> <li>✓ Possible steps</li> <li>✓ Discovery plan</li> <li>✓ Nature of Likely Counterclaims</li> <li>✓ Nature of Available Relief</li> </ul>		
<b>Matter Budget by Phases:</b>  (Describe estimated fees and expenses by phase)		
<b>Estimates</b>	<b>Total Life of Matter</b>	<b>Through End of Calendar Year</b>
<b>Outside Counsel Fees:</b>	\$	\$
<b>Outside Counsel Expenses:</b>	\$	\$
<b>Expert/Vendor Fees:</b>	\$	\$
<b>Expert/Vendor Expenses:</b>	\$	\$
<b><i>Subject to the Attorney-Client Privilege and Work-Product Protection</i></b>		



### NON-LITIGATION MATTERS

**FCB requires the MMP within thirty (30) days of outside counsel being assigned the case or of circumstances changing such that an MMP is required.**

<b>Matter Name / FCB Matter Number:</b>	
<b>Date of Submission:</b>	
	<input type="checkbox"/> Check here if this is an <b>update</b> to a previously submitted plan.
<b>FCB PIC:</b>	
<b>Names, Titles, Tenure, Billing Rate, Area of Expertise:</b>	

<b>Valuation of Underlying Transaction, Proceeding, or Event:</b>	<input type="checkbox"/> Under \$50,000 <input type="checkbox"/> Under \$150,000 <input type="checkbox"/> Under \$500,000	<input type="checkbox"/> Under \$1 Million <input type="checkbox"/> \$1-10 Million <input type="checkbox"/> Over \$10 Million
<b>Issue Description:</b>		
<b>Matter Comments (optional):</b>		
<b>Legal Analysis / Strategy:</b>  (This should be a succinctly written analysis on the path forward and any issues that may arise that would affect the outcome).		
<b>Proposed AFA (if appropriate):</b>		
<b>Matter Budget by Phases:</b>  (Describe estimated fees and expenses by phase)		
<b>Estimates</b>	<b>Total Life of Matter Life</b>	<b>Through End of Calendar Year</b>
<b>Outside Counsel Fees:</b>	\$	\$
<b>Outside Counsel Expenses:</b>	\$	\$
<b>Expert/Vendor Fees:</b>	\$	\$
<b>Expert/Vendor Expenses:</b>	\$	\$
<i>Subject to the Attorney-Client Privilege and Work-Product Protection</i>		

## APPENDIX 05

### APPLICABLE DEFINITIONS

Capitalized terms used in the OCG are defined below and as otherwise defined in the Engagement Letter and/or its exhibits, appendices, and addenda, as applicable, and those definitions are incorporated in the same as if fully set forth herein.

#### **1. Authorized Service Provider Representatives**

Service Provider Representatives who require access to the Network in order for Service Provider to fulfill its obligations under this Agreement.

#### **2. Business Continuity and Disaster Recovery Plan (BC/DRP)**

A practiced logistical plan for how Service Provider will recover and restore partially or completely interrupted critical (urgent) functions within a predetermined time after a disaster or extended disruption.

#### **3. Cardholder Data**

The definition of that term under the then current Payment Card Industry Data Security Standards and includes any data containing a full payment card primary account number, or the full primary account number plus any of the following: the cardholder's name, expiration date, or service and/or security codes.

#### **4. Computer Resources**

Equipment, non-public computers or computer data, networks and/or systems or records of FCB.

#### **5. Confidential Information**

Proprietary Information, Customer Information, and/or Personal Information regarding FCB employees.

#### **6. Customer Information or Customer Data**

Any information owned or provided by or on behalf of FCB or Processed by Service Provider on FCB's behalf through providing the Services, in any form, format or media (including paper, electronic and other records), which Service Provider has access to, obtains, uses, maintains, or otherwise handles in connection with the performance of Services, including partial copies thereof. Customer Data includes Personal Information of customer, Sensitive Personal Information of customer, and Cardholder Data.

#### **7. Data Breach**

Is (i) the loss or misuse, by any means, of Confidential Information; (ii) the inadvertent, unauthorized, and/or unlawful Processing, disclosure, access, alteration, corruption, transfer, sale or rental, destruction, or use of any Confidential Information; or (iii) any other act, omission, and/or

set of facts when and to the extent (i), (ii), or (iii) compromises the security, availability, confidentiality, or integrity of Confidential Information.

## **8. Deliverables**

All materials developed or created by Service Provider specifically for FCB under this Agreement.

## **9. FCB**

First Citizens BancShares and its subsidiaries which includes the entity formerly known as CIT Group, Inc., and its subsidiaries.

## **10. FCB Person In Charge (PIC)**

The authorized FCB representative or “Person-in-Charge” for the matter.

## **11. First-Citizens Bank**

First Citizens Bank & Trust Company and its parent (First Citizens BancShares, Inc.), subsidiaries, and affiliates (as those terms are defined in Section 23A of the Federal Reserve Act).

## **12. Force Majeure Event**

An extraordinary event or circumstance beyond the control of the parties, such as an event that prevents one or both parties from fulfilling their obligations under the contract, including without limitation, acts of God (earthquakes, floods, fires, and any other natural disasters, severe weather, such as hurricanes, tornadoes, snow, or ice); pandemics or epidemics; hostile, terrorist or warlike actions in time of peace or war by any person, entity, government or sovereign or military power, or an agent of any of the above; strikes, or labor disturbances, or widespread communication or power outages; civil disturbances; insurrection or riot; or compliance with governmental laws, regulations, or orders in connection with any of the foregoing.

## **13. Government Agency**

Any federal, state, or other governmental agency, regulator, commission, authority, or other governmental entity that has supervisory, legal, or other jurisdiction or authority over FCB, and/or their business operations.

## **14. Law**

Law shall mean any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, or other binding restriction of or by any Governmental Agency, including Privacy Laws.

## **15. Matter Assignment**

A matter for legal services to be provided to FCB by Service Provider as agreed by the Parties.

## **16. Network**

FCB's internal network (including, but not limited to, hardware, software, and other resources used to access, process, store, display, present and/or transmit FCB-related information) used for the purpose of sharing files, data and other information.

## **17. Party**

Either of FCB or Service Provider.

## **18. Personal Information**

Any information that identifies, or can be used to identify, an individual that is Processed in connection with, or as a result of, providing the Services including, without limitation, (i) information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual, employee, consumer, data subject, or household and (ii) any other information that is defined as "personally identifiable information," "personal information," "personal data" or other similar term under Privacy Laws. Personal Information includes Sensitive Personal Information and Cardholder Data.

## **19. Process, Processing, or Processed**

Any operation or set of operations that is performed upon Personal Information, whether or not by automatic means, including, but not limited to, collection, recording, organization, storage, access, transmission, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination, making available, alignment, combination, blocking, deleting, erasure, or destruction.

## **20. Privacy Laws or Applicable Data Protection Laws**

The applicable national, federal, state, and/or provincial and local laws, rules, regulations, and binding guidance and opinions from applicable regulatory or data protection authorities in all jurisdictions from which the Personal Information was originally sourced, in which the data subject resides, and/or which FCB advises apply that: (i) relate to privacy, the tracking, surveillance, or observation of individuals, households, and/or the devices they use, and/or the collection, use, and disclosure of Personal Information, (ii) provide individuals with rights respecting access, use, disclosure or otherwise relating to their Personal Information; and (iii) relate to the security, integrity, availability, and/or confidentiality of Personal Information including data breach notification and/or reporting and/or identity theft prevention; and all new and/or amendments to such laws.

## **21. Proprietary Information**

Information relating to the Disclosing Party that is competitively sensitive material not generally known to the public, including without limitation to, information that relates to past, present, or future research and development, trade secrets, products and services, pricing, marketing plans, strategies, mergers, acquisitions, financial matters, information technology, or business affairs (including without limitation policies, procedures, internal controls, plans and methods of operation), intellectual property, clients, customer lists, business contacts, business plans,

techniques, know-how, standards, source or object code, product or service specifications, manuals, agreements, economic and financial information, data, reports, analyses, compilations, statistics, summaries, studies, and any other tangible or intangible information or any materials based thereon, furnished directly or indirectly by the Disclosing Party and any technical or business information of a third person furnished or disclosed by one party to the other.

## **22. Recovery Point Objective (RPO)**

The maximum amount of time in which data might be lost due to a major incident.

## **23. Recovery Time Objective (RTO)**

Duration of time within which a business process must be fully restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity.

## **24. Regulatory Requirement**

The Laws which apply specifically to the business and industry of FCB, including Privacy Laws, as such Laws are applicable to the Services and the obligations of Service Provider and its Representatives or other agents under this Agreement.

## **25. Security Standards**

FCB's information security and physical security standards and other security policies, procedures and requirements, all as may be amended from time to time.

## **26. Sell**

Selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Personal Information to a third party for monetary or other valuable consideration.

## **27. Sensitive Personal Information**

Is (i) Personal Information that reveals: (a) a consumer's social security, driver's license, state identification card, or passport number; (b) a consumer's account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; (c) a consumer's precise geolocation; (d) a consumer's racial or ethnic origin, religious or philosophical beliefs, or union membership; (e) the contents of a consumer's mail, email and text messages, unless the business is the intended recipient of the communication; and/or (f) a consumer's genetic data; (ii) the Processing of biometric information for the purpose of uniquely identifying a consumer; (iii) Personal Information collected and analyzed concerning a consumer's health; and/or (iv) Personal Information collected and analyzed concerning a consumer's sex life or sexual orientation.

## **28. Services**

The services and/or products provided by Service Provider pursuant to this Agreement as described in one or more written letters of engagement or Matter Assignments.

### **29. Service Provider Representatives**

Service Provider's employees, agents, permitted Subcontractors, or other representatives who are utilized by Service Provider in its performance under this Agreement.

### **30. Share**

Sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Personal Information to a third party for cross-context behavioral advertising, whether or not for monetary or other valuable consideration, including transactions between a business and a third party for cross-context behavioral advertising for the benefit of a business in which no money is exchanged.

### **31. Subcontractor**

An individual or business that enters into a contract with Service Provider to perform part or all of Service Provider's obligations under this Agreement.

### **32. Technical and Organizational Security Measures**

Established information and data security controls consistent with legal and regulatory requirements and industry best practices aimed at preventing a Data Breach, including but not limited to, such breach resulting from, or arising out of, Service Provider's internal use, Processing or other transmission of Confidential Information.

## APPENDIX 06

### CONFIDENTIALITY and PERSONAL INFORMATION OBLIGATIONS

#### 1. Confidentiality Obligations

In addition to those ethical and professional responsibility standards applicable to Service Provider (which shall not be lessened by the terms herein), this Agreement shall govern the confidentiality obligations of the Parties with respect to the subject matter hereof. Any prior non-disclosure or confidentiality agreements between the Parties related to the subject matter of this Agreement are hereby superseded. Except as provided under "Exceptions" below, each party (the "Recipient") shall (a) use Confidential Information of the other party (the "Disclosing Party") solely to carry out the purposes for which the information was disclosed and for no other purpose; (b) limit access to the Disclosing Party's Confidential Information to the Recipient's employees, officers, permitted Subcontractors and agents who have a need to know the information to carry out the purposes for which the information was disclosed, and require those persons to adhere to the confidentiality obligations of this Agreement; (c) not disclose, divulge, or use the Disclosing Party's Confidential Information, directly or indirectly, voluntarily or involuntarily, to any other person or entity; and (d) not use the Disclosing Party's Confidential Information to the detriment of, or in competition with, the Disclosing Party, in an unlawful manner, or to interfere with or attempt to interfere with or otherwise adversely affect any business relationship of the Disclosing Party. Recipient shall implement appropriate Technical and Organizational Security Measures to: (i) safeguard the security and confidentiality of Confidential Information; (ii) protect against the destruction, loss, alteration of, or unauthorized access to Confidential Information; and (iii) ensure the proper disposal of Confidential Information.

#### 2. Exceptions

The Recipient shall not be in violation of this Appendix when disclosure of the Disclosing Party's Confidential Information is required pursuant to (a) any federal or state law or regulation, (b) the rules or regulations of any governmental agency, or (c) a subpoena or court or administrative order, provided, however, that if the Recipient receives a subpoena or other legal process which requires disclosure of the Disclosing Party's Confidential Information, the Recipient shall, unless prohibited by law, regulation, or court order, notify the Disclosing Party immediately and provide reasonable cooperation with the Disclosing Party's efforts, if any, to prevent or limit such disclosure. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Disclosing Party, and need not provide prior notice to the Disclosing Party, where disclosure is made (i) in response to a request by a regulatory or self-regulatory authority with jurisdiction over the Recipient or its Representatives (as applicable) or (ii) in connection with a routine audit or examination by a bank examiner or auditor of the Recipient or its Representatives (as applicable); provided that the Recipient or its Representatives (as applicable) (1) promptly notify the Disclosing Party following such disclosure unless prohibited by law and (2) advise such regulatory authority, examiner or auditor of the confidential nature of such information. The Recipient shall also not be in violation of the terms of this Appendix for disclosing the Disclosing Party's Confidential Information when (A) the Disclosing Party gives its written consent to the disclosure; (B) the Disclosing Party's Confidential Information (other than Personal Information) is or becomes publicly available other than as a result of a breach of this Agreement; (C) the Disclosing Party's Confidential Information (other than Personal Information) is disclosed to the Recipient by a third party not subject to any obligation of confidentiality; (D) the Disclosing Party's

Confidential Information (other than Personal Information) already was known by the Recipient prior to the date of this Agreement (unless disclosed in connection with negotiations and discussions related to this Agreement or associated transactions); or (E) the information was independently developed by the Recipient without reference to the Disclosing Party's Confidential Information under this Agreement. Notwithstanding these exceptions, Confidential Information consisting of Personal Information shall remain subject to the terms of this Agreement applicable to Personal Information, including the requirements of confidentiality and non-disclosure. The confidentiality provisions of this Agreement shall not be construed to grant or assign to the Recipient any ownership right in or license to the Disclosing Party's Confidential Information.

### **3. Requirements of FCB's Licensors and Third-Party Service Providers**

Service Provider acknowledges that FCB's licensors or third-party service providers may request that Service Provider and/or Service Provider's Representatives execute or agree to confidentiality, non-competition, and similar covenants protecting the licensor or third-party service provider in order for Service Provider to access systems or information relating to the licensor or third-party service provider or its products or services, whether in conjunction with providing Services or otherwise. Service Provider shall not unreasonably withhold its consent to or execution of such covenants and shall advise FCB immediately if Service Provider or any of Service Provider's Representatives will not consent to or execute any such covenant as presented.

### **4. Information Transfers**

The Parties acknowledge that the performance of their respective obligations under this Agreement may require from time to time the transfer of Confidential Information between the Parties and, if applicable and as permitted herein, between Service Provider and Service Provider's Representatives. Each Party shall use commercially reasonable secure methods for the transfer of Confidential Information whether the transfer occurs electronically or by physical media, including, at a minimum and as applicable, the use of encrypted and password-protected files, and reputable courier services that provide shipment tracking. Service Provider shall require that Service Provider's Representatives comply with the requirements of this Appendix and Service Provider shall be responsible under this Agreement for any unauthorized access to Confidential Information resulting from a Service Provider Representative's failure to so comply.

### **5. Return or Destruction of Confidential Information**

Upon termination of this Agreement for any reason or upon request of the Disclosing Party, the Recipient shall either: (a) return to the Disclosing Party all Confidential Information in the Recipient's possession or control, and, if requested by the Disclosing Party, provide certification that all such Confidential Information has been returned; or (b) destroy such Confidential Information and provide certification to the Disclosing Party that all such Confidential Information has been destroyed. The requirements of this Appendix apply to all originals and copies of Confidential Information whether maintained tangibly, electronically, or otherwise, other than documents that the Recipient is required by applicable Law or Regulatory Requirement to maintain or that are automatically archived as part of its *bona fide* disaster recovery or data backup system (and cannot be expunged without considerable effort). Certifications provided must include, at a minimum, the date and method of return or destruction and such other information as agreed upon by the parties. Notwithstanding any such destruction, the Recipient and its Representatives will continue to be bound by its and their respective obligations of



confidentiality and other obligations hereunder for the term hereof. Notwithstanding anything to the contrary in this Agreement, Confidential Information consisting of Personal Information shall be effectively deleted upon request by FCB.

## **6. Service Provider's Additional Obligations as to Personal Information**

This Section of the Appendix applies in addition to Service Provider's other obligations regarding Confidential Information, if and only to the extent the obligations of the Privacy Laws apply to the Personal Information being Processed by Service Provider following the process set forth in Section XI (Information Security) of the Agreement. Service Provider and/or Service Provider Representatives shall implement and maintain appropriate Technical and Organizational Security Measures and processes consistent with all obligations under the Privacy Laws to: (a) ensure the security and confidentiality of such Personal Information; (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Personal Information; (c) protect against unauthorized access to or use of Personal Information; (d) Process Personal Information only as necessary and reasonably proportionate to provide the Services and not for any other reason, including, without limitation, Selling, Sharing, Processing, disclosing, creating or maintaining data which is derivative from Personal Information, even if aggregated, de-identified, or pseudonymized; (e) use reasonable minimization procedures to limit collection and retention of Personal Information in its systems; (f) use strong cryptography, or similar cryptographic controls when transmitting Sensitive Personal Information over open public networks and Sensitive Personal information at rest; (g) promptly provide notice to FCB of any actual or suspected Data Breach as required under Appendix 10 (Data Breach Response) of this Agreement; (h) ensure the proper disposal or destruction of Personal Information consistent with the Privacy Laws and reasonable information security practices, including, subject to and consistent with Service Provider's professional responsibility requirements, FCB's request to return or destroy all Personal Information; (i) correct any inaccurate or incomplete Personal Information at FCB's request; (j) Process and access all Personal Information within systems and servers located within the United States and refrain from transferring or allowing access to Personal Information by anyone located outside the United States (including, without limitation, parents, subsidiaries, affiliates, and agents), except as otherwise agreed to in writing by FCB in the Engagement Letter<sup>2</sup>; (k) execute further mutually agreed documents or agreements as necessary to legally Process and access Personal Information, such as a Business Associate Agreement (as defined under HIPAA); and (l) otherwise adhere to the requirements of applicable Privacy Laws, this Agreement, and the applicable rules of professional conduct. Upon FCB's written request, Service Provider shall make available to FCB written records of Service Provider sufficient to demonstrate the information security measures employed by Service Provider so long as such access is conducted in a manner so not to reveal confidential information of other clients, impinge or negate any attorney-client privilege between the Service Provider and its internal or external counsel, and is otherwise in compliance with applicable rules of professional conduct. Such records shall be used for the

---

<sup>2</sup> Due to FCB's compliance obligations and the variation of privacy and data security regulations, FCB requires any Service Provider that intends to Process Personal Information outside of the U.S. to submit to FCB a summary of the Personal Information to be Processed, the manner in which such Processing will be handled, and the purpose or reason for such Processing outside of the U.S. Processing Personal Information outside of the U.S. will be evaluated on a case-by-case basis in relation to the Personal Information and the non-U.S. jurisdiction involved. FCB will not unreasonably withhold its consent, but FCB reserves the right to deny Service Provider's request based on FCB's compliance requirements and the protection of its Personal Information.

sole purpose of determining Service Provider's compliance with its confidentiality obligations under this Agreement and shall be considered Confidential Information of Service Provider.

At all times that Service Provider Processes Personal Information, Service Provider shall have in place appropriate and reasonable Technical and Organizational Security Measures which include written, physical, electronic, and procedural safeguards and policies designed to prevent: (i) unauthorized or unlawful Processing of Personal Information; and, (ii) a Data Breach, in each instance commensurate with the sensitivity of the Personal Information Processed by Service Provider.

Service Provider shall cooperate with FCB's efforts to monitor Service Provider's compliance with this Agreement, including allowing FCB at its expense to conduct or have a third party conduct an audit or review of Service Provider records and systems relevant to Service Provider's obligations under this Appendix so long as such audit is conducted in a manner so not to reveal confidential information of other clients, impinge or negate any attorney-client privilege between the Service Provider and its internal or external counsel, and is otherwise in compliance with applicable rules of professional conduct.

Service Provider shall not (i) Process Personal Information in violation of or in any manner inconsistent with Applicable Data Protection Laws and/or which could cause FCB to not be compliant with the Applicable Data Protection Law. If Personal Information is compromised as a result of Service Provider's breach of its obligations under the Agreement and FCB reasonably determines that remedial or mitigating measures are appropriate to minimize Customer impact, FCB shall so notify Service Provider, and Service Provider shall reimburse FCB promptly for the reasonable costs incurred by FCB in providing or implementing such measures, including without limitation the cost of providing notices and/or services such as credit monitoring services to Customers. The foregoing remedy shall be in addition to and not in lieu of any other remedies available to FCB under this Agreement.

## APPENDIX 07

### FCB TRAVEL AND REIMBURSEMENT

All chargeable travel must be approved by the FCB PIC in advance. Charges for Service Provider's time during travel will not be billed if the time is spent doing work on non-FCB matters or is billed to another client. If the travel is also for the benefit of another client, we expect to only be billed for our proportionate share of both time and expenses.

Expenses must be actually incurred and approved to be eligible for reimbursement. Request for reimbursement of expenses must be submitted to FCB within thirty (30) days of the completion of travel, any request for reimbursement not properly completed and submitted to FCB within thirty (30) days of travel shall not be paid. Receipts must be attached for any expenditures. Detailed hotel receipts for lodging expenditures must be attached regardless of amount.

#### 1. Air Travel

FCB's approved class of service for air travel is coach or economy.

Any purchase of personal accident insurance is not a reimbursable expense.

FCB will not reimburse for expenses relating to airport lounge club memberships.

FCB will not reimburse the expense for excess luggage unless such expense has been pre-approved by the FCB PIC.

Frequent Flyer miles may be used to upgrade an airline ticket to first-class at the Service Provider's expense.

Airline tickets should be purchased at least seven (7) days in advance when possible to obtain a lower fare.

FCB will reimburse for only the lowest readily available airfare while providing for the most expedient route and reasonable travel times.

#### 2. Ground Transportation

When traveling in out-of-town areas on FCB business, common sense should dictate the mode of transportation - public transportation, taxi, Uber, Lyft, or rental car. Consideration should be given to local conditions such as: (a) efficiency, quality, safety, security and timeliness of public transportation; (b) familiarity with the location; (c) distance from the place of work or hotel; (d) duration of the visit; and (e) number of people involved.

Rental cars should be limited to trips longer than one hundred fifty (150) miles and/or instances where such method of transportation represents the best form in terms of both convenience and cost. The following items should be adhered to when renting a car: (i) cars should be turned in as soon as possible; (ii) rental cars should be shared whenever possible; (iii) the standard rental cars are mid-sized (luxury cars will not be reimbursed); and (iv) the receipt must be attached to the reimbursement request.

If two or more employees of Service Provider are traveling together, they are encouraged to share taxis or rideshares whenever possible.

Fines for moving and parking violations will not be reimbursed under any circumstances.

### **3. Out-of-Town Lodging and Meals**

FCB will reimburse reasonable and necessary lodging (not to exceed the general standard rate for a single room in the area visited) of Service Providers who travel overnight on FCB business and said travel is necessary for effective representation.

Personal entertainment expenses, such as in-room movies, are not reimbursable.

Service Providers traveling on FCB business are encouraged to engage in meals at moderately priced restaurants. The reasonable cost of meals (e.g., \$15 for breakfast, \$30 for lunch, and \$50 for dinner) will be reimbursed. Alcoholic beverages will not be reimbursed. Each meal reimbursement request must include: the type of meal (breakfast, lunch, dinner), name of person attending meal, total meal cost. Meals including gratuities identified with charge receipt will be reimbursed, but not more than 20% (pre-tax). No cash tips will be reimbursed.

FCB reserves the right to audit the Service Provider's disbursements.

### **4. Miscellaneous**

Personal travel expenses and amenities will not be reimbursed (e.g. salon expenses, alcohol, in-room or in-flight movies or entertainment, travel agency expenses, shoe shines, toiletries, luggage, cancellation/change fees (unless FCB causes the change in plans), etc.).

Laundry and dry cleaning are reimbursable only if Service Provider is out-of-town longer than four (4) continuous days.

If Service Provider's luggage is lost during travel on FCB business, Service Provider should seek reimbursement directly with the hotel or airline involved.

Boarding and care of pets while a Service Provider travels is not reimbursable by FCB.

Expenses related to family care (gifts or other remuneration to relatives performing baby-sitting services) while a Service Provider is traveling on FCB business are not reimbursable.

If Service Provider stays with friends or relatives in lieu of a hotel, any meals or gifts purchased for the hosts are not reimbursable by FCB.

No cash tips will be reimbursed.

## APPENDIX 08

### INSURANCE REQUIREMENTS

During the term of the Agreement, Service Provider at its expense, shall secure and maintain at all times insurance of the types specified below. The insurance shall be obtained from an insurer with an A.M. Best's performance rating of at least A- and a financial size category of at least Class X to cover all responsibilities and obligations of Service Provider hereunder but at no less than the minimum coverage set forth below; provided, however, that these requirements shall not be construed to limit Service Provider's liability for any losses or claims that may arise out of Service Provider's performance under the Agreement. Prior to commencement of any work under the Agreement, Service Provider shall provide to FCB certificates of insurance that evidence the required coverages and provide that the insurer must give FCB not less than ten (10) days' advance notice of any changes in or cancellation of coverage or expiration without renewal.

Service Provider shall provide FCB at least ten (10) days' prior written notice of any proposed change in carriers or material terms of coverage. Service Provider shall ensure that FCB is provided with an updated certificate of insurance annually for the duration of the Agreement and when otherwise requested by FCB by uploading the certificates of insurance to CounselLink.

<b>Lawyers Professional Errors &amp; Omissions Liability</b>	<b>\$10,000,000</b>
<b>Cyber Liability</b>	<b>\$ 5,000,000</b>

## APPENDIX 9

### DATA BREACH RESPONSE

#### 1. Planning

Service Provider shall have developed and implemented written policies and procedures to address Data Breaches ("Response Plan") in order to (i) identify, (ii) analyze, (iii) contain, (iv) eradicate, (v) recover and (vi) prevent the recurrence of Data Breaches. At FCB's request, Service Provider shall provide FCB access to review its Response Plan. The development and implementation of the Response Plan shall follow best practices that at a minimum are consistent with standards such as NIST, COBIT, ISO, etc., as those standards may be amended.

#### 2. Notice of Data Breach

Promptly upon learning of an actual and/or suspected Data Breach related to the Services provided, Service Provider shall initiate its Response Plan within eight (8) hours of discovery of an actual or suspected Data Breach and shall promptly (and in any event within 24 hours) notify FCB by contacting FCB's cyber threat and vulnerability team at 919-716-2500. In addition, following the initial notification by phone, Service Provider shall promptly notify FCB via written letter. To the extent possible and to the extent known, with respect to the actual or suspected Data Breach the notice shall include: (i) the date and time of the occurrence believed to have caused or contributed to it; (ii) a summary of the facts and circumstances; (iii) a description of why it occurred; (iv) the current status (ongoing, contained or eradicated); (v) what steps have been taken to contain, eradicate, and remediate it; (vi) the amount of FCB information known or reasonably believed to have been involved; and (vii) the measures being taken to address and remedy the occurrence to prevent the same or a similar event from occurring in the future. Service Provider shall promptly correct any errors or inaccuracies in the reports or notifications delivered to FCB under this Agreement. Service Provider shall preserve all records and other evidence relating to the actual or suspected Data Breach. Service Provider further agrees to provide reasonable assistance and cooperation requested by FCB and/or FCB's designated representatives, in the furtherance of any correction, remediation, or investigation of any Data Breach caused by Service Provider and/or the mitigation of any damage finally found by a court of competent jurisdiction to have been caused by Service Provider, including any notification reasonably required to be sent to the appropriate supervisory authority, and/or individuals impacted or potentially impacted by such Data Breach, including the provision of any credit reporting service that Applicable Data Protection Laws require. For the avoidance of doubt, "reasonable assistance and cooperation" shall not include any on-site audit, inspection, or access to Service Provider's books, records, systems, and/or financial statements. Unless required by law, Service Provider shall not notify any individual or any third party other than law enforcement of any Data Breach with respect to FCB without first consulting with, and obtaining the permission of, FCB.

#### 3. Communication

Service Provider and FCB shall mutually agree upon communication protocols during and following the actual or suspected Data Breach, including periodic updates via phone and/ or email. Notwithstanding the foregoing, Service Provider shall also provide verbal and written updates to FCB addressing any new facts and circumstances learned after the initial written notice is provided and shall provide such updates promptly after learning of those new facts and circumstances.

#### **4. Investigation**

Service Provider will assist and cooperate with FCB with respect to any investigation of an actual or suspected Data Breach, disclosures to affected parties, and other remedial measures as requested by FCB or required under any applicable laws.

## APPENDIX 10

### BUSINESS CONTINUITY and DISASTER RECOVERY PLAN (BC/DRP)

#### 1. BC/DRP

Service Provider shall at a minimum establish, implement, and maintain a Business Continuity and Disaster Recovery Plan (“BC/DRP”) and backup capabilities and facilities as reasonably necessary to ensure Service Provider’s continuing ability to perform the Services and its obligations hereunder with minimal disruptions or delays, including, as applicable the Recovery Point Objective (RPO) and Recovery Time Objective (RTO) if stated in any engagement letter. Service Provider shall test its BC/DRP at regular intervals in accordance with industry standards for the Services provided. Service Provider shall provide to FCB, its auditors and Government Agencies reasonable access to the BC/DRP and to the associated test results, as FCB may reasonably request from time to time, including such information that may be reasonably required to determine the compatibility with FCB’s BC/DRP plans, so long as such access is conducted in a manner so not to reveal confidential information of other clients, impinge or negate any attorney-client privilege between the Service Provider and its internal or external counsel, and is otherwise in compliance with applicable rules of professional conduct. Such records shall be used for the sole purpose of determining Service Provider’s compliance with its confidentiality obligations under this Agreement and shall be considered Confidential Information of Service Provider.

#### 2. Force Majeure

Neither Party shall be liable to the other for failure to perform, or delay in the performance of, its obligations under an engagement letter when such failure or delay is caused by a Force Majeure Event provided, however, that if a Force Majeure Event materially impacts Service Provider’s ability to perform some or all of its Services obligations hereunder, (i) Service Provider shall notify FCB in writing as soon as reasonably possible describing the affected area of performance and the Parties shall promptly confer, in good faith, to agree upon equitable, reasonable actions to minimize the impact to both Parties, and (ii) Service Provider shall use commercially reasonable efforts, including without limitation, implementing Service Provider’s BC/DRP, to minimize the disruption and/or delay caused by the Force Majeure Event and resume full performance of the Services as soon as reasonably possible. If Service Provider is unable to resume full performance of the Services within five (5) business days of the first date on which the Services were disrupted, and has not provided a plan for resumption of the Services that is acceptable to FCB, FCB may terminate this Agreement or the applicable Matter Assignment without penalty upon written notice to Service Provider. The occurrence of a Force Majeure Event shall not excuse the Service Provider’s obligation to execute the BC/DRP and restore the Services and recover the Customer Information in accordance with Section 1 above (*BC/DRP*) of this Appendix.



## APPENDIX 11

### IDENTITY THEFT / RED FLAG

Service Provider acknowledges that FCB is subject to regulations of the Federal Deposit Insurance Corporation ("FDIC") that require financial institutions to establish and administer an identity theft program that includes policies and procedures to identify, detect and respond appropriately to a pattern, practice, or specific activity that indicates the possible existence of identity theft ("Red Flags"). The FDIC's regulations are set forth in 12 C.F.R. Part 334 and include Appendix J, the "Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation" ("Red Flag Regulations"). The Red Flag Regulations also require that a financial institution take steps to ensure that its Service Providers have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service Provider's activities. Service Provider represents and warrants to FCB that Service Provider has written policies and procedures in place to detect relevant Red Flags that may arise in the Service Provider's performance of the Services as applicable and that such policies and procedures are in compliance with the Red Flag Regulations. Furthermore, Service Provider agrees to (i) maintain and apply such policies and procedures as applicable to the Services, (ii) upon detection of Red Flags, take immediate action to prevent or mitigate the risk of identity theft as appropriate, and (iii) promptly report in writing to FCB the detection of Red Flags and the actions taken by Service Provider in connection therewith. Service Provider shall cooperate with FCB's efforts to monitor Service Provider's compliance with this Appendix, including allowing FCB or its designee to conduct an audit or review of Service Provider's records and systems relevant to Service Provider's obligations under this section so long as such audit or review is conducted in a manner so not to reveal confidential information of other clients, impinge or negate any attorney-client privilege between the Service Provider and its internal or external counsel, and is otherwise in compliance with applicable rules of professional conduct.

## APPENDIX 12

### CONSUMER FINANCIAL PROTECTION

In addition to Service Provider's other obligations related to compliance with laws under the Agreement, Service Provider shall comply at all times with all applicable federal and state consumer financial protection laws, rules, regulations and regulatory guidance applicable to Service Provider's performance of its obligations and duties hereunder (collectively, "Consumer Financial Protection Laws"). If further amendment of the Agreement becomes necessary for Service Provider to comply with Consumer Financial Protection Laws, the Parties agree to amend the Agreement as reasonably necessary to comply. As new Consumer Financial Protection Laws are enacted or amended, Service Provider shall notify FCB in writing of its plan for compliance with such new law no later than thirty (30) days prior to the effective date thereof.

Upon written request by FCB, Service Provider shall provide to FCB its policies, procedures, internal control descriptions, and training materials related to Service Provider's compliance with Consumer Financial Protection Laws within thirty (30) days of such request. Service Provider shall promptly notify within at least fifteen (15) days FCB in writing in the event a federal or state regulatory agency notifies Service Provider of (a) a finding of noncompliance with any Consumer Financial Protection Law, or (b) the commencement of an investigation which alleges or avers noncompliance with any Consumer Financial Protection Law.

In the event Service Provider receives a written or oral complaint or dispute from or on behalf of a consumer including but not limited to discrimination or unfair, deceptive, or abusive acts or practices, Service Provider shall send (i) a copy and explanation of said complaint/dispute within two (2) business days to [customerresponseteam@firstcitizens.com](mailto:customerresponseteam@firstcitizens.com) and include a description of any remediation taken (ii) a monthly report identifying such complaints, unless the nature of the complaint is such that it warrants earlier action, (iii) upon request of FCB, provide FCB with copies of all correspondence and documentation related to a complaint, and (iv) comply with any further reasonable instructions from FCB with respect to responding and/or resolving such complaint.

In addition to all other audit rights provided in the Agreement, FCB shall have the right to perform, upon reasonable notice and at reasonable times, on-site compliance audits of Service Provider as well as telephone call monitoring to ensure Service Provider's compliance with Consumer Financial Protection Laws, including the right to inspect Service Provider's internal audit and external examination results; provided, however, that any such audit shall be conducted such that it does not impinge or negate any attorney-client privilege held by the Service Provider for communications with its internal and external counsel or violate any professional responsibility requirements of the Service Provider.

## APPENDIX 13

### PERFORMANCE

Service Provider shall be responsible for providing all labor, materials, services, facilities, equipment, and other resources necessary to perform the Services and satisfy its obligations under this engagement, excluding any items explicitly identified as being provided by FCB. Service Provider shall, and shall cause all Service Provider Representatives to, perform the Services in a prompt, professional and workmanlike manner and in accordance with industry standards, applicable FCB policies, and applicable Laws and Regulatory Requirements for the type of Services provided and any specific standards set forth in the applicable Appendices. If and only to the extent confirmed by the process set forth in Section XI (Information Security), at all times that Service Provider Processes Personal Information (as such terms are defined in Appendix 05 (Applicable Definitions)), Service Provider shall adhere to the requirements of Appendix 06 (Confidentiality and Personal Information Obligations). Service Provider shall conform the Services to comply with changes in FCB policies (that are made available to Service Provider or otherwise accessed or obtained by Service Provider) and applicable Laws or Regulatory Requirements, including Privacy Laws or Consumer Financial Protection Laws (as defined in Appendix 12 (Consumer Financial Protection)), applicable employment-related laws, applicable export laws, applicable restrictions, applicable national security controls and regulations of the United States and all other applicable international or foreign governments, agencies, and authorities regarding export-controlled items, and the Foreign Corrupt Practices Act. Service Provider shall promptly identify and notify FCB of changes in Law relevant to and within the scope of an engagement. Service Provider shall be responsible for any fines and penalties arising from its noncompliance with any Law arising out of or relating to a breach of this Agreement by Service Provider or its Representatives. In performing the Services, Service Provider shall not use materials or methods that infringe upon any intellectual property or proprietary rights of others.

Service Provider represents, warrants, and covenants to FCB that: Service Provider possesses the necessary skill, training, licenses and authorizations to provide the Services; the Services will be performed accurately, on time, in a professional manner in accordance with all applicable rules of professional responsibility, the rules and regulations in the state in which Service Provider is licensed, and in accordance with the generally accepted industry best practices; and, Service Provider shall employ security procedures consistent with the generally accepted best practices found in the computer industry to protect Personal Information and other Confidential Information (as such terms are defined in Appendix 05 (Applicable Definitions) and required by Appendix 06 (Confidentiality and Personal Information Obligations)).

## APPENDIX 14

### GOVERNMENT CONTRACTOR OBLIGATIONS

FCB is a financial institution with federal share and deposit insurance and is therefore considered to be a government contractor within the meaning of the regulations implementing Executive Order 11246, as amended, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the National Labor Relations Act. The obligations of FCB and of Service Provider, to the extent applicable, are described herein.

#### 1. Equal Employment Opportunity

FCB is an equal employment employer and strongly encourages diversity in candidate pools. FCB is committed, through its affirmative action program, to the full and effective utilization of qualified persons regardless of race, color, religion, national origin, sex, age, disability, veteran status, sexual orientation, gender identity, or other legally protected status. As a condition of doing business with FCB, Service Provider agrees that it will administer all recruiting and screening activities under this Agreement without discrimination on the basis of race, color, religion, national origin, sex, age, disability, veteran status, sexual orientation, gender identity, or other legally protected status. Service Provider agrees to use its best, good faith efforts to actively recruit and refer qualified women, minorities, individuals with disabilities and protected veterans for all other employment or contract services requested by FCB and submitted to Service Provider. The Service Provider agrees that all solicitations or advertisements for employees placed on behalf of FCB will include in clearly distinguishable type the phrase "An Equal Opportunity Employer—Minority/Female/Disability/Veteran."

The provisions of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a) are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. To the extent applicable, FCB and Service Provider shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

#### 2. National Labor Relations Act.

FCB incorporates by reference, 29 CFR Part 471, Appendix A to Subpart A. To the extent applicable, Service Provider is required to place the Employee Rights under the National Labor Relations Act poster in conspicuous places in Service Provider's workplace in the same manner that other employment related posters are displayed.

## APPENDIX 15

### INDEMNIFICATION

Service Provider will indemnify, defend, and hold harmless FCB and its directors, officers, and employees for any actual damages directly arising from any claim by a third party based on the Service Provider's gross negligence in performing the Services, except any such claim arising from the negligence, gross negligence, omissions, or willful misconduct of the Indemnitee.

To the extent anything in this Appendix affects or limits the Service Provider's rights and benefits under any insurance policy or contract of indemnity with respect to professional liabilities or waives or lessens the Service Provider's professional responsibilities owed to FCB, this paragraph shall be null and void.

This indemnity obligation will apply to all actual damages directly arising from such claim, including reasonable costs, expenses, and losses of FCB, such as attorneys' fees, other expenses in defense of claims, settlements, and judgments. This indemnity obligation does not include any consequential, incidental, indirect, exemplary, special, or punitive damages.

Service Provider and FCB agree that, upon receipt of a notice of claim or action potentially giving rise to the indemnity obligation, FCB will notify the Service Provider promptly. FCB shall fully cooperate with Service Provider and Service Provider shall immediately take control of the defense and investigation of such claim. Service Provider will not settle any such claim in a manner that adversely affects FCB. If Service Provider fails to assume control of the defense, FCB may elect to step in and defend the claim with counsel of its choosing; in such event, for clarity, Service Provider will continue to indemnify and hold FCB harmless from all actual costs and expenses (including reasonable attorneys' fees) incurred by FCB in such defense.