

TERMS OF USE
Terminated Originator Database

PLEASE READ THESE TERMS CAREFULLY. THEY GOVERN YOUR USE OF THE TERMINATED ORIGINATOR DATABASE.

1. Acceptance of Terms; Amendment. The Terminated Originator Database (“TOD”), including any website or other technology through which the database is offered, is administered by Nacha for subscribing institutions. If you use the TOD (“Subscriber” or “you”), you agree to be bound by these Terms of Use (“Terms”). You hereby represent and warrant that you are a Participating Depository Financial Institution or Third Party Service Provider in the ACH Network, that you are in full compliance with the Nacha Operating Rules and that you have full right, power and authority to enter into and comply with these Terms. You agree to comply with all applicable laws and regulations in connection with your use of the TOD. Nacha reserves the right to periodically amend or modify these Terms by making a copy available to you. An updated version of the Terms shall be effective with respect to all of your usage of the TOD after the date such updated Terms are first made available to you. Capitalized terms that are used herein, but are not specifically defined in this document, have the meanings assigned to them in the Nacha Operating Rules as amended by Nacha from time to time.

2. Access Requirements. Each employee authorized by you to use the TOD (each an “Authorized User”) must have an email address with a domain name assigned to you and meet such other authentication requirements as are required by Nacha from time to time. You are responsible for all acts and omissions of Authorized Users with respect to the TOD, and for the compliance of Authorized Users with these Terms. You agree to use the security procedures promulgated by Nacha from time to time to control access to the TOD and preserve the confidentiality and security of the data contained therein. You are responsible for maintaining in strict confidence any security credentials provided to any Authorized User for purposes of using the TOD, and you shall not to share such security credentials except within your institution as necessary to use the TOD. You are solely responsible for all activity that occurs using those security credentials. You must promptly notify Nacha of any unauthorized use of your security credentials, or any other breach of security or potentially unauthorized or impermissible activity relating to the TOD of which you become aware.

You agree not to change, disrupt or distort the functioning of the TOD, to solicit another Subscriber’s security credentials, or otherwise act in a way that interferes with other Subscribers’ use of the site. In accessing, transmitting or posting to the TOD, you agree not to post or distribute any computer program that damages, detrimentally interferes with, surreptitiously intercepts, or expropriates any system, data, or personal information, such as any viruses, worms, Trojan horses or other destructive features or to use any device, software or routine to interfere or attempt to interfere with the proper working or functions of the TOD. You may not access the TOD via any outside service provider, consultant, agent or other third party, nor may you or shall you access the TOD for, or distribute any information contained herein, to any third party. You shall not and may not obtain or attempt to obtain any materials or information through any means not intentionally made available to Subscribers through the TOD.

3. Posting Data to the TOD. The TOD is intended solely to gather from, and make available to, Subscribers, information regarding certain Originators and/or Third Party Senders whose relationship with an ODFI or Third Party Service Provider has been terminated. Each Subscriber agrees to post to the TOD information regarding its terminated Originators and Third Party Senders in accordance with the user operating instructions and requirements made available to you. By posting information to the TOD, you represent and warrant that such information is accurate and complete, and that the posting of such information is not a violation of any agreement or legal obligation to which you are subject or by which you are bound. If there is any error or omission in any information that you post, you shall promptly correct such error or omission. Nacha has no obligation to review the information posted to the TOD, and Nacha does not make any representations or warranties with respect to information in the TOD, including but not limited how accurate or current such information may be.

You agree that Nacha may access and use the TOD, including information posted therein, to administer the ACH Network.

4. Use Obligations. You acknowledge and agree that the information accessed and/or obtained from the TOD is confidential information that you may only use, disclose, disseminate or copy in strict accordance with these Terms. You may not share any information obtained through the TOD outside of your institution. You may not and shall not publish, disseminate, distribute or copy such information.

You agree to use the TOD solely for your own internal business purposes in accordance with these Terms and solely in conformance with your obligations herein. You are solely responsible for all your acts and omissions in connection with, or reliance on, any information that you access, at any time, past or present, through the TOD. Third Party Service Providers may be restricted from access to TOD data regarding Third Party Senders.

You should not base underwriting decisions or actions on information contained in or accessed through the TOD, but rather should perform your own due diligence on each prospective Originator and Third Party Sender. Inclusion of information about an Originator or Third Party Sender in the TOD does not prohibit you or other Subscribers from doing business with such a Originator or Third Party Sender, or serve to indicate any opinion of Nacha as to the Originator or Third Party Sender. You agree to use the TOD solely as one factor, and not the exclusive factor, in your decision regarding the amount of due diligence to conduct with respect to a prospective Originator or Third Party Sender. Nacha reserves the right to make changes to the TOD from time to time in its sole discretion, but you acknowledge and agree that it has no obligation to do so. Nacha may notify you of any changes it may make to the TOD, from time to time, by email or otherwise, but you agree that Nacha has no obligation to provide such notification to you. You agree to promptly update all your contact and other information provided to Nacha in connection with your use of the TOD.

5. Disputes. Nacha is not responsible for resolution of any dispute between you and any Originator or Third Party Sender. Each Subscriber agrees that its designated contact information may be provided to a terminated Originator or Third Party Sender whose name the Subscriber has contributed to the TOD.

6. Disclaimer of Warranties. All use of the TOD is at your own risk and you agree to bear all such risk, related costs and liability, and be responsible for your use of all information that you access or obtain through the TOD as a condition of your right to access the TOD. Nacha assumes no responsibility for any errors, omissions or inaccuracies whatsoever in the information provided in the TOD. The TOD, including all information contained in, accessed or obtained through the TOD is provided "as is" without representation or warranty of any kind, whether express or implied.

NACHA HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION (EVEN IF CREATED BY THE INTERNATIONAL SALE OF GOODS CONVENTION), NON-INFRINGEMENT, OR IMPLIED ANY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

7. Limitation of Liability. Under no circumstances will Nacha be liable for any loss or damage caused by your reliance on information accessed or obtained through the TOD. It is your sole responsibility to evaluate any information provided through the TOD, including for timeliness, accuracy, completeness and usefulness.

NACHA'S LIABILITY UNDER THESE TERMS OR WITH RESPECT TO THE TOD IS LIMITED IN ALL CASES AND IN THE AGGREGATE TO THE GREATER OF (I) THE AMOUNT OF FEES ACTUALLY PAID BY YOU FOR YOUR USE OF THE TOD DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM AND (II) \$1,000. In no event shall Nacha be liable for any special, incidental, indirect, punitive or consequential damages of any kind, whether in contract, tort, strict liability or otherwise arising out of or in connection with the use of, or inability to use the TOD, whether or not Nacha has been advised of the possibility of such damages. This limitation of liability is comprehensive and shall apply to all damages of any kind, including loss of data, loss of income or profit, loss of or damage to property and claims of third parties.

8. Indemnification. You agree to defend, indemnify, and hold harmless Nacha and its directors, officers, employees, agents and contractors from and against all losses, claims, threatened claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, of any kind that arise from your use or misuse of the TOD, including use of data or information contained therein or accessed thereby, your non-compliance with these Terms, or your violation of any third party rights.

9. Intellectual Property Rights. All property or other proprietary rights, including patents, designs, trademarks, copyright or trade-secrets, relating to the TOD, including software and information, are the exclusive property of Nacha and its licensors. Nacha and its licensors, as applicable, will retain all right, title and interest in and to all intellectual property rights in the information available through the TOD. Any rights not expressly granted herein are reserved.

10. Term and Termination. If the TOD is used by you in a way in which Nacha, in its sole discretion, deems to violate these Terms, Nacha may take any action it deems necessary in its sole discretion, including temporary or permanent removal of content, filtering of Internet transmissions and the immediate suspension or termination of all or any portion of your use of the TOD. You expressly acknowledge and agree that Nacha is permitted to perform these actions or temporarily or permanently discontinue the TOD or your access to the TOD, at any time and shall not be liable in any way for any such action.

Nacha reserves the right to investigate suspected violations of these Terms. You hereby authorize Nacha to cooperate with (a) law enforcement authorities in the investigation of suspected criminal violations and (b) system administrators at Internet service providers, networks or computing facilities in order to enforce these Terms. Such cooperation may include providing the username, IP address, or other identifying information about Subscribers. Nacha reserves the right at all times to disclose any information as Nacha deems necessary to satisfy any applicable law, regulation, legal process or governmental request. Nacha further reserves the right to edit, modify or delete any information or materials regarding the TOD in connection with any applicable law, regulation, legal process or governmental request, but is under no obligation to do so.

Notwithstanding the foregoing, Nacha reserves the right, in its sole discretion, to terminate Subscribers' access to the TOD or any portion of either, for any reason without notice. Subscriber may terminate its participation in TOD at any time upon prior written notice to Nacha.

These Terms continue to govern any rights and obligations with respect to your use of the TOD prior to termination of such use.

If the TOD is terminated for any reason, you agree that Nacha may transfer information you have posted to the TOD to another TOD provider.

11. Governing Law. These Terms will be governed by and construed in accordance with U.S. federal law and the laws of New York, without regard to any principles of conflicts of law. You agree that any action at law or in equity that arises out of or relates to these Terms, the TOD will be filed only in the state or federal courts located in Delaware.

12. Complete Agreement. These Terms represent the entire understanding relating to the use of the TOD and prevail over any prior or contemporaneous, conflicting or additional, communications with respect to the subject matter hereof. Except as provided in Section 7 and as provided herein with respect to Nacha, the parties do not intend that any third party be a beneficiary of these Terms.

You may not transfer or assign (voluntarily, involuntarily, by operation of law or otherwise) these Terms or any of your rights or obligations under these Terms, in whole or in part, without the prior written consent of Nacha, such consent not to be unreasonably withheld. Any such purported assignment is violation of this provision shall be voidable at the discretion of Nacha. Any permitted successor or assignee shall be bound by these Terms.

13. Severability. If any provision of these Terms shall for any reason and to any extent be determined by any court or other entity of competent jurisdiction to be invalid or unenforceable, the remaining provisions of these Terms shall be interpreted so as best to reasonably effect the intent of the parties. The parties further agree that any such invalid or unenforceable provisions shall be deemed replaced with valid and enforceable provisions that, to the extent possible, are coextensive with the business purposes and intent of such invalid and unenforceable provisions.

14. Interpretation. As used herein, (i) the terms "include" and "including" are meant to be inclusive and shall be deemed to mean "include without limitation" or "including without limitation," (ii) the word "or" is disjunctive, but not necessarily exclusive, (iii) words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa, and (iv) any term defined in a particular tense shall include other tenses of that term. The headings of these Terms are intended solely for convenience of reference and shall be given no effect in the interpretation or construction of these Terms.

15. Contacting Us. Please contact us at TOD@nacha.org with any questions about these Terms.