**NASAA ELECTRONIC FILING DEPOSITORY**

**STATE REGULATOR TERMS OF USE**

By clicking **ACCEPT**, I certify that I have read and understand all of the NASAA Electronic Filing Depository System State Regulator Terms of Use and intend to form a binding agreement with NASAA on those terms without modification or amendment. If I am accepting this Agreement on behalf of a Jurisdiction, I certify that I have the authority of that Jurisdiction to enter into this Agreement.

These Terms of Use constitute an agreement between the North American Securities Administrators Association, Inc. (“**NASAA**”) and each jurisdiction that has executed a NASAA Electronic Filing Depository System Entitlement & Settings Form, hereby incorporated herein by reference, opting to participate in the EFD System (“**Jurisdiction**”).

In addition, these Terms of Use constitute an agreement between NASAA and each individual (each, a “**State User**”) who is issued an EFD State Regulator User Account or who otherwise accesses the applications, content or services available via the EFD “Regulator Home” page, in each case on or through the website operated by NASAA and accessible at https://www.efdnasaa.org (the “**Website**”).

NASAA, itself or through its third party agents, offers or will offer, through the “Regulator Home” page of the Website, various on-line applications, content and services (the “**Electronic Filing Depository System,**” **“EFD System”** or “**EFD**”) to state securities regulators that are NASAA members in good standing.

Every access to, or other use of, the EFD System or the Website generally, indicates Jurisdiction’s and State User’s acceptance of and agreement to be bound by these Terms of Use and such other additional or different terms, conditions, rules or policies that are posted on, or to which Jurisdiction or State User may be directed in connection with, the Website, as the same may be modified by NASAA from time to time (collectively the “**Agreement**”).

NASAA reserves the right to modify any of the terms of the Agreement from time to time at its sole discretion and will provide notice of material changes thereto at the home page of the Website generally or at the “Regulator Home” page of the Website, as applicable. Jurisdiction and State Users should periodically check the Terms of Use links on the Website home page and Regulator Home page to view the then-current applicable Terms of Use. The Agreement may not be altered or amended orally. Only NASAA has the right to alter or amend the Agreement and such alteration or amendment shall only be in writing.

# Definitions.

## “**Applicable Law**” means all laws, directives, regulations and rules promulgated by any governmental or regulatory body and all orders of courts of competent jurisdiction that are applicable in any given instance.

## “**Authorized User**” means an employee or contracted agent of Jurisdiction who is authorized by Jurisdiction to access and use the EFD System on behalf of Jurisdiction and which, for the avoidance of doubt, shall include the Regulator Administrators.

## “**De-Identified Information**” means information which has been de-identified such that the risk is very small that such information could be used alone or in combination with any other reasonably available information to identify a natural person or to identify the fact that such information pertains specifically to a particular Filer or issuer.

## “**EFD Agent**” means NASAA’s third party agent that operates the EFD System and the Website on NASAA’s behalf.

## “**EFD Content**” means all information, text, images, data, links, graphics, software, tools, functionality, services or other material accessible through the EFD System or the Website generally, other than Filing Data.

## “**Filers**” means individuals or entities that establish a Filer Account within the EFD System for the purpose of: (i) submitting certain filings to securities regulators that have opted to participate in the EFD System and (ii) making electronic payment of associated state filing fees to such securities regulators and associated EFD system fees to NASAA.

## “**Filing Data**” has the meaning set forth in Section 5.1.

## “**Liabilities**” has the meaning set forth in Section 11.

## “**Regulator Administrator(s)**” means one or more employees or contracted agents of Jurisdiction who are designated by Jurisdiction to perform the role of Regulator Administrator, as further described herein.

## “**Term**” has the meaning set forth in Section 12.1.

# Access to Website; Login Names and Passwords.

## **Access by Authorized Users.** Jurisdiction shall not allow use of the EFD System by any individual other than Authorized Users. Jurisdiction and its Authorized Users shall have access to the EFD System only via a login name and password mechanism. Each Jurisdiction has executed an EFD System Entitlement & Settings Form, designating a State Super Account Administrator, who shall also serve as the initial Regulator Administrator. The Regulator Administrator shall be responsible for authorizing additional Authorized Users, including any additional Regulator Administrators, on behalf of Jurisdiction. Jurisdiction shall be responsible for ensuring that each Authorized User is assigned and uses his or her own individual login name. Jurisdiction shall use commercially reasonable efforts to ensure the protection of such login names and passwords and that only Authorized Users access and use the EFD System.

## **Termination of Access.** Jurisdiction shall be responsible for terminating access to the EFD System for any individual login name as reasonably required to protect the login names and passwords issued to Authorized Users from unauthorized use and otherwise to comply with this Agreement. Without limiting the generality of the foregoing, Jurisdiction shall immediately terminate access to the EFD System for any individual login name: (i) upon termination of the Authorized User’s employment or agency with Jurisdiction, (ii) in the event Jurisdiction becomes aware of any unauthorized use of such login name or has other reason to believe the security of the password or login name has been breached (for example, it has been lost or stolen), or (iii) in the event Jurisdiction becomes aware of or has reason to believe the EFD System has or is being misused by the Authorized User.

## **Responsibility for Authorized Users.** Jurisdiction shall use commercially reasonable efforts to ensure that all Authorized Users comply with the terms and conditions of this Agreement regarding the use of the EFD System, including the applications, content and services available thereby, and the Website generally, and shall be solely responsible for any failure by the Authorized Users to do so.

## **State User Obligations.** State User represents that he or she is an Authorized User of a Jurisdiction and further agrees that he or she shall remain an Authorized User of such Jurisdiction at all times during the Term of this Agreement. State User shall use commercially reasonable efforts to ensure the protection of the login name and password registered to him or her from unauthorized use. State User shall notify the Jurisdiction of which he or she is an Authorized User immediately if he or she becomes aware of the loss, theft, or unauthorized use of his or her login name or password.

## **No NASAA Liability.** Neither NASAA nor its agents shall be liable to Jurisdiction or to any third party for any Liabilities resulting from any failure by Jurisdiction or Authorized Users to safeguard login names and passwords or failure by Jurisdiction to terminate access to the EFD System for any individual login name pursuant to Section 2.2.

# Certain Obligations of Jurisdiction and State User.

## **NASAA Membership.** Jurisdiction represents that it is a member in good standing of NASAA and further agrees that it shall remain a member in good standing of NASAA at all times during the Term of this Agreement.

## **System Entitlement and Settings Form.** Jurisdiction acknowledges that the information provided by Jurisdiction in the EFD System Entitlement & Settings Form is critical to the proper functioning of the EFD System and that neither NASAA nor its agents will independently verify such information. Neither NASAA nor its agents shall be liable to Jurisdiction or to any third party for any Liabilities resulting from any inaccuracies, omissions or errors in the information provided by Jurisdiction in the EFD System Entitlement & Settings Form. Jurisdiction is responsible for updating the EFD System Entitlement & Settings Form to reflect any changes thereto as a result of changes to Applicable Law or otherwise. Jurisdiction shall provide NASAA at least thirty (30) days advance written notice of any such requested changes to the information in such form. Jurisdiction shall assist NASAA and the EFD Agent with any reasonably requested testing of the initial settings contained in such form, as well as of any subsequent revisions thereto submitted pursuant to the preceding sentence, as a condition of their implementation.

## **Pending Queue.** Jurisdiction acknowledges that certain functionality of the EFD System may not operate properly unless Jurisdiction’s Authorized Users log on to the EFD System periodically to clear items in Jurisdiction’s “Pending Queue” and “Deficiencies Queue.” Neither NASAA nor its agents shall be liable to Jurisdiction or to any third party for any Liabilities resulting from any failure by Jurisdiction to periodically clear the items in Jurisdiction’s Pending and Deficiencies Queues. NASAA recommends that Pending and Deficiencies Queue items be cleared by Jurisdiction not less frequently than once per week.

## **Fee Calculation Errors.** Jurisdiction and State User each shall promptly notify the EFD Agent, via email to support@efdnasaa.org, of any errors that it/he/she may identify in the EFD System’s calculation or disbursement of any fees due to their Jurisdiction. NASAA reserves the right to temporarily suspend the availability of the EFD System or Website generally, or any applicable portion thereof (including any portion applicable only to Jurisdiction), to Jurisdiction, State User or Filers, as NASAA deems appropriate during the period needed to correct any such errors.

## **Assistance with Error Resolution.** Jurisdiction shall provide such reasonable assistance to NASAA and its agents as NASAA may request in connection with resolving: (a) any EFD System or Website error identified by Jurisdiction or its Authorized Users, or (b) any EFD System or Website error that is specific to Jurisdiction’s settings, regardless of by whom it is identified, such assistance to include: (i) with respect to an error identified by Jurisdiction or its Authorized Users, full completion of an error report, the supply of relevant output listings, and telephone advice to NASAA or its agents to assist in reproducing the error and (ii) with respect to an error that is specific to Jurisdiction’s settings, any reasonably requested testing of the proposed error correction as a condition of its implementation.

## **System Configuration Requirements.** Jurisdiction and State User acknowledge that access to and use of the EFD System is conditioned upon having software and hardware meeting the requirements set forth in the System Configuration Requirements document at <https://www.EFDNASAA.org/Misc/SystemSpecs>, as the same may be amended by NASAA from time to time. Jurisdiction and State User acknowledge that Jurisdiction shall be responsible for meeting the System Configuration Requirements, and for obtaining and maintaining all hardware and other equipment needed for access to and use of the EFD System, for its Authorized Users at its own expense.

# Grant of License Rights to Jurisdiction

## **License to Use the EFD System.** Subject to compliance with the terms and conditions of this Agreement, NASAA hereby grants to Jurisdiction a non-exclusive, non-transferable license during the Term of this Agreement to access and use, and to permit its Authorized Users to access and use, the EFD System, which shall include the right to download, copy and print Filing Data made available for download via the EFD System, in all cases the EFD System and such Filing Data to be used solely for lawful purposes and otherwise in accordance with the terms and conditions of this Agreement. Jurisdiction shall have no right to grant sublicenses or similar commercial rights under the foregoing license. State User’s sole right to access and use the EFD System, including any right to download, copy or print content thereon, shall be in his or her capacity as an Authorized User of a Jurisdiction. Except as otherwise expressly permitted by Applicable Law or by this Agreement, no copying, redistribution, retransmission, publication or commercial exploitation of downloaded content from the EFD System will be permitted without the express written permission of NASAA and, if applicable, the owner of any exclusive proprietary rights in such content. Jurisdiction and State User each acknowledge that they do not acquire any ownership rights by downloading content from the NASAA EFD System or Website generally.

## **Modifications by NASAA.** NASAA reserves the right at any time and from time to time, in its sole discretion, to change the hours of availability of the EFD System or Website and to make changes to the EFD Content, including the right to remove or discontinue, temporarily or permanently, the EFD Content, or any portions or functionality thereof, without obligation to provide any notice of such changes to Jurisdiction or State User. NASAA further reserves the right to terminate any individual’s or entity’s EFD Filer Account(s), and corresponding right to use the filing and payment functionality of the Website, in the event such individual or entity violates NASAA’s EFD Filer Terms of Use. Jurisdiction agrees that NASAA shall not be liable to Jurisdiction or to any third party for any Liabilities caused by any changes or Filer Account terminations made in accordance with this Section 4.2.

## **No Other Rights Granted.** NASAA or its third-party licensors own all copyrights in and to all EFD Content.Jurisdiction and State User may use the EFD System only to the extent expressly authorized or licensed under this Section 4. All other rights with respect to the EFD Content and the Website generally (and any reproductions or derivative works of the foregoing), whether now existing or that may hereafter come into existence, are reserved for NASAA or its third-party licensors, as applicable. Without limiting the generality of the foregoing, Jurisdiction and State User shall not engage in, participate in or knowingly permit any other use of the EFD Content or Website, including the resale, rental or distribution or the EFD Content or Website to any third party or the modification or translation of or creation of derivative works based on any part of the EFD Content or Website. In particular, without limiting the foregoing, neither Jurisdiction nor State User shall engage in, participate in or knowingly permit (a) any disassembly, decompilation or other reverse engineering of any part of any software contained within the EFD Content or Website or the functions or operations thereof, or any other attempt to derive the source code thereof or (b) the removal or alteration of any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the EFD Content or Website.

# Filing Data

## **Ownership of Filing Data.** Pursuant to their use of the Website, NASAA anticipates that Filers will regularly use the Website to submit certain filings to Jurisdiction and will input certain data into the Website in connection therewith. To the extent that such data constitutes information that Filers would have provided to Jurisdiction via equivalent paper filings, such data shall be deemed “**Filing Data**.” As between Jurisdiction and NASAA, Jurisdiction shall own the Filing Data in whatever form or format; provided, however, that NASAA shall own any De-Identified Information obtained by NASAA or its agents through its analysis of the Filing Data, including, without limitation, all demographic, psychographic, behavioral and financial data.

## **Access to Filing Data.** In its provision of the EFD System hereunder, NASAA shall make certain Filing Data accessible to Jurisdiction. For the avoidance of doubt, NASAA shall not be obligated to provide Filing Data to Jurisdiction other than via the EFD System or as may otherwise be required by Applicable Law, or as agreed to by NASAA, Jurisdiction, and NASAA’s third party agents.

## **Jurisdiction and State User Use of Filing Data.** Jurisdiction and State User shall use the Filing Data provided by NASAA hereunder only for lawful purposes. Neither NASAA nor its agents shall be liable to Jurisdiction, State User or any third party for any Liabilities resulting from use of the Filing Data by Jurisdiction or by State User.

## **NASAA Use of Filing Data.** Jurisdiction hereby grants NASAA perpetual, irrevocable, non-exclusive, unlimited right to use, reproduce, modify, display, perform and distribute the Filing Data (in whole or in part) worldwide and to incorporate it into other works in any form, media or technology now known or hereafter developed for the purpose of operating the EFD System and the Website generally and to retain a copy of all such Filing Data for record-keeping purposes.

# Payment Terms.

## **Disbursements and Filer Chargebacks.** Fees collected by NASAA from Filers via the EFD System on behalf of Jurisdiction will be disbursed to Jurisdiction on a regular basis; provided, however, that NASAA shall have the right to offset against future fees collected by NASAA on behalf of Jurisdiction hereunder the amount of any Filer chargebacks that occur with respect to a given Filer payment after such payment has been disbursed by NASAA to Jurisdiction. In other words, NASAA may deduct an amount equal to such chargeback amount from any future EFD disbursement to Jurisdiction. In the event such a Filer chargeback pertains specifically to a payment of Jurisdiction fee(s), either by its nature or because it is identified as such by the Filer, NASAA shall have the right to offset the entire amount of the chargeback. In the event such a Filer chargeback pertains to a payment of both Jurisdiction fee(s) and other EFD fee(s), and no allocation is specified by the Filer, NASAA shall have the right to offset a fraction of the chargeback proportionate to the amount of the applicable Jurisdiction fee relative to the amount of the other EFD fees to which such chargeback applies.

## **Filer Underpayments.** In the event a Filer that makes payment of a fee to Jurisdiction via the Website underpays the amount due to Jurisdiction for any reason (for example, insufficient funds in the payor bank account, a chargeback, an EFD System error, a Jurisdiction settings error, or otherwise), NASAA shall have no obligation to seek payment of any amount due to Jurisdiction from such Filer or to contest any chargeback on behalf of Jurisdiction. In the event NASAA or the EFD Agent becomes aware of any such Filer payment deficiency, Jurisdiction will be notified via the EFD System “Dashboard” and the EFD System will reset the status of the applicable filing to which the payment deficiency pertains to “deficient funds.”

## **Filer Overpayments.** In the event a Filer that makes payment of a fee to Jurisdiction via the Website overpays the amount due to Jurisdiction for any reason (for example, the EFD System does not have the historical data necessary to calculate any applicable lifetime maximum fee for a particular filing, an EFD System error, a Jurisdiction settings error, or otherwise), NASAA shall have no obligation to refund the Filer the amount of the overpayment. In the event NASAA or the EFD Agent becomes aware of any such Filer overpayment, NASAA or the EFD Agent shall notify Jurisdiction.

# Content Submissions; Feedback

## **Content Submissions.** Neither Jurisdiction nor State User shall upload, post or otherwise make available on or to the EFD System or Website generally any content protected by copyright, trademark or other proprietary right without the express written permission of the owner of the copyright, trademark or other proprietary right and the burden of determining that any content is not protected by Applicable Law rests with Jurisdiction or State User, as applicable. Jurisdiction or State User, as applicable, shall be solely responsible for any Liabilities resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. By submitting content to the EFD System, Jurisdiction or State User, as applicable, automatically grants, or warrants that the owner of such content has expressly granted, NASAA a royalty-free, perpetual, irrevocable, non-exclusive, unlimited right and license to use, reproduce, modify, display, perform and distribute such content (in whole or in part) worldwide and to incorporate it into other works in any form, media or technology now known or hereafter developed for the full term of any copyright or other right that may exist in such content for the purpose of operating the EFD System and the Website generally. Jurisdiction agrees that to the extent any such content submitted by Jurisdiction or its Authorized Users contains personal information, such personal information has been and shall be collected and disclosed to NASAA in accordance with all Applicable Law, contractual requirements, and privacy policies that may apply to Jurisdiction’s handling of such information.

## **Feedback.** Jurisdiction and State User are not obligated to provide NASAA with any ideas, suggestions or proposals regarding the EFD System (“**Feedback**”); provided, however, that to the extent Jurisdiction or State User do provide NASAA or its agents with such Feedback, Jurisdiction or State User, as applicable, hereby grants NASAA a royalty-free, perpetual, irrevocable, non-exclusive, unlimited right and license to use, reproduce, modify, display, perform and distribute such Feedback (in whole or in part) worldwide.

# Monitoring; User Conduct; Security

## **Monitoring.** NASAA shall have the right, but not the obligation, to monitor the content of the EFD System and the Website generally to determine compliance with this Agreement and to satisfy any Applicable Law or authorized government request. NASAA shall have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on the NASAA EFD System or Website.

## **User Conduct.** Neither Jurisdiction nor State User shall use the EFD System or the Website generally for any unlawful purpose. Neither Jurisdiction nor State User shall post or transmit through the EFD System or the Website generally any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without NASAA’s express prior written approval, contains advertising or any solicitation with respect to products or services.

## **Security.** Jurisdiction and State User will not, and will not permit others to, violate or attempt to violate the security of the EFD System or the Website generally. Without limiting the generality of the foregoing, Jurisdiction and State User will not, and will not permit others to, do or attempt to do any of the following: (a) access data not intended for their respective use or log into a server or account connected to the EFD System or Website that it/he/she is not authorized to access; (b) probe, scan or test the vulnerability of any system or network connected to the EFD System or Website or breach the EFD System or Website security or authentication measures without proper authorization; or (c) impair the EFD System or Website or any system or network connected to the EFD System or Website or interfere with the use of the EFD System or Website by any other user.

# Privacy Policy.

The NASAA EFD Privacy Policy, available at <https://www.efdnasaa.org/> and hereby incorporated by reference herein, governs any personal information provided by State User, Jurisdiction or its Authorized Users to NASAA or its agents pursuant to their use of the EFD System or Website generally. Jurisdiction and State User hereby agree to the terms of the NASAA EFD Privacy Policy, as the same may be modified by NASAA from time to time.

# Disclaimers; Limitations on Liability; User Representations.

## **No Reliance.** UNDER NO CIRCUMSTANCES WILL NASAA OR ITS AGENTS OR SUPPLIERS BE LIABLE FOR ANY LIABILITIES (AS DEFINED HEREIN) RESULTING FROM JURISDICTION’S OR STATE USER’S RELIANCE ON INFORMATION CONTAINED IN ANY CONTENT AVAILABLE ON OR THROUGH THE EFD SYSTEM OR THE WEBSITE GENERALLY, INCLUDING, WITHOUT LIMITATION, THE FILING DATA. IT SHALL BE THE RESPONSIBILITY OF JURISDICTION OR STATE USER, AS APPLICABLE, TO EVALUATE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, OPINON, ADVICE OR OTHER CONTENT ACCESSIBLE TRHOUGH THE EFD SYSTEM OR THE WEBSITE GENERALLY.

## **Disclaimers.** NASAA AND ITS AGENTS AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AUTHENTICITY, AVAILABILITY, TIMELINESS OR ACCURACY OF THE APPLICATIONS, CONTENT OR SERVICES AVAILABLE ON OR THROUGH THE EFD SYSTEM OR THE WEBSITE GENERALLY (INCLUDING THE FILING DATA) AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH APPLICATIONS, CONTENT AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. NASAA, ON BEHALF OF ITSELF AND ITS AGENTS AND SUPPLIERS, HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO SUCH APPLICATIONS, CONTENT OR SERVICES (OR ANY PART THEREOF), INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT NASAA OR ITS AGENTS OR SUPPLIERS KNOW, OR HAVE REASON TO KNOW, OR HAVE BEEN ADVISED OF OR ARE OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. SPECIFICALLY, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NASAA, ON BEHALF OF ITSELF AND ITS AGENTS AND SUPPLIERS, DOES NOT WARRANT: (a) THAT SUCH APPLICATIONS, CONTENT OR SERVICES WILL BE UNINTERRUPTED, SECURE OR FREE OF ERRORS, (b) THAT DEFECTS, ERRORS OR INACCURACIES IN SUCH APPLICATIONS, CONTENT OR SERVICES WILL BE CORRECTED, (c) THAT ANY RESULTS OBTAINED VIA THE USE OF SUCH APPLICATIONS, CONTENT OR SERVICES WILL BE ACCURATE, EFFECTIVE OR RELIABLE, OR (d) THAT THE EFD SYSTEM, THE WEBSITE GENERALLY, OR THE SERVERS THAT MAKE THE SAME AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. JURISDICTION AND STATE USER FURTHER ACKNOWLEDGE THAT NETWORK OR SERVER PROBLEMS WITH THE INTERNET MAY PREVENT THEM FROM ACCESSING OR USING THE EFD SYSTEM AND THE WEBSITE GENERALLY.

## **Limitations on Liability.** TO THE MAXIMIUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALLNASAA, ITS AGENTS OR SUPPLIERS BE LIABLE TO JURISDICTION OR STATE USER (OR TO ANY PERSONS WHOSE CLAIMS ARE BASED ON OR DERIVED FROM RIGHTS CLAIMED BY JURSIDICTION OR STATE USER) FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF USE, LOSS OF DATA (INCLUDING FILING DATA), LOSS OF PROFITS, LOSS OF BUSINESS, INTERRUPTION OF BUSINESS OR COSTS OF OBTAINING SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING THE USE OF OR INABILITY TO USE, PERFORMANCE OR NON-PERFORMANCE OF, OR UNAUTHORIZED ACCESS TO, THEFT OR ALTERATION OF, THE EFD SYSTEM OR THE WEBSITE GENERALLY, INCLUDING THE APPLICATIONS, CONTENT AND SERVICES AVAILABLE THEREON (INCLUDING THE FILING DATA), WHATEVER WAY THEY MAY ARISE, WHETHER IN WARRANTY, STRICT LIABILITY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF NASAA OR ITS AGENTS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.

## IF JURISDICTION OR STATE USER IS DISSATISFIED WITH ANY PORTION OF THE EFD SYSTEM OR WEBSITE GENERALLY, OR WITH ANY OF THE TERMS OF THIS AGREEMENT, ITS/HIS/HER SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 12.

## **Third Party Services and Websites.** The EFD System and the Website generally may include links to other websites that are owned or operated by third parties (“**Third Party Sites**”). NASAA does not have any control over or responsibility for the content, terms of use, quality, completeness, accuracy, nature, practices or policies of the Third Party Sites and is not responsible or liable for any content, advertising, products, services or other materials on or available from the Third Party Sites (“**Third Party Services**”). Jurisdiction and State User each agree that access to and use of the Third Party Sites and Third Party Services by it/him/her or, in Jurisdiction’s case by its Authorized Users, shall be at its/his/her own risk and neither NASAA nor its agents shall be liable for any Liabilities incurred or alleged to be incurred by or in connection with the use of or reliance on any such Third Party Sites or Third Party Services by Jurisdiction and its Authorized Users or by State User.

## **Jurisdiction Responsibilities.** Without limiting the generality of the exclusions set forth in this Section 10, and except as provided otherwise in this Agreement, Jurisdiction shall be exclusively responsible as between the parties for, and NASAA makes no representation or warranty with respect to: (a) determining whether the EFD System and Website generally will achieve the results desired by Jurisdiction; (b) training its Authorized Users in the use of the EFD System; and (c) ensuring the accuracy of any data input by Authorized Users into the EFD System.

# Indemnification.

Jurisdiction shall defend, indemnify and hold harmless NASAA and its employees, representatives, agents and directors, and the respective successors and assigns of any of the foregoing (“**NASAA Indemnitees**”), from and against any losses, demands, liabilities, costs or expenses (including without limitation reasonable attorneys’ fees) (“**Liabilities**”) arising out of any claim, action or proceeding brought against any NASAA Indemnitee by any third party and resulting from, or alleged to result from: (a) Jurisdiction’s use (including that of its Authorized Users) of the EFD System or the Website generally; (b) Jurisdiction’s violation (including that of its Authorized Users) of this Agreement; (c) Jurisdiction’s violation (including that of its Authorized Users) of any Applicable Law in connection with this Agreement; and (d) use by NASAA or its agents, in accordance with the terms and conditions of this Agreement, of any content or personal information provided to them by Jurisdiction or its Authorized Users in connection with this Agreement.

# Term and Termination

## **Term.** This Agreement will remain in effect until terminated in accordance with Section 12.2 (the “**Term**”).

## **Termination of Agreement with State User.**

## (a) State User may terminate this Agreement at any time by terminating State User’s EFD State Regulator User Account. Termination of State User’s EFD State Regulator User Account may occur either via a Regulator Administrator terminating such account directly via the EFD System, if possible, or otherwise via written notice by the State Super Account Administrator to NASAA and the EFD Agent.

## (b) The State Super Account Administrator or a Regulator Administrator, as applicable, may terminate State User’s access to the EFD System at any time, for any or no reason, by terminating such State User’s EFD State Regulator User Account in the manner described in Section 12.2(a). Upon any such termination of State User’s EFD State Regulator User Account, this Agreement with State User shall also terminate.

(c) NASAA may terminate State User’s access to the EFD System at any time by terminating such State User’s EFD State Regulator User Account in the event that: (i) NASAA determines that State User has breached any provision of this Agreement or (ii) the EFD agreement between NASAA and the Jurisdiction of which State User is an Authorized User terminates. Upon any such termination of State User’s EFD State Regulator User Account, this Agreement with State User shall also terminate.

## **Termination of Agreement with Jurisdiction.**

(a) Jurisdiction may terminate this Agreement at any time, for any reason or no reason, upon sixty (60) days written notice to NASAA.

(b) Either Jurisdiction or NASAA shall have the right to terminate this Agreement by giving written notice of termination to the other party, if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same. Without limiting the generality of the foregoing, any failure by Jurisdiction to remain a member in good standing of NASAA shall be deemed a breach of a material term or condition of this Agreement.

(c) NASAA shall have the right to terminate this Agreement at any time upon immediate written notice to Jurisdiction if it is required to do so by Applicable Law (for example, where the provision of the EFD System to Jurisdiction is, or becomes, unlawful).

(d) NASAA shall have the right to terminate this Agreement at any time upon written notice to Jurisdiction if it elects to discontinue providing the EFD System generally. If NASAA terminates for this reason, NASAA will use reasonable efforts to notify Jurisdiction at least sixty (60) days prior to the effectiveness of such termination.

## **Effects of Termination.**

1. Except as may be expressly provided otherwise herein or agreed in writing by NASAA, the rights granted to Jurisdiction and State User hereunder shall expire automatically upon the termination of this Agreement in accordance with Section 12.2 or 12.3, as applicable, and, in either case, Jurisdiction or State User, as applicable, shall immediately cease all use of the EFD Content.
2. Immediately upon any such termination of this Agreement, NASAA shall be entitled, without notice to Jurisdiction or State User, as applicable, to terminate Jurisdiction’s or State User’s, as applicable, access to the EFD System by disabling all of Jurisdiction’s Authorized Users’ login names and passwords or State User’s login name and password, as applicable, or, if applicable to the reason for termination, by taking down or otherwise disabling the EFD System or the Website generally. In such case, Jurisdiction and its Authorized Users, or State User individually, as applicable, shall have no further access to the EFD System. Notwithstanding the foregoing, NASAA shall provide Jurisdiction with a commercially reasonable period of time (“**Transition Period**”) during which Jurisdiction, subject to its compliance with all terms and conditions of this Agreement, which shall remain in effect for such purpose, may access the EFD System for the sole purpose of accessing and downloading the Filing Data. NASAA shall provide Jurisdiction with reasonable assistance in accessing and downloading the Filing Data provided that Jurisdiction shall promptly reimburse NASAA for any reasonable costs NASAA may incur in connection therewith, including the costs of services performed in connection therewith by the EFD Agent. For the avoidance of doubt, to the extent any Filing Data has been downloaded or printed by Jurisdiction during the Term of this Agreement or during the Transition Period, Jurisdiction may retain and continue its use of the same after the Term of this Agreement in accordance with Section 5.3. For the further avoidance of doubt, unless and to the extent required by Applicable Law, NASAA shall have no other obligation to provide any other content from the EFD System or Website generally to Jurisdiction or State User after the termination this Agreement. Jurisdiction and State User each agree that NASAA shall not be liable to it/him/her or to any third party for any Liabilities caused by the termination of this Agreement or the termination of its/her/her access to the EFD System in accordance herewith.
3. Termination of this Agreement for any reason shall not release either party from any Liabilities which, at the time of such termination, have already accrued to the other party or which are attributable to a period prior to such termination. Termination of this Agreement, for any reason permitted hereunder, shall be without prejudice to any other rights or remedies of the parties.

## **Survival.** The provisions of Sections 4.3 (No Other Rights Granted), 5.1 (Ownership of Filing Data), 5.3 (Jurisdiction and State User Use of Filing data), 5.4 (NASAA Use of Filing Data), 6.1 (Disbursements and Filer Chargebacks), 6.3 (Filer Overpayments), 7 (Content Submissions; Feedback), 11 (Disclaimers; Limitations on Liability, User Representations), 11 (Indemnification), 12.4 (Effects of Termination), this 12.5 (Survival) and 13 (Miscellaneous) of this Agreement and the respective obligations of the parties under this Agreement that by their nature or expressly would continue beyond the termination of this Agreement shall survive any termination of this Agreement.

# Miscellaneous.

## **Assignment.** Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder without the other party’s express, prior written consent. Any attempted assignment or delegation other than as permitted herein shall be null, void, and of no effect. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party and its successors and assigns. For the avoidance of doubt, this Section 13.1 shall notprohibit NASAA’s use of agents and subcontractors in the operation the EFD System and the Website.

## **Governing Law.** This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflicts of law principles.

## **Consent to Jurisdiction and Venue.** The parties agree that the federal and “state” courts sitting in the District of Columbia shall have exclusive jurisdiction to resolve any claim or dispute (including all counterclaims and cross-claims) relating to this Agreement and neither party shall object to or oppose venue or jurisdiction in such courts. The parties hereto expressly waive any right to a jury trial. Notwithstanding the foregoing, in the event of any unauthorized access to or use of the EFD System or Website in violation of these terms NASAA shall be entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## **Headings.** The article and section headings used in the Agreement are for reference and convenience only and shall not enter into the interpretation thereof.

## **No Waiver.** No waiver by either party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the party giving such waiver.The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No written waiver shall constitute, or be construed as, a waiver of any other obligation or condition of this Agreement or of any subsequent breach of this Agreement.

## **Relationship of the Parties.** Jurisdiction and State User each agree that no joint venture, partnership, employment, or agency relationship exists between it/him/her and NASAA as a result of this Agreement or use of the EFD System.

## **Severability**. In the event that any provision of this Agreement is held unenforceable by a court or other tribunal of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement.

## **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written or oral, regarding such subject matter; provided, however, that Jurisdiction acknowledges that use by Authorized Users, and State User acknowledges that use by State User, of the content and/or functionality of the Website outside of the EFD System shall also be governed by the additional terms of use applicable to, and available on, the portions of the Website containing such content and/or functionality.