

Summary of Changes to the Secure Payments Task Force Participation Agreement

March 2016

Over the past several months, lawyers and business leaders from the Federal Reserve Banks of Kansas City, Minneapolis, and Chicago held calls with multiple Participants and potential Participants regarding business concerns surrounding participation in the Secure Payments Task Force, as well as legal concerns with the Participation Agreement. Based on the feedback we received, we have made the substantive revisions described below and reflected in the attached Amended and Restated Participation Agreement.

This document is in no way meant to provide legal advice. Participants are encouraged to seek advice of their own counsel regarding the changes to the Participation Agreement.

Fair, Reasonable, and Non-Discriminatory (FRAND) Licensing: In the original Participation Agreement, the Participant agrees to license all intellectual property (IP) contained in a Report unless the Participant declines to FRAND license by opting-out and identifying specific IP. Feedback indicated that this created too large of a burden, especially for those firms with large IP portfolios. Therefore, we have narrowed the scope of the FRAND licensing to apply only to the IP the Participant puts forth in its Proposal which is incorporated into the Final Report. The Participant may still decline to FRAND license by opting out and identifying specific IP.

Representations and Warranties: The original Agreement requires a Participant to represent and warrant that any technology provided by the Participant to the Task Force does not violate another entity's copyright and does not infringe another entity's IP. Feedback received indicated that this representation and warranty was too broad for some entities, as it would require indemnification based on the representation and warranty in any infringement situation, which would place a burden to search an entity's entire IP portfolio on that entity. Therefore, we have adjusted the representation and warranty around the Participant's IP to only require that the Participant represent and warrant that "to the best of its actual knowledge, without due inquiry and review," its technology presented in its Proposal does not infringe the "valid and enforceable intellectual property of another entity." A clarification was also added that the representations and warranties do not apply to any commercial use by the Bank, another Federal Reserve Bank, or the Board of Governors of any technology disclosed by the Participant's Proposal and that a separate commercial agreement would govern such use.

Copyright: Feedback received indicated that Participants wanted additional certainty that they would retain ownership of copyrighted works submitted, including software or computer code. The Copyright language has been revised to make clear that the Participant retains copyright ownership in any copyrighted materials it submits to the Task Force, including software or computer code which may be contributed by the Participant.

Other Substantive Changes: Revisions were also made to reflect that Participants will make submissions as part of the Proposal, and the Proposal is what will be included in a Final Report, which will then trigger the obligations described above. Finally, it was clarified that each Participant is an intended third party beneficiary of the FRAND licensing section of this Amended and Restated Agreement.

Non-Substantive Changes: Because the Agreement was being revised for substantive changes, we took the opportunity to make several non-substantive edits and clarifications. One change that is specific to the Secure Payments Task Force Participation Agreement is to note that reports or work

product of the Secure Payments Task Force Work Groups are not considered a “Proposal” for the purposes of the Participation Agreement.