

## **Software User Service Agreement**

This Software User Service Agreement (the "Agreement") is made and entered into as of the date of the last signature below (the "Effective Date") by and between CleverAlpha Asset Management, LLC, a California limited liability company with its principal place of business at 425 15th Street 3321 Manhattan Beach, CA 90266 ("CleverAlpha") and First Bankers Bank Securities, a Missouri corporation with its principal place of business at 1714 Deer Tracks Trail 110, St. Louis, MO 63131 ("FBBS"). CleverAlpha and FBBS are each referred to herein as a "Party" and collectively as the "Parties".

### **Recitals**

WHEREAS, CleverAlpha is the owner and operator of the CDexplorer.com platform (the "Platform"), a marketplace for the sale of brokered deposits to the public;

WHEREAS, FBBS wishes to use the Platform to offer its brokered deposits to potential customers;

WHEREAS, CleverAlpha agrees to grant FBBS a limited, non-exclusive, non-transferable license to use the Platform subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

### **Terms and Conditions**

1. License Grant. CleverAlpha hereby grants FBBS a limited, non-exclusive, non-transferable license to access and use the Platform solely for its own internal business purposes during the term of this Agreement. FBBS shall not sublicense, resell, rent, lease, distribute, or otherwise transfer the Platform or any part thereof to any third party without the prior written consent of CleverAlpha. FBBS shall not modify, reverse engineer, decompile, disassemble, or create derivative works based on the Platform or any part thereof without the prior written consent of CleverAlpha. FBBS shall comply with all applicable laws and regulations in connection with its use of the Platform and shall not use the Platform for any unlawful or fraudulent purpose.
2. Fees. In consideration for the license granted herein, FBBS agrees to pay CleverAlpha a monthly fee based on a percentage of the commissions generated from CD sales made through the Platform (the "Fee"). The percentage rate shall be mutually agreed upon by the Parties in writing before each month (the "Rate"). The Fee shall be calculated and invoiced by CleverAlpha at the end of each month and shall be due and payable by FBBS within thirty (30) days of receipt of invoice. CleverAlpha reserves the right to suspend or terminate FBBS's access to the Platform in case of late or non-payment of any Fee.
3. White Labeling. CleverAlpha agrees to white label, brand, use FBBS's legal disclosures, privacy policies, terms and conditions, phone number, support email, address, logo, likeness, colors and web look and feel for use within the Platform (the "White Labeling"). FBBS hereby grants CleverAlpha a non-exclusive, royalty-free license to use its trademarks, logos, and other intellectual property rights solely for the purpose of White Labeling. FBBS represents and warrants that it has all necessary rights and authority to grant such license and that such license does not infringe or violate any third party rights. FBBS shall indemnify, defend, and hold harmless CleverAlpha from any claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any breach of this representation and warranty.
4. Support. CleverAlpha shall provide FBBS with reasonable technical support and maintenance services for the Platform during normal business hours via email or phone. CleverAlpha shall use commercially

reasonable efforts to correct any errors or defects in the Platform as soon as practicable after receiving notice from FBBS. CleverAlpha does not guarantee that the Platform will be error-free or uninterrupted or that it will meet all of FBBS's requirements or expectations.

5. Confidentiality. Each Party agrees that it will not disclose or use any confidential information of the other Party without the prior written consent of the other Party. Confidential information includes but is not limited to any information relating to the business, operations, finances, customers, suppliers, products, services, plans, strategies, techniques, methods, processes, software, data, or trade secrets of the other party that is marked or designated as confidential or that should be reasonably understood to be confidential given the nature of the information or the circumstances of disclosure.

Confidential information does not include any information that: (a) is or becomes publicly available without breach of this Agreement; (b) was rightfully known by the receiving Party prior to its disclosure by the disclosing Party; (c) was rightfully obtained by the receiving Party from a third party without restriction on disclosure; or (d) was independently developed by the receiving Party without use of or reference to the disclosing Party's confidential information. Each Party agrees that it will take all reasonable measures to protect the confidentiality of the other Party's confidential information and will not disclose or use such information except as necessary to perform its obligations or exercise its rights under this Agreement or as required by law or court order. Each Party agrees that it will return or destroy all copies of the other Party's confidential information upon termination or expiration of this Agreement or upon request of the other Party.

6. Term and Termination. This Agreement shall commence on the Effective Date and shall continue on a month-to-month basis until terminated by either Party upon thirty (30) days prior written notice to the other Party. Either Party may also terminate this Agreement immediately upon written notice if: (a) the other Party breaches any material term or condition of this Agreement and fails to cure such breach within fifteen (15) days after receiving written notice thereof; (b) the other Party becomes insolvent, files for bankruptcy protection, makes an assignment for the benefit of creditors, or ceases to do business; or (c) there is a change in control of either Party that adversely affects its ability or willingness to perform its obligations under this Agreement. Upon termination or expiration of this Agreement for any reason: (i) all licenses granted herein shall cease; (ii) FBBS shall cease all use of and access to the Platform; (iii) each Party shall return or destroy all confidential information of the other Party; and (iv) any outstanding Fees owed by FBBS shall become immediately due and payable.

7. Platform Changes. CleverAlpha reserves the right to make changes to the Platform at its sole discretion without notice and to discontinue or modify any features or functionalities of the Platform without notice. FBBS acknowledges and agrees that such changes may affect the performance, availability, or compatibility of the Platform and that CleverAlpha shall not be liable for any damages or losses arising from or relating to such changes. FBBS may request CleverAlpha to make changes or updates to the Platform that are specific to FBBS's needs or preferences. CleverAlpha may consider such requests but is not obligated to implement them. If CleverAlpha agrees to implement any such requests, it may charge FBBS a software upgrade fee that will be quoted by CleverAlpha and paid by FBBS before the implementation. FBBS agrees that any such requests and implementations do not give FBBS any rights to the idea, upgrade, or change and that CleverAlpha retains all intellectual property rights in the Platform and any modifications thereof.

8. Force Majeure. Neither Party shall be liable for any failure or delay in performance of its obligations under this Agreement to the extent such failure or delay is caused by a force majeure event, which means any event beyond the reasonable control of the affected Party, including but not limited to fire, flood, earthquake, storm, epidemic, pandemic, war, terrorism, riot, civil unrest, sabotage, strike, lockout, labor

dispute, governmental action, or failure of public utilities or communication networks. The affected Party shall give notice to the other Party within ten (10) days of becoming aware of the force majeure event and shall use reasonable efforts to mitigate the effects of the force majeure event and resume performance as soon as possible. If the force majeure event prevents or delays the performance of either Party for more than thirty (30) days, either Party may terminate this Agreement upon written notice to the other Party.

9. Warranty Disclaimer. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND. CLEVERALPHA DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH RESPECT TO THE PLATFORM AND ITS PERFORMANCE OR RESULTS OF USE WHETHER EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE NON-INFRINGEMENT OR TITLE OR ANY WARRANTY ARISING FROM A COURSE OF DEALING USAGE OR TRADE PRACTICE CLEVERALPHA DOES NOT WARRANT THAT THE PLATFORM WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT IT WILL MEET ALL OF FBBS'S REQUIREMENTS OR EXPECTATIONS.

10. Limitation of Liability. IN NO EVENT SHALL CLEVERALPHA BE LIABLE FOR ANY INDIRECT INCIDENTAL CONSEQUENTIAL SPECIAL EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE PLATFORM EVEN IF CLEVERALPHA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS REVENUE DATA GOODWILL OR BUSINESS OPPORTUNITY THE TOTAL LIABILITY OF CLEVERALPHA FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE PLATFORM SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY FBBS TO CLEVERALPHA IN THE SIX MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIMS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES SO SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of California without regard to its conflict of laws principles The Parties agree that any dispute arising out of or relating to this Agreement shall be submitted exclusively to a state or federal court located in Los Angeles County California The Parties hereby consent to personal jurisdiction and venue in such courts and waive any objection based on inconvenience forum The Parties agree that neither party may bring a claim under this Agreement more than one year after such claim arose The prevailing party in any action arising out of this Agreement shall be entitled to recover its reasonable attorneys' fees costs and expenses from the other party.


12. Miscellaneous. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior oral or written agreements understandings representations warranties promises negotiations proposals commitments communications correspondence drafts memoranda discussions courses of dealing practices policies procedures actions activities events occurrences transactions arrangements understandings expectations assumptions inducements representations warranties promises negotiations proposals commitments communications correspondence drafts memoranda discussions courses of dealing practices policies procedures actions activities events occurrences transactions arrangements understandings expectations assumptions inducements or representations of any kind or nature whatsoever whether written or oral relating to the subject matter

hereof. This Agreement may not be modified amended waived or supplemented except by a written instrument signed by both Parties. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party except that CleverAlpha may assign this Agreement to any successor or affiliate upon notice to FBBS. Any attempted assignment or transfer in violation of this section shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of such provision or of any other provision of this Agreement. If any provision of this Agreement is held to be invalid unenforceable or illegal by a court of competent jurisdiction such provision shall be modified to the extent necessary to make it enforceable or if modification is not possible such provision shall be severed from this Agreement and the remaining provisions shall remain in full force and effect. This Agreement may be executed in counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**Signature**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CleverAlpha Asset Management, LLC


By: 

Name: Rick Cabanes

Title: CEO

Date: 06/12/23

First Bankers Bank Securities

By: 

Name: AW Spellmeyer

Title: CEO

Date: 6-12-23