

FEDERAL DEPOSIT INSURANCE CORPORATION

In Re: Nelnet Bank (In Organization)
Draper, Salt Lake County, Utah

Application for Federal Deposit Insurance

ORDER

The Board of Directors of the Federal Deposit Insurance Corporation (“FDIC”) has fully considered all available facts and information relevant to the consideration of the statutory factors enumerated in section 6 of the Federal Deposit Insurance Act (“FDI Act”), including financial history and condition, capital adequacy, future earnings prospects, general character of management, risk to the Deposit Insurance Fund, convenience and needs of the community, and consistency of corporate powers, as they relate to the application for Federal deposit insurance for Nelnet Bank (“Bank”), a proposed Utah-chartered industrial bank to be located at 13907 S. Minuteman Drive, Draper, Salt Lake County, Utah 84020. The FDIC has concluded that the application should be approved.

Accordingly, it is hereby **ORDERED**, for the reasons set forth in the attached Statement, that the application submitted by the Bank for Federal deposit insurance be, and the same hereby is, approved, subject to the following conditions:

1. That initial paid-in-capital funds of not less than \$100,000,000 shall be provided.
2. That the Leverage Ratio (as defined in the FDIC’s capital regulations) be maintained at not less than twelve percent (12%), and the Bank shall provide for an adequate allowance for loan and lease losses.
3. That prior to the effective date of Federal deposit insurance, the Bank, Nelnet, Inc., and Michael S. Dunlap, as controlling shareholder of Nelnet, Inc., shall enter into a Capital and Liquidity Maintenance Agreement and a Parent Company Agreement with the FDIC. The written agreements are attached to this Order.
4. That any changes in the Bank’s proposed management or the proposed ownership or control of ten percent (10%) or more of the Bank’s stock, including new acquisitions of or subscriptions to ten percent (10%) or more of the stock, shall be approved by the FDIC prior to the Bank’s opening for business.
5. That the Bank will maintain the financial records of the Bank in accordance with U.S. Generally Accepted Accounting Principles, and maintain separate accounting and other business records, including customer account records. In addition, the Bank’s books and records shall be maintained under the control and direction of authorized Bank officials and available for review by the FDIC at the Bank’s main office.

6. That prior to the Bank's opening, full disclosure shall be made to all proposed directors of the Bank of the facts concerning the interest of any insider in any transactions being effected or contemplated, including the identity of the parties to the transaction and the terms and costs involved. An "insider" is a person who: (i) is or is proposed to be a director, officer, or incorporator of the Bank; (ii) is a shareholder who directly or indirectly controls ten percent (10%) or more of any class of the Bank's outstanding voting stock; or (iii) is an associate or related interest of any such persons.
7. That prior to the effective date of Federal deposit insurance, the Bank shall have appointed and must thereafter retain senior executive officers who possess the knowledge, experience, and capability to carry out the responsibilities of their positions in a safe and sound manner and independently from the activities of Nelnet, Inc. and its subsidiaries and affiliates.
8. That during the Bank's first three (3) years of operation, the Bank shall provide notice to and obtain the prior written non-objection of the FDIC for any proposed change to the Board of Directors of the Bank or to any senior executive officer position. Such notice shall be submitted at least thirty (30) days prior to the proposed election to the Board or appointment, and shall include a complete Interagency Biographical and Financial Report for each individual proposed for election or appointment.
9. That prior to the Bank executing final employment agreements and compensation arrangements for any director or senior executive officer of the Bank, and prior to the Bank commencing operations, the Bank shall submit copies of, and obtain the FDIC's written non-objection to, such final employment agreements and compensation arrangements.
10. That during the Bank's first three (3) years of operation, the Bank shall obtain the written non-objection of the FDIC prior to the implementation of any stock benefit plans, including stock options, stock grants, or other similar stock-based compensation plans benefitting Bank employees not previously reviewed by the FDIC as part of the application for Federal deposit insurance.
11. That prior to the effective date of Federal deposit insurance, the Bank shall obtain adequate fidelity coverage.
12. That the Bank shall obtain an audit of its financial statements by an independent public accountant ("independent auditor") annually for at least the first three (3) years after deposit insurance coverage becomes effective and shall submit to the FDIC's Kansas City Regional Office: (i) a copy of the audited annual financial statements and the independent auditor's report within ninety (90) days after the end of the Bank's fiscal year; (ii) a copy of any other reports by the independent auditor (including any management letters) within fifteen (15) days after their receipt by the Bank; and (iii) written notification within fifteen (15) days after a change in the Bank's independent auditor occurs.

13. That the Bank shall operate within the parameters of the Business Plan submitted as part of the application for Federal deposit insurance. During the first three (3) years of operations, the Bank shall notify the Regional Director of any proposed major deviation or material change from the Business Plan, at least sixty (60) days before consummating such deviation or change. In addition, the Bank shall notify the Regional Director within fifteen (15) days prior to implementation of any such major deviation or material change.
14. That the Bank shall conduct business pursuant to operating policies that are commensurate with the proposed Business Plan as submitted as part of the application for Federal deposit insurance, independent from those of affiliated entities, and adopted by the Board of Directors. In addition, the Board of Directors shall adopt controls reasonably designed to ensure compliance with and enforcement of Bank policies. Further, the Board of Directors shall ensure that senior executive officers are delegated reasonable authority to implement and enforce the policies independently of Nelnet, Inc. and its subsidiaries and affiliates.
15. That the Bank shall submit any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the Regional Director for review and comment.
16. That the Bank shall pay no dividends during the first three (3) years of operation without the prior written approval of the FDIC.
17. That the Bank shall develop and implement a Community Reinvestment Act plan appropriate for the Bank's business strategy, including identification of an assessment area that complies with Part 345 of the FDIC's Rules and Regulations.
18. That prior to the Bank opening, the Board of Directors shall implement a sound risk-based compliance management system, including a comprehensive compliance program to ensure that all activities related to service providers comply with all applicable consumer protection laws, including any implementing rules and regulations. Such compliance program shall include an effective consumer complaint monitoring process.
19. That during the Bank's first three (3) years of operation, the Bank shall notify the FDIC of any plans to establish a loan production office at least sixty (60) days prior to opening such facility.
20. That the Bank shall not commence operations until the FDIC has concluded a pre-opening visitation with findings satisfactory to the Regional Director.
21. That prior to the Bank opening for business, the Bank shall fully document and conduct full-scope independent validations of all models with such model validations being subject to the satisfaction of the Regional Director.
22. That all assets purchased from affiliates in connection with the formation of the Bank comply with the prohibition on the purchase of low quality assets in Section 23A(a)(3) of

the Federal Reserve Act, as implemented in Regulation W, 12 C.F.R. 223.15(a), including the definition of “low quality assets” in 12 C.F.R. 223.3(v).

23. That Federal deposit insurance will not become effective until the applicant has been granted a charter as an industrial bank, has authority to conduct such business, and its establishment and operation have been fully approved by the Utah Department of Financial Institutions.
24. That this approval is conditioned on the facts as currently known by the FDIC. If there are any material events prior to the opening of the Bank for business, the Bank shall notify the FDIC as soon as the Bank becomes aware of the event, and this approval may be withdrawn or modified.
25. That if deposit insurance has not become effective within one (1) year from the date of this ORDER, the consent herein shall expire unless a written request for an extension of time by the Bank has been approved by the FDIC.
26. That until Federal deposit insurance becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment should any interim development be deemed by the FDIC to warrant such action.

By Order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, D.C. this 17th day of March, 2020.



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By: Robert E. Feldman
Executive Secretary

FEDERAL DEPOSIT INSURANCE CORPORATION

Re: Nelnet Bank (In organization)
Draper, Salt Lake County, Utah

Application for Federal Deposit Insurance

STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act (“FDI Act”) (12 U.S.C. §1815), the Federal Deposit Insurance Corporation (“FDIC”) received an Interagency Charter and Federal Deposit Insurance Application on behalf of Nelnet Bank (“Bank”), a proposed new Utah industrial bank, to be located at 13907 S. Minuteman Drive, Draper, Salt Lake County, Utah 84020. The organizers have applied to the Utah Department of Financial Institutions for an industrial bank charter.

The FDIC must consider the statutory factors of Section 6 of the FDI Act (12 U.S.C. §1816) when evaluating an application for deposit insurance. These factors relate to the financial history and condition of the depository institution; the adequacy of capital and management; the future earnings prospects; the risk to the Deposit Insurance Fund; the convenience and needs of the community to be served; and the consistency of corporate powers with the FDI Act.

The Bank will be a wholly owned subsidiary of Nelnet, Inc. (“Nelnet” or “Parent Company”), a publicly traded, financial and technology services company with its main offices in Lincoln, Nebraska. Nelnet began operations in 1978, and its primary focus is on providing education-related products and services to students, families, schools, and financial institutions nationwide. Nelnet also services student loans for the U.S. Department of Education, owns a communications company that provides fiber optic technology services, operates a registered investment advisor subsidiary, and holds ownership of various real estate properties.

The Bank will offer education-related loans and consumer credits, with loans offered to new and existing borrowers who seek to finance or refinance their education debt. Loans will also be offered to consumers to consolidate or refinance credit card debt and other general purpose debt. The Bank will offer deposit products to loan customers and the general public through digital channels such as a web portal or mobile app.

The FDIC also has considered whether the parent company will serve as a source of financial strength to the Bank, as required by section 38A(b) of the FDI Act (12 U.S.C. §1831o-1(b)). To ensure that the Bank maintains sufficient capital and liquidity, approval of the application is conditioned upon the Bank, Nelnet, and Michael S. Dunlap, controlling shareholder of the Parent Company, executing a Capital and Liquidity Maintenance Agreement with conditions and requirements for Nelnet (or for the controlling shareholder to cause Nelnet) to provide financial resources to support the Bank.

The FDIC also considered that Nelnet is not subject to consolidated Federal bank supervision and the activities of Nelnet and its subsidiaries are not exclusively financial in nature. As an additional safeguard to protect the safety and soundness of the Bank and the Deposit Insurance Fund, approval of the application is conditioned on Nelnet and Michael S. Dunlap executing a Parent Company Agreement with conditions and requirements related to reporting and examination of Nelnet and its subsidiaries, and to allow the FDIC to monitor compliance with laws and regulations governing transactions with affiliates. The Bank will also be required to maintain a board of directors with a majority of members that are independent of Nelnet and its subsidiaries and affiliates; and Parent Company representation shall be limited to no more than twenty-five (25) percent of the members of such board of directors.

For the purposes of this proposal, capital and management are considered satisfactory, and projections for future earnings prospects are favorable. Corporate powers to be exercised are consistent with the purpose of the FDI Act. The Bank's plans demonstrate a commitment to serving the convenience and needs of the community. No undue risk to the Deposit Insurance Fund is apparent.

Accordingly, based upon careful evaluation of all available facts and information, and in consideration of the factors of Section 6 of the FDI Act, the Board of Directors of the Federal Deposit Insurance Corporation has concluded that approval of the application is warranted, subject to certain prudential conditions.

**BOARD OF DIRECTORS
FEDERAL DEPOSIT INSURANCE CORPORATION**

CAPITAL AND LIQUIDITY MAINTENANCE AGREEMENT

This **CAPITAL AND LIQUIDITY MAINTENANCE AGREEMENT** (the “Agreement”), dated as of _____, _____, is made and entered into by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a Federal banking agency existing under the laws of the United States and having its principal office in Washington, DC (the “FDIC”); **NELNET, INC.**, a corporation duly organized and existing under the laws of the State of Nebraska with headquarters at 121 South 13th Street, Suite 100, Lincoln, NE, 68508 (the “Parent Company”); **MICHAEL DUNLAP**, controlling shareholder of the Parent Company (the “Controlling Shareholder”); and **NELNET BANK**, a proposed Utah-chartered industrial bank, located at 13907 S. Minuteman Drive, Draper, Salt Lake County, Utah 84020 (the “Applicant”).

WITNESSETH:

WHEREAS, the FDIC Board of Directors is charged by section 5 of the Federal Deposit Insurance Act (the “FDI Act”), 12 U.S.C. § 1815, with the responsibility of acting upon applications for Federal Deposit Insurance by all depository institutions;

WHEREAS, the Applicant is a proposed Utah-chartered industrial bank being formed as a wholly-owned subsidiary of the Parent Company;

WHEREAS, the Parent Company is a publicly traded company and desires to organize the Applicant to originate, refinance and service private student and consumer loans, and to offer deposit products;

WHEREAS, the Applicant submitted an application for Federal deposit insurance (the “Application”) to the FDIC pursuant to section 5 of the FDI Act on November 12, 2019;

WHEREAS, the FDIC is required to consider, among other things, the statutory factors described in section 6 of the FDI Act, 12 U.S.C. § 1816, (the “Statutory Factors”) and will generally grant an application for Federal deposit insurance if it finds favorably upon all of the Statutory Factors; and as a part of the application process, the FDIC also considers the financial resources of a parent company when evaluating the adequacy of an applicant’s capital;

WHEREAS, the FDIC is required by section 38A(b) of the FDI Act, 12 U.S.C. § 1831o-1(b), to require the Parent Company to serve as a source of financial strength to the Applicant;

WHEREAS, the Applicant, the Parent Company, and the Controlling Shareholder have expressed their willingness to submit to such conditions as the FDIC may determine are reasonable and necessary to ensure the adequacy of the Applicant’s capital and maintain sufficient liquidity;

WHEREAS, paragraphs 5 and 6 hereof are intended to provide separate and independent mechanisms to ensure that Parent Company serves as a source of financial strength to the Applicant;

WHEREAS, the FDIC is unable to find favorably on the Statutory Factors if the Applicant, the Parent Company, and the Controlling Shareholder do not enter into and comply with the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises, terms, and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effectiveness; Approval by FDIC.** Upon approval of the Application by the FDIC, this Agreement shall become fully effective and binding upon the parties hereto.

2. **Capital.** The Parent Company shall maintain the capital levels of the Applicant at all times such that the Applicant's capital satisfies the following conditions (the capital requirements contained in this paragraph are referred to herein as the "Minimum Capital Ratios."):
 - Meets or exceeds the levels required for the Applicant to be considered "well capitalized" under section 324.403(b) of the FDIC's Rules and Regulations, 12 C.F.R. § 324.403(b);
 - In no event shall the Leverage ratio (as defined in the FDIC's capital regulations) be maintained at less than twelve percent (12%); and
 - The Applicant shall also maintain an adequate allowance for loan and lease losses.
 - a) **Maintenance of Required Minimum Capital Ratios.** If at any time the Applicant's capital ratios fall below the Minimum Capital Ratios, the Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) immediately contribute sufficient additional capital to the Applicant to comply with the Minimum Capital Ratios.

 - b) **Maintenance of Revised Capital Ratios.** If the FDIC determines it necessary, pursuant to its regulatory authority, for the Applicant to maintain capital ratios that are greater than the Minimum Capital Ratios (the "Revised Capital Ratios"), it shall provide written notice of such determination to the Applicant, the Controlling Shareholder, and the Parent Company. Within thirty (30) days after the FDIC issues such notice, if the Applicant has not met the Revised Capital Ratios, the Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) immediately contribute sufficient additional capital to the Applicant to comply with the Revised Capital Ratios specified by the FDIC.

c) **Capital Contributions.** All capital contributions from the Parent Company to the Applicant will be in the form of cash, or if appropriate and approved by the FDIC, other assets acceptable to the FDIC. Any and all such capital contributions shall be credited to the Applicant's surplus account.

3. **Liquidity.** The Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) maintain the Applicant's liquidity at such levels as the FDIC deems appropriate and take such other actions as the FDIC deems appropriate to provide the Applicant with a source of additional liquidity. In particular, the Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) provide the Applicant with financial assistance, as specified below, to permit the Applicant to meet its short- and long-term liquidity demands.

a) **Short-Term Liquidity.** The Parent Company shall provide and maintain a Revolving Line of Credit ("Line of Credit") for the benefit of the Applicant that provides the greater of:

- Ten (10) percent of the Applicant's total assets as of the most recent Call Report date; or
- Such additional amount as may later be negotiated between the Parent Company and the Applicant.

The Applicant may draw on the Line of Credit provided by the Parent Company at any time the Applicant or the FDIC considers it necessary. Any and all agreements related to the Line of Credit must contain only such terms and conditions as the FDIC, in its sole discretion, finds acceptable. At a minimum, the Line of Credit is subject to the restrictions of section 23B of the Federal Reserve Act, 12 U.S.C. § 371c-1, and cannot contain terms and conditions that are less favorable to the Applicant than a comparable transaction with an unaffiliated third party.

b) **Long-Term Liquidity.** If the Applicant identifies liquidity requirements that it cannot satisfy, then at the written request of the Applicant or the FDIC, the Parent Company, within ten (10) days of receiving such request, shall provide the Applicant with financial support, including cash, in such amount and for such duration as may be necessary for the Applicant to meet its ongoing liquidity obligations.

4. **Enhanced Safeguard (Pledged Deposit-Other Limitations).** To further ensure that the Parent Company serves as a source of financial strength for the Applicant, the Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) establish and, at all times, maintain a pledged deposit (the "PD") of \$40,000,000 in cash with the Applicant as part of the Parent Company's obligations under paragraphs 2 and 3 hereof; provided however, that the establishment of the PD does not relieve the Parent

Company of its responsibility to (or relieve the Controlling Shareholder of causing the Parent Company to) serve such other support obligations identified herein.

- a) The PD shall be in the name of the Parent Company earmarked for the sole benefit of the Applicant and to be used by the Applicant in the event the Parent Company fails to provide the support required under paragraphs 2 and 3 hereof.
- b) If at any time the Applicant's capital ratios fall below any of the Minimum Capital Ratios or Revised Capital Ratios (as appropriate), or the Parent Company ceases to provide the Line of Credit of at least the amounts specified in paragraph 3 a) hereof, the Applicant shall immediately provide written notice to the Parent Company and the Controlling Shareholder demanding the Parent Company provide sufficient funds to restore the Applicant's capital levels or reinstate the Line of Credit to meet the requirements under paragraph 3 hereof.
- c) If, within five (5) calendar days, the Parent Company does not provide sufficient funds to restore the Applicant's capital levels to the Minimum Capital Ratios or Revised Capital Ratios (as appropriate) or reinstate the Line of Credit, the Applicant shall immediately draw upon the PD in such amounts as is necessary to restore the Applicant's capital levels to the Minimum Capital Ratios or Revised Capital Ratios (as appropriate) or as necessary to meet the Applicant's liquidity needs.
- d) The Applicant shall immediately provide the FDIC with written notification whenever notice is provided to the Parent Company and the Controlling Shareholder in accordance with paragraph 4 b) hereof and whenever the Applicant draws upon the PD in accordance with paragraphs 4 c) hereof.
- e) In the event that the Applicant draws on the PD, the Parent Company shall immediately take such steps as are necessary to replenish the PD to the amount of \$40,000,000 in cash or unencumbered readily-marketable securities acceptable to the FDIC.
- f) Any and all agreements related to the PD shall only be made with the prior written approval of the FDIC and upon such terms and conditions as the FDIC, in its discretion, finds acceptable.
- g) **Other Limitations.** In the event the Parent Company fails to provide the support required under paragraphs 2 and 3 hereof, the Parent Company and the Applicant shall further take the following actions in order to ensure the continued safe and sound operation of the Applicant:
 - The Applicant shall not make, without the prior written consent of the FDIC, any "extension of credit" (as defined in section 215.3 of the Regulations of the Board of Governors of the Federal Reserve, 12 C.F.R. § 215.3) to the Parent Company or to any affiliate, and shall not enter into any "covered transaction" (as defined in sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c and 371c-1) with the Parent Company or any affiliate.
 - The Applicant shall not, without the prior written consent of the FDIC, declare or pay any dividends.
 - The Applicant shall not, without the prior written consent of the FDIC, permit the amount of "brokered deposits" (as defined by part 337 of the FDIC's Rules and

Regulations, 12 C.F.R. part 337) held by the Applicant to exceed the amount held as of the date that these limitations are implemented.

5. **Authority of the Parent Company and the Applicant.** The governing boards of the Parent Company and the Applicant have each approved a resolution (“Resolution”) authorizing the execution and performance of this Agreement. A certified copy of each Resolution is attached hereto and incorporated herein by reference.

6. **Miscellaneous.**
 - a) **Enforceability as a Written Agreement.** In addition to any other remedies provided by law, the parties agree that this Agreement is binding and enforceable by the FDIC as a written agreement pursuant to sections 8 and 50 of the FDI Act, 12 U.S.C. §§ 1818 and 1831aa, against the Applicant, the Parent Company, and the Controlling Shareholder, and their successors and assignees.

 - b) **Bankruptcy Treatment of Commitments.** The parties agree that obligations of the Parent Company and the Applicant contained in this Agreement include commitments to maintain the capital and liquidity of the Applicant and, if a bankruptcy petition is filed by or against the Parent Company, the obligations of the Parent Company contained in this Agreement shall be immediately cured by the Parent Company pursuant to 11 U.S.C. § 365(o) and any claim for a subsequent breach of the Parent Company’s obligations herein shall be entitled to priority under 11 U.S.C. § 507(a)(9).

 - c) **Conservatorship or Receivership.** In the event of the appointment of a conservator or receiver for the Applicant, the obligations of the Applicant, the Parent Company, and the Controlling Shareholder hereunder shall survive said appointment and be enforceable by the FDIC as conservator or receiver.

 - d) **Change in Control.**
 - i) In event that the Controlling Shareholder disposes of some or all of the voting securities of the Parent Company so that the Controlling Shareholder no longer controls (as that term is used in Section 7(j) of the FDI Act and in the presumptions of control 12 CFR §303.82(b)) the Parent Company, then upon notification to the FDIC, the Controlling Shareholder may request a release from this Agreement.

 - ii) The FDIC may grant a release if the following conditions are met to the FDIC’s satisfaction at the time of the release: 1) the Controlling Shareholder has performed all obligations under the provisions of this Agreement; 2) the FDIC has issued a non-objection to any notices pursuant to the Change in Bank Control Act if the transfer of Controlling Shareholder’s voting securities occurs in a transaction that requires one or more persons to file such a notice with the FDIC; 3) any other necessary and final

regulatory approvals have been obtained; and 4) any successor controlling shareholder of the Parent Company has agreed to the terms of this Agreement.

- e) **Governing Laws.** This Agreement and the rights and obligations hereunder shall be governed by, and shall be construed in accordance with the Federal laws of the United States and, in the absence of controlling Federal laws, in accordance with the laws of the State of Delaware.
- f) **No Waiver.** No failure or delay in the exercise of any right or remedy on the part of any of the parties hereto shall operate as a waiver or termination thereof, nor shall any exercise or partial exercise of any right or remedy preclude any other or further exercise of such right or remedy or any other right or remedy.
- g) **Fees and Expenses.** The Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) pay any attorneys' fees and other reasonable expenses incurred by the Applicant in exercising its rights or seeking any remedies hereunder.
- h) **Severability.** In the event any one or more of the provisions contained herein should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith to replace the invalid, illegal, or unenforceable provision with a valid provision, the effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.
- i) **Enforcement by Applicant.** The Applicant may, in its discretion, enforce this Agreement against the Parent Company.
- j) **Modification.** This Agreement may not be modified, amended, changed, discharged, terminated, released, renewed, or extended in any manner except by a writing signed by all of the parties.
- k) **Addresses for and Receipt of Notice.** Any notice hereunder shall be in writing and shall be delivered by hand or sent by United States express mail or commercial express mail, postage prepaid, and addressed as follows:

If to the **Parent Company:**

Nelnet, Inc.
Attn: Timothy Tewes, President
1248 "O" Street, Ste. 900
Lincoln, NE 68508

If to the **Controlling Shareholder:**

Michael S. Dunlap
1248 "O" Street, Ste. 900
Lincoln, NE 68508

If to the **Applicant:**

Nelnet Bank
Attn: Timothy Tewes
1248 "O" Street, Ste. 900
Lincoln, NE 68508

If to the **FDIC:**

Associate Director, Division of Risk Management Supervision
Risk Management Examination Branch
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

- l) **No Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the FDIC.
- m) **Binding on Parties, Successors and Assigns.** This Agreement is binding on the parties hereto, their successors and assigns.
- n) **Complete Agreement.** This Agreement is the complete and exclusive statement of the agreement between the parties concerning the commitments set forth in the Agreement, and supersedes all prior written or oral communications, representations and agreements relating to the subject matter of the Agreement, except that this Agreement does not affect or otherwise alter the Parent Company Agreement entered into by and among the FDIC, the Parent Company, the Controlling Shareholder, and the Applicant.
- o) **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original and all such counterparts taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year indicated above.

NELNET, INC.

By:

Name: _____

Title: _____

MICHAEL DUNLAP

By:

Name: _____

Title: _____

NELNET BANK

By:

Name: _____

Title: _____

FEDERAL DEPOSIT INSURANCE CORPORATION

By:

Name: _____

Title: _____

PARENT COMPANY AGREEMENT

This **PARENT COMPANY AGREEMENT** (the “Agreement”), dated as of _____, _____, is made and entered into by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a Federal banking agency existing under the laws of the United States and having its principal office in Washington, DC (the “FDIC”); **NELNET, INC.**, a corporation duly organized and existing under the laws of the State of Nebraska with headquarters at 121 South 13th Street, Suite 100, Lincoln, NE, 68508 (the “Parent Company”); **MICHAEL DUNLAP**, controlling shareholder of the Parent Company (the “Controlling Shareholder”); and **NELNET BANK**, a proposed Utah-chartered industrial bank, located at 13907 S. Minuteman Drive, Draper, Salt Lake County, Utah 84020 (the “Applicant”).

WITNESSETH:

WHEREAS, the FDIC is authorized by sections 5, 6 and 11 of the Federal Deposit Insurance Act (the “FDI Act”), 12 U.S.C. §§ 1815, 1816, and 1821, to act on all applications for Federal Deposit Insurance by depository institutions and to insure the deposits of all such institutions entitled to the benefits of Federal Deposit Insurance;

WHEREAS, the Applicant is a proposed Utah-chartered industrial bank being formed as a wholly-owned subsidiary of the Parent Company that has submitted to the FDIC an application for Federal Deposit Insurance (the “Application”);

WHEREAS, the Parent Company is a publicly traded company and desires to organize the Applicant to originate, refinance and service private student and consumer loans, and to offer deposit products;

WHEREAS, the FDIC has determined that this Agreement is necessary to better address the potential risks to the Applicant and the Deposit Insurance Fund;

WHEREAS, the FDIC is required by section 38A(b) of the FDI Act, 12 U.S.C. § 1831o-1(b), to require the Parent Company to serve as a source of financial strength to the Applicant;

WHEREAS, the Applicant, the Parent Company, and the Controlling Shareholder have expressed their willingness to submit to such conditions as the FDIC may determine are reasonable and necessary for this purpose;

NOW, THEREFORE, in consideration of the premises, terms, and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effectiveness; Approval of the FDIC.** Upon approval of the Application by the FDIC, this Agreement shall become fully effective and binding upon the parties hereto.
2. **Obligations of the Parent Company.**
 - a) **Capital and Liquidity.** Parent Company shall (or the Controlling Shareholder shall cause the Parent Company to) maintain the Applicant's capital and liquidity at such levels as the FDIC deems appropriate, as reflected in the terms of a Capital and Liquidity Maintenance Agreement (CALMA) entered into by and among the Parent Company, the Controlling Shareholder, the FDIC, and the Applicant; and take such other actions as the FDIC deems appropriate to provide the Applicant with resources for additional capital and liquidity.
 - b) **Subsidiary Listing.** The Parent Company shall submit to the FDIC annually a listing of all of its subsidiaries and affiliates. Such listing should be submitted by March 31 of each year following approval of this Application for the prior year-end.
 - c) **Examination.** The Parent Company consents to examination by the FDIC of the Parent Company and each of its subsidiaries to monitor compliance with this Agreement, the CALMA, and the provisions of the FDI Act or any other Federal law that the FDIC has specific jurisdiction to enforce against the Parent Company or its subsidiaries and affiliates.
 - d) **Reports.** The Parent Company shall submit to the FDIC such reports as may be requested by the FDIC to keep the FDIC informed as to the Parent Company's financial condition, systems for monitoring and controlling financial, compliance, and operating risks, and transactions with the Applicant; and as to compliance by Parent Company and its subsidiaries and affiliates, including the Applicant, with applicable provisions of the FDI Act or other Federal laws that the FDIC has specific jurisdiction to enforce against the Parent Company and its subsidiaries, including, without limitation, those laws and regulations governing transactions and relationships between any depository institution and its affiliates.
 - e) **Records.** The Parent Company shall maintain such records as the FDIC may deem necessary to assess the risks to the Applicant or the Deposit Insurance Fund.
 - f) **Board Representation.** The Parent Company shall limit its representation, and the representation of its subsidiaries and affiliates, direct and indirect, on the Board of Directors of the Applicant to no more than twenty-five (25) percent of the members of such Board of Directors.
 - g) **Control.** The Parent Company shall provide written notification to the FDIC within thirty (30) calendar days of becoming aware of any person who newly acquires or

reacquires control, directly or indirectly, by owning, controlling, or holding the power to vote ten (10) percent or more of any class of voting shares of the Parent Company or acquires the ability to vote ten (10) percent or more of the votes available to be cast in a shareholder vote.

- h) **Non-Compliance with Agreements.** Parent Company shall notify the FDIC within ten (10) calendar days of any non-compliance with any of the covenants in (i) any agreements with its lenders or investors, including credit agreements, bond indentures, or similar documents; or (ii) any funding or similar agreements.

3. **Contingency Planning.**

- a) **Contingency Plan Required.** No later than thirty (30) calendar days prior to the Applicant opening for business, the Parent Company shall submit a written Contingency Plan to the FDIC, seeking the FDIC's written determination of no supervisory objection thereto. Such Contingency Plan shall contain the information required under paragraph 3 c) hereof.
- b) **Adoption of the Contingency Plan.** Within ten (10) calendar days of receipt by the Parent Company of the FDIC's non-objection to the Contingency Plan, the Parent Company shall adopt and thereafter implement and adhere to such Contingency Plan. Within ten (10) calendar days of adopting the Contingency Plan, the Parent Company shall submit to the FDIC a certified copy of a resolution by the Parent Company's Board of Directors approving and adopting the Contingency Plan and committing that in the future the Parent Company will take such actions as may be needed for the Applicant to successfully implement any recovery actions or disposition strategies provided in the Contingency Plan.
- c) **Contents of Contingency Plan.** The Contingency Plan shall:
 - i) Describe the overall organizational and legal structure of the Parent Company and of the Applicant;
 - ii) Identify scenarios in which each of the Parent Company and the Applicant would be likely to experience significant financial or operational stress;
 - iii) Describe the Applicant's core business lines and any of the Applicant's operations that may be critical in maintaining the financial strength and viability of the Applicant or the Parent Company ("critical operations");
 - iv) Identify specific indicators of risk or severe stress that could negatively impact the Parent Company's ability to serve as a source of strength for the Applicant and describe actions that would be taken by the Parent Company to improve the Parent Company's ability to serve as a source of strength for the Applicant;

- v) Identify specific indicators of risk or severe stress that could threaten the Applicant’s critical operations or otherwise result in the failure or insolvency of the Applicant and describe actions that would be taken by the Applicant, or the Parent Company, to enable the Applicant to recover from such risk or severe stress (“recovery actions”);
 - vi) Describe the strategy for ensuring the Applicant is adequately protected from risks that may arise from the activities of the Parent Company and any of its subsidiaries and affiliates at the time, and for the duration, of any recovery actions;
 - vii) Identify the point(s) at which further recovery actions are unlikely to restore the Applicant to financial strength and viability or otherwise remedy financial or operational stress;
 - viii) Set forth options for the orderly wind down of the Applicant through liquidation, sale, or merger, without the appointment of a conservator or receiver (each, a “disposition strategy”), through the description of the specific steps, including a projected timeline, for the execution of each disposition strategy; and
 - ix) Estimate the amount of capital and liquidity that would be required for the Applicant to successfully complete each disposition strategy, including but not limited to the source of funds to pay operating expenses and the source of funds to pay deposits, other debt, and other obligations.
- d) **Material Event.** The Parent Company shall submit to the FDIC for determination of no supervisory objection an updated Contingency Plan upon the occurrence of any event that materially alters:
- i) the organizational or legal structure of the Parent Company or the Applicant;
 - ii) the core business lines or critical operations of the Applicant; or
 - iii) the financial condition of the Parent Company or the Applicant.

4. **Miscellaneous Provisions.**

- a) **Definitions.** The term “Board of Directors” includes, for a corporation, the board of directors, and for a limited liability company, the board of managers or the managing members, as appropriate. The term “subsidiary” means any company that is directly or indirectly controlled by another company, and “control” has the meaning given it in section 7(j)(8)(B) of the FDI Act, 12 U.S.C. § 1817(j)(8)(B), and includes the presumption of control reflected in section 303.82(b)(1) of the FDIC’s Rules and Regulations, 12 C.F.R. § 303.82(b)(1). Other terms used in this Agreement that are not

otherwise defined herein have the meanings given to them in section 3 of the FDI Act, 12 U.S.C. § 1813.

- b) **Enforceability as a Written Agreement.** In addition to any other remedies provided by law, the parties agree that this Agreement is binding and enforceable by the FDIC as a written agreement pursuant to sections 8 and 50 of the FDI Act, 12 U.S.C. §§ 1818 and 1831aa, against the Applicant, the Parent Company, the Controlling Shareholder, and their successors and assigns.
- c) **Conservatorship or Receivership of the Applicant.** In the event of the appointment of a conservator or receiver for the Applicant, the obligations of the Parent Company hereunder shall survive said appointment and be enforceable by the FDIC as conservator or receiver.
- d) **Bankruptcy Treatment of Commitments.** The parties agree that obligations of the Parent Company and the Applicant contained in this Agreement include commitments to maintain the capital and liquidity of the Applicant and, if a bankruptcy petition is filed by or against the Parent Company, the obligations of the Parent Company contained in this Agreement shall be immediately cured by the Parent Company pursuant to 11 U.S.C. § 365(o), and any claim for a subsequent breach of the Parent Company's obligations herein shall be entitled to priority under 11 U.S.C. § 507(a)(9).
- e) **Authority of the Parent Company and the Applicant.** The Board of Directors of each of the Parent Company and the Applicant have each approved a Resolution authorizing the Parent Company and the Applicant to enter into this Agreement. A certified copy of each duly adopted Resolution is attached hereto and is incorporated herein by reference.
- f) **Governing Law.** This Agreement and the rights and obligations hereunder shall be governed by, and shall be construed in accordance with, the Federal laws of the United States, and in the absence of controlling Federal laws, in accordance with the laws of the State of Delaware.
- g) **No Waiver.** No failure or delay in the exercise of any right or remedy on the part of any of the parties hereto shall operate as a waiver or termination thereof, nor shall any exercise or partial exercise of any right or remedy preclude any other or further exercise of such right or remedy or any other right or remedy.
- h) **Severability.** In the event any one or more of the provisions contained herein should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith to replace the invalid, illegal, or unenforceable provision with a valid provision, the effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.

- i) **Modifications.** This Agreement may not be modified, amended, changed, discharged, terminated, released, renewed, or extended in any manner except by a writing signed by all of the parties.
- j) **Addresses for and Receipt of Notice.** Any notice, correspondence, or submission required by this Agreement shall be provided in writing and shall be delivered by hand or sent by United States express mail or commercial express mail, postage prepaid, and addressed as follows:

If to the **Parent Company:**

Nelnet, Inc.
Attn: Timothy Tewes, President
1248 "O" Street, Suite 900
Lincoln, NE 68508

If to the **Controlling Shareholder:**

Michael S. Dunlap
1248 "O" Street, Ste. 900
Lincoln, NE 68508

If to the **Applicant:**

Nelnet Bank
Attn: Timothy Tewes
1248 "O" Street, Ste. 900
Lincoln, NE 68508

If to the **FDIC:**

Associate Director, Division of Risk Management Supervision
Risk Management Examination Branch
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

- k) **No Assignment.** This agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the FDIC.
- l) **Binding on Parties, Successors and Assigns.** This Agreement is binding on the parties hereto, their successors and assigns.
- m) **Joint and Several Liability.** The obligations, liabilities, agreements, and commitments of the parties contained herein are joint and several, and the FDIC may pursue any right

or remedy that it may have against one or more of the other parties without releasing or discharging any other party.

- n) **Complete Agreement.** This Agreement is the complete and exclusive statement of the agreement between the parties concerning the commitments set forth in the Agreement, and supersedes all prior written or oral communications, representations, and agreements relating to the subject matter of the Agreement, except that this Agreement does not affect or otherwise alter the CALMA.
- o) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all such counterparts taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year indicated above.

NELNET, INC.

By:

Name: _____

Title: _____

MICHAEL DUNLAP

By:

Name: _____

Title: _____

NELNET BANK

By:

Name: _____

Title: _____

FEDERAL DEPOSIT INSURANCE CORPORATION

By:

Name: _____

Title: _____