EXHIBIT 1

FINAL VOLUNTARY AGREEMENT
BY
KABBAGE, INC.
AND
U.S. SMALL BUSINESS ADMINISTRATION

This Final Voluntary Agreement ("Agreement") is dated as of October 22, 2021 (the "Effective Date"), by and between Kabbage, Inc. (d/b/a KServicing) ("Kabbage") and the U.S. Small Business Administration ("SBA") (the foregoing are hereinafter referred to individually as a "Party," and collectively as the "Parties").

RECITALS

A. Kabbage was authorized to participate as a Non-Bank and Non-Insured Depository Institution Lender to make Paycheck Protection Program ("PPP") SBA-guaranteed financing available as part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") (P.L. 116-136) and the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act ("Economic Aid Act") (P.L. 116-260), each as amended.

B. Kabbage executed a CARES Act Section 1102 Lender Agreement ("SBA Form 3507") governing "covered loans" approved under delegated authority for guaranty by SBA that are subject to the Paycheck Protection Program under the CARES Act, the Economic Aid Act, sections 7(a)(36), 7(a)(37), and 7A of the Small Business Act, any rules issued by SBA implementing the Paycheck Protection Program, or any other applicable Loan Program Requirements, as defined in 13 CFR § 120.10, as amended from time to time (collectively "PPP Loan Program Requirements").

C. Kabbage informed SBA that approximately 53,000 PPP loans processed by Kabbage on its behalf and on behalf of Cross River Bank and Customers Bank (the "Affected PPP Loans") may have been originated with excess loan amounts ("Excess Loan Amounts"). Excess Loan Amounts are defined herein as involving duplication of state and local income taxes ("SALT") that Kabbage believes may have caused borrowers to receive PPP loan amounts that may have exceeded the borrowers' correct maximum loan amount under the PPP Loan Program Requirements. Kabbage provided SBA with a list of the Affected PPP Loans ("Affected PPP Loans List"). Kabbage represented and warranted that the Affected PPP Loans List is an accurate and complete list of all Affected PPP Loans. Kabbage is currently servicing all of the Affected PPP Loans, including those loans owned by Cross River Bank and Customers Bank.

D. The existence of any Excess Loan Amounts means that Kabbage, Cross River Bank and/or Customers Bank may have collected PPP processing fees from SBA that were in excess of the amount of such fees that should have been collected.

E. Kabbage is also currently servicing approximately 170,000 PPP loans, for itself and on behalf of Cross River Bank and Customers Bank, that are not on the Affected PPP Loans List ("Non-Affected PPP Loans"). Kabbage represented and warranted, for itself and as the processer and servicer for Cross River Bank and Customers Bank, that the Non-Affected PPP Loans were not affected by the duplication of state and local income taxes that may have resulted in Excess Loan Amounts and were processed, made and originated in accordance with all PPP Loan Program Requirements.

F. Before Kabbage voluntarily stopped, at the SBA's request, issuing forgiveness decisions to SBA on Affected PPP Loans, SBA remitted forgiveness payments to Kabbage, Cross River Bank and Customers Bank on approximately 8,882 Affected PPP Loans, totaling approximately $309,878,000. Kabbage acknowledged that the forgiveness remittances included potential Excess Loan Amounts, which were, by Kabbage's estimate, as much as approximately $12.5 million ("Excess Loan Forgiveness Amounts").

G. Kabbage developed a methodology to identify the Affected PPP Loans and calculate the Excess Loan Amounts ("Identification Methodology"). Kabbage also developed a methodology to estimate eligible payroll costs that were not included in the maximum loan amount calculated by Kabbage's PPP loan origination platform ("Payroll Cost Methodology"). Those eligible payroll costs include certain insurance and retirement payroll costs. Kabbage has proposed to use the Payroll Cost Methodology to offset the Excess Loan Amounts on the Affected PPP Loans.

H. Kabbage contracted with Kroll, a division of Duff & Phelps, to review, assess the reasonableness of and validate the Identification Methodology and the Payroll Cost Methodology ("Kroll Review").

I. To avoid adversely impacting those borrowers with Non-Affected PPP Loans and as an interim measure while the Kroll Review was in process, the Parties entered into a Voluntary Agreement dated as of May 3, 2021 ("Interim Voluntary Agreement"). Under the Interim Voluntary Agreement, SBA allowed Kabbage to issue forgiveness decisions to SBA on the Non-Affected PPP Loans only and SBA agreed to process forgiveness remittances on the Non-Affected PPP Loans only. Further, Kabbage instructed SBA to withdraw pending forgiveness decisions on certain Affected PPP Loans from the Paycheck Protection Platform and SBA also placed Hold Codes on all Affected PPP Loans to prevent the remittance of any additional forgiveness payments on the Affected PPP Loans.

J. Pursuant to the Interim Voluntary Agreement, Kabbage established and has maintained a Secured Restricted Cash Account at Synovus Bank in favor of SBA in the amount of $12.5 million, which was equivalent to the estimated Excess Loan Forgiveness Amounts. Kabbage, SBA and Synovus Bank executed a Deposit Account Control Agreement--Blocked dated

May 17, 2021 ("Deposit Account Control Agreement") for deposit account number 1015565987 in the name of "K Servicing Restricted Cash Account re: U.S. Small Business Administration." Kabbage also executed a Security Agreement dated May 3, 2021 in favor of SBA.

K. The Interim Voluntary Agreement provides that Kabbage will not issue any forgiveness decisions to SBA on the Affected PPP Loans until the following conditions, *inter alia*, are met: (i) the Kroll Review is completed; (ii) Kroll has prepared a final report on the Kroll Review and submitted the report to Kabbage and to SBA for its own review; (iii) SBA has made a final determination, acceptable to SBA in its sole discretion, regarding the Affected SBA Loans; and (iv) a final written agreement is executed by the Parties. Kabbage also agreed that it would not submit any guaranty purchase requests on the Affected PPP Loans or the Non-Affected PPP Loans until such time as a final written agreement is executed by the Parties.

L. On May 28, 2021, Kroll provided Kabbage and SBA with a report titled Independent Review of Kabbage Inc.'s Paycheck Protection Program Loans ("Kroll Report"), which reviewed and assessed the reasonableness of the Identification Methodology and the Payroll Cost Methodology. The Kroll Report concluded: "that Kabbage's methodology for identifying 111,110 loans in the PPP Dataset with SALT Amounts was reasonable"; that the BLS data used in the Payroll Cost Methodology were "generally consistent with eligible components of payroll costs under PPP loan program requirements"; "that Kabbage's methodology for estimating insurance and retirement costs based on BLS data was not unreasonable"; and that "with few immaterial exceptions, that health insurance and retirement costs are significantly greater than SALT across the Number of Employees, the Loan Size Amount, and the Borrower Type categories."

Kroll also provided a spreadsheet titled "Analysis of Excess Loan Amounts and Comparison to BLS Data for Adjusted Affected Loan Dataset," which lists all Affected PPP Loans and compares on a loan-by-loan basis (i) the Excess Loan Amounts as a percentage of the PPP loan amount with (ii) the payroll costs estimated using the Payroll Cost Methodology as a percentage of total compensation ("Comparison Spreadsheet").

Additionally, in the Kroll Report, Kroll identified one Affected PPP Loan that involved a known fraudulent application where the funds had never been released to the borrower, and five Affected PPP Loans involving verified errors other than an Excess Loan Amount ("Kroll Identified Error Loans"). Further, SBA subsequently identified 147 loans on the Affected PPP Loans List that have invalid SBA loan numbers("Invalid Loan Number Loans").

M. SBA has reviewed the Kroll Report and the Comparison Spreadsheet. The Comparison Spreadsheet indicates that on a loan-by-loan basis, the Payroll Cost Methodology does not fully offset the Excess Loan Amounts because for approximately 4,000 Affected PPP Loans, the estimated payroll costs as a percentage of total compensation are less than the Excess Loan

Amounts as a percentage of the PPP loan amount. Kabbage has advised the aggregate potential Excess Loan Amount for these loans that is not offset by the Payroll Cost Methodology is approximately $13.5 million. Additionally, the Kroll Report sets forth certain concerns related to the Payroll Cost Methodology, although Kroll has determined that the Payroll Cost Methodology is "not unreasonable."

N. The Parties have agreed to a resolution of the Excess Loan Amounts on the Affected PPP Loans under the terms and conditions set forth in this Final Voluntary Agreement. This Final Voluntary Agreement is an agreement to resolve all issues solely related to the Excess Loan Amounts on the Affected PPP Loans, and to allow for the processing of loan forgiveness decisions for the Affected PPP Loans and guaranty purchase requests for the Affected PPP Loans and Non-Affected PPP Loans.

NOW, THEREFORE, in consideration of the agreements and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the conditions set forth herein, the Parties hereto agree as follows.

Kabbage and SBA agree to the following:

1. **Recitals.**

The Recitals are expressly incorporated as part of this Final Voluntary Agreement, and the Parties confirm and represent to one another that the Recitals are true and correct to the best of their knowledge, information and belief.

2. **Payment of Funds.**

Within five (5) business days of the Effective Date, Kabbage will make a cash payment to SBA in the amount of $30 million ("Voluntary Payment"). The Parties agree that the Voluntary Payment constitutes full compensation to SBA for the Excess Loan Amounts related to the Affected PPP Loans and resolves all issues solely related to the Excess Loan Amounts. In exchange for the Voluntary Payment, SBA agrees that no further payments are or will be owed to the SBA by Kabbage, Cross River Bank, Customers Bank or any individual borrowers in connection with the Excess Loan Amounts for loans on the Affected PPP Loans List (subject to the limitations in paragraphs 7 and 8 hereof), and that hereafter SBA will treat the Affected PPP Loans on the Affected PPP Loans List identically to Non-Affected PPP Loans for all purposes, including forgiveness, and in accordance with the PPP Loan Program Requirements.

The Voluntary Payment shall be made to SBA as follows:

a. Secured Restricted Cash Account

SBA will instruct Synovus Bank, in accordance with the Deposit Account Control Agreement, to release the entire balance of the Secured Restricted Cash Account to SBA, in the form attached hereto as Exhibit A.

b. Cash Payment by Kabbage

Kabbage will make a cash payment by wire to SBA in an amount sufficient to make up the difference between the amount in the Secured Restricted Cash Account and $30 million. Kabbage shall use the wiring instructions set forth below to disburse the funds to SBA:

Amount:	$
Bank name:	Treasury/NYC
Bank Address:	33 Liberty Street, New York, NY 10045
ABA number:	021030004
Account Name:	Small Business Administration
Account Address:	721 19th Street Denver, CO 80202
Account Number:	73000001
FFC:	Kabbage Voluntary Payment
Attention:	Susan Streich

3. Issuance and Processing of Forgiveness Decisions for Affected PPP Loans

Promptly upon SBA's receipt of the full Voluntary Payment, SBA agrees to accept forgiveness decisions issued by Kabbage on the Affected PPP Loans and process forgiveness remittances in accordance with the PPP Loan Program Requirements, subject to the following conditions:

a. Both for itself and for loans that it is servicing for Cross River Bank and Customers Bank, Kabbage agrees that it will accept loan forgiveness applications for and issue forgiveness decisions on the Affected PPP Loans.

b. Kabbage will review loan forgiveness applications for and issue all forgiveness decisions in accordance with PPP Loan Program Requirements, without regard to any Excess Loan Amounts.

c. SBA will process all forgiveness decisions issued by Kabbage on the Affected PPP Loans and issue forgiveness remittances in accordance with PPP Loan Program Requirements, without regard to any Excess Loan Amounts, including conducting loan reviews allowed under the PPP Loan Program Requirements.

d. To the extent that SBA identifies any issues of non-compliance with PPP Loan Program Requirements for an Affected PPP Loan that do not relate to the Excess Loan Amounts, SBA will review and process the forgiveness decision on that loan in accordance with PPP Loan Program Requirements, and nothing in this Final Voluntary Agreement shall prevent SBA from denying loan forgiveness (in whole or in part) for any identified non-compliance issue unrelated to the Excess Loan Amounts.

e. SBA will promptly release any Hold Codes related solely to Excess Loan Amounts on the Affected PPP Loans to allow for the remittance of forgiveness payments on the Affected PPP Loans to Kabbage. Kabbage acknowledges and agrees that any Hold Codes on Affected PPP Loans that do not relate to Excess Loan Amounts are not addressed by this Agreement.

f. Both for itself and for loans that it is servicing for Cross River Bank and Customers Bank, Kabbage acknowledges and agrees that SBA is not releasing and has no authority to release any claims for civil and criminal fraud (whether known or unknown) of the United States related to the Affected PPP Loans as set forth in paragraph 8 hereof.

4. <u>Issuance and Processing of Forgiveness Decisions for Non-Affected PPP Loans</u>

Kabbage will continue to issue forgiveness decisions to SBA for Non-Affected PPP Loans, in accordance with the PPP Loan Program Requirements. SBA will process the forgiveness decisions issued by Kabbage on Non-Affected PPP Loans in accordance with the PPP Loan Program Requirements, including conducting loan reviews allowed under the PPP Loan Program Requirements.

5. <u>Reserved</u>

6. <u>Servicing, Liquidation, Guaranty Purchase and Lender Oversight</u>

Kabbage will service and liquidate the Affected PPP Loans and the Non-Affected PPP Loans in accordance with all PPP Loan Program Requirements. Kabbage may submit guaranty purchase requests on Affected PPP Loans and Non-Affected PPP Loans, in accordance with the PPP Loan Program Requirements. Kabbage will comply with any lender review or examination request that may be scheduled by SBA's Office of Credit Risk Management ("OCRM") with respect to the Affected PPP Loans or the Non-Affected PPP Loans, and Kabbage will pay all fees to SBA to cover the costs of such reviews, examinations or other lender oversight activities. Kabbage will provide OCRM with reports related to the Affected PPP Loans and Non-Affected PPP Loans as requested by SBA in writing from time to time.

7. **Specific Carve Outs**

This Final Voluntary Agreement does not resolve issues relating to the Kroll Identified Error Loans and the Invalid Loan Number Loans. Those issues will be resolved outside of this Final Voluntary Agreement and in accordance with the PPP Loan Program Requirements.

8. **General Carve Outs**

Notwithstanding Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Final Voluntary Agreement, any administrative liability, including the suspension, revocation, debarment and termination rights of any federal agency;

d. Any liability to the United States (or its agencies) for any conduct other than that relating to the Excess Loan Amounts;

e. Any liability based upon obligations created by this Final Voluntary Agreement;

f. Any criminal or civil fraud liability of individuals; and

g. Any civil or administrative monetary claim the United States has under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1833a.

9. **Contemporaneous Exchange**

Kabbage warrants that, in evaluating whether to execute this Final Voluntary Agreement, it (a) has intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Kabbage, within the meaning of 11 U.S.C. § 547(c)(1), and (b) concludes that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, Kabbage warrants that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Kabbage was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. **Bankruptcy Filing**

If, within 91 days of the Effective Date of this Final Voluntary Agreement or of any payment made under this Final Voluntary Agreement, Kabbage commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Kabbage's debts, or seeking to adjudicate Kabbage as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Kabbage or for all or any substantial part of Kabbage's assets, Kabbage agrees as follows:

a. Kabbage's obligations under this Final Voluntary Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Kabbage shall not argue or otherwise take the position in any such case, proceeding or action that: (i) any of its obligations under this Final Voluntary Agreement may be avoided under 11 U.S.C. § 547; or (ii) the mutual promises, covenants, and obligations set forth in this Final Voluntary Agreement do not constitute a contemporaneous exchange for new value given to Kabbage.

b. If Kabbage's obligations under this Final Voluntary Agreement are avoided for any reason, including, but not limited to, through exercise of a trustee's avoidance powers under the Bankruptcy Code, SBA, at its sole option, may rescind the resolution of the Excess Loan Amounts under this Final Voluntary Agreement and bring any civil and/or administrative claim, action, or proceeding against Kabbage, Cross River Bank, Customers Bank and/or the borrowers on the Affected PPP Loans that would otherwise be covered by the resolution of the Excess Loan Amounts under this Final Voluntary Agreement. Kabbage agrees that it will not plead, argue, or otherwise raise any defenses under theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings.

c. Kabbage acknowledges that its agreements in this Paragraph 10 are provided in exchange for valuable consideration provided in this Final Voluntary Agreement.

11. Further Assurances; Cooperation

The Parties will, from time to time, execute, acknowledge, and deliver supplements to this Final Voluntary Agreement as may reasonably be required for carrying out the intention of or facilitating the performance of this Final Voluntary Agreement.

12. Kabbage Representations and Warranties

Kabbage has full corporate power and authority to execute and deliver this Final Voluntary Agreement and has had a full opportunity to review it with the counsel of its own choosing. The execution and delivery of this Final Voluntary Agreement by Kabbage has been duly and validly authorized by all necessary corporate action of Kabbage. This Final Voluntary Agreement has been duly and validly executed and delivered by Kabbage and constitutes the valid and binding obligation of Kabbage, enforceable against Kabbage in accordance with its terms. No consent, authorization or approval of, or filing with or other act by, any governmental authority or regulatory body is required in connection with the execution, delivery, performance, validity or enforceability of this Final Voluntary Agreement.

13. Governing Law

This Final Voluntary Agreement shall be governed by substantive Federal law and, to the extent to which substantive Federal law is not applicable, it shall be construed and enforced in accordance with the laws of the State of New York.

14. Reservation of Rights

Any failure by Kabbage to comply with this Final Voluntary Agreement, or any other PPP Loan Program Requirement, as determined by SBA in its sole discretion, may result in SBA taking additional action, including, but not limited to, an enforcement action. SBA reserves all rights to take any and all actions under law. SBA has not waived, does not waive, and shall not be deemed to have waived or released, any rights or remedies available to SBA, including, but not limited to, any civil or administrative monetary claim the United States has under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1833a. Acceptance by Kabbage of the terms and conditions in this Final Voluntary Agreement does not constitute a cure of any violation or default of any statutes, regulations, SOPs, notices, forms, loan authorizations, or any agreements with SBA, other than as relates to the Excess Loan Amounts and as set forth herein.

15. Severability

If any provision of this Final Voluntary Agreement or the application thereof to any party or any circumstance is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any competent jurisdiction), the remaining terms of this Final Voluntary Agreement, modified by the deletion of the unenforceable, invalid or illegal portion (in any competent jurisdiction), will continue in full force and effect and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms of this Final Voluntary Agreement so long as this Final Voluntary Agreement as so modified continues to express, without material change, the original intentions of the Parties as to the subject matter hereof and the deletion of such portion of this Final Voluntary Agreement will not substantially impair the respective expectations of the Parties or the practical realization of the benefits that would otherwise be conferred upon the Parties.

16. Successors and Assigns

This Final Voluntary Agreement is binding on Kabbage's successors, transferees, and assigns.

17. Notices

All notices, reports or any other documents or information required to be transmitted to SBA or Kabbage under this Final Voluntary Agreement will be sent via e-mail to SBA's OCRM with a copy to SBA's OGC, and to Kabbage as follows:

OCRM

- susan.streich@sba.gov
- edward.ledford@sba.gov
- paul.kirwin@sba.gov
- IncreasedSupervision@sba.gov

OGC

- eric.benderson@sba.gov
- christine.nell@sba.gov
- jason.weidberg@sba.gov

Kabbage

- lmilner@kservicecorp.com
- kwithrow@kservicecorp.com
- deidson@kservicecorp.com

18. Entire Agreement and Amendments

There are no representations, agreements, arrangements, or understandings, oral or written, between or among the Parties hereto relating to the subject matter of this Final Voluntary Agreement that are not fully expressed herein and in the written agreements contemplated hereby. This Final Voluntary Agreement may not be modified, amended, or supplemented except by an agreement in writing signed by all of the Parties hereto.

Intending to be legally bound, the Parties have executed this Final Voluntary Agreement as of the day and year first written above. This Final Voluntary Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

KABBAGE, INC.

Laquisha Milner, Chief Executive Officer
Kabbage, Inc.

Daniel Eidson, Corporate Secretary
Kabbage, Inc.

U.S. SMALL BUSINESS ADMINISTRATION

SUSAN STREICH Digitally signed by SUSAN STREICH
Date: 2021.10.22 18:14:53 -04'00'

Susan E. Streich, Director
SBA, Office of Credit Risk Management

JOHN MILLER Digitally signed by JOHN MILLER
Date: 2021.10.22 18:27:43 -04'00'

John A. Miller, Deputy Associate Administrator
SBA, Office of Capital Access

EXHIBIT A

Form of Disposition Instruction

[Letterhead of The SBA]

[Date]

Synovus Bank
Attention: Deposit Services, RE- DACA
1137 1st Ave., Uptown Center, 2nd floor
Columbus, GA 31901

Chandra Cockrell
3400 Overton Park Dr SE
5th Floor
Atlanta, GA 30339
T: (678) 578-1912
M: (404) 431-4816

Re: Account number 1015565987

Ladies and Gentlemen:

This is a Disposition Instruction as defined in the Deposit Account Control Agreement dated May 17, 2021, among you, us and Kabbage, Inc. (K Servicing) (as currently in effect, the "Agreement"). Capitalized terms used in this Disposition Instruction have the meanings given them in the Agreement.

By this Disposition Instruction, we direct you to send the entire balance in the Deposit Account to SBA, by wire and at the Fedwire instructions indicated below. We recognize that, as a condition to your complying with this Disposition Instruction and to the extent that we have not already done so, we must provide to you evidence reasonably required by you as to the authority of the person giving this Disposition Instruction to act for us. We also recognize that your obligation to comply with this Disposition Instruction is subject to the other provisions of the Agreement.

Amount to be transferred instructions (*initial one instruction below*):

__________ the entire balance in the Deposit Account.

__________ the greater of $__________ or the entire balance in the Deposit Account.

__________ periodic dispositions from the Deposit Account as described in Schedule 1, "Standing Wire Transfer Addendum", which is attached to, agreed to, and made a part of this Disposition Instruction by this reference.

Funds transfer (Fedwire) instructions:

Amount:	$
Bank name:	Treasury/NYC
Bank Address:	33 Liberty Street, New York, NY 10045
ABA number:	021030004
Account Name:	Small Business Administration
Account Address:	721 19th Street Denver, CO 80202
Account Number:	73000001
FFC:	Kabbage Voluntary Payment
Attention:	Susan Streich

Very truly yours,

U.S. Small Business Administration

____

By: Susan Streich

Title: Director, Office of Credit Risk Management