

## **Commercial Digital Banking Agreement**

This Commercial Digital Banking Agreement (“Agreement”) will be effective as of the first day we make the Services accessible to you. Unless otherwise stated, any reference to the Agreement shall include applicable schedules, enrollment forms and exhibits to the same, as well as applicable user guides, user manuals, set-up forms and other user materials, including online terms and information.

This Agreement is in addition to other agreements between American Riviera Bank and you, including but not limited to (as applicable), your checking, savings, and other deposit account agreements, as may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and those contained in the other agreements between you and us, this Agreement will control.

### **Available Services**

Subject to system limitations and the approvals set and established for your Account(s), with the Services you may be able to:

- Obtain limited Account information;
- Transfer funds between linked Accounts, including loan accounts but excluding certificates of deposit (“Book Transfers”);
- Initiate check stop-payment instructions;
- Order checks;
- Download (or “export”) Account information for transfer to specified financial software programs and/or spreadsheets. (Note: we are not responsible for the accuracy of data or for its integration with financial software);
- Initiate bill payments (“Bill Payments”);
- Consent to receive digital periodic Account statement (“Digital Statements”);
- Access the Services using your mobile device, subject to additional separate terms (“Mobile Banking”)
- Accept payments and send invoices through Autobooks. (Note: fees and features of Autobooks subject to change based on terms and condition of the service. Autobooks Service agreement is presented at enrollment and is available on request by contacting Autobooks support);
- Initiate wire transfers to yourself or to third parties (“Wire Transfers”);
- Originate automated clearing house Entries (“ACH Entries”);
- Create Electronic Items from eligible paper items and transmit the Electronic Items in an electronic file (“Electronic File”) to Bank for review and processing for credit to Company’s deposit account at Bank (“Account”) in accordance with the Supporting Document attached as Exhibit B to this Agreement (“Remote Deposit Capture Service Description”);
- Check positive pay; and
- ACH positive pay.

Some Services may be restricted or unavailable depending on the type of the account. In addition, some Services may not be available without special application to and approval by us and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated. Services performed during nightly processing may not succeed when applied to your actual balance at the end of the nightly processing. Some Services may not be available without special application to and approval by us, may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated.

### **Dollar Limits**

Some of the Services are subject to dollar limits which will be included as part of the Supporting Documents and which are subject to change by us at any time.

### **Cut-Off Hours**

A Communication received by us after the cut-off time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At our option, however, we may treat it as received the same day as the day of receipt. There can be a delay between the time when you send a Communication to us and the time we receive it. All times provided in this Agreement will refer to Pacific Standard Time. Our current cut-off hours are as follows but may be changed by us from time to time:

- Check Stop Payments: 5:00 p.m.
- Bill Payments: 5:00 p.m.
- Wire Transfers: 11:30 a.m. (International) 3:00 p.m. (Domestic)
- Remote Deposit Capture 5:00 p.m.
- ACH Entries: 3:30 p.m.
- Positive Pay: 1:00 p.m. for Exception Item decisions  
10:00 p.m. previous day for Submission of Issued Checks File

## General Terms

*Definitions.* Except as otherwise defined in this Agreement, the following are defined terms used in this Agreement:

- An “*account*” means any account you maintain with us and can include all accounts and products you use with us. Your “Account” refers to the account(s) you have designated as the account accessible to the Services.
- The “*Administrator*” is a person who is able to provide Credentials, to and establish access and use authority and/or limitations for Sub-Users.
- An “*authorized representative*” is a person with authority of any kind with respect to an Account, and includes Sub-Users.
- Your “*available balance*”, “*available funds*” and similar words mean the balance in your Account as determined under our funds availability policy.
- A “*business*” is anyone other than a consumer who owns an Account with respect to which a Service is requested. A business includes a sole proprietor, corporation, partnership, limited liability company, unincorporated association or any person not a consumer.
- “*Business Day*” means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, June 19, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.
- “*Check*” means an Original Check, as defined in Regulation CC, except that Check does not include a Substitute Check or a remotely created check.
- “*Communication(s)*” means instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.
- “*Confidential Information with respect to either party as recipient*” means any information obtained by, or disclosed or made available to such party (whether in writing, verbally or by observation of objects or processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient’s possession before the time of disclosure, (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party’s other Confidential Information. The Supporting Documents and any materials relating to the Supporting Documents will be deemed the Confidential Information of Bank for purposes of this Agreement. Any nonpublic personal information regarding Customer’s Customers shall be deemed the Confidential Information of Customer for purposes of this Agreement.
- “*Imaged Item*” means the digitized image of a Check that is created by Customer and transmitted to Bank using the Service.
- “*Endpoint*” means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.

- "*Electronic Check*" means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.
- "*Item*" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks, Substitute Checks and Electronic Checks. Such term does not include Non-cash Items or Items payable in a medium other than United States money.
- A "*payment order*" is a payment order as defined under Section 11103(a)(1), as amended or revised, of the California Commercial Code, and includes a Communication received by us instructing us to pay, or to cause another bank to pay, a fixed or determinable amount of money to a you, to a third party or to any other beneficiary.
- A "*commercial account*" shall mean an account maintained for a business that is not established primarily for personal, family or household purposes, or is otherwise not a "consumer account" under the EFTA.
- A "*consumer account*" shall mean an account that is established primarily for personal, family or household purposes, and is subject to the EFTA as a "consumer account."
- "*Security Procedures*" are those procedures that are associated with you and used by us to verify the authenticity of Communications from you, and include the use of "Credentials".
- Your "*Credentials*" are the Security Procedure credentials (such as codes and passwords) used to access your Accounts and to use the Services. The Credentials include any supplemental or alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.
- "*Non-cash Item*" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.
- "*Original*" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
- "*Payor Financial Institution*" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.
- "*Product*" means collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the Services.
- "*Regulation CC*" means 12 C.F.R. Part 229, as it may be amended from time to time.
- The "*Service(s)*" are the on-line banking interface and the banking services described in this Agreement, including the services described in this Exhibit B, to be provided by Bank to Customer to enable the processing of Items digitally as Electronic Checks through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints.
- "*Software*" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.
- "*Substitute Check*" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC. A "*Sub-User*" is a person other than the Administrator who uses Credentials to access a Service. The Administrator (and not American Riviera Bank) controls the designation of Sub-Users and the access or other limitations (if any) placed on a Sub-User's use of the Services.
- "*Supporting Documents*" refers to supporting materials made available by us and includes any schedules, and exhibits, user guides, user manuals, set-up or enrollment forms, other user materials, including online terms and information (including on-line instructions), and the terms of Schedule A as may be amended and provided to Customer from time to time in connection with the Service(s).
- "*UCC*" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Agreement.
- "United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.
- The word "*includes*" means "*including but not limited to*" the examples given.
- The word "*may*," when used in reference to us, means at our option and sole discretion. Action (or inaction) that we "*may*" take is authorized by you and allowed to us but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.
- The words "*we*," "*us*," "*our*," "*Bank*" and similar terms are used to refer to American Riviera Bank.

- The words “you,” “your,” and similar terms are used to refer to the person entering into this Agreement and to each person who is an owner of or has an interest in an Account together with the owner’s authorized representatives.

*Agreement.* We may act on requests for information, or requests to facilitate any Service requested on or associated with an Account, from any Account owner or its or their authorized representatives. Each time you use our Services or you permit any other person to use our Services, you are agreeing to the terms and conditions that we have set out in this Agreement, including any instructional materials regarding the Services, including instructions presented to you at our website, as amended. You agree not to resell or offer a Service to another, or to process any transactions for others using a Service. If you are a natural person and you are at least 18 years or older, you authorize us to obtain information about you from others (including credit reporting agencies) as part of our review of your enrollment application and from time to time thereafter. You agree to provide us with information as we request, from time to time.

You expressly agree that you are not, and you agree to take no action that would result in your being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business.

*Eligible Accounts.* If you wish to add a new Account to, or remove an existing Account from, Service access, you must call us at (805) 965-5942. We are not, however, obligated to establish access to any or all of your Accounts, and not all Services may be available with all Accounts. Some Services may not be available without special application to and approval by us or may be limited to specific types of Accounts.

Eligible Accounts include the following types: checking, money market, savings and time deposits. In some cases, we may allow loans and lines of credit to be linked, in which case you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. Certificates of deposit are time deposits where early withdrawals may result. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use.

You agree to review the configuration of your Account(s) at commencement of the Services, and periodically thereafter, and, for commercial accounts (as applicable), to restrict Sub-User access to Accounts and to specific Services on these Accounts in accordance with your risk assessment.

*Prerequisites for Enrolling in the Digital Banking Services.* Prior to enrolling in the Services, you should verify that you have the required technology necessary to access the Services and to retain a copy of this Agreement. In order to enroll in the Services:

- You must have the required hardware and software needed to access the Services;
- You must have an eligible account with us;
- Your account with us must be in good standing;
- If you are an individual, you must be at least 18 years of age;
- If you enroll in mobile deposit, you must also meet the minimum balance, non-NSF history, and other parameters established by us, in our discretion; and
- If you enroll for our bill payment services, you must also be a resident of the United States or its possessions.

*Sufficient Funds.* You must have sufficient available funds in your Account to cover the amount of any transaction that would be charged to your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds or available credit in your Account. We may hold (or “freeze”) funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient funds for completing the Service. If we do hold funds, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions). If you do not have sufficient or available funds or credit, you may be charged an overdraft or other fee (such as fees for returned checks or other digital items), as set forth herein and in our Schedule of Fees and Charges located on our website at

<https://arb.bank/fees>. Nothing in this Agreement, or any course of dealing between us, shall be construed as our commitment or obligation to lend you money.

*Provisional Credit.* You acknowledge that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. You agree that when we give you credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until we receive final settlement for the payment order. We may delay availability of provisional funds at our discretion. If we do not receive final settlement, you must return the funds previously credited to your account to us, and the person who sent the payment order will not be treated as having paid you. We may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if we believe in our sole discretion that there may not be sufficient funds in your account to cover chargeback or return of such transaction.

*Amending/Canceling a Transaction.* Except to the extent this Agreement provides otherwise, you do not have the right to amend or cancel a payment or transfer instruction once we have received it. If we attempt to reverse a transaction at your request, we assume no liability for any interest or losses that result if the reversal is not affected. If we attempt to effect a change or cancellation, you agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages we incur in effecting or attempting to effect any such change or cancellation. You assume sole responsibility to providing notice to the receiver/beneficiary that a reversal is being transmitted, as applicable, and the reason for the reversal no later than the settlement date of the reversing entry.

*Inconsistencies.* If a beneficiary of a payment order is identified by both names and account number, payment may be made by us and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and identifying number, we and other financial institutions may rely on the identifying number even if the name and the identifying number are not consistent or identify different parties.

**ACCESS RESTRICTIONS WAIVER:** Your Accounts may be subject to access restrictions when you conduct transactions in person or when you are using systems other than with a Service. If access restrictions exist, they do not apply to your use of the Services. We may limit or deny Services to you if there are access restrictions. Conversely, we may process your transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to your Accounts.

*Compliance with Laws and Rules.* You agree to comply with all state and federal laws, rules and regulations applicable to you and to your use of the Services (the "Laws"), including the operating rules of all systems used to provide Services to you (the "Rules"), and to provide evidence reasonably satisfactory to us of the same if requested by us. You agree not to use the Service for any illegal purpose, including but not limited to illegal Internet gambling. Without limitation, you agree and acknowledge that the Services may not be used by you in violation of the laws of the United States, including sanction laws administered by the Office of Foreign Asset Controls. You acknowledge and agree that the software you use to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations. You agree and certify that neither the software nor any direct product thereof is being or will be used by you for any purpose prohibited by these Acts.

Additionally, each Account and the Services will be subject to and governed by the following:

- The terms or instructions appearing on a screen when using a Service;
- The terms of our deposit account agreement with you, and our rules, procedures and policies;
- Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for bill payments facilitated through the ACH;
- Applicable state and federal laws, rules and regulations; and
- The rules of other funds transfer systems when used in connection with a Service.

Nothing in this Agreement relieves you of any obligation you may have under the Laws or the Rules, and this Agreement is deemed modified to the extent necessary to allow or require you to comply with the same. You will implement and maintain procedures, including retention of legal or compliance services, to ensure that you are able to comply with all current and future Laws and Rules, including any changes to them. We are not obligated to provide information, updates or notice of or regarding the Laws or the Rules, even if we are aware of the same and of the potential for material impact on you and your use of the Services, and your indemnification and other obligations to us are not relieved or reduced by our not providing the same to you. If we do provide information, updates or notices of or regarding the Laws or the Rules to you, we are not responsible for the accuracy of the same and may discontinue doing so at any time.

*Digital Records and Signatures.* When any Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions resulting from your instructions which we receive in your name and under your credentials shall be deemed to have been “a writing” and authenticated by you “in writing” for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been “signed” and to constitute an “original” when printed from records established and maintained by us or our authorized agent in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, our digital records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and “signed” documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our written request, you agree to manually sign or place your signature on any paper original of any record or “signed” document which we provide to you containing your purported signature.

*Transfer Limitations.* For certain types of transactions/transfers from a money market or savings account, you are permitted to make no more than six transfers and withdrawals, or combination of them, per calendar month or statement cycle, to another account or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, including by check, draft, debit card or similar order by you and payable to third parties. If you exceed these limits, we may impose a fee, close or convert your Account, limit your use of the Services, or any combination of the foregoing. Refer to our Schedule of Fees and Charges located on our website at <https://arb.bank/fees>.

### **Computer Equipment and Software to Access the Services**

You are responsible for providing and maintaining any equipment that is necessary for the Services, such as internet connections, mobile devices, and computers. You agree to use equipment that is compatible with the Services, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any computers or software that you use in connection with the Services, even if we have previously approved their use. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU. You agree to notify us promptly if any software or equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment. For security purposes, you agree to keep your browser and operating system up to date and free of malware. You agree to install and maintain appropriate firewall and anti-virus software on any equipment you use to access the Service, to protect your data when connected to the Internet. Except to the extent limited by applicable law, you assume sole responsibility for any and all loss, damage or injury arising with respect to any failure of your equipment, software not provided by us, the disruptions or unavailability of connectivity, viruses, spyware, malware, or worms affecting your equipment or software.

To use the Services, you must have sufficiently powerful hardware and appropriate software. Some Services may require you to download software; in some cases, we may place software on your computer as part of our security and/or verification tools. You agree to maintain the confidentiality of the Security Credentials at all times and not to provide access to them to anyone that you do not authorize to access your Accounts through the Services. Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. You agree to implement and maintain administrative,

technical and physical safeguards to protect against unauthorized access to or use of any Account information which you may access or store on your computer or other data storage systems.

### **Linking Accounts**

Accounts which are "linked" under the Services must have identical owners. Any signer on any linked Account, acting alone, is authorized by you to access and use Services for any other linked Account, whether or not that person would be authorized to transact on the other linked Account in the absence of this Agreement.

You represent and warrant that you have authorization from the Account owner to engage in each Service used by you affecting an Account that is linked. You make this representation and warranty at the time the Accounts are linked and each time you use a Service to access or transact on an Account. These representations and warranties are in addition to any others contained in this Agreement or in any supplemental agreements that may be required by us.

### **Credentials**

During your enrollment for the Services, you are required to select or will be assigned certain numbers, credentials, marks, signs, public keys or other means of authenticating your identity and digital communications in your name. These may include a customer number, logon name, and password. These credentials, with the other components of your Credentials, will give access to your Accounts through the Service.

You agree to change all passwords with sufficient frequency so as to protect confidentiality, and in any event no less frequently than once per year.

You agree not to disclose your Credentials to anyone and to take other reasonable precautions to ensure the safety, security and integrity of transactions conducted with your computer or mobile device (for example, do not write them down. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. NOTE: Some browser software may store user names and Credentials to facilitate the future use of a web site. For security reasons, you agree to disable this feature in your browser. Check your browser's "Help" screen for more information on this feature. For security reasons we may disable your Credentials, for example if they are entered incorrectly several times. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. It is also recommended you do not have your browser automatically remember your password. We may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited. The term "Credentials" will include any supplemental authentication tools that are used by you. After three unsuccessful attempts to use your Credentials, we may revoke your access to the Services. To re-establish your access to the Services, you agree to contact us at (805) 965-5942.

### **Contact in Event of Unauthorized Transfer**

If you believe any part of your Credential, including your password, has been lost or stolen call:  
(805) 965-5942 or write: American Riviera Bank  
P.O. Box 329  
Santa Barbara, CA 93102

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

### **Email**

While access to us through the secure email function of the Services is "on-line," messages sent to us through email are not reviewed by our personnel immediately after they are sent. If immediate attention is required, you must contact us by telephone or in person.

Your email messages may be acted upon by us if received in a manner and in a time providing us a reasonable opportunity to act. Nevertheless, unless otherwise provided herein, email messages will not serve as a substitute for any requirement imposed on you to provide us with "written" notice.

Email or messages sent by us to you will be deemed received by you when sent by us to you at your e mail address as shown on our records. You agree to notify us (using the Service or otherwise in form acceptable to us) whenever your email address changes. You agree that information or messages made available to you via the Services will be deemed received by you when first posted on our website or made available to you. You agree to access the Service from time to time, in no event less than monthly, to access this information or the messages.

**Data Retention.** You will retain data on file adequate to permit remaking or reconstruction of all requested Services (including payment orders or other money transactions) for one year following the date of the execution of the request to which such data relate, and will provide the data to us upon our request. You agree to determine promptly the accuracy of all records and information regarding a Service and to notify us immediately of any errors in such records or information. Nothing in this Agreement relieves you from: (a) any responsibility imposed by law, regulation or contract with regard to the maintenance records; or (b) any responsibility to perform audits and account reviewers customarily conducted by persons or entities whose businesses are similar to your business.

**Account Information Services.** The Services include the ability to obtain Account information and user defined reports, subject to system limitations, including where applicable Account information for multiple Accounts. Some transaction may not be reflected by the system until the following business day. Posted transactions may be reversed due to insufficient funds, stop payment orders, legal process, or other reasons. Certain balances may not be subject to immediate withdrawal. You understand and agree that Account information may not reflect transfers made by multiple users from the same Account if different login credentials are used for the same Account. You agree to communicate to other persons with authorized access to your Accounts concerning any transfers from your Accounts, in order to avoid overdrafts. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in your access to online information. If you are unable to access the Services for any reason, you may contact us directly.

**Digital Statements.** Digital statements offer you a convenient way to view, save and print your periodic statements. If you elect to receive digital statements, we may discontinue sending paper statements and make periodic statements available to you in digital form only. This includes, but is not limited to, ongoing terms and disclosures currently provided on the back of your paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. Each digital statement will be available for your viewing, downloading or printing for 12 months from the date that it is made available to you. You agree to review your digital statements in a timely manner, just as you would paper statements, and to promptly notify us of any errors, unauthorized activity or other problems, as provided in our agreement with you. You will be deemed to receive digital statements when they are made available to you. Any time periods within which you must notify us of any problems or errors reflected on your statement(s) will begin on the date we make the digital statement available to you, regardless of when it is actually viewed by you. If you cannot access, print or view your digital statements, you must contact us immediately at (805) 965-5942 to make alternate arrangements. You agree to periodically logon and check on the delivery of new statements.

**Book Transfers.** The Book Transfer feature allows you to transfer funds between your eligible linked Accounts. Transactions posted to your account as of a certain business day may not be reflected in account balances reported by the Service until the following business day. Information on transfers to or from your accounts with us will be reflected on your periodic statements, will be available to you online, and can be obtained by calling (805) 965-5942. We do not provide any other notice of the receipt, transmittal or debiting of funds transfers.

*Scheduling Fund Transfers.* You may instruct us to initiate single or recurring Book Transfers on any business day (the "Transfer Process Date"), up to 365 days in advance. If the Transfer Process Date for an automatic transfer falls on a weekend or holiday, the transfer may be sent the following business day. To initiate a transfer, you must specify the account to be debited, the account to be credited, the transfer amount, and the Transfer Process Date.

*Rejecting Transfer Instructions.* We may reject transfer instructions with or without cause or prior notice. We may reject a transfer instruction, for example, if you do not have sufficient available funds to cover the transfer or the



transfer instruction is unclear, ambiguous or incomplete. If we reject a transfer, you may need to re-enter the information if you wish to make the transfer at a later date.

*Changing or Cancelling Transfer Instructions.* For same-day Book Transfer requests, once submitted, the transfers cannot be cancelled through the Online Banking System. For future dated Book Transfers, the transfers can be cancelled through the Online Banking System before the cut-off hour.

## **Bill Payment Service**

*Generally.* When using the Bill Payment Service, you must designate the Account (“Bill Payment Account”) from which the Bill Payments are to be made, the complete name of the payee, your Account number and the payee’s remittance address (as exactly as shown on the billing statement or invoice), the amount of the payment and the date you want the payment to be processed from your Bill Payment Account (“Payment Processing Date”).

*Use of Vendors; Use of Information.* We may use one or more bill payment vendor(s) to provide the Bill Payment Service, and you understand that various financial intermediaries and their servicers may be involved in processing any one of your Bill Payment instructions. These intermediaries may benefit from interest that accrues on Bill Payments between the time your Bill Payment Account is debited and the time the payee is paid. Any information you provide may be used by us or any of these other parties to complete or otherwise deal with your transaction or comply with any laws, rules or regulations. If there is a dispute between you and us, or between us and any other person (including any merchant, payee, financial institution or other intended or actual recipient of any Bill Payment), you authorize us to obtain information regarding you, your Account and your Bill Payment obligations (or the absence of them) from any party that was involved in the Bill Payment transaction or that might otherwise assist in the resolution of the dispute or problem. This may include financial and other information.

*Setting-Up Payees.* When you sign onto the Bill Payment Service, you must establish your list of payees. A payee is anyone, including us, which you designate to receive a Bill Payment, provided that we accept the payee for the Bill Payment Service. If we accept the payee, then the payee will be placed on your authorized list of payees. Each time you want to initiate a Bill Payment, the payee must be on your authorized list of payees, and if payment will be facilitated digitally to the payee’s financial account (rather than by paper check) the payee’s receiving financial account must be within the United States.

We are not responsible if a Bill Payment is not made to a payee because you provided us with incomplete, incorrect or outdated information regarding the payee or we attempted to make a payment to a payee that is not on your authorized list of payees. Also, we reserve the right to refuse to approve a payee for your authorized list of payees and to otherwise prohibit payment to a payee via the Bill Payment Service.

*Payment Methods.* We reserve the right to select the method in which to remit funds on your behalf. These payment methods may include, but may not be limited to, a digital payment, an digital check payment (where the check is drawn off Bank’s third party service provider’s account), or a demand draft payment (where a negotiable instrument is created and drawn off of your Bill Payment Account).

*One-Time Payment.* You can use the Bill Payment Service to make a one-time Bill Payment. A one-time Bill Payment will be processed on the Payment Processing Date; provided that the Payment Processing Date selected by you is a business day and you submit your one-time Bill Payment instruction prior to the Bill Payment cut-off hour for that date. If you select a Payment Processing Date that is not a business day or submit your Bill Payment instruction after the Bill Payment cut-off hour for that date, then the Payment Processing Date will be the next business day. Refer to “Available Funds” below regarding when funds must be available in your Bill Payment Account. We may also allow expedited bill payments for an additional fee. Refer to the below section on Service Fees and Charges.

*Recurring Payments.* You can use the Bill Payment Service to make recurring Bill Payments. The Bill Payment Service will allow you to schedule Bill Payment instructions that will cause a Bill Payment to be processed from the selected Bill Payment Account on your selected frequency on an ongoing basis. However, if the future Payment

Processing Date is on a non-business day, then the new future Payment Processing Date may be the next business day. Refer to “Available Funds” below regarding when funds must be available in your Bill Payment Account.

*Available Funds.* For Bill Payments, you will need to have sufficient available funds in your designated Bill Payment Account to cover the amount of the Bill Payment on the Payment Processing Date. If payment is facilitated using a demand draft drawn directly against the Bill Payment Account, sufficient available funds must remain on deposit in the Bill Payment Account until the demand draft has cleared. You can initiate Bill Payments up to the available funds in your Bill Payment Account, plus any linked credit or other overdraft facility (as applicable). If you exceed these limits, then we may prevent (or reverse) Bill Payments in any order and in any amount that we choose, even if the result is to reduce your transactions to a level below the amounts needed to pay your bills.

*Non-Recommended Payees.* We do not recommend that you use the Bill Payment Service to pay your federal, state or local taxes, courts or other governmental entities. These agencies normally require an accompanying coupon, which cannot be provided via the Bill Payment Service. We will not be liable for penalties, interest or other damages of any kind if you try to use the Bill Payment Service to remit or pay money for taxes, or to courts or governmental agencies.

*Payment Changes and Cancellation.* You may change or cancel a Bill Payment instruction via the Service as long as you submit the change or cancellation request before the cut-off hour prior on the business day prior to the Payment Processing Date for the Bill Payment instruction and you follow the Bill Payment instructions provided by the Bill Payment Service for changes and cancellations.

*Accurate Information on Payees.* The Bill Payment will be processed using the information you supply, and if the information you give to us is inaccurate or incomplete in any way the Bill Payment may be delayed or misdirected. If the Service provides you with a series of options regarding payee address or location, you are responsible for correcting that information if such information does not agree with your records or with your particular bill. We and the others that handle your Bill Payment (including the payee’s bank) are entitled to rely on information you supply, such as the payee’s account number or the routing number of the payee’s bank, even if the name you give to us and the number you give to us identify different persons.

*ACH Entries.* Digital payments that are made through the ACH are subject to the rules of the ACH, and you agree to be bound by the Operating Rules of the ACH, including the rule making payment to the payee provisional until receipt by the payee’s bank of final settlement of the credit transaction. If final settlement is not received, you will not be deemed to have paid the payee the amount of the digital bill payment. Furthermore, you agree that any payment by us to you for any returned credit entry or credit reversal is provisional until receipt by us of final settlement for such entry. If final settlement is not received, we are entitled to a refund from you of the amount credited and we may charge your account for the amount credited. We may refuse to permit the use of any amount credited for a credit reversal if we believe that there may not be sufficient funds in your account to cover charge back or return of such reversal.

### **Connection Service (Express Web Connect & Direct Connect Services)**

The terms of this Section will govern your access and use of the Online Banking services offered by us and made accessible through your use of the connection services (the “Connection Services”), such as Express Web Connect and Direct Connect with Quicken® and QuickBooks®. The Connection Services are an internet-based service that is compatible with Quicken® and QuickBooks®, and enables you access to your accounts and to certain digital services online. We reserve the right, with prior written notice to you, to place, from time to time, limits on your right to use the Connection Services.

Subject to our prior approval, your Connection Services may include the following: (i) download balances on your linked Accounts; (ii) download Account transaction history; (iii) transfer funds between linked Accounts (limited to Accounts with like vesting); and (iv) initiate domestic bill payments.

*Communications; Security Devices.* For the purpose of this Section, Communications shall have the meaning provided in this Agreement and shall include Communications to us in connection with the Connection Services. For the purpose of this section, Security Devices mean the Customer ID and password that is used by you to set up access to Connection Services through Quicken® and QuickBooks®.

*Administrator and User(s).* We will not control or oversee any Administrator, user or similar function that may be made available in Quicken® or QuickBooks®. The fact that we are, or may be made aware of, or could have discovered, any limitation on access to the Connection Services as imposed by you through QuickBooks®, Quicken®, or otherwise, does not make us obligated to enforce or attempt to enforce any limitation. You understand that the Connection Services may be utilized without regard to any restrictions otherwise applicable to an Account. For example, the Connection Services may be utilized regardless of whether an individual user is also an authorized signer on your Account signature card.

*Access to Account Data.* You can obtain balance and other Account information through the Connection Services. Since certain information and transactions are not processed by us until after the close of our business day, some transactions may not be reflected in the system until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in our information system. If you are unable to access our system for any reason, you may contact Customer Service at 805-965-5942.

*Account Transfer Limitations.* All transfers to and from an Account will be subject to the terms and conditions applicable to the Account as set forth in the deposit agreement governing the Account, including but not limited to transfer limitations. For example, federal regulations limit certain types of transactions/transfers from a money market or savings account. If you exceed these limits, we may impose a fee, close or convert your Account, limit your use of the Connection Services, or any combination of the foregoing.

*Bill Payment Service.* To use the Bill Payment feature (“Bill Payment Service”), you must access the feature through your QuickBooks®/Quicken® software and designate the Account from which the bill payments are to be made (“Bill Payment Account”). Subject to this section, your use of the Bill Payment Service is subject to the terms and conditions provided in the Bill Payment Service section of this Agreement. For each bill payment, you will also be required to access your QuickBooks®/Quicken® software to complete the name of the payee, the account number and the payee’s remittance address (as required by the software), the amount of the payment and the date you want the payment to be processed. If the payment processing date is not a business day, then your bill payment will be processed the next business day. Your access to the Bill Payment Service through QuickBooks®/Quicken® may require you to designate a list of acceptable payees within the software. We do not oversee or monitor your list of payees (if any) and we will not be responsible for errors in the payee detail entered by you or maintained through the QuickBooks®/Quicken® software. Notwithstanding the foregoing, we reserve the right to reject any payee at any time, at our discretion.

*Software, Equipment and Third-Party Content.* You are responsible for obtaining and maintaining any software, including the Quicken® or QuickBooks® software, and equipment that is necessary for the Services, such as telephones, terminals, modems and computers (collectively, “software and equipment”). We assume no responsibility for the defects or incompatibility of any software or equipment that you uses in connection with the Services, even if we have previously approved their use. **WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SOFTWARE AND EQUIPMENT.**

Through the Connection Services, such as Express Web Connect and Direct Connect with Quicken® or QuickBooks®, you may be able to access content provided or operated by third parties (“Third Party Content”). Unless we tell you otherwise in writing, we do not operate or control any such Third Party Content or any of the information, products or services accessed or uploaded through the same. You acknowledge and agree that: (i) you access Third Party Content at your own risk; (ii) we make no representation or warranty, and assume no responsibility for, Third Party Content provided or operated by third parties, actions or omissions of third parties, operators or providers; (iii) we make no endorsement of, and assume no responsibility for, Third Party Content

uploaded to our system or your hardware, or goods or services offered on or advertising on or by any other party; (iv) by using third party services or software, you may be exposed to material that is offensive, indecent or objectionable; and (v) although we may have a contractual or other relationship with the operators of a linked website or the providers of Third Party Content, we will not be responsible for the Third Party Content, accuracy, completeness, integrity, availability, timeliness or operation of their website or the Third Party Content provided. You agree to hold us harmless in connection with all of the foregoing.

## **Loan Transfers**

*Eligible Loan Transfer Accounts.* Accounts eligible for loan transfers (“Loan Transfers”) will be determined at our discretion. You agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized pursuant to this Agreement. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements.

*One-Time Advance/Payment.* You can use the Loan Transfer feature to make recurring and non-recurring “on-us” loan Account advances (“Loan Advance(s)”) and payments (“Loan Payment(s)”). The Loan Transfer will be processed on the Loan Transfer processing date (“Loan Payment Processing Date”); provided that the Loan Payment Processing Date selected by you is a business day and you submit your one time Loan Transfer instruction prior to the Loan Transfer cutoff hour for that date. If you select a Loan Payment Processing Date that is not a business day or submit your Loan Transfer instruction after the Loan Transfer cutoff hour for that date, then the Loan Payment Processing Date may be the next business day. Loan Advances will only occur to the extent there are sufficient available funds on the eligible loan Account, as determined by the terms and conditions of the applicable loan documents and agreements, including, but not limited to, the promissory note, governing the loan Account.

*Loan Payments.* You may designate the Loan Payment as a regular installment or an interest/principal only payment. If funds transferred will be applied as a reduction in principal only, funds will be applied as unscheduled reductions of principal and as such will not satisfy the installment obligations under the payment schedule for the loan Account or pay accrued interest. If funds transferred will be applied as a regular installment payment, you are responsible for ensuring that you initiate an Loan Payment instruction in time for the payment to be received by us before its due date. We are not responsible for any damages, costs or fees you may suffer if you do not allow sufficient time between the Processing Date and the due date.

*Noncompliance with Borrowing Base.* This paragraph is applicable if the promissory note or other loan document for your loan Account provides that the loan Account is tied to a borrowing base of eligible receivables. At any time that you are not in compliance with the borrowing-base requirement, we may reverse any transfer that constitutes an advance on the loan Account.

*Loan Transfer Changes and Cancellation.* You may change or cancel a Loan Transfer instruction via the Service as long as you submit the change or cancellation request [insert deadline ] prior to the Loan Payment Processing Date for the Loan Transfer instruction and you follow the Loan Transfer instructions provided by the Loan Transfer feature for changes and cancellations.

*Provisional Credit.* You agree that any credit by us to you for any Loan Transfer is provisional until we have received final settlement for such Loan Transfer. We may delay availability of provisional credit at our discretion. If final settlement is not received, we are entitled to and you agree to pay a refund of the amount credited; we may charge your account for the amount due.

## **Check Stop Payment Services**

You may request a stop payment on a check issued on your Account(s) by submitting all the required information to us (“Check Stop Payment”). All Check Stop Payment requests, renewals, and revocations of stop orders will be subject to our current policy on stop payment requests. If you are unable to access our system for any reason, you may contact Customer Service at 805-965-5942. You are responsible for reviewing all information available to you to determine whether the check has already been paid, including your account statements. Information available online may not include sufficient historical information to verify whether the check has been paid. Your receipt of a

Check Stop Payment confirmation via the Service, or acceptance of your request via the Service, does not conclusively represent whether or not the check has already been paid. In any event, we must receive your Check Stop Payment request sufficiently in advance to provide us with a reasonable opportunity to process your request in sufficient time prior to presentment of the check. There will be a fee assessed for each Check Stop Payment request whether or not we receive the request in time to place the Check Stop Payment. Refer to our Schedule of Fees and Charges located on our website at <https://arb.bank/fees>.

You must give us timely, complete, and accurate information as prompted by the Service, including the check date, payee, EXACT amount of the check, and the check number. Under applicable circumstances you may be able to provide us with a list of a series of check numbers. If any information is incomplete or inaccurate, we will not be responsible for failing to stop payment on the check.

You may use the Check Stop Payment Service to stop payment on checks that you have written against your Accounts. If you wish to cancel or amend any other Service transaction, you should use the process applicable to that Service, and you will be subject to any limitations or inability to stop applicable to that Service.

You may not use the Check Stop Payment Service to stop payment on any ACH/EFT transaction, point-of-sale ACH/EFT transfer; any cashier's check, certified check or other official institution check you have purchased from us or any check which we have guaranteed. You understand that your Check Stop Payment request is conditional and will not be effective if we have not had a reasonable opportunity to respond to your request, or that stopping payment may subject us to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

A Check Stop Payment request against a check is effective only against the check that is described in the Check Stop Payment request form; and does not cancel or revoke any authorization for future or recurring ACH/EFT transfers by you or by the same biller or originator. A Check Stop Payment request is effective for six (6) months only and will expire automatically, at which time you are responsible for any renewal desired by you for another six (6) month term.

You assign to us your rights against the payee or any other holder of any check on which you have requested a Check Stop Payment, and you agree to cooperate with us in any legal action we may take against such persons. You should be aware that a holder of a check may be entitled to enforce payment against you notwithstanding a digital stop payment order. Your obligations under this subsection will survive termination of this Agreement.

### **Account Alerts**

The account alerts ("Alerts") feature is a convenience tool that permits you to request automated notification in specific situations. Alerts do not replace standard communications you receive from us concerning your accounts. If you elect to receive Alerts by text messaging from us, you acknowledge that such messages will be automatically sent to your Device. You assume all responsibility for the secure receipt of the text messages and acknowledge that these Alerts are not sent through a secure channel and may be intercepted or read by others. Receipt of Alerts may be delayed, or prevented by factor(s) affecting your access, including your Internet service provider(s), phone operator(s), and other relevant entities. We do not guaranty the delivery or the accuracy of the contents of any Alert. We will not be liable for losses or damages arising from: (i) non-delivery, delayed delivery, or wrong delivery of any Alert; (ii) inaccurate content in an Alert; or (iii) your use or reliance on the contents of any Alert for any purposes. We reserve the right to terminate any request from you for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays. You may stop or suspend Alerts at any time.

### **Security Interest in Accounts**

You grant us a security interest in all accounts or other deposits (whether general or special) of yours at the Bank, to secure your obligations to us under this Agreement. This security interest will survive termination of this Agreement. We may hold any funds on deposit with us by you after termination of this Agreement for up to 90 days following the expiration of any return or chargeback rights or, if later, until any other claims to such funds have expired.

### **Third Parties**

You acknowledge and agree that we may arrange to provide software, if required, and/or may arrange for the Services covered by the Agreement to be performed or provided by third parties, including our affiliates. You further agree that any such party is a third-party beneficiary of the Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it were us, including, without limitation, the limitations on liability and the indemnities described in the Agreement. Our ability to provide certain Services may be dependent upon our ability to obtain or provide access to third-party networks. In the event any third-party network is unavailable, or we determine in our sole discretion, that we cannot continue providing any third-party network access, we may discontinue the related Service or may provide the Service through an alternate third-party network. In such situations, we will have no liability for the unavailability or delay of access.

Notwithstanding the limitations described above pertaining to third parties, if you authorize a third party to access the Services on your behalf, you will be solely responsible and liable for all actions and inactions of said third party. You expressly assume the risks associated with providing Service access rights to your agents or third-party vendors, including but not limited to the risk of unauthorized or erroneous transactions. We will not be responsible, nor have any liability whatsoever for any services you receive from your agents or third-party vendors. We reserve the right to require you to agree to additional terms and conditions as a condition precedent to your use of any agent or third-party vendor in connection with your access to the Services.

### **Service Fees and Charges**

Our current fees and charges can be located on our website at <https://arb.bank/fees>. We may impose new fees and charges, or increase or change existing fees and charges. We will provide advance notice of these changes to you if required by law. Other fees may be assessed and billed separately by your Internet and/or telephone service provider. You agree to pay all fees and charges we impose. You authorize us to charge the designated Account and/or any other account you hold with us to cover your fees and charges. You also authorize us to charge you according to our then-current fee schedule.

If you do not use this Service for any three-month period, we reserve the right to discontinue your Service without notice to you.

### **Business Days**

Except to the extent otherwise provided in this Agreement and for the purpose of this Agreement, our business days are Monday through Friday, except federal bank holidays and state holidays that we may observe.

### **Hours of Operation; Interruption in Services; Changes**

You will generally be able to use Services seven days a week, 24 hours a day. However, a Service may not be available due to system maintenance or circumstances beyond our control. Services may be added, cancelled or limited at any time or from time to time, with or without cause or notice (except as required by law).

### **Harm to Computer Systems/Data**

You agree that we will not be liable for viruses, worms, Trojan horses, or other similar harmful components that may enter your computer system by downloading information, software, or other materials from our site. We will not be responsible or liable for any indirect, incidental, or consequential damages that may result from such harmful components.

### **Disclaimer of Warranty**

We make no warranty of any kind, express or implied, including any implied warranty or merchantability or fitness for a particular purpose, in connection with Services provided to you under this Agreement. We do not and cannot warrant that Services will operate without errors, or that any or all Services will be available and operational at all

times. Due to the possibility of human and mechanical errors, as well as other factors, the system website is not error-free, and all information is provided “as-is,” without warranty of any kind. We make no representation and specifically disclaim any express or implied warranties to users of any third parties, including but not limited to, warranties as to accuracy, timeliness, completeness, merchantability, or fitness for any particular purpose.

### **Services Not Substitute for Legal, Tax, or Financial Advice or Planning**

You acknowledge that the Services, Bank, its employees and service providers are not intended to provide legal, tax or financial advice or planning. The Service are merely a tool for use to assist your independent decision-making and have not been designed in contemplation of your specific needs or risk tolerances. Prior to making any financial decisions, communicating, or taking any action with respect to information made available using the Services, you represent that you will have obtained appropriate and independent legal and tax advice regarding the same, as you deem appropriate.

### **Uploaded Content, Linked Sites and Advertisements**

From our website or using the Services, you may be able to access uploaded content provided or operated by third parties. Unless we tell you otherwise in writing, we do not operate or control any such content or any of the information, products, or services on such linked websites. You acknowledge and agree that: (i) you access such content and linked sites at your own risk; (ii) we make no representation or warranty, and assume no responsibility for, content on our website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) we make no endorsement of, and assume no responsibility for, content uploaded to our website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and Services, you may be exposed to content that is offensive, indecent or objectionable; and (v) although we may have a contractual or other relationship with the operators of a linked website or the providers of content, we will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. You agree to hold us harmless in connection with all of the foregoing.

We reserve the right, but shall have no obligation, to reject, move, or delete content that we, in our sole discretion, believe violates this Agreement, or contains content, including viruses, that may interfere with the operation of our website. We may, but have no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. We shall have the right, but not the obligation, to disclose content to any third party if required by law or if we believe reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any content violates rights of third parties; or (d) protect our rights, property, or personal safety, or those third parties.

### **Third Party Content**

We may receive, process, and make available to you content that we receive from you and others. In this regard, we are merely a passive conduit for such content, although we reserve the right to block or remove any content that we believe violates this Agreement. We assume no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that you or others provide to us, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography, or profanity on such sites. We will not have a duty to interpret or evaluate any content transmitted to us or through our website or Services, except to the limited extent, if any, and set forth in this Agreement. We will not be required (by means of any Security Procedure or otherwise) to detect errors or illegality in the transmission or content of any content we receive from you or third parties. We will not have a duty to notify you about any inaccuracy, unreliability, ownership, incompleteness, or other problem that may be associated with third party content on our website, even if we have reason to know of its existence. Use of any content you obtain from our website is at your own risk.

### **User Communication and Personalization Settings**

Our website and Services may permit you to send or receive communications and to store content and personalized settings for various options. We are not responsible for any delay, deletion, alteration, mis-delivery or failure to deliver or store any such communications, content or settings.

### **Idea Submission**

If you submit any materials or other information to any public areas of our website (such as bulletin boards, guest books, forums, wish lists and chat rooms), you hereby grant us a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, sub-licensable, assignable, transferable, irrevocable license under copyright and patent, with the unrestricted right to use, self, reproduce, distribute, transmit, create derivative works of, publicly display, and publicly perform any such materials and other information (including, without limitation, ideas contained therein for new or improved products and services) by all means and in any media now known or hereafter developed or commercialized. In addition, you represent and warrant to us that you have the right to grant to us the foregoing license.

### **Our Intellectual Property**

You acknowledge and agree that the software and content used by us in the operation of our website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by us on our website and as part of the Services and our name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by us and our licensors. As such, you will not gain any ownership or other right, title, or interest in or to such Intellectual Property by reason of this Agreement or otherwise.

You may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer (i) any portion or element of the Services or the Intellectual Property (ii) use of our website, Services or Intellectual Property, or (iii) access to our website Services or Intellectual Property. Further, you may not (a) create derivative works of any portion or element of our website, Services or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology we incorporate in our website or the Services; (d) modify or erase any copyright or trademark notice we place at our website; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of our content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (f) access the Services by any means other than via our website; (g) frame our website or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing our name, trademark, URL, product name or Intellectual Property. You agree to comply with the terms of any license agreement we make available to you with any software.

### **User Conduct**

You agree not to use the Service or the content or information in any way that would: (a) infringe any third-party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to the Service; or (i) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.

### **No Commercial Use or Re-Sale**



You agree that the Service is only for the personal use of the individuals authorized to access your account information with us. You agree not to make any commercial use of the Service or resell, lease, rent or distribute access to the Service.

### **Purchase**

Our website or Services may permit you to purchase goods and services from various online or offline merchants, retailers, vendors, suppliers, services, or individuals (collectively, "Merchants"). The web pages from which you conduct such transactions may bear our logos, names, trademarks or service marks, or brand identity. Nonetheless, we have no responsibility for any of your transactions with any such Merchants, and make no guarantees, representations, or warranties regarding any of them. We shall not be responsible for any loss or damage you or anyone else incurs as a result of such transactions or Merchants.

### **Cumulative Remedies**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, ordinance or otherwise.

### **Delays/Force Majeure**

The obligations of the Bank shall be suspended to the extent and for so long as such obligations are hindered or prevented from being performed on account of labor disputes, war, riots, civil commotion, acts of God, fires, floods, failure of suppliers and/or subcontractors to perform, failure of power, restrictive governmental law and/or regulations, storms, accidents or any other cause which is reasonably beyond the control of the Bank.

### **Severability**

Wherever possible, each provision of this Agreement shall be interpreted in a manner which makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

### **Entire Agreement**

This Agreement contains the entire agreement between the parties and no statements, promises or inducements made by either party or agent of either party that are not contained in this written Agreement or other documents referenced by this Agreement.

### **Choice of Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the state of California, except where preempted by federal law.

### **Amendment of this Agreement**

We may amend, add to or change this Agreement (including changes in its fees and charges, or Services. We will provide notice of amendments, additions or changes if required by law. Your continued use of the Services will constitute your consent to the amendments, additions or changes.

### **Waiver.**

We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future.

**Assignment.**

We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unenforceable at our election.

**Termination; Suspension; Delay.**

We may terminate or suspend this Agreement and any service provided hereunder at any time. We will provide digital or written notice of termination to you. Except to the extent restricted by law, we reserve the right to terminate or to discontinue support of any Service, or delay or refuse processing any transaction, without notice. You may terminate this Agreement upon 30 days written notice to us. Termination of this Agreement will not affect any rights we may have, or any obligations you may have, as to any transaction or Services caused or attempted by you before termination.

**Authorized Representatives.**

Your "authorized representative" includes each person who is (1) authorized by you to conduct business with us, including as part of your account management resolution(s); or (2) a principal officer of yours (such as your CEO if you are a corporation, or a partner in a partnership, or a manager in an LLC); or (3) otherwise authorized (or deemed authorized) to act on your behalf, whether under this Agreement or any other agreement with us, by the laws of agency, or under by any other state or federal law, rule or regulation.

**Administrator.**

An authorized signer will be required to designate at least one initial Administrator, who must also be an authorized signer, and that designation must be communicated to us for the initial Administrator to be added to the Service. Once designated and added to the Service, the Administrator then controls the Services and access to them, including by Sub-Users. The Administrator will be able to and will be responsible for maintaining your Service settings and Sub-User security. Access to your Account(s) through the Service will be based upon authority established by the Administrator, who you agree may specify usage levels (without filling out a new business resolution). You must notify us when you wish to terminate or change the Administrator. You must also notify us to add or delete Accounts.

The Service will allow the Administrator to establish authority levels to help you manage additional Sub-Users and control use of various Services. The levels are used to specify who can access specific Accounts, what dollar amounts Sub-Users are authorized to handle and what functions a Sub-User can access when transacting on an Account using the Services.

The Administrator is responsible for setting up your Sub-Users. The Administrator is also responsible for assigning all persons with the Credentials that are necessary to access Services and for establishing what, if any, limitations will apply (including what level of activity is appropriate for each Account). The Bank changes and maintains your Credentials once they are established. The Administrator(s) will have full access to your Accounts and to any future Accounts you may open.

We will **not** control or oversee the Administrator or any activity or function of an Administrator or other Sub-User. You agree to the creation of an Administrator and to all action taken by the Administrator. You agree to all action taken by any Sub-User and by any person approved for access by the Administrator or by a Sub-User, and all such persons are your agent for purposes of use of the Services.

You further agree to assume all risks associated with providing Credentials to your Administrator, understanding that this can result in Sub-Users and possibly other persons obtaining access to your Account without control or monitoring by us. It is your obligation to internally set, control and monitor authorization parameters and/or limits for each person you authorize to use the Service. You agree to use and implement each control (including template

management, verification, access, use of maximum process settings, security, audit and review procedures) to prevent unauthorized persons gaining access to Credentials or your Accounts.

**Responsibility For Communications In Your Name, Whether Or Not Authorized By You.**

You are responsible for and bound by any Communication we receive in your name through a Service if the Communication: (a) comes from an authorized representative, Administrator or Sub-User; or (b) is authenticated using Security Procedures, described herein, even if not authorized by you; or (c) is legally binding on you under the laws of agency, contract or otherwise. You agree that we may use the Security Procedures to verify the authenticity of Communications that are received by us in your name. If we verify the authenticity of a Communication or instruction received in your name using the Security Procedures, we may rely on it and you will be obligated on the Communication or instruction, whether or not it was authorized by you.

On the other hand, if a Communication or instruction was authorized by you or if you would otherwise be bound by it under this Agreement, you will be obligated on it even if we did not verify its authenticity using the Security Procedures and even if the Security Procedures would have prevented error. You agree that the Security Procedures are intended to verify authenticity and not to detect error.

**Responsibility for Security Procedures.**

In addition to the Credentials as Security Procedures, you may choose additional Security Procedures that we may offer or require. We may from time to time offer supplemental Security Procedures, and you agree to consider them. You agree to follow any instructions we provide to you about using, storing, or otherwise related to Security Procedures, including those on Schedule A.

You agree to consider the size, type and frequency of the payment orders or other money transactions you will or intend to use Services to accomplish. You agree to consider the risks presented by the possibility of unauthorized access to these Services, including the risk loss to you that we may process Communications and instructions that are your responsibility even though they were not authorized by you. You agree to use Services only after determining, and only for so long as you continue to determine, that the Security Procedures are a commercially reasonable method of providing security against unauthorized payment orders or other Communications. You agree and acknowledge that the Security Procedures are commercially reasonable for you and that you will be bound by instructions or Communications in your name, as set forth above.

We reserve the right to offer to you or require you to use additional security authentication tools or methods as part of the Security Procedures from time to time. If you choose not to implement the supplemental authentication tools, your access to some or all of the Service may be limited. The term "Security Procedures" will include any supplemental authentication tools that are used by you. Your continued use of any modified Security Procedures will evidence your agreement that the modified Security Procedures are commercially reasonable for Customer's use of the Services.

You agree to take appropriate steps to ensure that all Security Procedures, including Credentials, are protected and kept confidential, including that the Administrator and Sub-Users do not share or disclose Credentials to third parties or with the Administrator or other Sub-Users. You assume all risks associated with disclosure of any part of the Security Procedures, including to your employees, agents or other third parties. You agree to limit disclosures of Security Procedures to those employees or agents you authorize to access the Services on your behalf, or who have a specific need to know the Security Procedures. You agree to follow all requirements and guidance that may be outlined in the Supporting Documents.

In your review of the Services, including those aspects of the Services pertaining to the issuance, use, and protection of Credentials and Security Procedures, you agree to notify us if your use of the Services would necessitate or be better served by a level of security that exceeds that offered by the Services. If you fail to notify us, then you acknowledge and agree that the Security Procedures of the Services are appropriate for your needs and will provide you with a commercially reasonable degree of security against unauthorized use.

**Refusal to Process Communications.**

We may delay or refuse to process any requested Service, including payment orders or other money transactions, or any other Communication from you. We may do so for any reason or for no reason. We may provide notice to you but are not obligated to do so. We may delay or refuse processing, for example, if: (a) processing would or may exceed the available funds in your affected Account; (b) the Communication is not authenticated to our satisfaction or we believe it may not have been authorized by you; (c) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (d) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (e) processing would or may cause a violation of any Laws or Rules applicable to you or to us; or (f) for any other reason under this Agreement. In addition, we shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

**Limitations on Liability.**

Unless otherwise required by applicable law, we are only responsible for performing Services as expressly stated in this Agreement and will only be liable for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct.

IN NO EVENT WILL WE OR ANY OF OUR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS, OR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOSS OF DATA, FILES, PROFIT OR GOODWILL OR THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICE), INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER IN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SERVICES, OR THE INABILITY TO USE THE SERVICES, IRRESPECTIVE OF WHETHER WE HAVE OR HAVE NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE THE LESSER OF THE AMOUNT YOU ORIGINALLY PAID FOR THE SERVICE, PRODUCTS OR MATERIALS OR \$15,000.

You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with the Services. You acknowledge that Service fees have been established in contemplation of: (A) these limitations on our liability, (B) Your agreement to review statements, confirmations, and notices promptly and to notify us immediately of any discrepancies or problems; and (C) Your agreement to assist us in any loss recovery effort.

We will not be obligated to honor, in whole or in part, any transaction or instruction or Communication which:

- Is not in accordance with any term or condition applicable to the relevant Service or Account;
- We have reason to believe may not be authorized by you or any third person whose authorization we believe is necessary or involves funds subject to hold, dispute, restriction or legal process we believe prevents their withdrawal, transfer or availability;
- Would result in us exceeding any limitation of our net funds position established pursuant to present or future Federal Reserve guidelines;
- Would violate any applicable law, rule or regulation, or any guidance or directive of any federal or state regulatory authority;
- Is not in accordance with any other requirement of our applicable policies, procedures or practices; or
- We have reasonable cause not to honor for our or your protection.

**Indemnification.**

Except to the extent that we are liable under the terms of this Agreement, or of any agreement that otherwise governs your Account, you agree to indemnify and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from any and all third party claims, liability, damages and/or costs (including but not limited to reasonable attorney's fees) arising from: (1) an Account; (2) the performance of a Service; (3) a third party claim, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; (4) any fraud, manipulation, or other breach of these terms; (5) any third party claim, action, or allegation brought against us arising out of or relating to a dispute with you over the terms and conditions of an agreement, purchase or sale of any goods or services; (6) your violation of any Law or Rule or of the rights of a third party; (7) your use, or the provision of Services or use of your Account by any third party; or (8) any transaction or instruction or Communication from you to us. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. You will not settle any action or claims on our behalf without the prior written consent from us. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your authorized representative. This indemnification provision survives termination of this Agreement.

**Data Retention.**

You will retain data on file adequate to permit remaking or reconstruction of all requested Services (including payment orders or other money transactions) for one year following the date of the execution of the request to which such data relate and will provide the data to us upon our request. You agree to determine promptly the accuracy of all records and information regarding a Service and to notify us immediately of any errors in such records or information. Nothing in this Agreement relieves you from: (a) any responsibility imposed by law, regulation, or contract with regard to the maintenance records; or (b) any responsibility to perform audits and account reviewers customarily conducted by persons or entities whose businesses are similar to your business.

**Advice of Payment; Duty to Examine.**

You agree to examine any records or monthly account statements promptly upon receipt. You will notify us immediately, and in no event later than 14 days after receipt of the record or account statement, whichever is earlier, of the existence of any errors, unauthorized transactions, or irregularities reflected on the record or on the account statement. If you fail to notify us of any such discrepancy within 14 calendar days of receipt of the record or statement containing such information, you agree that we will not be liable for any other losses resulting from your failure to give such notice or for any loss of interest with respect to a transaction that is or should have been shown. Except to the extent expressly limited by applicable law, if you fail to notify us of any such discrepancy within one year of receipt of such statement or report, you will be precluded from asserting the discrepancy against us. For purposes of this Section, you will be deemed to have "received" a periodic statement at the earlier of the time that: (a) we first make it available to you for pick-up; or (b) the statement or the information is mailed or otherwise made available to you digitally.

**Providing Personal and Financial Information.**

You agree to provide true, accurate, current, and complete personal and financial information about yourself and about your affiliates as requested. You agree to not misrepresent your identity.

**Collection.**

If we initiate collection proceedings against you in an effort to recover any amounts owed, you agree to reimburse us for all costs and expenses, including attorneys' fees. "Attorneys' fees" includes reasonable charges for the time expended by in-house counsel.

**Audit and Inspection.**

We reserve the right, with prior notice to you, to enter upon your premises from time to time during regular business hours to verify that your operations and procedures are in compliance with the terms of the Agreement.

In connection with any such audit, you agree to furnish us with any documentation or information as is reasonably necessary to establish your compliance with the terms of the Agreement. If it is determined by us that additional procedures or controls need to be implemented by you, you agree to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.

In connection with our entry on your premises for the purpose of conducting an on-site audit or inspection, or in connection with providing support to you, we shall not be liable or responsible to you or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into your system, including any which allegedly delay, alter or corrupt your data, whether related to the transmission of check images or other data or whether caused by the equipment, software, Internet service providers, Internet browsers, or other parties providing communication services to or from us to you.

#### **Corporate Authority; Partnership Authority.**

If you are a corporation or LLC, the person signing this Agreement on behalf of the corporation or LLC represents and warrants that he or she has full authority to do so, and that this Agreement binds the corporation or LLC. If you are a partnership, the person signing this Agreement for you represents and warrants that he or she is a general partner of the partnership, that he or she has full authority to sign for the partnership and that this Agreement binds the partnership and all general partners of the partnership. You shall give written notice to us of any general partner's withdrawal from the partnership.

#### **Wire Transfer Services**

You are responsible for all wire transfer payment order requests ("Requests") to the fullest extent provided by law and as set forth in this Agreement. All Requests must be submitted through the Service and may include the ability for you to upload to the Service file information for multiple Requests. We may choose the funds transfer mechanism (for example, FedWire, correspondent bank transfer, internal transfer) to be used when acting on upon your Request.

*Security Procedures.* If we act on a Request in compliance with the Security Procedures, then you will be obligated on the Request and it will be treated as your Request, whether or not authorized by you. Any Request received by us will be treated as yours and will bind you whether or not we complied with the Security Procedures, and regardless of whether the Request was erroneous in any respect or that any loss would have been prevented if we had complied with the Security Procedures agreed to, and if applicable chosen, by you as long as: (i) the Request is authorized by you; (ii) the Request is delivered to Bank directly or indirectly by an authorized representative ("Representative"), regardless of whether the Representative utilizes the Credentials belonging to such person or another Representative; or (iii) you would otherwise be legally bound by the Request.

Notwithstanding the foregoing, we are not obliged to act on a Request that is not transmitted in accordance with the Security Procedures. However, we reserve the right to act on an incomplete Request at our sole discretion, including but not limited to, if in our reasonable opinion it contains sufficient information. We have no duty to discover, and shall not be liable for, errors or omissions made by you or the duplication of any Request by you.

*Payment Account Designation.* When you initiate a Request, you authorize us to charge the designated Account for the amount of the payment, plus any applicable fees and charges imposed by us or by any intermediary bank. Each Request authorizes us and any intermediary bank to obtain payment for fees and expenses, including our and those of any (including subsequent) intermediary bank(s). We and any intermediary bank may obtain payment by issuing a payment order in an amount that is reduced by the amount of these fees and charges. We may but are not obligated to provide you with advance notice of intermediary bank fees and charges. You agree that we may retain or be paid a portion of any fees or charges imposed or collected by an intermediary bank. You agree that if an intermediary bank is used whose fees and charges are not disclosed to you in advance, then we are not liable in any

manner whatsoever for any losses or damages you may suffer as a result of that bank's processing a payment order in an amount less than the payment order given requested by you.

*Foreign Currency Transactions.* Subject to the terms and conditions of this Agreement, when we offer U.S. currency Requests to be sent to foreign countries, you agree to the following:

- You may use the Wire Transfer Service contemplated under this Agreement to send a Wire Transfer to a foreign country in foreign or U.S. dollars. We may communicate to you through the Service the exchange rates available at that time to us, our intermediaries or our correspondents; however, the exchange rates communicated to you may vary from the actual exchange rates ultimately applied to the particular wire transfer;
- If, for any reason the Wire Transfer is returned, the refund will be in U.S. dollars or in foreign currency, as received by us;
- If the Wire Transfer is received in U.S. dollars, then one or more sending banks may have engaged in currency conversions and you will get the amount of U.S. dollars after the conversion of the foreign money, whether based on the buying rate of the bank(s) converting the currency to U.S. dollars on the date of the refund, or based on our current conversion rate and less any charges and expenses incurred by us; and
- The exchange rates used for processing may be a rate selected by us or other intermediaries from a range of rates available in wholesale currency markets, which rate may vary from the rate we and the other intermediaries themselves receive, or the government-mandated rate (if any) in effect (these rates may not be the lowest available to you, or to us or other intermediaries).

*Inconsistencies.* If a beneficiary of a Request is identified by both names and account number, payment may be made by us and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and identifying number, we and other financial institutions may rely on the identifying number even if the name and the identifying number are not consistent or identify different parties.

*Refusal to Process Request.* We reserve the right to, in our sole discretion, delay or refuse to process any Request, including inbound or outbound transfers. We may do so for any reason or for no reason. We may provide notice to you but are not obligated to do so. Without limiting the foregoing, we may delay or refuse processing, for example, if: (a) processing would or may exceed the available funds in your affected account; (b) the Request is not authenticated to our satisfaction or we believe it may not have been authorized by you; (c) the Request contains incorrect, inconsistent, ambiguous, or missing information; (d) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (e) processing would or may cause a violation of any Laws or Rules; or (f) for any other reason. In addition, we shall be excused from failing to transmit or delay in transmitting a Request if such transmittal would result in Bank having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise may violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

*Provisional Credit.* When we give you credit for an incoming payment order, it is provisional until we receive final settlement for the payment order. If we do not receive final settlement, we must return the funds previously credited to your account, and the person who sent the payment order will not be treated as having paid you.

*Subject Rules and Regulations.* You acknowledge that any Request executed by us will be subject to rules and regulations applicable to payment orders, including recordkeeping and information transmittal requirement under federal Bank Secrecy Act and its implementing regulations. You acknowledge and agree that we may capture and transmittal information regarding a Request (for example, beneficiary's name and address, other beneficiary identifiers and beneficiary's account number) as part of the processing of a Request. You agree to assist us in connection with any requirements imposed on us fulfilling our obligations in this regard.

*Cancellation or Amendment.* You shall have no right to cancel or amend any Request after we receive it. However, we may at our discretion use reasonable efforts to act on your request to cancel or amend a wire transfer if such request is received by us before the completion of the wire transfer in accordance with any security measures you

have chosen. We will have no liability if such cancellation or amendment is not effectuated. You agree to indemnify and hold us harmless from any liability, costs or expenses we may incur as a result of following your cancellation or amendment requests.

## **ACH Service**

The ACH Service allows you to initiate credit and/or debit Entries by means of the Automated Clearing House Network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("NACHA") and the local Automated Clearing House Association (the "Rules"). All Entries must be submitted through the Service and may include the ability for you to upload to the Service file information for multiple Entries. We are willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. Accordingly, you may submit ACH Entries to us in accordance with the terms and conditions of this Agreement. You are responsible for all Entries to the fullest extent provided by law and as set forth in this Agreement.

*The Rules.* A copy of the Corporate Edition of the Rules can be purchased from NACHA at [www.NACHA.org](http://www.NACHA.org). You agree to obtain a copy, to understand and be familiar with the Rules, and to be responsible for keeping up to date with changes in the Rules. You agree that information or advice you receive from us as to the Rules or the operation of the Rules is not legal advice and is not a substitute for your obligation independently to understand and comply with the Rules. You further acknowledge and agree that we reserve the right to terminate your ACH Service or your Account if you breach or otherwise fail to comply with the Rules.

*Processing Entries.* You shall transmit PPD (Prearranged Payments and Deposits) or CCD (Corporate Credit or Debit) credit or debit Entries to us in compliance with the formatting and other requirements set forth in the Rules and the Supporting Documents. The ACH Service will start on a date agreeable to us after all set up requirements have been completed.

You agree that the use of Security Procedures described in this Agreement applicable to Communications will apply to the processing of ACH Entries that are received by us in your name. If we verify the authenticity of a Communication or instruction received in your name for ACH Entries using the Security Procedures, we may rely on it and you will be obligated on the Communication or instruction, whether or not it was authorized by you, and you agree that such Security Procedures are commercially reasonable for your purposes prior to initiating the ACH entries.

You will not submit individual or total monthly Entries in excess of the maximum limits established by us and reflected in the Supporting Documents, as amended from time to time. The parameters and variations of the limits shall be set at our discretion, including but not limited to limits based on dollar amounts and/or Standard Entry Class Code types. You will not divide a transaction into more than one Entry in order to avoid these limitations. We may adjust these limitations from time to time, at our discretion. You will be notified of your maximum limits in writing or by email or other digital delivery and your continued use of the ACH services will constitute your acceptance of these limits. Our processing of Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing Entries in a greater amount at any time without prior notice.

You may not originate Entries using Standard Entry Class Codes other than CCD or PPD without prior notice to and written approval from us. We may require you to submit an application in form and content acceptable to us, and your execution of supplemental schedules, agreements and other documents as we may require, as a condition precedent to your use of other Standard Entry Class Codes. By way of example, the foregoing restrictions and requirements may apply to your use of ARC, RCK, BOC, POP, WEB, IAT or TEL Standard Entry Class Codes, or if you are engaging in cross-border (International) transactions. We may block unapproved use of a Standard Entry Class Code or an unapproved cross-border transaction.

Except as provided below for On-Us Entries, we shall: (i) process Entries received from you to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an ODFI to an ACH Operator selected by us in our sole discretion ("ACH Operator"), and (iii) settle for such Entries as provided in the Rules. We shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, one business day prior to the Effective Entry Date shown in such Entries, provided: (a) such Entries are received by our related cut-off time



on a business day, (b) the Effective Entry Date is at least two business days after such business day, and (c) the ACH Operator is open for business on such business day. Entries shall be deemed received by us when the transmission and compliance with any related Security Procedure is completed. If any of the requirements of this paragraph are not met, we may use reasonable efforts to transmit such Entries to the ACH by the next deadline of the ACH Operator which is a business day and a day on which the ACH Operator is open for business.

Except as provided below for On-Us Entries, we shall: (i) process Entries received from you to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an ODFI to an ACH Operator selected by us in our sole discretion ("ACH Operator"), and (iii) settle for such Entries as provided in the ACH Rules. We shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, one business day prior to the Effective Entry Date shown in such Entries, provided: (a) such Entries are received by our related cutoff time on a business day, (b) the Effective Entry Date is at least two business days after such business day, and (c) the ACH Operator is open for business on such business day. Entries shall be deemed received by us when the transmission and compliance with any related Security Procedure is completed. If any of the requirements of this paragraph are not met, we may use reasonable efforts to transmit such Entries to the ACH by the next deadline of the ACH Operator which is a business day and a day on which the ACH Operator is open for business.

*On-Us Entries.* In the case of an Entry received for credit to an account maintained with us (an "On-Us Entry"), we shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in this Agreement are met. If said requirements are not met, we may use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.

*Notice of Returned Entries.* We will notify you by phone or digital transmission, including email of the receipt of a returned Entry from the ACH no later than one business day after the business day of receipt. Except for an Entry retransmitted by you in accordance with the requirements of this Agreement, we shall have no obligation to retransmit a returned Entry to the ACH if we have complied with the terms of this Agreement with respect to the original Entry.

*Prenotifications.* If you choose to originate non-dollar prenotification Entries to verify the accuracy of routing and account numbers, you agree not to initiate live dollar Entries until at least three (3) business days following the Settlement Date of the prenotification Entry. Prenotifications must be provided to us in the format provided in the Rules. If you receive notice that a prenotification has been rejected or returned, you agree to research the problem and make any necessary corrections before transmitting another Entry.

*Notifications of Change.* We will notify you of all Notifications of Changes (NOC) received by us relating to Entries transmitted by you by mutually agreeable means, including email, no later than one business day after the business day of receipt. You must make the changes specified in an NOC or corrected NOC: (a) within six business days of receipt or prior to initiating another Entry to the Receiver's account, whichever is later; or (b) as otherwise required in the Rules if the Rules specify a different time for correction.

*Prefunding; Payment.* We may designate you as "ACH Prefunding," and we may change your designation to or from ACH Prefunding at any time, with or without cause and at our sole discretion. We will inform you of your designation as ACH Prefunding, and of any change in the designation.

You will pay us, in immediately available funds, an amount equal to the sum of all credit Entries or debit Reversals related to Entry data delivered to us at such time as we may from time to time designate or, if not otherwise designated: (a) if you are not designated ACH Prefunding, no later than two business days prior to the Effective Entry Date; and (b) if you are designated ACH Prefunding, no later than the date of transmittal of the related Entry data to us or at such other time as we may have established for you.

*Inconsistencies.* If a Receiver of an Entry is identified by both name and account number, payment may be made by us and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and account number, we and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

*Provisional Credit.* You agree that any payment by us to you for any debit Entry, returned credit Entry or credit Reversal is provisional until we have received final settlement for such Entry. We may delay availability of provisional funds at our discretion. If final settlement is not received, we are entitled to and you agree to pay a refund of the amount credited; and we may charge your account for the amount due. We may refuse to permit the use of any amount credited for a debit Entry or credit Reversal if we believe that there may not be sufficient funds in your account to cover chargeback or return of such Entry or Reversal.

*Your Representations and Warranties.* In addition to the representations and warranties provided by you under the Agreement, with respect to each and every Entry initiated by you, you represent and warrant to us and agree that:

- You shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two years after they expire, and other documents related to Entries for a period of six years. Without limiting the foregoing, each person as the Receiver of an Entry received by us from you has authorized the initiation of such Entry, and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry. You will provide us with a copy of such authorization whenever requested to do so within five business days. Such authorization is operative at the time of transmittal or crediting / debiting by us as provided herein;
- Entries transmitted to us by you are limited to those types of credit or debit Entries set forth in this Agreement;
- If the amount of a debit Entry to a Receiver's account varies in amount from the previous debit Entry relating to the same authorization or preauthorized amount, you will, at least ten days before the Effective Entry Date of such debit Entry, send the Receiver written notice of the amount of such debit Entry and its Effective Entry Date, unless the Receiver has previously been notified of Receiver's right to receive such notice and Receiver has elected to receive such notice only when the debit Entry does not fall within a specified range of amounts or varies from the most recent debit Entry by an agreed amount;
- If any change is made by you in the scheduled Effective Entry Date of one or more debit Entries, you will, at least seven days before the Effective Entry Date of the first such debit Entry to be affected by such change, send the Receiver a written notice of the new Effective Entry Date(s) of such Entry or Entries;
- You shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the treatment of a payment of an Entry by the Receiving Depository Financial Institution ("RDFI") to the Receiver as provisional until receipt by the RDFI of final settlement for such Entry;
- You specifically acknowledge that you have received notice of the Rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and you shall not be deemed to have paid the Receiver the amount of the Entry;
- You will not use the ACH Service to collect: (i) payments for goods or services sold by third parties; (ii) payments relating to marijuana related businesses, adult entertainment, gambling services, or child pornography; (iii) obligations owing to third parties; or (iv) obligations related to cash advances by you;
- You hereby make the same representations and warranties to us with respect to Entries sent by us to an ACH Operator upon your authorization as we are deemed to make under the Rules, and we shall have no responsibility with respect to matters so represented and warranted by you; and
- Except as previously disclosed in writing by you to us: (i) you are not a "money-services business" (as defined at 31 CFR 103.11(uu) or successor regulation) and are not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (ii) no Entry data is submitted by you on behalf of, or as agent, service bureau or processor for another. By way of example, you will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver.

You agree to indemnify us against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

*Retention.* In addition to any retention obligations of yours under this Agreement, you agree to retain and make readily available to us on request all information necessary to remake any files of Entries for ten business days following the Settlement Date.

*Audit.* In addition to the audit commitments provided under the Agreement, if transactions you conducts involve some use of the Internet, then you agree to conduct an internal security audit at least annually to ensure that the financial information obtained from Receivers is protected by security practices and procedures ("security audit") that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; (iii) network security to ensure secure capture, storage, and distribution of financial information; and (iv) any other items identified in the Operating Guidelines of the Rules. Upon our request, you agree to have an external security audit conducted within sixty (60) days of the request. The external security audit will include the same items described in this paragraph for an internal security audit. You agree to provide us with a copy of each internal and external audit report, as applicable, in a format acceptable to us within (30) days from the completion of the audit.

Without limiting the foregoing, you specifically agree to establish data security policies, procedures and systems as required by the Rules. This requires you to:

- Protect the confidentiality and integrity of Protected Information;
- Protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and
- Protect against unauthorized use of Protected Information that could result in substantial harm to a natural person.

Such policies, procedures, and systems must include controls that comply with applicable regulatory guidance on access to all systems used by you to initiate, process and store Entries. NACHA defines Protected Information as the nonpublic personal information, including financial information, of a natural person used to create or contained within an Entry and any related Addenda record.

### **Check Positive Pay Service**

The Check Positive Pay ("Positive Pay") Service is an optional Service which provides an effective way to manage the risk of loss from fraudulent check issuance or payment. Our Positive Pay Service allows you to identify Exception Items, as defined herein under "Definitions", by reviewing digital images of Exception Items and to instruct us whether to pay or return those checks. In addition, you may establish ACH transaction rules to monitor ACH Items as further described below.

On each Business Day, we will provide you with an Exception Items Report of checks presented to us for payment on the prior Business Day, which have been identified as Exception Items based on information you have provided to us. Exception Items are determined by comparing the Check Information from the checks listed on your Issued Checks File with the check Information that is encoded on that Business Day's Presented checks that are presented to Bank for payment against your Account (either by other depository institution or, where applicable, for cashing at one of our branches). This comparison will be done only on the Business Day Presented Checks are received by Bank. Also, the comparison will be done only against the checks that are on the Issued Checks File. It is your responsibility to submit the Issued Checks File in the proper format and time specifications as set forth in the User Agreement provided at the time of application for the Positive Pay Service. If the Check Information matches exactly, the Positive Pay Service will treat the matching items as validly issued and properly payable, and will process those items for payment, assuming you have sufficient available funds in your Account for the payment. If there are checks presented to Bank on or as of that Business Day that do not match the Check Information as set forth in your Issued Checks File, the Bank will notify you of these mismatch checks by providing you an "Exception Items Report" as further described below.

As an alternative, you may choose an option under which we report all checks presented for payment, in which case we will treat all such Checks as Exception Items.

*Definitions.* Unless otherwise defined in this Agreement, capitalized words or phrases used in this Agreement shall have the meanings set forth in California Uniform Commercial Code Division 3 – “Negotiable Instruments” and California Uniform Commercial Code Division 4 – “Bank Deposits and Collections.”

“*Check Information*” means check number and dollar amount, or such information identifying a check issued by you as Bank may require from time to time.

“*Exception Item*” means a Presented Item that does not match the checks listed or identified on the Issued Checks File or ACH Exception File provided to Bank via the Bank’s Positive Pay Service.

“*Exception Items Report*” means a record of Exception Items, which is provided by the Bank via the Positive Pay Service to you.

“*Issued Checks File*” means a cumulative list of all checks, uploaded by you through use of the Positive Pay Service to the Bank, which have been issued by you but have not been presented and are otherwise approved for payment under this Agreement.

“*Presented Check*” means a check drawn on the Account and presented to the Bank for payment through the check collection system. A check presented to the Bank by the payee directly (for example, over-the-counter) or otherwise outside of the Bank’s automated check collection system will not be a Presented Check and will not be governed by this Agreement.

“*Return Items File*” means a record describing Exception Items listed on the Exception Items Report that you do not want to be paid, which is provided via the Positive Pay Service by you to the Bank as described below.

*Issued Checks File.* You must submit an Issued Checks File to Bank prior to the cutoff time that the Bank establishes for this purpose from time to time (“Cutoff Time”) in accordance with the file format specifications established in the User Guide provided at the time the Positive Pay Services were applied for. The Issued Checks File must be uploaded to the Check Positive Pay Service of Bank’s Service by the Cutoff Time, defined as 10:00 a.m. PST on any Business Day, for files to be updated through end-of-day processing. Only those checks listed on a validly prepared and uploaded Issued Checks File will be part of the Check Positive Pay Service. Any Issued Checks File uploaded after the Cutoff Time may not be included with the Bank’s end-of-day processing until the next banking day.

*Exception Items Report.* Bank will make an Exception Items Report available to you each Business Day that Bank receives Presented Checks through the Service that contains Exception Items. The Exception Items Report lists the items that did not match your Issued Checks File. On the same day we report Exception Items to you, you must notify us, by the deadline specified below, which checks you want us to “pay” or which to dishonor and “return”. As described below, you will indicate which checks you want us to return, having been deemed by you to be fraudulent.

To have any Exception Items finalized as paid, you must review the Exception Items Report, assign a “Pay” decision for each Exception Item on the Return Items File via the Service for processing. If an Exception Item is not assigned a “Pay” decision on the Return Items File prior to 1:00 p.m. Pacific Time, our local time, or such other designated cutoff time to be established by the Bank from time to time, on the business day following the day of presentment of the Presented Checks, Bank will return all Presented Checks, including but not limited to Exception Items and non-matching items. If you have elected the option under which we report all checks presented for payment, in which case we will treat all such checks as Exception Items, and fail to timely “Pay” the Exception Item, the Bank will return the Exception Item unpaid but will not be liable for its return of the Exception Item.

Bank makes no representation or warranty regarding the effectiveness of the Exception Items Report and makes the Exception Items Report available only as an accommodation to you. You agree to indemnify, defend, and hold us harmless from every loss, liability and claim arising from information provided on, or excluded from, this Exception

Items Report by us. American Riviera Bank shall have no responsibility for any liability, loss or damage resulting from any payment of any Exception Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer, return of any Exception Item to American Riviera Bank, or Customer's failure to meet the deadlines for the Check Positive Pay Service. You understand that the fee for this Service has been established in contemplation of this limitation on Bank's liability.

You may only use the Check Positive Pay Service of the Bank's Service as a mechanism to instruct us to pay Presented Checks listed on the Exception Items Report and not for any other checks, including those checks presented prior to or after the banking day Bank sends the Exception Items Report. If you want to stop payment on any check, you must follow the proper stop payment procedures and requirements established by the Deposit Agreement, which shall be subject to the Bank's customary stop payment fee.

*Checks Covered by Service.* The Positive Pay (Check) Service applies to Presented Checks that are presented for payment to us through normal interbank clearings. It is not designed to compare your Issued Checks File against items that are presented in any other manner (e.g., at a teller window, through an automated teller machine, or by mail). At Bank's sole discretion, Bank may attempt to compare your Issued Checks File with such items; however, Bank will not be liable for Bank's failure or refusal to do so.

Bank assumes no duty to compare or otherwise to identify and/or return, checks not able to be processed on an automated basis, duplicate checks, checks with duplicate serial numbers, misencoded items, or checks lacking an encoded serial number. Bank may pay stale-dated and post-dated checks unless you timely submit a stop payment order or notice of post-dating for such items.

*Payee Positive Pay.* Payee Positive Pay uses Optical Character Recognition (OCR) to identify the payee on the check image. Customer shall refer to the Payee Match Implementation Guidelines provided at the time of application to minimize unnecessary Exception Items.

In reliance on the payee information provided by Customer, each Business Day, the Bank shall make reasonable efforts to report to Customer any payee names that do not match the Issued Checks File for that day's presentment. Customer shall supply the Bank with the payee name for each item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to the Bank. Customer acknowledges that the Bank will not be able to validate payee information for digitally converted items presented to Bank for payment.

*Reliance on MICR Encoding.* You agree that Bank will not be obligated to verify the authenticity of any check that matches the Check Information listed in your Issued Checks File. You understand and agree that Bank may compare your information on its Issued Checks File with information that is encoded on the items presented to Bank for payment. Bank will not be required to otherwise examine checks, or seek to confirm that they are properly signed, completed or encoded, or otherwise unmodified. You agree that Bank may rely on such a process and that the process will be deemed an acceptable standard of care for this Service and your Account. You understand that the Service may not identify altered, counterfeit or duplicate checks or checks with forged or unauthorized signatures. As such, you agree to review promptly all statements, returned checks, reports and other check and transaction information Bank makes available to you.

*Accuracy of Information.* You assume full responsibility for the completeness and accuracy of all information furnished to Bank. You understand that it is important that the information be exact, e.g., the correct amount in dollars and cents. Bank assumes no responsibility for detecting or correcting ambiguous, incomplete, untimely or inaccurate information provided by you. Bank's willingness to process nonconforming information will not be considered a waiver of any requirement of this Section, and Bank may discontinue processing nonconforming information without prior notice.

*Communications.* You or the Bank, at either's discretion, may each submit to the other party a revision of any communication provided for under this Section. The revised communication must: (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent; (ii) identify the original communication; (iii) clearly specify that it is a revision of the original or prior communication; and (iv) be sent in the format and

medium, and be received by the deadline(s) and at the place(s), established by the receiving party. A properly submitted revised communication serves to revoke the original communication.

Bank and you shall only use an Issued Checks File, Return Items File or Exception Items Report that complies with this Agreement, provided that either has not been timely revoked, in the handling of Presented Checks under this Agreement.

Bank and you shall not be obligated to comply with any communication not received by Bank, or received in a format or medium, after a deadline, or at a place not specified or agreed to under this Agreement but may instead treat such a communication as though it had not been received.

Bank is not responsible for detecting any error contained in any Issued Checks File or Return Items File sent by you to Bank.

*Lost or Destroyed Checks.* Any Presented Check that is damaged, lost or destroyed ("Damaged Checks") so as to be rejected by automated processing systems during processing will not be covered by this Agreement.

You and Bank will cooperate in the payment decision regarding processed Damaged Checks. You agree that Bank has discretion regarding returning a Damaged Check to the presenting bank or otherwise to any depository financial institution. This means that Bank is not obligated to (but may) return a Damaged Check, unless expressly instructed otherwise by you. You further agree that Bank's decision to return a Damaged Check does not obligate Bank to return future Damaged Checks. If Bank returns a Damaged Check, it may return the Damaged Check by any means reasonable, including by use of notice in lieu of return or by return of copies of the Damaged Check. Bank will use its best efforts to notify you of a Damaged Check.

*Remedies.*

*Commercial Code Liability.* To the extent applicable, the liability provisions of California Uniform Commercial Code Divisions 3 and 4 shall govern this Agreement, except as modified below.

*Wrongful Honor.* It shall constitute wrongful honor by Bank if Bank pays an Exception Item submitted in a timely and un-revoked Return Items File.

In the event that there is wrongful honor, Bank shall be liable to you for the lesser of the amount of the wrongfully paid Exception Item or your actual damages resulting from Bank's payment of the Exception Item, but for no other damages suffered as a result of the wrongful honor.

Notwithstanding the improper payment of an Exception Item, Bank expressly reserves the right to assert that you are liable for the amount of the wrongfully honored Exception Item on the grounds that the Exception Item was properly payable under Section 4-401(a).

Bank retains the right to assert your failure to exercise reasonable care under Sections 3-406(a) and 4-406(c). Bank's improper payment shall not in and of itself constitute a failure of the Bank to have exercised ordinary care under the loss allocation provisions of Sections 3-406(b) and 4-406(e).

Bank retains the right to assert the defense that you have sustained no actual damages because the Bank's honor of the Exception Item discharged for value an indebtedness of yours.

*Rightful Payment and Dishonor.*

If Bank honors a Presented Check that is listed on an Exception Items Report but that is not submitted on the Return Items File, such honor shall be rightful, and you waive any right you may have to assert that the Presented Check was not properly payable under Section 4-401.

If Bank honors a Presented Check that is listed on an Issued Checks File, such honor shall be rightful, and you waive any right you may have to assert that the Presented Check was not properly payable under Section 4-401.

If Bank dishonors a Presented Check that is listed on the Return Items File, the dishonor shall be rightful, and you waive any right you may have to assert that the dishonor was wrongful under Section 4-402.

You agree that Bank exercises ordinary care whenever it rightfully pays or returns a Presented Check consistent with the provisions of this Agreement.

### **ACH Positive Pay Service**

ACH Positive Pay allows Customers to view ACH exceptions and make decisions to pay or return them. You may use the ACH Positive Pay Service to review and confirm ACH debit and credit transactions that post to the specified Accounts either through blocking (the "ACH Blocking Service") or filtering (the "ACH Filtering Service") mechanisms.

If you select the ACH Filtering Service, whereby ACH transactions are compared against conditions, called payment rules ("Payment Rules"), which determine whether they will be charged to the specified Account or blocked. You shall establish (and update from time to time) through the Service ACH Payment Rules which govern permissible transactions by Originating Company ID, Standard Entry Class, Dollar Range, and/or Transaction Code, as specified further by Bank from time to time. If a transaction matches the condition criteria set by Customer, it will be processed and charged to the Customer's designated account and presented to Customer to make a decision whether to pay or return them. Alternatively, if you choose the ACH Blocking Service over the ACH Filtering Service, all incoming ACH transactions (debit or credit) may be treated as exceptions and available for your review.

You shall review exceptions you receive from Bank through the Online Banking Service and determine if the exceptions will be treated as authorized or unauthorized ACH transactions. It is your responsibility to review the ACH Exception Items Report and digitally communicate a pay decision or a return decision for all item exceptions. Decisions must be communicated using the Bank's Online Banking System prior to 1:00 p.m. Pacific Time, our local time, or such other designated cutoff time to be established by the Bank from time to time, on each business day where exceptions exist, in accordance with the User Guide provided at the time of application for the Positive Pay Services. If no decision is made by Customer to pay or return Exception Items by the deadline, the Exception Items will be returned.

You acknowledge that the ACH Positive Pay Service does not cover ACH debit or credit items which Bank has already paid or finalized, or which Bank is already committed to pay or honor under applicable laws, regulations or the ACH Operating Rules.

Bank shall compare incoming ACH debit and credit transactions against your established ACH policies and accept those transactions which are authorized under your ACH policies as established by you through the Service.

Bank shall submit to you as exceptions any ACH transactions which do not meet your ACH policies (unless you have chosen the ACH Blocking Service, in which case all ACH transactions may be treated as exceptions).

Bank shall make reasonable efforts to make exceptions available to you on each Bank business day prior to 1:00 p.m. Pacific Time, our local time, or such other designated cutoff time to be established by the Bank from time to time,

Bank will return and will reflect in your account records as posted and returned any ACH exceptions you do not choose to pay. Generally, unauthorized ACH debit transactions will be returned on the Bank business day following posting.

Bank shall default to a "return" decision for any exception for which you have not submitted a decision on the same Bank business day by the deadline established above. If you miss the deadline or fail to respond, the Bank will reject final payment of the Exception Item and the item(s) will be returned unpaid.

*System Interruption or Failure.* In the event of system interruption or failure, either of your system or the Bank's system, resulting in Bank's inability to receive or process your ACH file or other communication, the ACH file or other communication will be deemed as having not been sent by you, even if Bank has possession of the ACH file or other communication from you.

*Limitation on Liability.* In addition to any other limitation on liability in the Agreement, you agree that if Bank pays or rejects any ACH debit or credit in accordance with this Agreement, you release Bank and hold it harmless from any claim that the ACH debit or credit was not authorized by you.



## **SCHEDULE A**

### **Additional Security Procedures Requirements**

Exposure Limits will be assigned by Bank and communicated to Company via letter or email. The Company agrees to comply with the Exposure Limits as part of the Commercial Digital Banking Services Agreement, and that they may be amended from time to time by Bank. Bank will review Company Exposure Limits on a regular basis, not less than annually. Bank will provide written notice to Company before or promptly after any amendment.

#### **Wire Transfer Accounts**

By default, all Company users given access to originate wire transfers will be able to originate wires out of any account that user has access to. Bank recommends that Company limit wire origination access to only the accounts that will be used to originate wires.

#### **Wire Transfer Alerts**

You may set up automatic alerts in the System to notify you by text message or email each time a wire transfer is initiated. Each user has the ability to manage their own alert(s).

#### **Company Wire Transfer Review**

The System has a security feature which, if turned on, requires any wire transfer created by a user to be reviewed and approved by a second user. If you elect to use this feature, all wire transfers initiated by users given access to wire services by the Company's designated Company Administrator(s) must be reviewed by a second Company user. Contact Company Administrators can assign specific users with the review ability. If you do not elect to use this feature, users given access to wire services by the Company's designated Company Administrator(s) can initiate wire transfers without review by a second Company user.

#### **ACH Origination Accounts**

Files must be transmitted or delivered to Bank, using encryption and security standards agreed to by Bank and Company.

All files transmitted from the Company will contain debit and credit entries that offset in a net zero (\$0.00) balance condition. All Company outgoing credits will equal the Company's "on-us" debit entry. All Company outgoing debits will equal the Company's "on-us" credit entry. Any outgoing reversing entries processed by Company will balance to an offsetting Company "on-us" adjusting entry.

By default, all Company users given access to originate ACH transactions will be able to originate ACH transactions out of any account that user has access to. Bank recommends that Company limit ACH origination access to only the accounts that will be used to originate ACH.

#### **ACH Origination Alerts**

You may set up automatic alerts in the System to notify you by text message or email each time an ACH transaction is initiated. Each user has the ability to manage their own alert(s)

#### **Company ACH Origination Review**

The System has a security feature which, if turned on, requires any ACH origination created by a user to be reviewed and approved by a second user. If you elect to use this feature, all ACH origination initiated by users given access to ACH by the Company's designated Company Administrator(s) must be reviewed by a second Company user. Contact Company Administrators can assign specific users with the review ability.. If you do not

elect to use this feature, users given access to ACH services by the Company's designated Company Administrator(s) can initiate ACH origination without review by a second Company user.

### **Remote Deposit Capture**

You will be solely responsible for establishing, maintaining, and following such security protocols as deemed necessary to ensure that output files transmitted directly to Bank are intact, secure and confidential until received by Bank.

The Company agrees to implement security procedures that Bank may offer to verify the authenticity of any output files transmitted to Bank in the name of the Company. Regardless of the security procedures implemented by the Company, you agree that Bank may rely on, and the Company will be obligated on the output file, whether or not the output file was authorized by the Company. Also, if an output file was authorized by the Company, you will be obligated on the output file even if Bank did not verify its authenticity using the security procedures and even if the security procedures would have prevented error. The Company agrees that the security procedures are intended to verify authenticity and not to detect error.

The Company shall comply with online instructions for using the Product and Service by the use of a firewall to prevent unauthorized access, taking reasonable steps to safeguard the confidentiality and security of any passwords, equipment, and other proprietary property or information provided in connection with the Service. An annual review will be performed, and the customer will be expected to provide information that is requested at that time.

The Company shall limit access to any passwords and equipment to persons who have a need for such access, closely and regularly monitor the activities of employees who access the Service; notify Bank immediately if the Company has any reason to believe the security or confidentiality required by this provision has been or may be breached; and immediately change the password if the Company knows or suspects the confidentiality of the Password has been compromised in any way. Security procedures are not designed for the detection of errors, e.g., duplicate transmissions of Imaged Items or errors in information provided to Bank. Bank is not obligated to detect errors by the Company.

Bank may elect, at Bank's discretion, to verify the authenticity or content of any transmission by placing a call to any authorized signer on the Company's Account or any other person designated by the Company for that purpose. Bank may deny access to the Service without prior notice if unable to confirm any person's authority to access the Service or if Bank believes such action is necessary for security reasons.

The Company warrants each time Imaged Items are transmitted using the Product and Service that Bank's security procedures are commercially reasonable (based on the normal size, type, and frequency of transmissions). The Company agrees to be responsible for any transmission Bank receives through this Service, even if it is not authorized by the Company, provided it includes a password or is otherwise processed by Bank in accordance with this security procedure.

## SCHEDULE B

### Remote Deposit Capture Service Description

1. **Background.** Bank offers the Product and Services for the conversion of Checks to Substitute Checks or Electronic Checks, which would enable Customer to transmit paper checks converted to Imaged Items to Bank for processing and deposit into the deposit account of Customer maintained at Bank ("Account(s)").
2. **Definitions.** Capitalized terms defined in this Agreement shall have the meanings indicated in this Agreement.
3. **Services.** Bank will provide to Customer the Product and Services described in this Agreement to enable Customer to transmit Imaged Items to Bank or the Bank's designated processor to be cleared as Substitute Checks or Electronic Checks. Bank and Customer will comply with the terms and provisions of this Agreement with respect to the use of the Product and the performance of the Services.
4. **Implementation.** Customer will capture digitized images of Checks using Software and equipment provided by or through Bank or other software and equipment acceptable to Bank and will ensure that the output files are compatible with the Product. Any software necessary shall be maintained by Customer, except as the parties may otherwise agree in writing, and must meet technical specifications acceptable to Bank. Customer shall transmit its output files as provided in the Supporting Documents.
5. **Customer Responsibilities.** In connection with the Product and the Services, Customer shall comply with the following:
  - 5.1. **Customer's General Responsibilities.**
    - 5.1.1. Customer shall maintain one or more bank accounts at Bank for the receipt of deposits of Items.
    - 5.1.2. Customer shall be responsible for training its own employees in the use of the Product and Services subsequent to the initial training provided by Bank.
    - 5.1.3. Customer may only use the service to deposit original paper checks that are payable to you. You may NOT use the Service to deposit:
      - (i) Checks payable to a third party;
      - (ii) A check drawn on your account at another bank or a related business;
      - (iii) Demand drafts or remotely created checks (i.e. checks lacking the original signature of the drawer);
      - (iv) Substitute Checks (i.e. checks created from an electronic image);
      - (v) Checks that are irregular in any way (e.g. where the numerical and written amounts are different);
      - (vi) Checks that have previously been returned unpaid for any reason;
      - (vii) Checks that are postdated more than 6 months old;
      - (viii) Checks drawn on a foreign bank or payable in a foreign currency;
      - (ix) Checks payable to "cash;"
      - (x) State Warrants; or

(xi) Any Check or Checks that exceed the transaction limitation(s) that we establish for your account.

- 5.1.4. Customer will (i) ensure that Checks are restrictively endorsed with the words "For Remote Deposit Only at American Riviera Bank" to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks as set forth in paragraph 5.1.11 and in the Supporting Documents, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.
- 5.1.5. Customer will use the Product and Services, including the entering, processing and transmittal of Imaged Items, in accordance with the Supporting Documents. In addition, Customer will provide, at its own expense, an Internet connection, such as via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Service, all of which must satisfy any minimum requirements set forth in the Supporting Documents or as otherwise may be acceptable to Bank. Customer will provide, or obtain from another party selected by Customer at Customer's expense, support and maintenance of such Internet connection and all other computer hardware, Software, and equipment required to use the Service, including without limitation troubleshooting Internet connectivity issues with Customer's internet service provider (ISP), and Bank will not be responsible therefore.
- 5.1.6. Customer shall be responsible for verifying Bank's receipt of Customer's transmission(s) by verifying that deposits have been posted to the appropriate Accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
- 5.1.7. Customer shall be responsible for installing and implementing any changes and upgrades to the Product and Services as required by the Bank within 5 days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Product and Services. Customer will ensure that the equipment for the Service is clean and operating properly, and inspect and verify the quality of images and ensure that the digitized images of Items are legible for all posting and clearing purposes.
- 5.1.8. Customer shall exercise due care in preserving the confidentiality of any user identification, password, or other code or authentication method provided by the Bank or otherwise required for use of the Service and shall further prevent the use of the Service by unauthorized persons. Customer assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Service or disclosure of any confidential information or instructions by Customer, its employees and agents.
- 5.1.9. Customer will retain each Original Check in accordance with the Supporting Documents. If not directed otherwise by the Bank and except as provided in paragraph 5.1.6, **Customers will store Original Checks in a locked and secure environment for such time as Customer deems necessary and advisable for a period of 45 days after such Item has been digitized and processed.** Customer shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to Original Checks, and (b) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties. Customer will promptly (but in any event within 5 business days) provide any retained Original Check (or, if the Original Check is no longer in existence, a sufficient copy of the front and back of the Original Check) to Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as Bank otherwise deems necessary. **Customer will use a commercially reasonable method which is consistent with any requirements of Regulation CC and approved by Bank to destroy Original Checks after Customer's retention period has expired.**
- 5.1.10. Customer understands and agrees that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Customer and Customer's Account charged for the amount of the Item plus any associated fee as disclosed in Bank's schedule of fees located at <https://arb.bank/fees>. Bank's right to charge the Account of Customer will apply without regard to whether the Item is timely returned to Bank or whether there is any other claim or defense that the Item has been improperly returned to Bank.

- 5.1.11. Customer shall maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Agreement.
- 5.1.12. Customer represents, agrees and warrants to Bank that (except as otherwise specifically disclosed in writing to Bank) Customer is not now engaged, and will not during the term of this Agreement engage, in any business that would result in Customer being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations.
- 5.1.13. Customer will not engage in any activity directly or indirectly related to the use of the Service that is illegal or fraudulent.

## **5.2. Remote Deposit Capture Service.**

- 5.2.1. Customer's Account will be provisionally credited upon Bank's acceptance of Imaged Items for deposit which are received by Bank from Customer through the Service. On a case-by-case basis, the bank reserves the right to place a hold on funds deposited in compliance with the provisions of bank Regulation CC.
- 5.2.2. Customer will create images of Checks by use of iPhone, Android, or scanning hardware and Software approved or provided by Bank. Customer will enter all amounts and any other required information correctly.
- 5.2.3. The Imaged Items will be transmitted by Customer to Bank, or Bank's authorized processor, over the Internet through a web-based interface.
- 5.2.4. Bank will maintain the appropriate Account for Customer to receive credit and provide other specific information required by Bank related to the Service. In addition to the accounts identified on the enrollment form, accounts opened after this form has been signed and added to Remote Deposit set up will fall under the same terms and conditions set forth in this agreement as the original accounts do. This includes accounts that have similar signers, even if the Tax Identification Number is different. As set forth in paragraph 9.2, all deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank at Bank's sole discretion. All deposits are subject to the terms of the Deposit Account Agreements.

**6. Compliance with Law.** Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to the Products and Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which Electronic Checks are processed pursuant to this Agreement. Customer shall have the responsibility to fulfill any compliance requirement or obligation that Bank and/or Customer may have with respect to the Service under all applicable U.S. federal and state laws, regulations, rulings, including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including but not limited to, the federal Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.

**7. Communications Software.** At any time during the term of this Agreement, Bank may require in its sole discretion the use of Software in connection with the Product and Services. If Software is required, Bank will provide to Customer a copy of the Software or instructions on how to obtain the necessary Software.

- 7.1. To the extent the Bank requires the use of Software in connection with the Service, Customer will implement and use the Software, as set forth in the Supporting Documents and any applicable materials relating to the Supporting Documents to transmit output files to Bank.
- 7.2. Customer acknowledges that (i) its license to any Software that may be required for the Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Customer or otherwise provided to Customer, (ii) Bank may provide certain "first level" support to Customer with respect to the Software, but that Bank will have no responsibility for maintenance, support, infringement protection, or otherwise, to Customer with respect to the Software, and (iii) Customer will look strictly to the Software provider, or its

successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.

- 7.3. Customer will use the Software solely for the purpose of transmitting output files to Bank consistent with this Agreement and not for communications with any other party. Customer will not allow access to the Software or the use of the Product by any person other than Customer, and will only process Items arising from a transaction or obligation between Customer and its direct payor.
- 7.4. Customer will promptly return all copies of the Software and Supporting Documents, including materials related to the Supporting Documents, to Bank upon termination of the Agreement.
- 7.5. Customer will not reproduce the Software or other functionality or content included or used for the Service or on which the Service is based. Additionally, Customer will not decompile, reverse engineer or disassemble the Software or otherwise attempt to derive computer source code from the Software functionality of the Service.
- 7.6. Consistent with Paragraph 8.9, Bank may, from time to time, require and change the Software required for this purpose, provided such change does not result in any additional license or maintenance fees payable by Customer. Customer will be responsible to install and implement any changes to the Software within 5 days following notice of such change.

## **8. Bank Rights and Responsibilities.**

- 8.1. For all Imaged Items processed by Customer pursuant to this Agreement, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Electronic Checks will be presented for payment through one or more image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Supporting Documents, applicable laws, regulations or rules, and as otherwise established by the Bank from time to time.
- 8.2. Unless otherwise agreed by Customer and Bank, Bank will process any returned Items in accordance with applicable law and the Deposit Account Agreements.
- 8.3. Subject to Paragraph 8.5 below, availability of credit from Items processed under this Agreement will be subject to the availability schedule of Bank, which may be amended without notice.
- 8.4. Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish exposure limitations and assign them to Customer.
- 8.5. In addition to any other rights Bank may have as regards the Accounts of Customer, including those set forth in Paragraph 11, Bank may hold and use funds in any deposit Account following termination of this Agreement for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, Customer recognizes that under the Rules, the UCC, Regulation CC and the rules of any image exchange network, Bank's representations and warranties as regards Electronic Checks and Substitute Checks may expose Bank to claims for several years following processing of the Electronic Check or Substitute Check.
- 8.6. Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In the event of any of the foregoing failure or delays, Customer acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment provided such Original Items have not been previously imaged and processed in connection with the Product and Services. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any

provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

- 8.7. Customer acknowledges that Bank may from time to time establish minimum amounts to be funded by Customer as reserve amounts. Bank will provide notice to Customer of any reserve requirement, and Customer shall immediately fund the reserve amount with good funds. Bank may withhold and use any amounts due to Customer to maintain any reserve amounts at levels specified by Bank. To secure all obligations of Customer to Bank arising from this Agreement, Customer grants to Bank a security interest in all Accounts of Customer at Bank, all funds in those Accounts, any reserve Accounts or funds therein, all Items, whether now or hereafter established by or for the benefit of Customer at Bank, and all proceeds of the foregoing. Bank's security interest will survive after termination of this Agreement. This security interest is supplemental to and not in lieu of the security interest granted by Customer to Bank under any other agreement.
- 8.8. Bank may at its sole discretion conduct an on-site inspection, at any time and from time to time, of the customer's place of business to ensure compliance with the provisions of this Agreement. In connection with Bank's entry on the premises of Customer for the purposes of conducting an on-site inspection, Bank shall not be liable or responsible to Customer or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into Customer's system, including any which allegedly delay, alter or corrupt the data of Customer, whether related to the transmission of Imaged Items or other data to Bank or whether caused by the equipment, Software, Bank, Internet service providers, Internet browsers, or other parties providing communication services to or from Bank to you.
- 8.9. Bank may add, delete or change the features or functions of the Service at any time in Bank's sole discretion. If Bank deems it reasonably practicable to do so and if the change adversely affects Customer's usage of the Service, Bank will notify Customer of the change in advance. Otherwise, Bank will notify Customer of the change as soon as reasonably practicable after it is implemented, which notice may be given electronically. Bank may cause the Service to be temporarily unavailable to Customer, either with or without prior notice, for site maintenance, security or other reasons, and Customer acknowledges that factors beyond Bank's reasonable control, such as telecommunications failure or equipment failure, may also cause the Service to be unavailable to Customer. Customer may deposit Original Checks and other items to any deposit Account at Bank in person or in any other manner permitted by agreement between Customer and Bank, and Customer will be responsible for maintaining procedures and facilities to enable Customer to do so if the Service is unavailable to Customer.
- 8.10. Bank may make an investigation of the undersigned(s) credit or financial status, at any time, either directly or through any agency employed by Bank for that purpose. The undersigned(s) agrees to provide additional information that may be required to process the Remote Deposit Application or a request for Remote Deposit Capture limit increase, including but not limited to, true and complete federal income tax returns and financial statements. The undersigned agrees to inform the Bank immediately of any matter that will cause any significant change in their financial condition.

## 9. Deposit Limits

- 9.1. Daily and Monthly Limits for Deposit. Unless American Riviera Bank specifically agrees otherwise in writing, you agree not to use the Service to deposit any check or checks that exceed the daily and monthly deposit limits established by American Riviera Bank from time to time. The current daily and monthly limits are set forth below and vary depending on the particular account(s) you maintain with American Riviera Bank. These limits are subject to change at the discretion of the Bank. American Riviera Bank will communicate to you any changes to these limits by written or electronic notice to you.

Silver  
\$100,000 per day

Gold  
\$500,000 per day

## 10. Processing Times.

The Service is available for use seven days per week and 24 hours a day except during maintenance periods, or such hours as established by Bank from time to time. **Monday through Friday, except for designated holidays, the service cut-off for same day processing of deposits is 5:00 PM, Pacific Time.** Transmissions processed by the customer after the 5:00 PM cut-off time or on any day that is not a business day, are treated as occurring on the next business day.

- 10.1. Customer agrees to view the images of each scanned Item that is sent to Bank. If Item information received by Bank is not complete or cannot be processed by Bank for any reason, Bank may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to Customer's Account. Customer will be responsible for verifying Bank's receipt of Customer's transmissions by verifying that deposits have been posted to Customer's Account.
  - 10.2. Imaged Items processed for deposit through the Service will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at the location where Bank or its designated agent posts the credit to the Account. A deposit of Imaged Items will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Bank has preliminarily verified that the image quality of the Imaged Items is acceptable to Bank in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Bank for deposit may be rejected by Bank in Bank's sole discretion.
  - 10.3. Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Customer. Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.
  - 10.4. If under Paragraph 10.2 above an Imaged Item is not accepted for deposit, Customer may then submit the Original Check to Bank for processing or contact the maker to reissue the Check. If Customer submits the Original Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require Customer to have the maker reissue the Check.
  - 10.5. It is Customer's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank as set forth in the Deposit Account Agreements or as otherwise established by Bank. Customer is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.
11. **Customer Representations and Warranties.** Customer makes the following representations and warranties with respect to each Item processed by Customer pursuant to this Agreement:
- 11.1. The Imaged Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Customer converted the Check to an Imaged Item;
  - 11.2. The Imaged Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and
  - 11.3. All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.
  - 11.4. There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Customer assumes responsibility for any such duplicate presentment of any Check. Customer agrees to indemnify and defend Bank against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check.



## 12. Term and Termination.

- 12.1. The term of this Agreement will commence upon full execution of this Agreement and will continue thereafter until terminated as follows:
- 12.2. Customer may terminate this Agreement at any time, with or without cause, upon 30 days prior written notice to Bank.
- 12.3. Bank may terminate this Agreement at any time immediately upon notice to Customer, (including, without limitation if Bank discovers any breach of this Agreement by Customer, willful misconduct, bad checks or fraudulent activities on the part of Customer or any other party with respect to Items processed by Customer under this Agreement).
- 12.4. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items, that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same. Upon termination, Bank may terminate Customer's access to the Product and Services, and Customer will terminate its access to and use of the Product and Services, except to the extent necessary to process and collect Items that were in process prior to the termination date. Within 7 days after termination of this Agreement, Customer will, at its expense, promptly uninstall and remove all Software provided for the Service from its computers and return to Bank all hardware and equipment provided by Bank for the Service, including scanner, the Supporting Documents and any materials relating to the Supporting Documents in its possession or under its control, destroy all copies of the Supporting Documents and materials relating to the Supporting Documents that cannot be returned, and certify in writing to Bank that all copies have been returned or destroyed. Customer will be responsible and liable to Bank for the replacement cost of all lost, stolen or damaged equipment that was provided by Bank to Customer in connection with the Service.
- 12.5. All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 5 through 0 will survive any such termination.
13. **Customer Indemnification.** In addition to any indemnification obligations Customers has under this Agreement, and except to the extent expressly prohibited by applicable law, Customer will indemnify and hold harmless Bank, its licensors and providers of the Product and Services, and their respective directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Customer, or any person acting on Customer's behalf (including without limitation Customer's authorized processor or agent, if any), in connection with Customer's use of the Product or Services or processing of Items under this Agreement, including without limitation (a) the breach by Customer of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Customer or its Customers, or any third party or agent on behalf of Customer, (c) any misuse of the Product or Services by Customer, or any third party within the control or on behalf of Customer, (d) the failure by Customer to comply with applicable state and federal laws and regulations, or (e) any fine, penalty or sanction imposed on Bank by, any clearing house, or any governmental entity, arising out of or connected with any Item processed by Bank for Customer or at Customer's instruction; (ii) any act or omission of Bank that is in accordance with this Agreement or instructions from Customer; (iii) actions by third parties, such as the introduction of a virus that delays, alters or corrupts the transmission of an Imaged Item to Bank; (iv) any loss or corruption of data while at Customer's location or while in transit from Customer to Bank; including without limitation any security breaches which result in the loss or disclosure or personal information of third parties; (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by Customer under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check; or (vi) any claims, loss or damage resulting from Customer's breach of, or failure to perform in accordance with, the terms of this Agreement.
14. **Disclaimer.** BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND CUSTOMER HEREBY WAIVES AND RELEASES BANK, ITS LICENSORS AND THEIR RESPECTIVE OWNERS,

OFFICERS AND EMPLOYEES FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL SUPPORTING DOCUMENT, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE PRODUCTS, OR OTHER MATTERS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PRODUCT WILL BE ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

## 15. **Bank's Liability.**

- 15.1. Bank will not be liable to Customer for any of the following: (i) any damages, costs or other consequences caused by or related to Bank's actions that are based on information or instructions that Customer provides to Bank; (ii) any unauthorized actions initiated or caused by Customer, its employees or its agents; (iii) the failure of third persons, agents or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Electronic Check or Substitute Check for any reason (other than the breach of contract, gross negligence or willful misconduct of Bank), including without limitation, that the Electronic Check or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) failures, errors or omissions, or breach of warranty from Customer's agent; (vi) Customer's agent's, or any other party's lack of access to the Internet or inability to transmit or receive data; (vii) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems, or (viii) if Customer or its agent does not follow or comply with the representations or warranties set forth in Section 11 above.
- 15.2. Bank's liability for errors or omissions with respect to the data transmitted or printed by Bank in connection with this Agreement will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the Electronic Checks or Substitute Checks to the Payor Financial Institution.
- 15.3. Notwithstanding anything to the contrary in this Agreement, Bank's aggregate liability for claims related to this Agreement, whether for breach, negligence, infringement, in tort or otherwise, arising during any 12 month period shall be limited to an amount equal to the amount of fees paid by Customer to Bank under this Agreement for such 12 month period.
- 15.4. Except as otherwise specifically provided in this Agreement, in no event will either party be liable to the other for any consequential, indirect, incidental, special, exemplary or punitive damages, including without limitation any loss of use or loss of business, revenue, profits, opportunity or good will, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if such party has been advised or should have known of the possibility of such damages.
- 15.5. Customer and Bank acknowledge and agree that the limitations of liability in this Section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into this Agreement without the limitations of liability set forth in this Section.

## 16. **MISCELLANEOUS.**

- 16.1. **Assignment.** Neither party may assign its rights or obligations under this Agreement without the written consent of the other party; provided, however, Bank may assign or transfer this Agreement, by operation of law or otherwise, to any person that becomes the successor entity of Bank, in connection with a change of control (which shall include a direct or indirect transfer of all or substantially all of Bank's stock or assets to a third party, a merger, reorganization or other such transaction, or any such transaction by a parent corporation of Bank) and Customer hereby

consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer will succeed to and be bound by this Agreement. Bank may subcontract any of the work, services, or other performance required of Bank under this contract without the consent of Customer.

- 16.2. **Consent to Breach Not Waived.** Neither party will, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- 16.3. **Notices.** All Notices shall be provided in accordance with the terms of the Commercial Digital Banking Agreement.
- 16.4. **Force Majeure.** Neither party will be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.
- 16.5. **Entire Agreement: Amendment.** Bank may amend this Agreement at any time and from time to time as determined in its sole discretion and without prior notice to Customer. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation.
- 16.6. **Severability.** If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.
- 16.7. **Applicable Law.** This Agreement will be governed by federal law, and to the extent not preempted, by internal laws of the State of California (without regard to that state's principles of conflicts of law).
- 16.8. **Relationship of Parties.** Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.
- 16.9. **Arbitration.** Any disputes or claims arising out of or relating to this Agreement shall be resolved pursuant to the arbitration or alternative dispute resolution provisions of the Deposit Account Agreements.
- 16.10. **Headings.** The titles or captions used in this Agreement are for convenience only and will not be used to construe or interpret any provision hereof.