



## BUSINESS ONLINE BANKING SERVICES TERMS AND CONDITIONS

This Business Online Banking Services Terms and Conditions, along with the signed Business Online Banking Services Application and Agreement into which it is incorporated by reference (the "Application") (altogether the "Agreement") sets forth the terms of the Business Online Banking Services that Mission Valley Bank (the "Bank") makes available to you as its business customer (the "Customer") through the Bank's online system (the "System"). The System can be used to access only the Customer accounts that Customer has designated for access by the System in Customer's Application, or, following approval of the Application by the Bank, as subsequently requested by Customer and approved by the Bank. By applying for any service described herein (a "Service" or "System Service"), Customer agrees to be bound by these terms. Customer's use of any Service will be additional evidence of Customer's agreement to these terms.

**1. Definitions.** The words "User" or "Users" mean Customer's employees, agents and representatives, as well as anyone else authorized by Customer or its Administrator to exercise control over Customer's funds through the System, whether or not that person is an employee of Customer. The words "account," "accounts," "Customer's account," and "Customer's accounts" mean the deposit and loan accounts at the Bank in the name of the business organization authorized by the Bank to use the System pursuant to the terms of this Agreement, and any accounts of Customer's parent company, subsidiaries or affiliates designated pursuant to Section 8 herein. The words "password" or "passwords" mean password(s) relating to the System assigned to or by Customer, any Administrator and/or any User. The term "funds transfers" means electronic transaction services that the Bank may from time to time make available to Customer through the System, including, among other things, Automated Clearing House (ACH) transactions, wire transfers, ATM withdrawals, preauthorized transactions, point of sale transactions, and transfers to and from the accounts using the System, including the Bill Payments Services. The term "instruction" means a payment or transfer instruction (including but not limited to a wire transfer instruction), an ACH Entry, a Positive Pay File, a Positive Pay Return Items File, and any other request or instruction submitted to the Bank through the System. The term "System Services" means the services provided pursuant to this Agreement, including the Bill Payment Service. The term "business day" means Monday through Friday. Holidays are not included. All terms and conditions regarding "Customer's" use of the System or any Service shall apply to Administrators' and Users' use of the System or Service. Additional definitions used in this Agreement are set forth above and below.

**2. Access.** To use the System, Customer must have at least one checking account at the Bank, access to the Internet and an email address. These terms and conditions also apply if Customer is provided access to the System through a downloadable app for use on a mobile device or mobile telephone. Once the Bank has received all required documentation, including a signed Application, and has verified Customer's account information, the Bank will contact the Customer via telephone at the number set forth in the Application. Upon verifying the Customer's identity through the use of security questions from information about Customer from the Bank's files, the Bank will give the Customer the assigned user ID and temporary password. Access to Customer's accounts through the System will be based upon the identification of Users and authority levels specified by Customer in a completed Application or as subsequently established by an Administrator designated by Customer. Customer may add or delete any of Customer's accounts from the System by completing a new Application or making a request to the Bank. The Bank undertakes no obligation to monitor transactions effected by Customer and Customer's Users through the System to determine that such transactions are made and authorized by Customer. Customer agrees that it may be required to execute certain other documents or agreements in order to effect one or several types of funds transfers utilizing the System and agrees to execute the same as necessary.

**3. System Services.** Depending upon the Services selected by Customer and authorized by the Bank, Customer can use the System to check the balance of Customer's accounts, view account histories, transfer funds between Customer's accounts, make stop payment requests, view checks, pay bills from Customer's accounts in the amounts and on the dates requested, conduct wire transfers, and initiate ACH debits and credits. The availability of the System Services is subject to rules of operation set from time to time by the Bank, including posting, balance, and account activity. Customer agrees to familiarize itself, and to ensure familiarity by all of its Users, with all user guides, operational rules and policies established from time to time by the Bank regarding the System Services, and further agrees that it and all of its Users will comply with such rules and policies when utilizing the System. Without limiting the foregoing, Customer acknowledges and agrees that there may be delays in the posting of off-System transactional activity on the System from certain of Customer's accounts, and Customer shall familiarize itself, and ensure familiarity by all of its Users, with the Bank's procedures for updating account information as shown on the System.

**4. Hours of Access.** Customer may use the System 7 days a week, 24 hours a day, although some or all System Services

may not be available during non-business hours or as a result of emergency or scheduled System maintenance. The Bank shall provide commercially reasonable notice to Customer on the System website of any non-emergency extended periods of non-availability for the System or the System Services.

**5. Security, Security Procedures, and Administrator(s).**

Customer may appoint one or more individuals (each an “Administrator”) with full access to Customer’s accounts at the Bank designated for use with the System and with the authority to determine who will be authorized to use the Services on Customer’s behalf. Customer’s Administrator can establish separate passwords for Customer and each User. Customer assumes sole responsibility for the actions of its Administrator, the authority he, she, or they give others to act on Customer’s behalf, and the actions of the persons designated by the Administrator to use the Services. The Bank undertakes no obligation to monitor changes to the authority given to Users by the Administrator to determine that such changes are made and authorized by Customer.

The Bank therefore recommends that Customer only appoint Administrators on whom it has conducted a thorough background check and who are covered by a fidelity bond, and that its Administrators only designate Users on whom Customer has conducted a thorough background check and who are covered by a fidelity bond. If Customer and/or its Administrators do not do so, and if Customer and/or its Administrators designate Users who are not employees of Customer, this is done at Customer’s own risk and peril.

For security purposes, Customer shall be required to change its temporary password provided by the Bank upon Customer’s initial login to the System. Customer acknowledges and agrees that: (a) the Bank shall have no access to Customer’s password(s); (b) Customer shall be solely responsible to determine what password(s) will be used by its Users; and (c) the identification of such password(s) selected by Customer shall not be communicated to the Bank. Customer agrees that the Bank shall be authorized to effect the System Services upon receipt and verification by the System of the Customer’s password(s), and that the Bank is authorized to act on instructions received upon receipt and verification by the System of the Customer’s password(s). Customer shall be solely responsible for the confidentiality and security of its password(s) and acknowledges that it is strictly and solely responsible to establish and maintain commercially reasonable security procedures to safeguard against unauthorized transmissions of instructions to the Bank, and Customer agrees to change its password(s) regularly. Upon three unsuccessful attempts to use a Customer password, Customer’s access to the System will be revoked, and further access to the System shall be permitted only upon compliance with established procedures by the Bank, including the issuance of new password(s).

Customer acknowledges the importance of its role in preventing misuse of Customer’s accounts through the System and agrees to promptly examine all account statements for accuracy immediately upon receipt. Customer agrees to protect the confidentiality of its account(s) and account number(s), and personal identification information.

(Customer acknowledges that certain personal identification information by itself, or together with information related to Customer’s accounts, may allow unauthorized access to Customer’s accounts.) While data transferred via the System is encrypted in an effort to provide transmission security (the System utilizes identification technology to attempt to verify that the sender and receiver of System transmissions can be appropriately identified by each other), Customer acknowledges that the Internet is inherently insecure and that all data transfers, including the System Services, occur openly on the Internet and potentially can be monitored and read by others. The Bank specifically does not warrant that data transfers utilizing the System, or email transmitted to and from the Bank, will not be monitored or read by others.

Customer agrees to change the passwords it or its Administrator assigns to its Users on a regular basis, and agrees that it has systems in place to do so no less frequently than every 120 days. Customer agrees to change its temporary password(s) promptly after it is given access to the Services for the first time and whenever anyone who has had access to Customer’s passwords is no longer employed or authorized by Customer to use the Services. The Bank may require Customer to change its passwords at any time. The Bank may deny access to the Services without prior notice if the Bank is unable to confirm (to its satisfaction) any person’s authority to access the Services or if the Bank believes such action is necessary for security reasons.

Each time Customer, or any User, makes a transfer or payment with a Service, Customer warrants that the Bank’s security procedures are commercially reasonable considering the Customer’s wishes expressed to the Bank, the Customer’s circumstances known to the Bank (including the size, type, and frequency of payment orders the Customer normally issues to the Bank), any alternative security procedures offered to the Customer, and security procedures in general use by customers and banks similarly situated. The Customer agrees the security procedures provide an appropriate level of security for the instructions Customer contemplates issuing. The Customer expressly represents it has not withheld any information or circumstances from the Bank which would indicate different security procedures are appropriate for this Agreement.

Some of the Bank’s Services allow Customer or its Administrator to set transaction limitations and establish internal controls. Customer’s failure to set such limitations and implement such controls increases Customer’s exposure to, and responsibility for, unauthorized transactions. Customer agrees to be bound by any transfer or payment order the Bank receives through the Services, even if the order is not authorized by Customer, if it includes Customer’s password(s) or is otherwise processed by the Bank in accordance with its security procedures.

If a transfer or payment order received by the Bank was in fact transmitted or authorized by Customer, Customer is bound by such instruction whether or not the Bank complied with the security procedure with respect to that instruction, whether or not an error in the instruction would have been detected if the Bank had complied with such procedure.

**a. IP Address.** Pursuant to Section 5, the System uses identification technology in an attempt to verify that the sender and receiver of System transmissions can be appropriately identified by each other. Accordingly, in the Application, the Bank has requested the internet protocol address (“IP Address”) of Customer and/or its Users in order to increase the effectiveness of such technology and to provide Customer with the option for Customer to restrict the ability of Customer and/or its Users to engage in certain transactions on the System, including but not limited to initiating wire transfers, from an IP Address other than an IP Address provided to the Bank. Thus, the Bank has made available to Customer security procedures which restrict access from a foreign IP Address. If Customer opts out of providing IP Addresses to the Bank, Customer represents to the Bank that it refuses IP Address restrictions and acknowledges and agrees that pursuant to the Agreement and the California Commercial Code, it is bound by any payment order, whether or not authorized, issued in its name and accepted by the Bank in compliance with the security procedure chosen by the Customer.

**6. Computer and Software.** Customer is responsible for the installation, maintenance, and operation of its computer and browser software and that of its Users. Customer is required to keep its virus protection, malware and other standard system protection, and that of its Users, current. Customer assumes all risk of error, failure, incompatibility, non-performance, including the risk that Customer and its Users do not operate Customer’s and/or User’s computer or software properly. The Bank assumes no responsibility for the defects or incompatibility of any computers or software that Customer uses in connection with the Services, even if the Bank has previously approved their use. The Bank is not responsible for any errors or failures from any malfunction of the computer or software of Customer or any User. The Bank has no liability to Customer or any User for any damage or other loss, direct or consequential, which it or they may suffer or incur by reason of Customer’s and/or User’s use of Customer’s and/or User’s computer or software. THE BANK MAKES NO WARRANTY TO CUSTOMER REGARDING THE COMPUTER OR SOFTWARE OF CUSTOMER OR ANY USER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. Fees and Charges.** Customer agrees to pay the fees and charges for the use of System Services as set on the Application. Customer agrees that all such fees and charges will be deducted at statement cycle from Customer’s checking account designated as the first checking account on Customer’s Application (the “Primary Checking Account”). If Customer closes its Primary Checking Account, the Bank may deduct all fees and charges from any other Customer account (whether or not such account is designated in the Application for use with the System) until Customer designates another account as its Primary Checking Account. Customer agrees to pay any additional charges for services Customer requests that are not covered by this Agreement. Customer acknowledges that it shall be separately responsible

for telephone and Internet service fees and data processing charges payable to third parties incurred by Customer in connection with Customer’s use of the System. In addition to the Service fees, Customer agrees to pay for all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Services, this Agreement, and/or the software or equipment made available to Customer (excluding any income tax payable by the Bank).

**8. Accounts.** Customer’s Application may list certain accounts that Customer wishes to access with the Services. Customer represents and warrants that the accounts are owned entirely by Customer or, if the Application and Agreement includes the accounts of Customer’s parent company, subsidiaries or affiliates, Customer warrants that each such entity has authorized Customer to access its accounts through the Services in the same manner as Customer’s own accounts and that Customer is authorized to incur fees and charges in connection with the use of the System and System Services. Customer agrees to provide the Bank with such written authorization, in form and substance acceptable to the Bank, evidencing that authority, and Customer agrees to notify the Bank immediately in writing of any change to that authorization.

Customer will need to designate certain accounts for specific purposes in connection with some of the Services. If Customer links more than one checking account to the Bank’s wire or ACH Services, for example, Customer will need to specify the account from which the transfers should be made.

**9. Transfer Between Unlike Entities.** The Bank offers its Business Online Banking customers the ability to link accounts together so that funds can be transferred easily between them. It is even possible to link the accounts of affiliated companies (such as subsidiaries or sister companies) or even the personal accounts of the company owner. Before deciding to link accounts you should be aware of the following. Part of the reason that a business entity such as a corporation or a limited liability company is formed is to shelter the owner(s) from liability associated with the company’s activities. Lawyers advise that maintaining these liability protections requires the maintenance of corporate formalities and keeping distinctions between entities. In other words, simply forming a business entity will not automatically insulate the owners from personal liability for the debts and liabilities of the business. The owners must also maintain and respect each entity’s separate existence. If there is excessive comingling of funds between an individual and a company or between two companies and other corporate formalities are ignored, a court can find that one company is the “alter ego” of the other or the individual is the alter ego of the company he or she owns. Under the alter ego doctrine, the assets of one business or individual might be considered available to satisfy the debts of the other.

Although many factors can contribute to a finding of alter ego liability, the mixing of funds is perhaps the most important factor. For this reason, the best business practice is to only link the accounts of a single company. If the accounts of multiple companies or individuals and companies are linked, careful records should be maintained for all transfers

along with documentation which explains any transfers. It is also a good idea to get legal advice regarding the impact of transfers between entities or between individuals and entities. As a general rule, if a transfer between two entities represents a loan from one entity to the other; this transaction should be supported by loan documents, including the reason for the loan and repayment terms. If a transaction between an entity and an owner represents a profit distribution or an additional investment, the transfer should be properly documented. Of course, questions regarding documentation of distributions and investments should be directed to an attorney. So long as you have signed this document, the Bank will not restrict your transfers if you decide to link the accounts of several entities. Customer assumes the sole responsibility to consider the risks of linking accounts of different entities or linking accounts of individuals and entities and accept the risks associated with such transfers.

**10. Passwords.** Customer and/or its Administrator will need to designate which accounts will be utilized for Service payments and transfers. Customer understands and agrees that any Administrator may assign passwords and other security items to persons not otherwise authorized to sign and conduct transactions on one or more deposit accounts set up on the Service. Similarly, in the event Customer designates an account that requires more than one signature for the withdrawal or transfer of funds, the Bank will act upon any Service instruction that is accompanied by the password(s) designated by Customer or its Administrator(s). Such an assignment will result in change in signing authority on each deposit account set on the Service. The Bank does not monitor any effective change in signing authority that results from Customer's or Administrator's designations. Transactions initiated in accordance with the Bank's requirements for a Service using passwords are deemed authorized notwithstanding the signing authority otherwise stated in the deposit account agreement or applicable signature card. Customer is responsible to control and monitor its Administrator and to ensure that Customer's passwords and any other security items are known only to and used only by the person or persons Customer intends to be properly authorized to access and use a Service. **FAILURE TO PROTECT PASSWORDS AND ANY OTHER SECURITY ITEMS MAY ALLOW AN UNAUTHORIZED PARTY ACCESS TO CUSTOMER'S ACCOUNTS AND THE BANK'S ACCOUNT INFORMATION AND ENABLE THAT PARTY TO CONDUCT TRANSACTIONS ON CUSTOMER'S ACCOUNT. CUSTOMER ASSUMES THE RISK OF UNAUTHORIZED USE OF PASSWORDS AND ANY OTHER SECURITY ITEMS. CUSTOMER IS RESPONSIBLE FOR THE ACTS OF EACH USER AND ADMINISTRATOR AND CUSTOMER ASSUMES THE RISK OF LOSS FOR ALL SUCH ACTS.**

**11. Information Processing and Reporting.** The Bank offers a number of Services that require the Bank to receive, process, and report information involving Customer's accounts and transactions. The Bank will not be responsible for determining the accuracy, timeliness, or completeness of

any information that Customer or others provide to the Bank. The Bank will not have a duty to interpret the content of any data transmitted to the Bank, except to the limited extent set forth in this Agreement. Unless otherwise agreed in writing, the Bank will not be required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information the Bank receives from Customer, any Users, or third parties.

**a. Information Customer Provides to the Bank.** Customer assumes the sole responsibility for providing the Bank with complete and accurate information in the form and format that the Bank requires (e.g., in connection with wire and ACH transfers). The Bank is not responsible for confirming such information, or for monitoring or refusing to process duplicate instructions by Customer, any Users, or any other agents, representatives, or employees. For example, if Customer gives the Bank a wire transfer instruction that is incorrect in any way, Customer agrees that the Bank may charge Customer's account for the payment whether or not the error could have been detected by the Bank. The Bank is not obligated to detect errors in Customer's or any User's instructions.

**b. Customer's Instructions.** Customer, and any User, must accurately describe transaction beneficiaries, intermediary financial institutions, and the beneficiary's financial institution in transfer and payment instructions. If Customer or any User describes any beneficiary or institution inconsistently by name and number, the Bank may process the transaction solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution. Customer agrees to supply the Bank, upon demand, any other information that the Bank may reasonably request, including, but not limited to, money amounts, accounts to be affected, date of transfers, supplemental instructions, and further evidence of any User's authority to transfer funds or to do any other act contemplated under this Agreement. Customer represents and warrants that any transaction contemplated by this Agreement will not be in violation of state or federal law and that all formalities will be followed with respect to each transfer of funds, including but not limited to, proper authorization of individual transactions and any record keeping requirements with respect thereto.

**c. Customer's Review.** Customer acknowledges that it is not possible for the Services to be totally free from operator, programming, or equipment error, and that errors in processing and compiling data may occasionally occur (e.g., due to the failure of others to provide accurate information, telecommunication failures, or a breakdown in an electronic data interchange). As such, Customer agrees to review and verify all results and to maintain adequate controls for ensuring both the accuracy of data transmissions and the detection of errors. Unless otherwise required by law, the Bank's sole responsibility for any reporting errors caused by the Bank will be to reprocess the information for the period in question and to provide corrected reports at the Bank's own expense. Customer agrees to maintain adequate backup files of the data Customer, or any User, submits for a reasonable period of time in order to facilitate any needed reconstruction

of Customer's transactions (e.g., in the event of a telecommunication failure). If the Bank is unable to provide a Service for any reason, the Bank will promptly inform Customer of the problem and will take reasonable steps to resume processing.

**12. Amending/Canceling a Transaction.** Unless this Agreement or Customer's user guide for the Service provides otherwise, Customer does not have a right to cancel or amend an instruction (e.g., an ACH payment) once the Bank has received it. If the Bank attempts to reverse a transaction at Customer's request, the Bank assumes no liability for any interest or losses that result if the reversal is not effected. Requests to cancel a transaction must state the exact amount (dollars and cents) of the transaction Customer wishes to stop. Customer agrees to indemnify, defend, hold harmless, and reimburse the Bank for all expenses, losses, claims, actions, proceedings, and damages the Bank incurs in effecting or attempting to effect any reversal. Customer is solely responsible for providing notice to the receiver/beneficiary that a reversal is being transmitted and the reason for the reversal no later than the settlement date of the reversing entry.

**13. The Bank's Rejection of Transactions.** The Bank may refuse any transfer or payment instruction without cause or prior notice. All specific examples of the circumstances where the Bank might right to refuse an instruction described in this Agreement are by way of illustration and not by way of limitation of the right set forth in this Section 13.

**14. Notice of Returned Payments or Transfers.** The Bank may notify Customer electronically, in writing, by telephone, or otherwise if any funds transfer is rejected or returned (e.g., by the ACH) for any reason. The Bank will not be obligated to credit Customer's account with any interest, unless the return is caused by the Bank's failure to properly execute Customer's instruction.

**15. Unauthorized Transactions.** The Bank may process any instruction (including an amendment or cancellation instruction) that the Bank believes is transmitted or authorized by Customer if the Bank acts in compliance with the security procedures Customer and the Bank have agreed upon for the Service. The instructions will be deemed effective as if made by Customer, and Customer will be obligated to pay the Bank in the amount of such transactions, even though they are not transmitted or authorized by Customer. The Bank may elect to verify the authenticity or content of any instruction by placing a call to any authorized signer on Customer's account or any other person designated by Customer for that purpose but the Bank is not required to do so. If the Bank is unable to verify an instruction to its satisfaction, or the Bank believes in good faith that such instruction violates a federal, state, or local law, regulation, or court instruction, the Bank may reject the instruction.

**16. Transaction Limits and Safeguards.** Customer agrees not to exceed the Service transaction limits the Bank establishes from time to time for Customer's accounts (e.g., in connection with ACH transactions). Customer agrees that it will not allow anyone, including any non-employee User, to initiate instructions, or use any Service, on its behalf without

proper supervision and adequate safeguards, and that Customer will review pending instructions prior to their submission to the Bank to ensure that they are complete, accurate, and properly authorized.

## **17. Email**

**a. Use of Email.** Customer must not use the Mission Valley Bank Online email function for communication that is time sensitive, such as placing stop payments orders, making fund transfers, reporting lost or stolen debit or credit cards or checks, or reporting an error on Customer's account. If Customer sends the Bank a message using email, the Bank will not be deemed to have received until the following business day. Customer agrees that the Bank may take a reasonable period of time to act on any message.

**b. Email Not Secure.** Email transmissions are not secure. The Bank recommends that Customer not send the Bank or ask for sensitive information via any general or public email system.

**c. Response by Email.** Customer agrees that the Bank may respond to Customer by email with regard to any non-confidential matter related to Mission Valley Bank Online services or secure email for sensitive data. Any such message the Bank sends to Customer shall be considered received within three days of the date sent, regardless of whether Customer checks email messages within that time frame.

**18. Alerts. Your enrollment in Mission Valley Bank Online Banking and/or Mobile Banking (the "Service") includes enrollment to receive transaction alerts and notifications ("Alerts"). Alerts are electronic notices from us that contain transactional information about your Bank account(s). Alerts are provided within the following categories:**

**Mandatory Alerts** provide you with important account notifications, such as information about changes to your Online Banking password, PIN, or login information. You do not have the option to suppress these Mandatory Alerts.

**Account Alerts** provide you with notification of important account activities or when certain changes are made to your Service accounts, such as scheduled payments made, scheduled payments cancelled and mobile deposits. These Alerts are automatically activated for you. Although you may suppress these Account Alerts, we strongly recommend that you do not do so because they provide important information related to your Service accounts.

**Additional Alerts** must be activated by you to be enabled. These Additional Alerts can be accessed from the Alerts menu within Mission Valley Bank Online Banking and Alerts menu within Mission Valley Bank Mobile Banking.

Account Alerts and Additional Alerts must be managed and/or added online through the Service. You cannot maintain all Alerts through your mobile device. We may add new Alerts from time to time, or cancel old Alerts. We usually notify you when we cancel Alerts, but are not obligated to do so. The Bank reserves the right to terminate its Alerts service at any time without prior notice to you.

**Methods of Delivery.** We may provide Alerts through one or more channels ("**EndPoints**"): (a) a mobile device, by text message, (b) a mobile device, by push notification; (c) an

email account, by an e-mail message; or (d) your Mission Valley Bank Online Banking message in-box, by an e-mail message. You agree to receive Alerts through these EndPoints, and it is your responsibility to determine that each of the service providers for the EndPoints described in (a) through (c) above supports the email, push notification, and text message Alerts provided through the Alerts service. Please be advised that text or data charges or rates may be imposed by your EndPoint service provider. Alert frequency varies by account and preferences. You agree to provide us a valid mobile phone number or email address so that we may send you Alerts. If your email address or your mobile device's number changes, you are responsible for informing us of that change. Your Alerts will be updated to reflect the changes that you communicate to us with regard to your primary and secondary email addresses or mobile device number. **Alerts via Text Message.** To stop Alerts via text message, text **"STOP" to 99588 at any time.** Alerts sent to your primary email address will be unaffected by this action. To restore Alerts on your mobile phone, just visit the Alerts tab in Mission Valley Bank Online Banking and click the box next to your mobile number for the Alerts you'd like to receive again. For help with SMS text alerts, text "HELP" to 99588. In case of questions please contact customer service at 818-394-2300. Our participating carriers include (but are not limited to) AT&T, SprintPCS, T-Mobile®, U.S. Cellular®, Verizon Wireless, MetroPCS.

**Limitations.** The Bank provides Alerts as a convenience to you for information purposes only. An Alert does not constitute a bank record for the deposit or credit account to which it pertains. We strive to provide Alerts in a timely manner with accurate information. However, you acknowledge and agree that your receipt of any Alerts may be delayed or prevented by factor(s) affecting your mobile phone service provider, internet service provider(s) and other factors outside the Bank's control. We neither guarantee the delivery nor the accuracy of the contents of each Alert. You agree to not hold the Valley Bank, its directors, officers, employees, agents, and service providers liable for losses or damages, including attorneys' fees, that may arise, directly or indirectly, in whole or in part, from (a) a non-delivery, delayed delivery, or the misdirected delivery of an Alert; (b) inaccurate or incomplete content in an Alert; or (c) your reliance on or use of the information provided in an Alert for any purpose.

**Alert Information.** As Alerts delivered via SMS, email and push notifications are not encrypted, we will never include your passcode or full account number. You acknowledge and agree that Alerts may not be encrypted and may include your name and some information about your accounts, and anyone with access to your Alerts will be able to view the contents of these messages.

**19. Cut-off Hours.** A number of Services are subject to processing cut-off hours. All times are Pacific Time on a business day:

Positive Pay Exceptions Review	11:30 AM
Positive Pay Upload File	4:00 PM
Foreign Wires	12:30 PM
Domestic Wires	1:30 PM

ACH Transactions	4:00 PM
Internal Book Transfer	5:00 PM
On-Site Teller Mon-Friday	5:00 PM
Stop Payments	No Cut-off
Mobile Banking Deposits Mon –Friday	5:00 PM

**20. Limitation of Liability.** Except as otherwise expressly stated in this Agreement or required by a provision of law which displaces this Agreement, the Bank will be deemed to have exercised ordinary care if its action or failure to act has been in conformity with this Agreement and the Bank will be liable to Customer only for damages arising directly from the Bank's intentional misconduct or gross negligence in the performance of the Services. The Bank will not be responsible for any loss, delay, cost, or liability which arises, directly or indirectly, in whole or in part, from: (a) Customer's, any Administrator's, or any User's actions or omissions, or those of third parties that are not within the Bank's immediate and reasonable control (including but not limited to a provider of a network necessary to provide a Service); (b) Customer's, any Administrator's, or any User's negligence or breach of any agreement with the Bank; (c) any ambiguity, inaccuracy, untimeliness, or omission in any instruction or information provided to the Bank; (d) any error, failure, or delay in the transmission or delivery of data, records, or items due to a breakdown in any computer or communications facility; (e) the Bank's reasonable belief that compliance with an instruction would result in the Bank's having violated any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other governmental regulatory authority or self-regulating body such as NACHA; (f) accidents, strikes, labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God; (g) causes beyond the Bank's reasonable control; (h) the application of any government or funds-transfer system rule, guideline, policy, or regulation; (i) the lack of available funds in Customer's account to complete a transaction; (j) the Bank's inability to confirm to its satisfaction the authority of any person to act on Customer's behalf; or (k) Customer's or any User's failure to follow any applicable software manufacturer's recommendations or the Bank's or any third-party vendor's Service instructions. There may be other exceptions to the Bank's liability, as stated in Customer's deposit or other agreements with the Bank.

**IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, OR INDIRECT LOSSES OR DAMAGES WHICH THE OTHER PARTY INCURS OR SUFFERS BY REASON OF THIS AGREEMENT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT. THIS LIMITATION SHALL APPLY WHETHER OR NOT THE LIKELIHOOD OF SUCH LOSSES OR DAMAGES WAS KNOWN BY EITHER PARTY.**

The Bank's liability and Customer's remedy for actual costs and losses resulting from the Bank's actions and/or omissions, whether the claim is in contract or tort, will not exceed six times the average monthly charge for the Service(s) in question for the three months immediately preceding the cost

or loss. Any liability which the Bank may have for loss of interest for an error or delay in performing its obligations pursuant to this Agreement shall be calculated by using a rate equal to the average Federal Funds rate of the Federal Reserve Financial Institution of California for the period involved, less any applicable reserve requirements. Any claim, action, or proceeding by Customer to enforce the terms of this Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action, or proceeding first occurs. Customer agrees to cooperate with the Bank in any loss recovery efforts the Bank undertakes to reduce any loss or liability that arises in connection with the Services. Customer acknowledges that the Bank's Service fees have been established in contemplation of: (a) these limitations on the Bank's liability; (b) Customer's agreement to review statements, confirmations, and notices promptly and to notify the Bank immediately of any discrepancies or problems; and (c) Customer's agreement to assist the Bank in any loss recovery effort.

**21. Indemnification.** Customer agrees to indemnify, defend, and hold the Bank, its parent company, affiliates and subsidiaries, and its respective directors, officers, employees, and agents, harmless from and against any claim, damage, loss, liability, and cost (including, without limitation, attorneys' fees) of any kind which results directly or indirectly, in whole or in part, from: (a) the Bank's actions or omissions, if they are in accordance with Customer's, Administrator's, and/or its User's instructions or the terms of this Agreement; (b) the actions or omissions of Customer, its Administrator, its Users, or any other agents, representatives, or employees; or (c) any breach of the agreements, representations, or warranties of the Customer contained in this Agreement.

**22. Arbitration.** At Customer's or the Bank's request, any claim or controversy that arises out of or relates to this Agreement or the Services will be submitted to arbitration in Los Angeles County, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any arbitrator chosen to preside over the dispute must be a member of the California State Bar either actively engaged in the practice of law or a retired member of the California state or federal judiciary, and, unless otherwise agreed in writing, must have expertise in the process of deciding disputes in the deposit account and/or internet banking services context. Any party who fails to submit to binding arbitration following a lawful demand of the opposing party shall bear all costs and expenses, including reasonable attorney fees, incurred by the opposing party in compelling arbitration.

**23. Statements and Notices.** Information on transfers to or from Customer's accounts will be reflected on Customer's periodic statements and will be available to Customer on-line. The Bank is not required to provide Customer with any other notice of the receipt, transmittal, or debiting of wire transfers, ACH Entries, or bill payments.

Customer agrees to notify the Bank immediately if Customer discovers: (a) any error or discrepancy between Customer's

records and the information the Bank provides to Customer about its accounts or transactions (e.g., in a statement, confirmation, or electronic report); (b) unauthorized transactions involving any account; (c) a breach in the confidentiality of the password(s) or the user guide for any Service; or (d) other problems related to the Services. Customer must send the Bank a written notice of any discrepancy or other problem, including a statement of the relevant facts, within a reasonable time (not to exceed 15 days from the date Customer first discovers the problem or receives information reflecting the problem, whichever occurs first). If Customer fails to notify the Bank within 15 days, Customer agrees that, in addition to any other limitations on the Bank's liability: (a) in the case of an erroneous funds transfer, Customer will be liable for all losses up to the amount thereof (as well as any loss of interest), that result from Customer's failure to give the Bank such notice or that might have been prevented by Customer giving the Bank such notice; and (b) in the case of an unauthorized funds transfer, the Bank will not be liable for any loss of interest that results from Customer's failure to give the Bank such notice or which might have been prevented by Customer giving the Bank such notice.

**24. Customer Records.** This Agreement and the Services are not intended to relieve Customer of any obligation imposed by law or contract regarding the maintenance of records or from employing adequate audit, accounting, and review practices as are customarily followed by similar businesses. Customer agrees to retain and provide to the Bank, upon request, all information necessary to remake or reconstruct any deposit, transmission, file, or entry until ten business days following receipt by the Bank of the deposit, file, entry, transmission, or other order affecting an account.

**25. Termination.** Customer may cancel one or all of the System Services at any time by providing the Bank with written notice. Customer's access to the System, or the requested service, will be suspended within ten (10) business days of the Bank's receipt of Customer's instructions to cancel the System Services. Customer agrees, however, that Customer shall remain responsible for all outstanding fees and charges incurred prior to the date of cancellation, as well as all funds transfers, payments orders, instructions, and System Services effected by Customer or any User, and any other obligation that arises prior to the effective date of the termination.

The Bank may terminate or limit access to the System or the System Services for any of the following reasons: (a) without prior notice, if Customer has insufficient funds in any one of its accounts accessible by the System (System Services may be reinstated, in the Bank's sole discretion, upon three business days' notice); (b) without prior notice if the confidentiality of Customer's password is compromised; (c) without prior notice, if the Bank believe that an unauthorized transaction has taken or may take place involving any of Customer's accounts or the Services; (d) without prior notice if the Customer does not contact the Bank to designate a new Primary Checking Account immediately after Customer closes its Primary Checking Account; (e) without prior notice if Customer becomes insolvent or the subject of a bankruptcy,

receivership, or dissolution proceeding; (f) without prior notice in the event of a material breach by the Customer of this Agreement; and (g) upon reasonable notice, for any other reason or for no reason in the Bank's sole discretion.

**26. Notices.** Unless this Agreement provides otherwise (i.e. that notice must be in writing), Customer may communicate with the Bank in any one of the following ways:

**Email:** [ebanking@missionvalleybank.com](mailto:ebanking@missionvalleybank.com)

**Telephone:** 818-394-2300

**Facsimile:** 818-394-2385

**Postal Mail:**

*Mission Valley Bank*

9116 Sunland Blvd

Sun Valley, CA 91352

Attn: Business Online Banking Department

**In Person:**

*Mission Valley Bank – Main Branch*

9116 Sunland Blvd.

Sun Valley, CA 91352

*Mission Valley Bank – Santa Clarita Branch*

26701 McBean Parkway, Suite 100

Valencia, CA 91355

The addresses noted above may be changed by the Bank by notifying Customer of the changed address(es). A notice that must be provided in writing shall be delivered in person or by express carrier, sent by facsimile, or sent by United States registered or certified mail and is deemed given when received. Customer agrees that any notice or other type of communication provided pursuant to the terms of this Agreement, and any future disclosures required by law, including electronic fund transfer disclosures, may be made electronically by posting the notice on the System website or by email and shall be deemed given when sent or posted. Customer agrees to notify the Bank immediately of any change in its email address. The Customer will hold the Bank harmless from any consequences, including financial loss, resulting from Customer's failure to notify the Bank of the change in Customer's mailing or e-mail address. Except as otherwise expressly provided herein, the Bank shall not be required to act upon any notice or instruction received from the Customer or any other person, or to provide any notice or advice to the Customer or any other person with respect to any matter.

**27. Wire Transfer Service.** The Wire Transfer service will provide Customer with the ability to create and send wire transfer requests. If Customer has requested Wire Transfer services, the terms and conditions of this Section 27 form part of this Agreement.

**a. Additional Definitions.** Unless otherwise defined, terms used in this Section 27 shall have the meanings provided for in the Uniform Commercial Code, Article 4A (the "UCC-4A").

**b. Transfers.** The Bank may act upon all transfer requests on the date received, when received prior to the deadline imposed by the Bank, and to use any means for the transmission of funds the Bank in its sole discretion may consider suitable and charge the appropriate account of Customer for any charge to the Bank for the transfer, and for

any service charge for such transfers then in effect at the Bank. The Bank may transfer funds based upon predetermined criteria described in instructions to the Bank submitted by Customer or any User.

**c. Limitation of Liability.** In addition to, and not limitation of, the Limitation of Liability provided in Section 20 above and limitations elsewhere in this Agreement, if the Bank fails to act on a wire transfer request on the date received, when received prior to the Bank's deadline, and when such failure is due to the Bank's error, Customer's sole remedy shall be the adjustment of the ledger and collected balances of Customer's account(s) to reflect properly the balances in the account(s) that would have resulted had no error occurred, plus any interest that should have accrued.

**d. Obligation Before Acceptance.** The Bank shall have no obligation with respect to any instruction for a wire transfer until accepted by the Bank. The Bank reserves the right to reject any wire transfer instruction. In the event that the Bank rejects any wire transfer instruction, the Bank may notify Customer of any such action by any means reasonable under the circumstance, which need not be in writing. The Bank may cancel a wire transfer request if it determines that the recipient(s) or payee(s) are blocked by OFAC Restrictions.

**e. Amending/Canceling a Transfer.** Customer may request that the Bank cancel or amend a wire transfer instruction before it is processed, provided that such request is received by the Bank in a time and manner that gives the Bank a reasonable opportunity to act on it. Without limiting the generality of the foregoing, the Bank may from time to time specify a cut-off time for cancellation or amendment requests. The Bank is under no obligation nor is the Bank willing to accept liability for canceling a transaction once the transaction has been processed. Customer will be responsible for contacting the beneficiary to request return of the transaction.

**f. Authenticity of Instructions; Security Procedures: Wire Transfers Initiated Through the System.** The Bank assumes no responsibility for ascertaining the genuineness or authenticity of instructions sent via the System. In addition to authentication by entering the appropriate password(s) into the System, User will be required to use a portable electronic device that generates a one-time digital code (a "Token") in order to initiate a wire transfer through the System. The Bank reserves the right to verify or authenticate any request for a wire transfer or other related act by a subsequent telephone call to one or more of Customer's officers, or by any other means which the Bank may deem appropriate, but its failure to verify or authenticate any such instructions received through the System shall not be evidence of any failure to exercise reasonable care or good faith.

**g. Authenticity of Instructions; Security Procedures: Wire Transfers Initiated In Person, By Facsimile or By Email.** In addition to wire transfer initiated through the System, the Customer authorizes the Bank to honor, execute, and charge to the Customer's account(s) at the Bank, all in-person, facsimile, and/or email requests or orders for the wire transfer of funds when such requests or orders are received from the Users designated in the Application and are made in compliance with the Bank's transfer procedures then in effect,

provided that the Bank has used reasonable care in identifying the name of the parties giving such verbal, facsimile, and/or email instructions to ascertain that the named party has been authorized by the Customer to give such instructions. The Customer agrees that the Bank assumes no responsibility for ascertaining the genuineness or authenticity of any person giving verbal instructions or any person sending requests or orders for the transfer of funds via facsimile or via email except as provided in this paragraph 27.g. When a payment order is submitted to the Bank in person, the Bank will obtain personal identification documents from the person submitting the payment order and will verify that the name of the person on the identification documents is the name of an authorized User. The Bank has offered, and the Customer has rejected, a security procedure which requires the User to come in person to the Bank to verify all payment orders in person. The Customer therefore agrees to be bound by any payment order, whether or not authorized, issued in its name and accepted by the Bank in compliance with the security procedures chosen by the Customer as reflected in this Agreement. Upon receipt of a payment order transmitted via facsimile or email, the Bank will call the Customer back at the telephone number established by the Customer in the Application.

**28. Automated Clearing House (“ACH”) Service.** The Bank may initiate electronic fund transfer Entries (as hereinafter defined) by means of the Automated Clearing House (“ACH”). If Customer is enrolled in ACH Services whereby Customer initiates credit and debit Entries through the Bank for deposit and transfer of funds to and from the accounts of other parties maintained at the Bank and other participating institutions, the terms and conditions of this Section 28 form part of this Agreement.

**a. Rules, Laws, and Regulations; Additional Definitions.** Customer will comply with, and will ensure that the origination of all ACH transactions complies with, all rules of the National Automated Clearing House Association (“NACHA”), and abide by all local, state, and federal laws and regulations, including but not limited to, the Electronic Fund Transfer Act and Regulation E, and sanctions laws administered by the Office of Foreign Assets Control (OFAC), as are existence as of the date of this Agreement and as amended from time to time (herein collectively referred to as the “Rules”). It shall further be the responsibility of the Customer to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline.) The specific duties of the Customer provided in this Section 28 in no way limit the foregoing undertaking. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term “Entries” shall have the meaning provided in the Rules and shall also mean the data received from Customer hereunder from which the Bank prepares Entries and for the purposes of any request from Customer for reversal of an Entry. The term “Business Day” shall mean a legal banking day where both the Bank and the ACH processor is open for business.

**b. Security Procedures.**

(i) Customer is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Customer warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any logins, passwords, codes, security devices and related instructions provided by the Bank in connection with the security procedures described in this Agreement.

(ii) The Customer agrees that the purpose of the security procedures set forth in this Agreement, including this Section 28.b., is to verify the authenticity of Entries transmitted to the Bank in the name of the Customer and not to detect an error in the transmission or content of any Entry, and that no security procedure for the detection of such errors has been agreed upon by the Bank and the Customer, and that the Bank will undertake no such effort. In addition to authentication by entering the appropriate password(s) into the System, User will be required to use a portable electronic device that generates a one-time digital code (a “Token”) in order to initiate an ACH transaction through the System. Customer agrees that the Bank shall be authorized to effect the ACH Services upon receipt and verification by the System of the Customer’s password(s) and Customer’s use of the Token, and that the Bank is authorized to act on instructions received upon receipt and verification by the System of the Customer’s password(s). The Bank assumes no responsibility for ascertaining the genuineness or authenticity of instructions sent via the System. If an Entry (or request for cancellation or amendment of an Entry) received by the Bank was transmitted or authorized by Customer, Customer shall pay the Bank the amount of the Entry, whether or not the Bank complied with the security procedure with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if the Bank had complied with such procedure.

**c. Transmittal of Entries by Customer.** For consumer entry types, the Bank will transmit the PPD credit and debit Entries initiated by Customer into the ACH as provided in the NACHA rules. For Corporate entry types, the Bank will transmit the CTX, CCD and/or CCD+ credit and debit Entries initiated by the Customer into the ACH as provided in the NACHA rules. The Entries shall be in compliance with the formatting and other requirements established by the Bank. Customer agrees that its ability to originate Entries under this agreement is subject to exposure limits in accordance with the Rules and as established by the Bank.

**d. Delivery Timeframes.** All ACH Credit Entries should be completed/authorized at least two (2) Business Days prior to the “Effective Date” of the transactions. All ACH Debit Entries should be completed/authorized at least one (1) or two (2) Business Days prior to the “Effective Date” of the transactions. If the transactions are not completed/authorized by the required timeframe, the Bank cannot guarantee the transactions will be accepted by ACH processors, or be received/posted on the “Effective Date” by the recipient’s financial institution. The Bank may accept these items and

they will be forwarded to the ACH processor no later than the Bank's next regularly scheduled delivery time. All ACH Credit originations represent financial obligations, thus the Bank may reject any Entry if Customer has failed to comply with its account balance obligations as set forth herein. The balance showing in the System associated with the account designated as the settlement account for the Entries must be sufficient to cover the total originations on the Delivery date as described above. If the settlement account does not have sufficient funds at that time, the Bank may, without any liability, deny, reject or process the Entries. If the entries are processed, Customer is still obligated to pay the Bank for the Entries.

**e. Processing, Transmittal, and Settlement by the Bank.**

(i) Except as provided in Section 28.f. (on-us entries) and 28.g. (rejection of Entries; prefunding), the Bank shall: 1) process Entries received from Customer to conform with the file specifications set forth in Rules; 2) transmit such Entries as an Originating Depository Financial Institution ("ODFI") to Federal Reserve Bank (the ACH) acting as an Automated Clearing House Operator; and 3) settle for such Entries as provided in the Rules.

(ii) The Bank shall transmit or complete the necessary batch authorization of such ACH Entries by the Delivery Date deadline of the ACH prior to the Effective Entry Date shown in such Entries, provided (I) such Entries are received by the ACH Transactions Cut-Off set forth in Section 19 on a Business Day, (II) the Effective Entry Date is at least two (2) days after such Business Day, and (III) the ACH is open for business on such Business Day. Entries shall be deemed received by the Bank, in the case of transmittal by tape, when received by the Bank at the location set forth in this Agreement, and in the case of transmittal by electronic transmission, when the transmission (and compliance with any related security procedure provided for herein) is completed as provided by Section 28.d.

(iii) If any of the requirements of clause (I), (II), (III) of Section 28.e.ii. is not met, the Bank shall use reasonable efforts to transmit such Entries to the ACH by the next deposit deadline of the ACH on the next Business Day.

**f. On-Us Entries.** Except as provided in Section 28.g. (rejection of Entries; prefunding), in the case of an Entry received for credit or debit to an account maintained with the Bank (an "On-Us Entry"), the Bank shall credit or debit 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 clauses (I) and (II) of Section 28.e.ii. are met. If either of those requirements is not met, the Bank shall 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.

**g. Rejection of Entries; Prefunding.**

(i) The Bank may reject any Entry which does not comply with the requirements of Section 28.c. (transmittal of Entries by Customer), or Section 28.b. (security procedures), or which contains an Effective Entry Date more than two days after the Business Day such Entry is received by the Bank. The Bank may reject an On-Us Entry, for any reason for

which an Entry may be returned under the Rules. The Bank may reject any Entry if Customer has failed to comply with its obligation to maintain a sufficient account balance to cover its payment obligations under this Agreement. The Bank may reject any Entry of Customer that does not adhere to security procedures as described herein. The Bank shall notify Customer by phone or by electronic transmission, including email, of such rejection no later than the Business Day such Entry would otherwise have been transmitted by the Bank to the ACH or, in the case of an On-Us Entry, its Effective Entry Date. Notices of rejection shall be effective when given. The Bank shall have no liability to Customer by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

(ii) From time to time, the Bank may, in its sole discretion, require that Customer irrevocably make available to the Bank, in actually and finally collected funds, the total amount of all ACH Credit originations prior to the time the Bank processes the items (to "Prefund"). Customer may Prefund its credit originations by transfer from another depository institution, or by maintaining a sufficient balance of actually and finally collected funds in the designated account. Unless Customer indicates that it will Prefund in another way and actually do so, Customer authorizes the Bank, prior to processing the Entries, to deduct from the designated account the amount needed to Prefund the ACH credits. If Customer fails or refuses to Prefund the full amounts of its ACH credits in a cycle, the Bank may, at its sole discretion, refuse to process Entries that have not been Prefunded. If Customer only partially Prefunded the amount of its ACH credits and Customer does not indicate which items have been Prefunded, the Bank may, in its sole discretion, determine which Entries shall be considered to have been Prefunded, or may refuse to process all Entries. If Customer Prefunds the ACH credits, Customer's obligation to settle in respect of the Prefunded ACH Credit Entries up to the amount of the Prefunding shall be automatically satisfied and discharged and replaced by an irrevocable obligation of the Bank to settle for the Prefunded items on the Settlement Date.

**h. Cancellation or Amendment by Customer.** Customer shall have no right to cancel or amend any Entry after its receipt by the Bank. However, if such request complies with the security procedures described herein for the cancellation of Data, the Bank shall use reasonable efforts to act on a request by Customer for cancellation of an Entry prior to transmitting it to the ACH or, in the case of an On-Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. Customer shall reimburse the Bank for any expenses, losses, or damages the Bank may incur in effecting or attempting to effect Customer's request for the reversal of an Entry.

**i. Notice of Returned Entries and Notifications of Change.** The Bank shall notify Customer by electronic transmission, including email, of the receipt of a returned Entry from the ACH no later than one Business Day after the Business Day of such receipt. Except for an Entry retransmitted by Customer in accordance with the requirements of Section 28.c. (transmittal of Entries by

Customer), the Bank shall have no obligation to retransmit a returned Entry to the ACH if the Bank complied with the terms of this Agreement with respect to the original Entry. Customer shall notify the Originator by phone or electronic transmission, including email, of receipt of each return Entry no later than one Business Day after the Business Day of receiving such notification from the ODFI. The Bank shall provide Customer all information, as required by the Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by the Bank relating to Entries transmitted by Customer. The Bank must provide such information to Customer within two Business Days of the Settlement Date of each NOC or Corrected NOC Entry. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) Business Days of Customer's receipt of the NOC information from the Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

**j. Payment by Customer for Entries; Payment by ODFI for Entries.**

(i) Except with respect to Entries which have been Prefunded in accordance with Section 28.g.(ii), Customer shall pay the Bank the amount of each credit Entry transmitted by the Bank pursuant to this Agreement at such time specified on the Settlement Date with respect to such credit Entry as the Bank, in its discretion, may determine.

(ii) Customer shall promptly pay the Bank the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") that was transmitted by the Bank pursuant to this Agreement.

(iii) The Bank shall pay Customer the amount of each debit Entry transmitted by the Bank pursuant to this Agreement at such time on the Settlement Date with respect to such debit Entry as the Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date with respect to such Entry as the Bank, in its discretion, may determine.

(iv) The Bank shall promptly pay Customer the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Agreement.

**k. Prenotification.** The Bank recommends the Customer issue zero-dollar prenotification Entries three (3) banking days following the prenotes settlement date prior to initiating the first live dollar Entries. Such Entries are to be provided to the Bank in the format and on the medium provided in the NACHA rules. Should the Customer receive notice that any such prenotification has been rejected by an RDFI, or that an RDFI will not receive Entries without having first received a copy of the written authorization signed by its customer (the "Receiver"), the Customer will initiate no further Entries to the Receiver until such time as the Customer provides the RDFI with such authorization. At such time, the Customer may initiate Entries within the time limits provided in the ACH Rules.

**l. Customer Representations and Agreements; Indemnity.** With respect to each and every Entry initiated by Customer, Customer represents and warrants to the Bank and agrees that:

(i) each person shown as the Receiver on an Entry received by the Bank from Customer has authorized the initiation of such Entry (sample forms available from the Bank) and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry;

(ii) such authorization is operative at the time of transmittal or crediting/debiting by the Bank as provided herein;

(iii) Entries transmitted to the Bank by Customer are limited to those types of Credit or Debit Entries set forth in Section 28.c. (transmittal of Entries by Customer);

(iv) Customer shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC; laws, regulations and orders administered by FinCEN, and any state laws, regulations or orders applicable to the providers of ACH payment services. This includes, but is not limited to sanctions enforced by the Office of Foreign Assets Control (OFAC). It shall further be the responsibility of the company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC.);

(v) Customer shall be bound by and comply with the provision of the Rules (among other provisions of the Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Customer specifically acknowledges that it has 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 Customer shall not be deemed to have paid the Receiver the amount of the Entry. Customer shall indemnify the Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements; and

(vi) Customer acknowledges and agrees that the third parties who may be involved with the ACH other than the Bank (including but not limited to the ACH processor, the ACH Originator, the Receiver and the RDFI are not agents of the Bank. The Customer shall indemnify the Bank against any loss, liability, or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or warranties.

**m. The Bank's Responsibilities; Liability; Limitations on Liability.** In addition to, and not limitation of, the Limitation of Liability provided in Section 20 above and limitations elsewhere in this Agreement, in the event the Customer incurs any loss due to mishandling of a particular Entry or Entries by the Bank, the Bank's liability to Customer shall be limited to: 1) liability for the Bank's own negligence or willful misconduct; and 2) the amount recoverable by the Bank from the ACH, or any third party pursuant to the Rules or any indemnity agreement, and such compensation shall be calculated using the compensation rules provided in the NACHA rules. In no event shall the Bank be liable for any loss or damage from subsequent wrongful dishonor resulting

from the Bank's performing ACH Services under this Agreement. In addition, the Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in the Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in the Bank's reasonable judgment otherwise violation any provision of any present or future risk control program of the Federal Reserve or any rule or regulation or any other U.S. governmental regulatory authority.

**n. Inconsistency of Name and Account Number.** It is the responsibility of the Customer to verify that the individual signing the ACH debit or credit authorization is in fact entitled to use of the specified account. Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by the Bank to the RDFI may be made by the RDFI (or by the Bank in the case of an On-Us Entry) on the basis of the account number supplied by the Customer, even if it identifies a person different from the named Receiver, and that Customer's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.

**o. Data Retention and Audit of Records.** Customer shall retain data on file adequate to permit remaking of Entries for five (5) days following the date of their transmittal by the Bank as provided herein, and shall provide such Data to the Bank upon its request. Without limiting the generality of the forgoing provision, Customer specifically agrees to be bound by and comply with all applicable provisions of the Rules regarding the retention of documents or any record, including, without limitation, Customer's responsibilities to retain all items, source documents, and records of authorization in accordance with the Rules. The Bank reserves the right to audit Customer's compliance with terms of this Agreement and the Rules.

**p. Tapes and Records.** All magnetic tapes, Entries, security procedures and related records used by the Bank for transactions contemplated by this Agreement shall be and remain the Bank's property. The Bank may, at its sole discretion, make available such information upon Customer's request. Any expenses incurred by the Bank in making such information available to Customer shall be paid by Customer.

**q. Evidence of Authorization.** Customer shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations, and other documents related to the Entries, for two years after they expire.

**r. ACH Deposit.** Customer may be required to maintain as a reserve a deposit ("ACH Deposit") in an amount to be solely determined by the Bank. Customer acknowledges and agrees that any ACH Deposit will be deposited in a Bank account for exclusive use by the Bank for purposes of offsetting any of Customer's obligations under the provisions of this Agreement applicable to the ACH service. Customer authorizes the Bank to immediately replenish the ACH Deposit to an amount to be determined by the Bank via an ACH debit to Customer's account or by a direct deposit to the ACH Deposit if Customer's ACH Deposit falls below the required amount. Customer grants the Bank a security interest

in any ACH Deposit to enable the Bank to enforce any obligation owed by Customer applicable to the ACH service without notice or demand to Customer. Customer's obligation to maintain an ACH Deposit shall survive the termination of this Agreement, with such obligation lasting until all of Customer's obligations under this Agreement have been fully offset. The Bank's security interest shall continue until all of Customer's obligations under this Agreement have been fully offset

**s. Records.** All electronic transmission files, Entries, security procedures and records used by the Bank for transactions contemplated by this Section 28 shall be and remain the Bank's property. The Bank may, in its sole discretion, make available such information upon the Customer's request. Any expenses incurred by the Bank in making any such information available to the Customer shall be paid by the Customer.

**29. Positive Pay Service.** The Positive Pay Service will provide fraud protection assistance by comparing the checks paid on Customer's designated account against the checks issued from Customer's records. If Customer has requested Positive Pay services, the terms and conditions of this Section 29 form part of this Agreement.

**a. Positive Pay Service Description and Use**

**(i) Positive Pay File.** Customer must submit a Positive Pay upload file to the Bank prior to the Positive Pay Upload File Cut-Off set forth in Section 19 on the business day of issuance of any checks in order for files to be updated through end-of-day processing. Only those checks listed on a validly prepared and uploaded Positive Pay File will be part of the Positive Pay Service. Any Positive Pay File uploaded after the Positive Pay Upload File Cut-Off set forth in Section 19 on a business day may not be included with the Bank's end-of-day processing until the next business day.

If there are checks reported on the Positive Pay File, the System will compare the check information from the checks listed on Customer's Positive Pay File with the check information that is encoded on that business day's presented checks that are presented to the Bank for payment against Customer's account. This comparison will be done only on the business day presented checks are received by us. Also, the comparison will be done only against the checks that are on the Positive Pay File. It is Customer's responsibility to submit the Positive Pay File in the proper format and time specifications as set forth in this Agreement. If the check information matches exactly, the System will treat the matching items as validly issued and properly payable, and will process those items for payment, assuming Customer has sufficient available funds in its account for the payment. If there are checks presented to the Bank on or as of that business day that do not match the check information as set forth in Customer's Positive Pay File, the Bank will notify Customer of these mis-matched checks through Customer's online access on the "Positive Pay History page."

The Bank will make the Positive Pay History page available to Customer each business day that the Bank receives presented checks through the System. The Positive Pay History page lists the items that did not match Customer's Positive Pay File

(an "Exception Check"). To have any Exception Check returned unpaid, Customer must review the Positive Pay History page, assign a "Return" decision and call the Bank with an instruction to return the Exception Check by the Bank's established cut-off time. If an Exception Check is not assigned a "Return" decision on the Return Items File and Customer does not call the Bank with a return instruction before the Positive Pay Exceptions Review Cut-Off set forth in Section 19, on the business day following the day of presentment of the presented checks, the Bank will pay all presented checks, including but not limited to Exception Checks and non-matching items. If Customer either fails to call with an instruction to return an Exception Check or fails to list an Exception Check in a Return Items Report, the Bank may, but is not obligated to, return the Exception Check unpaid but the Bank will not be liable for not doing so.

The Bank makes no representation or warranty regarding the effectiveness of the Exception Check Report, and makes the Exception Check Report available only as an accommodation to Customer. Customer agrees to indemnify, defend and hold the Bank harmless from every loss, liability and claim arising from information provided on, or excluded from, the Exception Check Report by the Bank. Customer understands that the fee for this Service has been established in contemplation of this indemnification clause.

Customer may only use the Positive Pay Service of the Bank's System as a mechanism to instruct the Bank to return presented checks listed on the Exception Check Report and not for any other checks, including those checks presented prior to or after the business day the Bank sends the Exception Check Report. If Customer wants to stop payment on any check, Customer must fill out a proper stop payment order.

Customer agrees that the Positive Pay File will be sent in the format and medium, by deadline(s), at scheduled day(s), and at the places specified in this Agreement.

(ii) Checks Covered by Service. This Service applies to presented checks that are presented for payment to us through normal interbank clearings. It is not designed to compare Customer's Positive Pay 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 the Bank's sole discretion, it may attempt to compare Customer's Positive Pay File with such items; however, the Bank will not be liable for any failure or refusal to do so.

The Bank assumes no duty to compare under paragraph 29.a.i., 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. We may pay stale-dated and post-dated checks unless Customer submits timely a stop payment order or notice of post dating for such items.

(iii) Reliance on MICR Encoding. Customer agrees that the Bank will not be obligated to verify the authenticity of any check that matches the check information listed in Customer's Positive Pay File. Customer understands and agrees that the Bank may compare Customer's information on its Positive Pay File with information that is encoded on the items presented to the Bank for payment. The Bank will not be

required to otherwise examine checks, or seek to confirm that they are properly signed, completed or encoded, or otherwise unmodified. Customer agrees that the Bank may rely on such a process and that the process will be deemed an acceptable standard of care for this Service and the Customer's account. Customer understands that the Service may not identify altered, counterfeit or duplicate checks or checks with forged or unauthorized signatures. As such, Customer agrees to review promptly all statements, returned checks, reports and other check and transaction information we make available to Customer.

If Customer orders or prints checks from a check-printing vendor other than the Bank, Customer agrees to ensure the MICR encoding ink is of high quality. Not using high quality ink could result in a large number of Exception Checks being reported by the Bank on an Exception Check Report and higher costs to Customer.

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

(v) Customer and the Bank's Communications. The Customer or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Section 29. 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.

The Customer shall use only the Positive Pay Return Items File that complies with paragraph 29.a.1, provided that either one or both has not been revoked by the Bank in accordance with this paragraph 29.a.v, in the submission of the Positive Pay Return Items File.

The Bank shall only use the Positive Pay File and Exception Check Report that complies with paragraph 29.a.1, provided that either one or both has not been revoked by Customer in accordance with paragraph 29.1.v. in the handling of Presented Checks under this Agreement.

The Bank shall not be obligated to comply with any communication not received by the 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.

The Bank is not responsible for detecting any Customer error contained in any Positive Pay File or Positive Pay Return Items File sent by the Customer to the Bank.

(vi) 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.

Customer and the Bank will cooperate in the payment decision regarding processed Damaged Checks. The Customer agrees that the Bank has discretion regarding returning a Damaged Check to the presenting bank or otherwise to any depository financial institution. This means that the Bank is not obligated to (but may) return a Damaged Check, unless expressly instructed otherwise by the Customer. The Customer further agrees the Bank’s decision to return a Damaged Check does not obligate the Bank to return future Damaged Checks. If the 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. The Bank will use its best efforts to notify Customer of a Damaged Check.

**b. Customer’s Remedies.**

(i) Wrongful Honor. It shall constitute wrongful honor by the Bank if the Bank pays an Exception Check submitted in a timely and un-revoked Positive Pay Return Items File submitted in accordance with this Agreement. In the event that there is wrongful honor the Bank may, subject to the defenses set forth in this Agreement, be liable to the Customer for the lesser of the amount of the wrongfully paid Exception Check or the Customer’s actual damages resulting from the Bank’s payment of the Exception Check, but for no other damages suffered as a result of the wrongful honor. Notwithstanding the improper payment of an Exception Check, the Bank expressly reserves the right to assert that the Customer is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under Section 4-401(a). The Bank retains the right to assert the Customer’s failure to exercise reasonable care under Sections 3-406(a) and 4-406(c). The 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). The Bank retains the right to assert the defense that the Customer has sustained no actual damages because the Bank’s honor of the Exception Check discharged for value an indebtedness of the Customer.

(ii) Rightful Payment and Dishonor. If the Bank honors a Presented Check that is not submitted on the Positive Pay Return Items File, such honor shall be rightful, and the Customer waives any right it may have to assert that the Presented Check was not properly payable under Section 4-401. If the Bank honors a Presented Check that is listed on a Positive Pay File, such honor shall be rightful, and the Customer waives any right it may have to assert that the Presented Check was not properly payable under Section 4-401. If the Bank dishonors a Presented Check that is listed on the Positive Pay Return Items File, the dishonor shall be rightful, and the Customer waives any right he or she may

have to assert that the dishonor was wrongful under Section 4-402. The Customer agrees that the Bank exercises ordinary care whenever it rightfully pays or returns a Presented Check consistent with the provisions of the Agreement.

(iii) Assignment. To the extent that the Customer suffers a loss under this Section 29, the Bank assigns to the Customer any claim that the Bank would have against a depository or collecting bank to recover the loss, including any claim of breach of warranty under Commercial Code Sections 4-207, 4-208, and 4-209.

**c. Limitation of Liability**. In addition to, and not limitation of, the Limitation of Liability provided in Section 20 above and limitations elsewhere in this Agreement, if the Bank pays checks or items in accordance with this Agreement, Customer releases the Bank from any claim that the checks or items were not properly payable. If the Bank dishonors items in accordance with this Agreement, Customer releases the Bank from any claim that the checks or items were properly payable and any claim for wrongful dishonor. Customer agrees to be bound by any Positive Pay File and Positive Pay Return Items File, whether or not authorized by Customer that is issued in its name and accepted by us in accordance with this Agreement and the security procedures. The Bank will not be responsible for determining or reporting to Customer whether there is an unauthorized signature or alteration of any item presented against Customer’s account.

**d. Security Procedures**. The Bank assumes no responsibility for ascertaining the genuineness or authenticity of instructions sent via the System. Customer agrees that the Bank shall be authorized to effect the Positive Pay Services upon receipt and verification by the System of the Customer’s password(s), and that the Bank is authorized to act on instructions received upon receipt and verification by the System of the Customer’s password(s). The security procedures are not designed for the detection of errors, and the Bank will not be obligated to detect errors by the Customer even if the Bank takes certain actions from time to time to do so.

**30. On-Site Teller Service and Mobile Banking Deposit Service**. The On-Site Teller service allows Customer to operate an image scanner device specified by the Bank to scan paper checks and to remotely deposit those paper checks into an eligible account by creating an Electronic Deposit through the Bank’s On-Site Teller capture system. If Customer has requested On-Site Teller services, the terms and conditions of this Section 30 form part of this Agreement. The Mobile Banking Deposit Service (“Mobile Banking Deposit Service”) allows Customer to remotely deposit paper checks into an eligible account by creating an Electronic Deposit through the Bank’s Mobile Banking Application, which is processed like a paper check. If Customer has enrolled in the Mobile Banking Deposit Service, the terms and conditions of this Section 30 form part of this Agreement.

**a. Additional Definitions**. Additional definitions applicable to this Section 30 are as follows:

- “Check” means an Original Check, as defined in Regulation CC.

- “Check Image” means an electronic image of an original paper draft (check), payable on demand, and drawn on (or payable through) an office of a United States bank.
- “Capture Device” means an image scanner device or a mobile device (camera), software, or web-based applications used by Customer to prepare a Check Image, create an Electronic Deposit, and access the On-Site Teller Service or Mobile Banking Deposit Service.
- “Documentation” means all documentation, any manuals, all instructions (including on-line instructions) relating to Mobile Banking Deposit Service which the Bank may provide to Customer from time to time.
- “Electronic Deposit” means the package of information (including the Check Image, dollar amount information, deposit account information, etc.) that is transmitted to the Bank allowing for the deposit, processing, and collection of the item.
- “Electronic Item” means a digitized image of a check, an image exchange item, or any other electronic version of a check or other electronic item (such as items process able through the Automated Clearing House (ACH) system) approved by the Bank for processing through the System.
- “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 Imaged Items or Substitute Checks.
- “Imaged Item” means the digitized image of a Check that is created by Customer and transmitted to the Bank using the On-Site Teller Service or Mobile Banking Deposit Service.
- “Image Exchange Item” 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 and payable or endorsed to Customer, and includes Original Checks, Substitute Checks and Image Exchange Items.
- “Magnetic Ink Character Recognition Line and MICR Line” means the numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing for an original check and American National Standard Specifications for an Image Replacement Document for a substitute check (unless the Federal Reserve Board, by rule or order, determines that different standards apply).
- “Mobile Banking Application” means the Bank’s downloadable mobile application (“app”) for use on a mobile device or mobile smart telephone which enables transmission to the Bank of the Check Image.
- “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.

- “Non-qualifying Item” means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, demand drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or postdated, savings bonds, Items payable to “cash,” Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds Customer’s transaction limitations as established by the Bank from time to time.

- “Original” with respect to a Check means the first paper Item issued with respect to a particular payment transaction.

- “Paying Bank” means:
  - The bank by which a check is payable, unless the check is payable at another bank and is sent to that bank for payment or collection;
  - The bank at which a check is payable and to which it is sent for payment or collection;
  - The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;
  - The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or
  - The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

Paying bank includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection. A paying bank also includes the Treasury of the United States or the United States Postal Service for a check that is payable by that entity and that is sent to that entity for payment or collection.

- “Product” means collectively the procedures, protocols, and Software used by the Bank and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the On-Site Teller Service and Mobile Banking Deposit Service.

- “Regulation CC” means 12 C.F.R. Part 229, as it may be amended from time to time.

- “Software” means any software which may be offered or required by the Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to the 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.

- “Transfer and Consideration” have the meanings set forth in the Uniform Commercial Code as adopted in California and in addition:

- The term transfer with respect to a substitute check or a paper or electronic representation of a substitute check means delivery of the substitute check or other representation of the substitute check by a bank to a person other than a bank; and
- A bank that transfers a substitute check or a paper or electronic representation of a substitute check directly to a person other than a bank has received consideration for the item if it has charged, or has the right to charge, the person's account or otherwise has received value for the original check, a substitute check, or a representation of the original check or substitute check.

• “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.

**b. Security Procedures.** The Bank assumes no responsibility for ascertaining the genuineness or authenticity of instructions sent via the System. Customer agrees that the Bank shall be authorized to effect the On-Site Teller Services or the Mobile Banking Deposit Services upon receipt and verification by the System of the Customer's password(s), and that the Bank is authorized to act on instructions received upon receipt and verification by the System of the Customer's password(s). The security procedures are not designed for the detection of errors, and the Bank will not be obligated to detect errors by the Customer even if the Bank takes certain actions from time to time to do so.

**c. Account Eligibility and Limitations.** Use of the On-Site Teller Service or the Mobile Banking Deposit Service is subject to approval. The following minimum requirements (which may be waived by the Bank in its sole discretion) apply: (i) Customer must have a relationship with the Bank for greater than 90 days; (ii) account(s) must be and remain in good standing and have no restrictions; and (iii) Customer must have no overdrafts or non-sufficient funds violations in the past 3 statement cycles.

**d. Services.** Customer can use the Software and the System to do the following:

(i) Scan Checks and Make Deposits. Customer can scan checks and make deposits into its accounts designated in the Application if the checks are payable to the account holder and no other joint payee.

(ii) View Deposit History, Check Images and Reports. Customer can view deposit history, check images and reports.

(iii) Posting of Deposits. Deposits completed through the System before the On-Site Teller or Mobile Banking Deposit Cut-Off set forth in Section 19 on a business day are posted to Customer's account the same day. Deposits completed after the On-Site Teller or Mobile Banking Deposit Cut-Off set forth in Section 19 or on a non-business day will

be posted on the next business day. Customer agrees to communicate this information with any other persons with authorized access to Customer's accounts concerning any transfers, bill payments, or other transactions from Customer's accounts in order to avoid overdrafts. The Bank reserves the right in its sole discretion to terminate or suspend Customer's access to On-Site Teller Services or Mobile Banking Deposit Services at any time and with or without notice to Customer. For example, if an account has no Items presented for deposit through the On-Site Teller Service for a period of 90 days the Bank may terminate Customer's access to the On-Site Teller Service.

**e. Customer's Responsibility.** In connection with the Product and On-Site Teller Service or Mobile Banking Deposit Service, Customer shall comply with the following:

(i) For commercial depositors, Customer will be responsible for training its employees in the use of the Product and On-Site Teller Service or Mobile Banking Deposit Service.

(ii) Customer will create images of Checks at Customer's location by use of a Capture Device and Software approved or provided by the Bank. Customer will enter all amounts and any other required information correctly.

(iii) Customer will only submit Items for processing to the Bank that meet the definition of “Item” as provided in this Agreement and will ensure that the Items scanned meet the standards for image quality established by the American National Standard Institute (ANSI) required by Regulation CC, or other standards established or required by the Bank or applicable law. Customer will not process any Non-qualifying Items. The Bank's processing of any Non-qualifying Items shall not constitute a waiver by the Bank or obligate it to process such Non-qualifying Items in the future. The Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

(iv) Unless prior approval is granted by the Bank in writing, Customer will not attempt to scan and transmit to the Bank any Item which is drawn on a deposit account of Customer at the Bank or any other financial institution, or a deposit account of any business entity of which Customer is a principal, officer or authorized signer.

(v) Customer will not attempt to scan and transmit to the Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank. Notwithstanding the foregoing, the Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the deposit account agreements.

(vi) Customer will (i) ensure that Items are restrictively endorsed or otherwise processed 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 this Agreement and in the Documentation, 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.

(vii) Customer will use the Product and On-Site Teller Service or Mobile Banking Deposit Service, including the entering, processing and transmittal of Imaged Items, in accordance with the Documentation. 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 On-Site Teller Service, all of which must satisfy any minimum requirements set forth in the Documentation or as otherwise may be acceptable to the 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 On-Site Teller Service, including without limitation troubleshooting internet connectivity issues with Customer's internet service provider (ISP), and the Bank will not be responsible therefore.

(viii) Customer will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to the Bank.

(ix) Customer will: (i) maintain a daily control record of all Checks, including transaction counts and dollar amounts; and (ii) balance transactions transmitted from the previous business day and immediately notify the Bank of any error or discrepancy discovered. Timeframes in which Customer must notify the Bank of any errors or discrepancies related to transactions, including without limitation Items deposited via the On-Site Teller Service or Mobile Banking Deposit Service, are provided in the deposit account agreements governing the applicable account. If Customer fails to notify the Bank of any errors or discrepancies within such timeframes, then the underlying transaction(s) will be deemed correct and Customer will be precluded from asserting any error or discrepancy against the Bank.

(x) Unless the Bank specifically agrees otherwise in writing, Customer will not use the On-Site Teller Service or Mobile Banking Deposit Service to deposit any Check or Checks that exceed the transaction limitations or file limitations or both (collectively the "Transaction Limits") that may be established by the Bank. The Transaction Limits may be changed in the Bank's sole discretion from time to time. A change in the Transaction Limits shall be effective upon the Bank providing notice of the change to Customer.

(xi) Customer shall be responsible for verifying the 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 transmissions with the Bank.

(xii) The Bank may from time to time send a notice to Customer requesting the installation or implementation of any changes (including without limitation a hardware or software upgrade) to the Product or On-Site Teller Service (or both) in order to ensure compliance with regulatory changes or developments, to protect the integrity and security of the Product and On-Site Teller Service, or for any other reason determined by the Bank (a "Change/Upgrade Notice").

Customer shall be responsible for installing or implementing the changes described in the Change/Upgrade Notice within 5 days from the date the Bank sent the notice. Customer will also ensure that the equipment for the On-Site Teller 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.

(xiii) Customer shall exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by the Bank or otherwise required for use of the On-Site Teller Service and shall further prevent the use of the On-Site Teller Service by unauthorized persons. Customer assumes full responsibility for the consequences of any missing or unauthorized use of or access to the On-Site Teller Service or disclosure of any confidential information or instructions by Customer, its employees and agents (as applicable).

(xiv) System applies a virtual endorsement containing deposit account information. Prior to scanning and submitting Original Check customer will use a restrictive endorsement stamp or otherwise place restrictive endorsement language on back of check below the space reserved for virtual endorsement. Language should include the following at minimum: "For Remote Deposit Only to Mission Valley Bank." If not directed otherwise by the Bank, Customers will store Original Checks in a safe and secure environment for a minimum of 14 days and a maximum of 30 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, (b) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties; (c) such Checks will not be duplicated or scanned more than one time; and (d) such Checks will not be re-deposited or renegotiated in any form. 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 the Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as the Bank otherwise deems necessary. Customer will use a commercially reasonable method which is consistent with any requirements of Regulation CC and the Bank to securely and permanently destroy Original Checks after Customer's retention period has expired.

(xv) 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 the account charged for the amount of the Item plus any associated fees, which may be changed from time to time in the Bank's discretion. The Bank's right to charge the account will apply without regard to whether the Item is timely returned to the Bank or whether there is any other claim or defense that the Item has been improperly returned to the Bank.

(xvi) If the account is, or at any time becomes, an account that is jointly owned by two or more parties (a "joint account"), Customer warrants that all joint account owners of

the account agree to the terms and conditions of this Agreement and that this Agreement binds all owners of the account. Each joint account owner further agrees that notice to one joint account owner is notice to all joint account owners. All joint account owners are jointly and severally liable to the Bank for any amounts owed to the Bank under this Agreement, including without limitation any fees for the Product and On-Site Teller Service, any and all overdrafts to the account, and any amounts charged to the account for deposited Items that return as unpaid provided, however, that no fees for the Product or On-Site Teller Service will be charged to a personal (non-business) account of an individual consumer.

**f. Determination of Items Eligible for the On-Site Teller Service or Mobile Banking Deposit Service.** Customer may only create a Check Image of items made payable to Customer individually or to Customer alternatively with another entity, person or persons (Company A or Company B); jointly payable items (Company A and Company B) may not be deposited using the On-Site Teller Service or Mobile Banking Deposit Service. Without limiting the preceding sentence, the Bank reserves the right to reject any deposit for any reason and the following items are specifically not eligible for deposit using the On-Site Teller Service or Mobile Banking Deposit Service:

- U.S. Treasury Checks;
- Checks, including travelers checks, that are drawn on banks located outside of the United States;
- Money orders and postal money orders;
- Credit card checks;
- Checks payable in a medium other than U.S. dollars;
- Non-cash items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC);
- Promissory notes and similar obligations, such as savings bonds;
- Third party checks;
- Pre-existing substitute checks;
- Checks that have been previously returned as unpaid or uncollected;
- Checks greater than 180 days old;
- Checks which are drawn on a deposit account of Customer at the Bank or any other financial institution (unless prior approval is granted by the Bank in writing);
- Checks that contain erasures or checks that have been altered; and
- Any other class of checks or drafts as identified by the Bank to Customer from time to time.

**g. Creating an Electronic Deposit.**

(i) The check must be properly endorsed by the payee(s) of the check and the check must be deposited into an account of one of the payees. Each payee or authorized representative must sign his or her name. Prior to submitting an Electronic Deposit, customer will use a restrictive endorsement stamp or otherwise place restrictive endorsement language on back of the check below the space reserved for virtual endorsement. Language should include the following at minimum: "For Mobile Banking Deposit Only to Mission

Valley Bank" and the account number to which the check will be deposited.

(ii) Customer is responsible for creating an accurate Check Image and inputting the correct dollar amount of the check into the Capture Device. In creating the Check Image, Customer must ensure that the MICR Data, check number, and name of the maker of the check are commercially printed on the check. Any defects such as tears or alterations may prevent the Capture Device from creating an accurate Check Image, causing the Electronic Deposit to be rejected. If Customer receives error messages or an email notification indicating that the Electronic Deposit has been rejected, then the check must be physically deposited at Customer's local bank branch or ATM.

(iii) Customer is responsible for the inspection of all Check Images to ensure the legibility of the Check Image including without limitation the dollar amount, the signature of the person who made the check, the presence of a restrictive endorsement stamp or language, and for ensuring that any and all information on the paper check is accurately captured and legible in the resulting Check Image.

If any information is not accurately captured and legible, Customer may cancel the scan/photograph and rescan/re-photograph the physical check. Any physical check that continues to yield an illegible Check Image after repeated scanning/photographing attempts must be physically deposited at Customer's local branch.

(iv) Customer acknowledges that the Capture Device may not capture all security features (e.g., watermarks) contained in or on the original paper checks, and Customer must manually examine the paper item to determine authenticity prior to creating a Check Image or submitting an Electronic Deposit. Customer agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

**h. Submitting an Electronic Deposit.** Performance of the On-Site Teller Service may be affected by external factors such as communication network latency. An Electronic Deposit is not considered "received" by the Bank for deposit until the entire Electronic Deposit transmission is received by the Bank and accepted at the location where the Bank or its designated agents post the credit to the account. Customer shall remain liable for, and the Bank shall not be accountable to Customer for, Electronic Items not received by the Bank.

**i. Deposit Limits.** Customer is limited in the amount that Customer may deposit at any given time using the On-Site Teller Service or Mobile Banking Deposit Service. The following deposit limits may apply to each account:

- Per Item Limit – Limits the value of each item that Customer deposits and applies to each separate item that Customer deposits.
- Daily Limit – Limits the total combined value of all items deposited in a single business day and/or the number of items deposited in a single business day. Deposits made after the daily cut-off time or on a non-business day (as explained in the "Funds Availability" section below) will apply to the daily limit of the next business day.

The deposit limits vary depending on many factors including

Customer's deposit history and the length of Customer's relationship with the Bank. Deposit limits are subject to change as the Bank continually evaluates these factors.

**j. The Bank's Operational Responsibilities.** The Bank agrees to be in compliance with the following:

(i) Delivering the following items to the customer, in addition to providing access to the Software and the System: (a) On-Site Teller Services User Guide; (b) user IDs, temporary passwords and any other related authentication methods; and (c) equipment necessary to perform the service.

(ii) Providing initial installation and ongoing training support to ensure the proper implementation and use of the Software and equipment;

(iii) Providing maintenance and support for the Software to ensure the accurate processing of checks, including but not limited to: (a) corrections, contingent or alternate work methods and fixes to any known program bugs or errors; (b) modifications, enhancements and updates; and (c) telephone and e-mail support during the Bank's normal business hours.

(iv) Accepting for deposit to the applicable account digitized images of checks that are transmitted to the Bank by Customer. Digitized images are deemed **received upon confirmation by the Bank of successful receipt** of the transmission of the images that are complete, usable, and adhere to the data specifications set forth in the Bank's On-Site Teller Services User Guide. If the digitized images are not complete, are not useable, or do not adhere to data specifications, the images may not be processed by the Bank, in which event Customer's deposit will be adjusted and notification will be provided to Customer;

(v) Processing digitized images after the Bank has received Customer's transmission of the digitized images. The Bank uses commercially reasonable efforts to present image exchange items and substitute checks for collection. Unless the Bank notifies Customer otherwise, the Bank provides same day credit to the applicable account for all items transmitted by the customer and received by the Bank within the timelines established by the Bank;

**NOTE: Notwithstanding the foregoing,** Customer's deposit of a check image is subject to the Bank's verification and final inspection process. The Bank may at any time deposit a check image or return all or part of a deposit of multiple check images to Customer without prior notice. The Bank is under no obligation to inspect or verify a check image to determine accuracy, legibility or quality of the check image or MICR line information associated with the check image, or for any other purpose. However, the Bank may correct or amend MICR line information associated with a check image to facilitate processing of the check image or a substitute check created from that check image.

The Bank may in its sole discretion process and collect a check image or a substitute check through one or more check clearing houses, Federal Reserve Banks, or other private clearing agreements with another bank. The check images or substitute checks are subject to the rules of that clearing house, Federal Reserve Bank, or private clearing bank agreement.

(vi) Retaining check images contained in the Bank's cash letter file for 7 years;

(vii) If a Paying Bank returns an item to the Bank for any reason, the Bank may charge Customer's applicable account for the returned item, whether or not the return is timely and proper, and may either: (a) return the item to the Customer; or (b) re-present it to the Paying Bank before returning it to the Customer.

Items may be returned as image exchange items, rather than substitute checks, as agreed by the parties. If a Paying Bank or other third party makes a claim against the Bank or seeks a recredit with respect to any check processed, the Bank may provisionally freeze or hold aside a like amount in the applicable account pending investigation and resolution of the claim;

(viii) Immediately suspending the System or the processing of any check or corresponding electronic item if the Bank has reason to believe that there has been a breach in the security of the System, fraud involving Customer's account(s) or check(s), or any uncertainty as to the authorization or accuracy of electronic items, including the right to process electronic items on a collection basis at any time; and

(ix) Refusing to process any non-conforming items, including without limitation any items that do not meet the definition of a "check."

**k. Funds Availability.** This policy only applies to deposits made using the On-Site Teller Service or Mobile Banking Deposit Service; deposits made at a branch location remain subject to the funds availability policy outlined in the most current version of Customer's applicable deposit account agreement. The Bank is not liable for transactions Customer initiates before the funds are available for Customer's use. Until Customer receives confirmation that the funds are made available, Customer may not withdraw the funds in cash and the Bank may not use the funds to pay items that Customer has written or honor other withdrawals Customer requests. If the Bank pays items that Customer has written or honors other withdrawals before funds are available to Customer, the Bank may charge a fee for this. The On-Site Teller Service and the Mobile Banking Deposit Service are available 24/7/365, but the funds availability of the approved deposit is subject to the following processing cut-off times:

(i) Deposits submitted and deemed received before the Mobile Banking Deposit Cut-Off set forth in Section 19 on a business day – generally, the total daily deposits will be available on the same day.

(ii) Deposits submitted and deemed received after the Mobile Banking Deposit Cut-Off set forth in Section 19 on a business day (or items deposited on a non-business day) – these deposits will not be processed until the next available business day, which will be considered the recorded day of the deposit. Generally, the Bank will make the total daily deposits available on the next available business day.

In certain circumstances, and at the Bank's discretion, the balance of the deposit may be delayed for a longer period under any of the following circumstances: (i) the Bank believes a check Customer deposits will not be paid; (ii)

Customer deposits checks totaling more than \$5,000 on any one day; (iii) Customer has overdrawn its account repeatedly in the past six months; or (iv) there is an emergency, such as the failure of computer or communications equipment.

The Bank will notify Customer if it delays Customer's ability to withdraw funds for any of these reasons, and the Bank will tell the Customer when the funds will be available. In general, funds delayed for the above reasons will be available no later than the seventh business day after the recorded day of Customer's deposit.

Even after the item has "cleared" and the Bank has made funds available to Customer, and Customer has withdrawn the funds, Customer is still responsible for items Customer deposits that are returned to the Bank unpaid and for any other problems involving the deposit.

**l. Returned or Rejected Items.** If a check that is deposited using the On-Site Teller Service or Mobile Banking Deposit Service is returned to the Bank for any reason (such as non-sufficient funds), Customer agrees that the Bank may charge the account for any and all fees associated with the returned item. Customer will not be charged the returned item fee for rejected items. Items that are rejected for deposit using Mobile Remote Deposit Service may be re-presented for deposit at a physical branch of the Bank.

**m. Collection of an Electronic Deposit.** Electronic Deposits are processed similarly to traditional deposits; the On-Site Teller Service and the Mobile Banking Deposit Service do not process Electronic Deposits through ACH conversion. The Bank will determine the manner in which it will seek to collect an Electronic Deposit and the Bank reserves the right to process an Electronic Deposit by any of the following methods:

- Present or transfer the Check Image to the paying bank, a Federal Reserve Bank, image share/exchange network, or other collecting bank;
- Create a Substitute Check from the Check Image and collect the Substitute Check; or,
- Request that Customer provide to the Bank the original paper check from which the Check Image was created and then collect the original paper check.

The Bank may, in its sole discretion, reject, repair, alter, amend, re-format or convert the Check Image or MICR Data submitted in an Electronic Deposit in accordance with general check collection practices and industry presentment standards, but the Bank has no obligation to do so. If the Bank requires that Customer comply with certain formatting standards or other guidelines when submitting Electronic Deposits and Customer declines to implement, or comply with, such standards or guidelines, Customer acknowledges that the Bank is not liable for any error or loss that results from the Bank's processing of such Electronic Deposit or any delays caused from the Bank's re-formatting or conversion of the Electronic Deposit prior to processing. The Bank will have no liability to Customer or any other person in the event that Customer's deposited check is processed as, or converted by the Bank to, a Check Image or Substitute Check.

**n. Marking, Retaining, and Destroying Original Paper Checks.** To mitigate the risk of potential fraud or the

presentment of duplicate items, Customer agrees all checks will have a restrictive endorsement stamp or language "For Mobile Banking Deposit Only to Mission Valley Bank" present on the back of original paper check prior to being deposited electronically. Customer must destroy the original paper check in accordance with this Agreement and employ commercially reasonable methods to securely store the original paper check until destruction. Customer agrees to securely store all deposited checks in a location away from daily processing activities. To help ensure that checks are not electronically processed more than once or physically deposited at the Bank after being electronically deposited, Customer will establish procedures to ensure that only authorized persons have access to these checks. Customer agrees to retain all checks for at least fourteen (14) days after the deposit is made in case a check is returned and Customer needs to collect on the check by re-depositing the original item. Customer agrees to destroy all deposited checks after the required retention period has expired. Cross-cut shredding is strongly recommended for check destruction. At the Bank's request, Customer must provide the original paper check to the Bank if the original paper check has not been destroyed by Customer and the Bank needs the original paper check to process a payment or resolve a dispute arising from an Electronic Deposit. In the event the Bank, in its sole discretion, determines that it requires the original paper check for re-presentment in order to collect a returned Check Image or Substitute Check, Customer is responsible for providing to the Bank the original paper check, or if the original paper check has been destroyed, for obtaining a replacement check.

**o. Indemnification of the Bank.** With respect to each Electronic Deposit that Customer transmits to the Bank, Customer indemnifies and holds the Bank, its affiliates and other service providers and each of the Bank's and their respective officers, directors, employees and agents harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (i) from Customer's failure to follow the eligibility or endorsement standards outlined in this Agreement; (ii) from Customer's breach of any check presentment representation or warranty; (iii) as a result of any of Customer's acts or omissions in the capturing, creation, or transmission of the Electronic Deposit; (iv) from any duplicate, fraudulent, or unauthorized presentment of an Electronic Deposit; (v) for any loss caused by the Bank's acceptance of the Electronic Deposit in lieu of the original paper check; or (vi) from any other act or omission arising out of the Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement.

If Customer believes it may have deposited a check more than once, call the Bank immediately.

**p. Service and Intellectual Property.**

(i) Service. The Bank, subject to the terms and conditions of this Agreement, hereby grants to Customer: (a) Use the Software solely for processing checks in connection with Customer's own business operations, in accordance with the On-Site Teller Services User Guide and solely on

authorized equipment; (b) the right to copy and use of the On-Site Teller Services User Guide to solely support Customer's authorized use of the Software; and (c) the right to copy any Service-related information solely for archival or backup purposes.

(ii) Protection and Security of the Software and the On-Site Teller Services User Guide. Customer agrees to establish and maintain reasonable: (a) precautions and use commercially reasonable efforts to protect the confidentiality and security of the Software; (b) measures to protect the Software and On-Site Teller User Guide from unauthorized copying, dissemination, disclosure or other unauthorized use; and (c) provisions to maintain a complete and accurate list of all locations where Customer has loaded and use the Software, and make such list available to the Bank upon the Bank's request.

In addition, Customer agrees not to at any time either directly or indirectly: (a) copy or use the Software or On-Site Teller Services User Guide except as expressly authorized by this Agreement; (b) sublicense, rent, distribute, transfer, publish, disclose, display or otherwise make available the Software to others; (c) use the Software or On-Site Teller Services User Guide for third party training, commercial time sharing or service bureau use; (d) alter, change, modify or otherwise create derivative works of the Software or On-Site Teller Services User Guide; and (e) reverse engineer, disassemble or decompile the Software, except to the extent expressly permitted by applicable law.

If Customer or any third party takes such action the Bank shall have the right to immediately terminate this Agreement and/or the license to the Software upon notice to Customer.

(iii) Ownership. Customer acknowledges and agree that all right, title and interest in and to the Software and the On-Site Teller Services User Guide, together with modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents, and trade secrets, pertaining to the Software and the On-Site Teller Services User Guide are: (a) owned exclusively by the Bank and its licensors; (b) represented or contain valuable rights of the Bank and its licensors; and (c) protected under United States patent, copyright, trademark and trade secret laws of general applicability.

No other license or interest in the Software or On-Site Teller Services User Guide, either express or implied, is granted under this Agreement other than the license set forth in this Agreement.

In addition, Customer agrees not to at any time either directly or indirectly: (a) put to issue the scope, validity or ownership of the Bank's (or its licensors') intellectual property rights in the Software and On-Site Teller Services User Guide; (b) perform any act which could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights; (c) assert any ownership rights to the Software or On-Site Teller Services User Guide; or (d) remove or alter any copyright, trademark, or other intellectual property or proprietary right notices, legends, symbols or labels appearing on or in the Software, On-Site Teller Services User Guide, or any packaging, and shall include any copy of the Software or

On-Site Teller Services User Guide any copyright, trademark, or other intellectual property or proprietary right notices contained on the original.

Customer acknowledges and agrees that this Agreement does not grant or convey to Customer an interest in or to the Software or On-Site Teller Services User Guide, or any right, title, interest or license in or to any trademark of the Bank or its licensors, but only a limited right of use (revocable in accordance with the terms hereof).

Customer hereby assigns to the Bank and/or its licensors, as directed by the Bank, any rights, including any patent, copyright, mask work rights, trademarks, and trade secrets, which Customer may now have or may acquire at any time in the future to the Software or the intellectual property rights to the Software, and any other computer code using any of the Software.

Customer agrees to: (a) cooperate with the Bank and its licensors to protect the Software, including in connection with any lawsuits or disputes involving the Software; (b) promptly notify the Bank and provide relevant information and facts upon becoming aware of any actual or potential claim made by a third party regarding infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof, by the Software; and (c) in the event of any actual or potential infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof of the Software by others: 1) grant to the Bank and its licensors the sole right to determine the course of action with respect to such infringement and to bring any proceeding with respect thereto, and to settle, and collect any settlement amount or judgment for any such proceeding; and 2) agree that such licensors shall be solely entitled to any proceeds of any such proceeding, including without limitation any settlement proceeds, insurance proceeds, arbitration award, judgment, or other consideration in any form.

(iv) Termination. Customer acknowledges and agrees that the license to the Software and On-Site Teller Services User Guide will terminate upon the earlier of the termination of this Agreement (or any earlier termination of the On-Site Teller Services), or the termination of the Bank's license to the Software and On-Site Teller Services User Guide.

(v) Limitation on Liability-Licensor. The Bank's Licensors shall have no liability of any nature to Customer, or any third party, for damages, liabilities or claims, whether in contract, tort for negligence, infringement or otherwise, including without limitation damages, liabilities or claims arising from or under this Agreement, error in the Software, or for any injury, damage or loss resulting from such error, or from any use of the Software. Notwithstanding the generality of the foregoing, in no event will such licensors be liable for any consequential, indirect, incidental, special or punitive damages, or any lost profits or loss of any opportunity or good will, even if such licensors have been advised of the possibility of such.

(vi) Compliance with Law. Customer shall not export, re-export or otherwise transfer, directly or indirectly, the Software or any portion thereof to any location outside the

United States without first complying with all applicable foreign and United States federal, state and local laws, rules, regulations or controls (including without limitation those regarding import, export, marketing, distribution or use of software programs).

(vii) Assignment. Customer may not assign the license granted hereunder to any party whatsoever, except in connection with an assignment of the entire Agreement, subject to the terms of the Agreement. Any attempted assignment of the license in violation of this provision shall be void.

(viii) Further Assurances. Customer agrees to, at its expense, promptly execute and deliver such further documents and take any and all other actions reasonably requested by the Bank from time to time, for the purpose of fully effectuating the intent and purposes of this Agreement, and to protect the interests of the Bank, its licensors, and their respective successors and assignees.

(ix) Injunctive Relief. Customer acknowledges that violation of its commitment regarding the security and use of the Software may cause irreparable injury to the Bank and/or its licensors, and agrees that the Bank be entitled to seek and obtain temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation.

(x) Survival. Customer agrees that the provisions of this section of the Agreement survive termination of the license granted hereunder and the termination of this Agreement.

**q. Security Procedures**. Customer must comply with all security procedures for the On-Site Teller Service and Mobile Banking Deposit Service that are established by the Bank or set forth in any written user requirements communicated to Customer. Customer is solely responsible for: (i) maintaining its own internal security procedures for maintaining, marking, destroying paper items deposited using the On-Site Teller Service or Mobile Banking Deposit Service; (ii) Safeguarding the security and confidentiality of any information obtained from Customer's deposited checks that may be printed from, stored on, or transferred from, the Capture Device; and (iii) Preventing errors or unauthorized access to the Capture Device. The Customer agrees that the purpose of the security procedures set forth in this Agreement, including this Section 30.q. is to verify the authenticity of instructions transmitted to the Bank in the name of the Customer and not to detect an error in the transmission or content of any instruction, and that no security procedure for the detection of such errors has been agreed upon by the Bank and the Customer, and that the Bank will undertake no such effort. Customer agrees that the Bank shall be authorized to effect the On-Site Teller Service or Mobile Banking Deposit Service upon receipt and verification by the System of the Customer's password(s), and that the Bank is authorized to act on instructions received upon receipt and verification by the System of the Customer's password(s). The Bank assumes no responsibility for ascertaining the genuineness or authenticity of instructions sent via the System.

**r. Confidentiality**. The Bank will disclose information to third parties about Customer's account or the checks

Customer deposits: 1) when it is necessary for completing deposits; 2) in order to verify the existence and condition of Customer's account for a third party, such as a credit bureau or merchant; 3) in order to comply with government agency or court orders; or 4) if Customer gives the Bank written permission.

**s. Disclaimer of Warranty, Limitation of Liability and Indemnity**. In addition to, and not in limitation of, any other disclaimers, limitations of liability, and indemnities in this Agreement, the Bank makes no warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, the existence of any latent or patent defects, viruses, or the accuracy or freedom from error, of the data or the program used by or furnished to the Bank or to Customer by licensor or others, in connection with the Software or Service(s) provided to Customer under this Section 30 of the Agreement. Without limiting the generality of the foregoing, the Bank makes no representation or warranty, express or implied, against any infringement of any proprietary rights of any other party. Customer assumes the entire risk as to the quality and performance of the Software, the suitability of the Service, and with respect to any documentation. This paragraph shall survive the termination of this Agreement by either Customer or the Bank, and also limits the liability of any agent, employee or affiliate of the Bank. The Bank does not and cannot warrant that the Software will operate without errors, or that any or all Service(s) will be available and operational at all times.

Nothing contained in this Agreement shall be deemed to relieve Customer of any liability, duty or obligation which may be imposed upon Customer by any federal, state or municipal laws, including without limitation, laws requiring Customer to maintain records regarding its business or employees or to withhold taxes or other deductions.

Customer will indemnify and hold harmless the Bank, its licensors and providers of services, and their respective directors, officers, shareholders, employees and agents (each an "Indemnified Party") from and against any third party suits, proceedings, claims, demands, causes of action, damages, liabilities, losses or expenses (including reasonable attorneys' fees and other legal expenses) that result from or arise out of: (a) The wrongful acts or omissions of Customer or any person acting on Customer behalf, in connection with Customer's use of the Software or processing of checks hereunder, including without limitation: 1) a breach by Customer of any provision, representation or warranty of this Agreement; 2) the negligence or willful misconduct (whether by act or omission) of Customer, Customer's customers, or any third party on behalf of Customer; 3) any modifications or changes to the Software System made by Customer or any third party within the control or on behalf of Customer; 4) any misuse of the Software by Customer or any third party within the control or on behalf of Customer; or 5) the failure by Customer to comply with applicable state and federal laws and regulations; (b) Any act or omission of the Bank that is in accordance with this Agreement or instructions from Customer; or (c) Any claim by any recipient of a substitute check corresponding to a check processed by Customer hereunder, that such recipient

incurred loss due to the receipt of the substitute check instead of the original check (a "Claim").

The Bank will not be liable to the Customer for any of the following, unless liability or loss is a result of the Bank's breach of this Agreement or the gross negligence or willful misconduct of the Bank or its employees or agents: (a) Any damages, costs or other consequences caused by or related to the Bank's actions that are based on information or instructions that Customer provides to the Bank; (b) Any unauthorized actions initiated or caused by Customer or its employees or agents; (c) The failure of third persons or vendors to perform satisfactorily, other than persons to whom the Bank has delegated the performance of specific obligations provided in this Agreement; (d) Any refusal of a Paying Bank to pay an electronic item or substitute check for any reason, including without limitation that the check, electronic item or substitute check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (e) Any other party's lack of access to the Internet or inability to transmit or receive data; (f) Failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems; or (g) Actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of an electronic item to the Bank.

The Bank's liability for errors or omissions with respect to the data transmitted or printed by the Bank will be limited to correcting the errors or omissions. Correction will be limited to reprinting and/or representing substitute checks or electronic items to the Paying Bank.

The Bank shall have no liability under this provision to the extent a Claim is attributable to: (a) Modification of the Software by anyone other than the Bank without the express prior written consent of the Bank, if liability for infringement would not have arisen but for such modification; (b) Combination or use of the Software with any software or hardware not provided by the Bank, if liability for infringement would not have arisen but for such combination or use with such software or hardware; (c) Use of the Software in any way not authorized by this Agreement, if liability for infringement would not have arisen but for such unauthorized use; (d) Transmission of electronic images to any other computer, system or media, other than, transmission to the Bank for the purpose of processing such electronic images as contemplated herein, if liability for infringement would not have arisen but for such transmission; (e) Use of other than the most current release of the Software provided to Customer, if liability for infringement would not have arisen if the most current release had been in use; or (f) Any breach by Customer of this Agreement, if liability for infringement would not have arisen but for such breach.

If Customer's use of the Software is, or in the Bank's opinion is likely to be, enjoined due to a claim that it constitutes infringement, the Bank shall, at its sole option and expense, do one or more of the following: (a) Provide Customer the right to continue using the Software at no additional expense; (b) Replace or modify the Software with non-infringing software, without a material reduction in functionality or performance; (c) Resolve any infringement claim so that Customer may

continue using the Software at no additional expense; or (d) Terminate the Service and the license of the Software.

**t. Representations and Warranties by Customer.** With respect to each Electronic Deposit that Customer transmits to the Bank, Customer is deemed to make any representation or warranty that would have applied had Customer deposited the original paper check. In addition, Customer is deemed to make to the Bank any representation or warranty that the Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when the Bank transfers, presents, or originates the Electronic Deposit, or a Substitute Check created from that Check Image. These representations and warranties include but are not limited to, that: (a) the transmissions contain accurate images of the front and back of the original checks; (b) the transmissions contain all necessary endorsements; and (c) no depository bank, drawee, drawer, or endorser will be asked to make a payment based on an item that it has already paid.

**u. Additional Limitations of the On-Site Teller Service and Mobile Banking Deposit Service.** The On-Site Teller Service and Mobile Banking Deposit Service is only available for use within the United States. The Bank reserves the right to periodically audit Customer's eligibility for the On-Site Teller Service and Mobile Banking Deposit Service, security, and information technology processes, and to require Customer to implement reasonable and necessary controls. Once a Check Image has been received for deposit, the Bank is not able to delete or remove the item from the collection process and it becomes subject to the funds availability policy described herein.

**v. Termination.** Any termination will not affect obligations arising prior to termination, such as the obligation to process any checks and electronic items (including returned electronic items) that were in the process of being transmitted or collected prior to the termination date. Within 15 days after termination of the On-Site Teller Services, Customer will return or remove all copies of the Software (drivers, software), On-Site Teller Services User Guide, and the scanner (hardware) in Customer's possession or under Customer's control, and will, upon request, certify in writing that Customer has returned or removed all such copies. If Customer fails to return any equipment provided by the Bank in connection with the On-Site Teller Services within 15 days of termination, Customer will be charged the full replacement cost of the equipment. In addition, Customer will keep its account(s) at the Bank open until the later of: 1) 60 days after the date of termination; or 2) final payment with respect to all processing fees, and will maintain funds in such account(s) in amounts and for a period of time determined by the Bank in its reasonable discretion to cover any outstanding checks and Customer's obligations for returns of checks, warranty claims, fees and other obligations.

If any such liabilities exceed the amount in the applicable account, the Bank may charge such excess against any of

Customer's other accounts at the Bank, and Customer will pay immediately upon demand to the Bank any amount remaining unpaid. Customer will also continue to retain checks and forward checks to the Bank.

**w. Settlement Reserve.** Customer may be required to maintain a reserve ("Settlement Reserve") of an amount to be solely determined by the Bank. Customer acknowledges and agrees that any Settlement Reserve will be deposited in a Bank account for exclusive use by the Bank for purposes of offsetting any of Customer's obligations under the provisions of this Agreement applicable to the On-Site Teller Service. Customer authorizes the Bank to immediately replenish the Settlement Reserve to an amount to be determined by the Bank via an ACH debit to Customer's account or by a direct deposit to the Settlement Reserve if Customer's Settlement Reserve falls below the required amount. Customer grants the Bank a security interest in any Settlement Reserve to enable the Bank to enforce any obligation owed by Customer applicable to the On-Site Teller Service without notice or demand to Customer. Customer's obligation to maintain a Settlement Reserve shall survive the termination of this Agreement, with such obligation lasting until all of Customer's obligations under this Agreement have been fully offset. The Bank's security interest shall continue until all of Customer's obligations under this Agreement have been fully offset.

**31. Book Transfer Service.** Transfers between Customer's deposit accounts with the Bank are subject to the terms of Customer's deposit agreement. Customer may instruct the System to make transfers between Customer's accounts at any time on any day.

Transfer funds among Customer's Online Accounts: Customer can transfer funds between any checking and savings account that Customer has successfully enrolled in Internet Business Online Banking. All transfers submitted **after the Internal Book Transfers Cut-Off set forth in Section 19** are effective the following business day. The maximum amount Customer can transfer is equal to the available balance in Customer's account. If Customer's account does not have sufficient funds to complete a transfer on the date(s) Customer has told the Bank to transfer funds from Customer's account, the transfer may not be completed. However, if the Bank does make the transfer as an accommodation to Customer, Customer will be responsible for any overdraft that is created.

**NOTE:** Because regulations require the Bank to limit pre-authorized transfers from certain savings accounts, including Money Market accounts, the following limitations apply:

If Customer's account is a savings or money market account, federal law requires that an account holder may make up to six transfers or withdrawals by means of a preauthorized, automatic, or telephonic transfer to another account of Customer or to a third party or by check, debit card, or similar order to a third party during any calendar month (or statement cycle of at least four weeks). Customer may make unlimited transactions in person at a teller window, by messenger, by mail, or at an ATM. If Customer exceeds the transaction limits on an account, it may be closed and/or converted to a checking account by federal regulation. A "preauthorized

transfer" includes any arrangement to pay a third party from Customer's account upon written or oral instruction (including an order received through an automated clearing house (ACH)) or any arrangement to pay a third party from Customer's account at a predetermined time or on a fixed schedule.

**32. Online Bill Payment Service.** This Service allows Customer to obtain information about its accounts and transactions, communicate with the Bank electronically, and make payments to others. In order to do so, Customer must accept the Bill Payment Agreement when Customer first logs in to Bill Payment after registration. All rules and warranties governing these types of transactions contained in the Bill Payment Agreement will apply and form part of this Agreement.

**33. Stop Payment Service.** Customer may stop payment on a check by providing the Bank with timely, complete and accurate information on: the number of the account in question; the date of the item; the item number; the payee information; and the EXACT amount of the item (dollars and cents). Stop payment requests are valid for Six Months (180 days) from the date the order is accepted. At expiration, an order may be renewed for an additional six months at Customer's request. If any information is incomplete or incorrect, the Bank will not be responsible for failing to stop payment on the item. Stop Payments post 24 hours a day and stop payment fees post the same day if the Stop Payment request is received before 7:00 p.m. Pacific Time. Stop Payment requests become effective when the Bank confirms their receipt and has verified that the item has not been paid. From time-to-time, the on-line System may be inoperable. If that occurs, Customer's request can be communicated to the Bank by telephone or in writing.

Customer understands that there may be claims or demands made against the Bank as a result of Customer's stop payment request. If any claim or demand of whatever nature is made against the Bank with respect to the stop payment order and/or the item itself, Customer agrees to indemnify and defend the Bank and to reimburse the Bank for any such claims or demands, and for reasonable costs, expenses, or attorneys' fees that the Bank may incur in defending itself against any such claims or demands. Customer understands that the Bank will use all reasonable efforts to comply with a stop payment order. However, Customer understands fully that unless the item number, the date of the item, and the amount of the item are correctly entered on the stop payment order, the Bank assumes no responsibility for stopping payment and is not liable to Customer if a stop payment cannot be accomplished. Stop-payment requests made through the System may only be used for paper checks written from an account, and not for electronic or ACH debit transactions.

**34. Miscellaneous Terms.**

**a. Agents.** Customer will not allow others to provide instructions to the Bank (e.g., wires transfer orders or ACH entries) on its behalf without the Bank's prior written consent. Customer will be solely responsible for the acts and omissions of such agents. Customer agrees to indemnify, defend, and hold the Bank harmless from any actions, claims, proceedings,

damages, losses, and costs which Customer or the Bank incur as a result of their actions or omissions.

**b. Assignment.** Customer may not assign this Agreement, nor assign any right or delegate any obligation under this Agreement, without prior written consent from the Bank and any purported assignment in violation of this section shall be void. The Bank may assign this Agreement either in part or in whole at any time and with or without notice to Customer and may assign its rights and delegate its duties under this Agreement to a company affiliated with it or to a third party. This Agreement is binding upon Customer's heirs, permitted successors and assigns, and the Bank's successors and assigns.

**c. Amendments.** The Bank may amend (add to, delete, or change) the terms of this Agreement, the Service fees, and its operating procedures by providing Customer with prior written notice or prior electronic notice through a notice on the System and the amendment is effective upon such date specified in the notice, or if no such date is specified, on the fifteenth day after mailing or emailing. Notices may be mailed or sent to Customer electronically at the statement, email, or mailing address shown for Customer in our records. The Bank may amend the security procedures without prior notice if immediate changes are required for security reasons or the changes do not have a material effect on Customer's use of the Services. Further, the Bank's own internal policies and procedures may be changed without notice to Customer. Continued use of the System or any Service after receipt of notice of any amendment to this Agreement shall constitute acceptance by the Customer of the amendment

**d. California Law.** This Agreement will be governed by and construed in accordance with the laws of the United States when applicable and with the laws of the State of California, without reference to California's conflict of law provisions.

**e. Compliance with Laws.** Customer agrees to comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, as applicable, and to the Services. To the extent permitted by applicable law, Customer shall have the responsibility to fulfill any compliance requirement or obligation that the Bank and/or Customer may have with respect to the Services 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. By way of example, and not in limitation of the foregoing, Customer agrees not to initiate any ACH Entry, or payment order, or issue any other instruction to the Bank, that would violate the economic sanctions administered by the U.S. Treasury's Office of Foreign Assets Control.

**f. Entire Agreement.** This Agreement supplements (and supersedes where inconsistent) the terms of Customer's deposit agreement(s) with the Bank. Except as expressly set forth herein, this Agreement (along with any service fee

schedule) constitutes the entire agreement between Customer and the Bank with respect to the Services.

**g. Credit, Audit, and Financial Review.** The Customer is subject to satisfactory credit and audit review by the Bank from time to time, at the Bank's sole option and discretion, and in accordance with the Bank's established credit and auditing criteria. The Customer shall, upon the Bank's request, provide to the Bank a financial statement or other financial, credit and audit related information and assistance as the Bank may require to perform any such review. Failure of Customer to meet such standards in the sole discretion of the Bank or to provide such information or assistance when requested shall constitute a breach of this Agreement. Customer authorizes the Bank to investigate or reinvestigate at any time any information provided by Customer in connection with this Agreement and to request reports from credit bureaus and reporting agencies for such purpose. Customer will provide written notice to the Bank of any changes to the information previously provided by Customer to the Bank, including without limitation as applicable, any additional locations, any change in business, any new business, any change in goods or services provided by Customer, the identity or principals and/or owners, the form of Customer's business organization, and method of conducting sales. Customer will provide the notice within 5 business days of the change. Without limiting the foregoing, Customer will provide the Bank any additional information requested by the Bank within 5 business days of such request. The Bank retains the right to review Customer's files and business activities from time to time to confirm information provided by Customer to the Bank.

**h. Monitoring of Communications.** Customer agrees on behalf of itself, its Administrator(s), its Users, and any other agents, representatives, or employees that the Bank may monitor and record telephone and electronic communications in connection with the Services at any time, without further notice to Customer or any party to the communication.

**i. No Third Party Beneficiaries.** This Agreement is made for the exclusive benefit of Customer and the Bank. No third party has any rights under this Agreement. Customer agrees to indemnify, defend, and hold the Bank, its transfer agents and employees, harmless from and against any and all claims by third parties which involve the Bank's acts or omissions under this Agreement.

**j. No Third Party Use.** Unless Customer has the Bank's prior written consent, Customer may not use the Services to process transactions for third parties or permit others to initiate Service transactions on Customer's behalf. Customer agrees to indemnify, defend, and hold the Bank, its transfer agents and employees, harmless from and against any and all claims by third parties which involve the Bank's acts or omissions under this Agreement.

**k. Sufficient Funds; Overdrafts; Offset.** When Customer transmits a transfer or payment request or instruction to the Bank, Customer represents and warrants that it has sufficient funds in its account for that purpose and authorizes the Bank to charge the designated account for the amount indicated. The Customer shall at all times maintain sufficient available

funds in its account to pay the amount indicated and the fees, and other amounts that the Customer is obligated to pay the Bank under this Agreement. If Customer's account does not have sufficient available funds, the Bank may reject the transaction. The Bank's allowance of any overdraft will not obligate the Bank to honor future overdrafts at a later time, and the Bank may refuse to do so without cause or prior notice. The Bank may charge a fee for each payment or transfer request presented against insufficient available funds. The Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the Customer's designated account. If there are insufficient funds available in the Customer's designated account the Customer agrees that the Bank may debit any account maintained by the Customer with the Bank or that the Bank may set off against any amount it owes to the Customer, in order to obtain payment of the Customer's obligations and Customer shall pay any amounts due immediately upon demand.

**i. Security Interest.** Customer grants the Bank a security interest in Customer's accounts, all funds in those accounts, any reserve accounts or funds therein, all checks payable to Customer, and all proceeds of the foregoing to secure the repayment of any overdraft or other obligation that Customer incurs under this Agreement. The Bank may hold any of Customer's funds on deposit with the Bank after termination of this Agreement for up to 30 days following the expiration of any return or chargeback rights regarding any request processed by Customer using the System or, if later, until any other claims to such funds have expired. This security interest is supplemental to and not in lieu of the security interest granted by Customer to the Bank under any other agreement.

**m. Validity.** If any provision of this Agreement is found to be void or invalid, the remainder of this Agreement will remain in full force and effect.

**n. Waivers / Overdrafts.** Any waiver by the Bank must be in writing to be effective. The Bank's waiver of any right will not be deemed a waiver of other rights or of the same right at another time. The Bank's practice of allowing overdrafts will not obligate the Bank to continue the practice at a later date. The Bank may discontinue permitting overdrafts at any time and without prior notice. A waiver by the Bank or Customer of any term or provision shall not be construed as a waiver of such term or provision at any other time, or of any term or provision. Any waiver (express or implied) by either party of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach. No course of dealing between the Bank and Customer will constitute a modification of this Agreement, including but not limited to the security procedures set forth herein, or constitute an agreement between the Bank and Customer regardless of whatever practices and procedures the Bank and Customer may use.

**o. Reliance by the Bank.** Except to the extent this Agreement specifically provides otherwise, the Bank shall be entitled to rely on any verbal or written notice, response, or

other communication believed by it to be genuine and to have been provided by the Administrator and/or a User, and any such communication shall be deemed to have been provided by such person on behalf of the Customer.

**p. Confidentiality.** The Customer acknowledges that it will have access to certain confidential information regarding the Bank's policies and procedures, security procedures, and means and methods of executing payment orders and instructions, and the Services contemplated by this Agreement. The Customer shall not disclose any such confidential information of the Bank and shall use such confidential information only in connection with the transactions contemplated by this Agreement.

**q. Severability.** In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and the Bank shall incur no liability to Customer as a result of such violation or amendment.

**r. Headings.** Headings to sections of this Agreement, and headings in any addenda or exhibit, are included for ease of reference and shall not be deemed to create rights, remedies, claims, or defenses arising under this Agreement.

**s. Survival.** Whether or not explicitly stated herein, all provisions of this Agreement that by their nature are intended to survive termination of this Agreement (including but not limited to the arbitration provision, limitations of liability, indemnification provisions, disclaimers, and the grant of a security interest) shall survive termination of this Agreement.