



**BUSINESS BANKING  
MASTER AGREEMENT  
EFFECTIVE 10/2022**





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# GENERAL TERMS AND CONDITIONS

This Business Banking Master Agreement (“Agreement”) includes description of certain banking services provided by Farmers and Merchants Bank of Long Beach (“Bank”). The words “we”, “us”, “our”, “Bank” and similar terms are used to refer to Farmers and Merchants Bank of Long Beach. The words “you”, “your” and similar terms are used to refer to the person entering this Agreement and to each person who is an owner of or has an interest in an Account together with the owner’s authorized representatives. The services are more specifically described in the following, as updated from time to time: (i) this Agreement, including any schedules, and exhibits to the same (collectively, “Service Descriptions”); and (ii) user guides, user manuals, enrollment forms, applications, set-up forms and other user materials, including online terms and information (collectively, “Supporting Documents”). This Agreement establishes the rules that cover your electronic access to your accounts at the Bank through our Online system. This Agreement will be effective as of the first day we make any of the Services accessible to you. Unless otherwise stated, any reference to this Agreement may include applicable Service Descriptions and Supporting Documents. By using the Online system, you accept all the terms and conditions of this Agreement. Please read it carefully. This Agreement is in addition to other agreements between us and you, including (as applicable) your checking, savings and other deposit account agreements, as may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and those contained in the other agreements between you and us, this Agreement will control. Unless otherwise provided, to the extent any provision of this Agreement conflicts with a Service Description, the provision of the Service Description will control.

This Agreement supersedes any prior agreement(s) between you and us with respect to the subject matter hereof. Except otherwise expressly provided herein, in the event of any conflict between this Agreement and any other document or oral statement, including, without limitation, any deposit agreement between you and us, the terms of this Agreement shall govern.

You agree not to resell or offer the Services to another, or to process any transactions for others using the Services. If you are a natural person, you certify that you are at least eighteen (18) years or older. You authorize us to obtain information about you from others (including credit reporting agencies) as part of our review of your enrollment application and from time to time thereafter. You agree to provide us with information we request from time to time. All references to time of day in this Agreement shall refer to Pacific Standard Time (“PST”).

## 1. SERVICE SELECTIONS

By executing the Business Application and Acceptance form, and using the respective Services below, you agree to be bound by this Agreement, together with each applicable Service Description, including any Supporting Documents, corresponding exhibits, schedules, enrollments, or attachments to the same, which apply to the Services designated by you, and your use of any Service. Each Service you commence using after receipt of this Agreement, confirms your agreement to be bound by the Agreement together with each Service Description and the Supporting Documents relating to each Service. Each Service Description that corresponds to each selected Service forms a part of the Agreement.

### *Definitions:*

- “Account” means any deposit account you maintain with us and can include all accounts and products you use with us. Your “Account” refers to the account(s) you have designated as the account accessible to the Services.

- “*Administrator*” is a person who is able to provide Security Codes to, and establish access and use authority and/or limitations for, Authorized Users.
- “*Authorized representative*” is a person with authority of any kind with respect to an Account.
- The “*Available balance*”, “*Available funds*” and similar words mean the balance in your Account as determined under our funds availability policy.
- “*Business*” is anyone other than a consumer who owns an Account with respect to which a Service is requested. A business includes a sole proprietor, corporation, partnership, limited liability company, unincorporated association or any person not a consumer.
- “*Business day*” means Monday through Friday. Federal holidays are not included.
- “*Communication(s)*” means instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.
- “*Commercial account*” shall mean an account that is not established primarily for personal, family or household purposes, or is otherwise not a “consumer account” under the Electronic Fund Transfer Act (“EFTA”).
- “*Consumer account*” shall mean an account that is established primarily for personal, family or household purposes, and is subject to the EFTA as a “consumer account.”
- “*Payment order*” is a payment order as defined under Section 11103(a)(1), as amended or revised, of the California Commercial Code, and includes a Communication received by us instructing us to pay, or to cause another bank to pay, a fixed or determinable amount of money to you, to a third party or to any other beneficiary.
- “*Security Codes*” are the credentials (such as codes and passwords) that are associated with you and used by us to verify the authenticity of Communications from you. Security Codes are used to access Accounts and to use the Services. The Security Codes include any supplemental or alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.
- “*Service(s)*” and “*Online Banking*” are the online banking interface and the banking services described in this Agreement.
- “*Authorized User*” is a person other than the Administrator who uses Security Codes to access a Service. The Administrator (and not Farmers & Merchants Bank of Long Beach) controls the designation of Authorized Users and the access or other limitations (if any) placed on an Authorized User’s use of the Services.
- “*Supporting Documents*” refers to supporting materials made available by us and includes any schedules, and exhibits, user guides, user manuals, set-up or enrollment forms and other user materials, including online terms and information.
- The word “*includes*” means including but not limited to the examples given.
- The word “*may*”, when used in reference to us, means at our option and sole discretion. Action (or inaction) that we “may” take is authorized by you and

allowed to us, but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.

- “*Other Agreements*” means our Deposit Agreement and any other agreement applicable to a deposit account or Service entered into by and between the Bank and the Account Holder, as amended from time to time.
- “*Online system*” means the Business Online Banking system offered by the Bank to the Account Holders, as described in this Agreement.

## **2. ELIGIBLE ACCOUNTS**

To use the Online system, you must have at least one account, access to Internet service and an email address. When you enroll in the Online system, the Accounts on which you are either the primary account holder or an authorized signer will be accessible using the Service; however, we are not obligated to establish access to any or all of your Accounts, and not all Services may be available with all accounts. Some Services may not be available without special application and approval by us, or may be limited to specific types of accounts.

If you wish to add a new account to, or remove an existing account from Service access, you must contact us.

Eligible accounts may include the following types: checking, money market, savings, certificate of deposit, loan and credit card. In some cases, the Bank may allow loans and lines of credit to be linked; in which case, you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use.

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

## **3. MULTIPLE ACCESS**

Multiple Access refers to linking Accounts without identical owners, within the Online Banking System (“Multiple Access”). Accounts without identical ownership that are linked in the Online system are subject to this Agreement, including these Multiple Access terms. Each account owner (“Account Holder”) requests us to allow all other Account Holders to access their Accounts using the Online system. Additional Account Holders may be added by notifying the Bank and providing the Bank with any information or approval it will require. To the extent these Multiple Access terms conflict with other terms in this Agreement, these Multiple Access terms will control. Accounts are linked subject to our prior approval and ongoing discretion to delink at any time and without notice.

Notice to Account Holders of Consumer Accounts: Refer to F&M Deposit Account Terms & Conditions for consumer protection disclosures applicable to electronic transfer to or from Consumer Accounts.

**Definitions.** As used in these Multiple Access terms, and in addition to other defined terms, the terms below will have the following meanings:

- “*Accounts*” means the deposit accounts identified by you on a Bank provided form where each Account Holder affirmatively agrees to the Multiple Access

as to the respective Accounts. Additional Accounts may be added by notifying the Bank and providing the Bank with any information or approval it will require.

- “Adverse Event” means:
  - i. If any Account is subject to levy, attachment or other legal process;
  - ii. If any Account Holder is the subject of voluntary or involuntary bankruptcy proceedings, or any other action for relief of creditors generally;
  - iii. If any Account Holder disputes the authenticity of any Communication, or the authority of the Bank to act or not to act, or the legitimacy of any action taken by the Bank, in connection with any Service performed in response to any Communication received by the Bank;
  - iv. Any non-Account Holder asserts an interest in an Account, whether or not the interest is later held to be valid; or
  - v. Any other action or inaction deemed by the Bank to present risk to the Bank.
- “Authorized MA User” means any of the following, any of whom may act independent of each other: (i) The Account Holder; (ii) An Account Holder’s employees, officers, designees, agents, Administrators, Authorized Users or other persons authorized by the Account Holder to use the Online system or Services. Any person who has been given authorization by an Account Holder or by another Authorized User (even if in breach of obligations of confidentiality) to use the Online system or Services. Except to the extent expressly prohibited by law or regulation, authorization to use the Online system or Services is deemed to have been given and is hereby confirmed to have been given by the Account Holder to any person: (a) to whom the Account Holder provides actual authority (for example, by appointment as agent or by resolution of the Account Holder’s board of directors or governing body); (b) who has apparent authority to act on behalf of the Account Holder; or (c) who receives Security Codes or any other security procedures from the Account Holder or any other person previously given access to the security procedures by the Account Holder. The authorization of an Authorized MA User continues until the Account Holder notifies the Bank and expressly withdraws authorization for that person to use the security procedures and the Bank has had a sufficient time to act on such information.
- “Customer Information File Number” (“CIF”) means a unique identification number assigned to each Account Holder.

Services. Each Account Holder acknowledges and agrees that all of the Services available pursuant to this Agreement with the Bank will be subject to access by all Authorized MA Users. Accordingly, the Services will be applied or made available to each Account Holder and to all Accounts of each Account Holder on an individual and on a multiparty basis. We may, but are not required to, impose limitations on Account Holders that differ from one Account Holder to the next Account Holder. At the Bank’s option, an Account Holder’s access to or use of the Accounts of another Account Holder may be subjected by the Bank to the restrictions applicable to the Account Holder in whose name the Account is held, or to those applicable to the Account Holder seeking access or to such other restrictions as the Bank may impose.

Use of Services. We will provide access, at the express request of each Account Holder, between unlike accounts that may or may not be related by common ownership or

common signers. Each Account Holder understands that the Security Codes allow active account transaction functionality (i.e., payments, transfers, etc.) between the Accounts and to third parties.

**Authorization.** Each Account Holder authorizes us to allow each other Account Holder and its Authorized MA Users access to the Account Holder's Accounts via the Online system with full authority given to conduct transactions. This may include Services that are made available to other Account Holders but that are not made available by us directly to the Account Holder whose Accounts are affected. This includes authority granted under this Agreement or under any applicable other agreement. Without limiting the foregoing, each Account Holder authorizes us to debit or credit its Accounts and otherwise to act in accordance with Communications received from any other Account Holder or Authorized MA User.

**Communication with the Bank.** Each Account Holder agrees that we are entitled to act upon any instruction or other Communication received by us through the Online system from any Authorized MA User, and may treat that Communication received through the Online system as valid to the same extent and to the same effect as if it had been received through the Online system from one of the Account Holders whose Account will be debited or otherwise is affected. To this end, each Account Holder appoints every other Account Holder and Authorized MA User as its agent and attorney in fact for the purpose of making payment orders and providing Communications to us, and agrees to be bound by any payment order or Communication issued through the Online system by any other Account Holder or Authorized MA User.

A Communication received by us through the Online system will be deemed a valid and authorized Communication of the Account Holder named in the Communication for purposes of any Service requested in the Communication. We are not required to verify the authenticity of any Communication other than through the security procedures set forth in this Agreement. Except to the extent expressly prohibited by law or regulation, a Communication received by us via the Online system in the name of the Account Holder will be deemed an authorized Communication, binding on the Account Holder named in the Communication, if the Communication is sent by:

- Any Authorized MA User, regardless of whether such individuals are reflected as authorized signers for the Account;
- Any officer of the Account Holder;
- Any other employee, designee or other person who has been authorized by the Account Holder to use the Online system under the terms of this Agreement or of any other agreement, or who is otherwise authorized to bind the Account Holder;
- Any other person, whether or not such person was authorized to act on behalf of the Account Holder, if the Communication is in the name of the Account Holder and if the Bank verifies the authenticity of the Communication using the security procedures described in this Agreement; or
- Any person with actual or implied authority to represent or bind the Account Holder, whether by agreement with us or otherwise, to the fullest extent allowed by law (including the law of agency or otherwise).

Without limiting the foregoing, and except to the extent expressly prohibited by law or regulation, each Account Holder will be bound by any Communication received by us through the Online system if: (i) the instruction or other Communication is in its own name (or in the name of any other Account Holder) and The payment order or other Communication was actually authorized by the Account Holder; or (ii) We verify the authenticity of the payment order or other Communication using the commercially reasonable security procedures set forth in this Agreement, whether or not the

payment order or other Communication was actually authorized by the Account Holder or by any other Authorized MA User.

**Signature Restrictions.** Each Account Holder understands that Services may be used to cause transfers of funds (debits and credits) from and to its Accounts without regard to any withdrawal or signature restrictions otherwise applicable to the affected Account. For example, if withdrawals, checks or other access to an Account is subject to dollar limits or multiple signature requirements, these limitations are not applicable to transactions conducted using the Services. This applies to deposit accounts if access to these or other types of accounts are made available using the Online system.

**Limitation on Services.** Each Account Holder agrees that we may impose restrictions on any Services, with or without cause, at any time and either with notice or without notice to any Account Holder (including those affected by the restriction). Without limiting the foregoing, if an Adverse Event occurs, then we may (but are not obligated to) take any one or more of the following actions in connection with one or more (including possibly all) Accounts:

- Terminate or close Accounts;
- Restrict or terminate Services in connection with Accounts;
- Delay availability of funds on deposit in any one (and up to all) Account(s);
- Freeze funds in any one (and up to all) Account(s) and hold them pending instructions acceptable to us;
- Interplead funds in Accounts with any court, whether or not the court later determines that interpleader is or is not an authorized action by us; or
- Take any other action to protect us against cost, harm, inconvenience, litigation or otherwise as we see fit at our sole discretion.

**Account Holder Acknowledgements.** Each Account Holder acknowledges and agrees that:

- We did not, at any time, solicit the Account Holders for activation of this multiparty access service;
- We are providing the multiparty access service as an accommodation to the Account Holders and at the express request of the Account Holders;
- We will not control any transactions conducted by any of the MA Authorized Users on any of the Accounts and that the MA Authorized Users may access information and funds in any of the linked Accounts, such access may increase the risk of unauthorized activity, improper comingling and misapplication of funds;
- The Multiple Access Feature will allow each MA Authorized Users to utilize a single set of Security Codes to access all linked Accounts using the Service, which may result in significant diminution in the protection offered by the Security Codes.
- The Account Holder and not the Bank is responsible for reviewing and understanding any negative impact on the Account Holder that may arise due to the Account Holder's use or allowance of these multiparty access services (for example, loss of any insurance coverage, increased possibility of liability for obligations or actions of other Account Holders in insolvency or otherwise, and increased losses due to unauthorized transactions);

- The Account Holder should consult with their legal counsel and accountant prior to signing up for the multiparty access service; and
- The Account Holder accepts all risks associated with the use of the multiparty access services by itself and by the other Account Holders.

**Account Holder Representations and Warranties.** The Account Holder individually represents and warrants the following:

- Each Communication is authorized, valid and binding on the Account Holder when named in the Communication, as provided to us in compliance with all terms and conditions of this Agreement;
- Any transaction conducted by the Account Holder will not be in violation of any state or federal law (including California Corporations Code Section 2253, which prohibits making any dividend or distribution of assets except in the cases and in the manner allowed by law, either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers); and
- All corporate or other business formalities (as applicable) have been and will be followed with respect to each transfer of funds, including proper authorization of all requests and transfers and record-keeping requirements with respect to them.

**Indemnification.** Except to the extent expressly prohibited by law or regulation, each Account Holder shall jointly and severally defend, indemnify and hold harmless the Bank and its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of any losses due to action or inaction by any Account Holder in the use of the Online system, the Services, or by the Bank in the performance of its obligations under this Agreement. The obligations of the Account Holders under this section are in addition to those provided elsewhere in this Agreement, and are not a limitation on any other obligation of an Account Holder to the Bank (whether under this Agreement, any applicable other agreement, at law or in equity).

#### **4. LOGIN SECURITY CODE CREDENTIALS**

During your enrollment for the Services, you are required to select or will be assigned certain numbers, codes, marks, signs, public keys or other means of authenticating your identity and electronic communications in your name. These may include a customer number, login name and password. These credentials, with the other components of your Security Codes, will give access to your Accounts through the Service. As a component of your Security Codes, our Online system utilizes multifactor authentication, which is login security that combines two authentication factors: Something you know (your password); and something you have (your computer/device).

In some cases, we also use out-of-band authentication ("OOBA"). OOBA requires the use of a one-time Secure Access Code ("SAC"), when prompted. For example, each time you log on from a computer or device that is not recognized by us, we will prompt OOBA.

You agree to change all passwords with sufficient frequency to protect confidentiality, and in any event no less frequently than every ninety (90) days. You agree not to disclose your Security Codes to anyone and to take other reasonable precautions to ensure the safety; security and integrity of transactions conducted with your computer or mobile device (for example, do not write them down). NOTE: Some browser software may store usernames and security codes to facilitate the future use of a website. For

security reasons, you agree to disable this feature in your browser. Check your browser's "Help" screen for more information on this feature. For security reasons, we may disable your Security Codes, for example, if they are entered incorrectly several times. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. It is also recommended that you do not have your browser automatically remember your password. We may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited.

Some users may want to log in from multiple computers. If this is the case, a very quick self-registration process will help us recognize your additional computers during future logins. This registration process occurs the first time you log in with the additional computer. After three unsuccessful attempts to use your Security Codes, we may revoke your access to the Services.

## **5. SECURITY PROCEDURES AND COMMUNICATIONS**

Application of the procedures and Security Codes to authenticate a Communication will be collectively referred to as the "Security Procedures" in this Agreement. If we take any action that is not provided in the Security Procedures in connection with any Communication, such additional action should not be deemed to become a mandatory part of the continuing Security Procedures. You understand and agree that we will use the Security Procedures to verify the authenticity of Communications and that the Security Procedures are not designed to, and are not used for the purpose of, detecting errors in transmission or content of Communications, including discrepancies between account names and numbers.

Before using a Service and before sending a Communication to us, you will review the Security Procedures and determine whether the Security Procedures will provide a commercially reasonable method for verifying whether a Communication is that of yours. As part of the review, you will consider the size, type and frequency of Communications you normally make or anticipate making, along with such other factors as you may deem relevant or appropriate.

- *Commercially Reasonable Procedures.* If the size, type or frequency of Communications made by you changes such that the Security Procedures in use by you no longer provide a commercially reasonable method of providing security against unauthorized Communications, you shall immediately notify us.
- *You Are Responsible for Verified Communications, Even If Unauthorized.* If we act on a Communication in compliance with the Security Procedures, then you will be obligated on the Communication, and it will be treated as your Communication, whether or not authorized by you.
- *You Are Responsible for Communications Actually Authorized.* Regardless of whether or not we complied with the Security Procedures, any Communication received by us will be treated as your Communication and will be binding by you if the Communication is delivered to us directly or indirectly by any "Authorized Representative", or if you would otherwise be legally bound by the Communication, regardless of whether the Communication was erroneous in any respect or whether any loss would have been prevented if we had complied with the Security Procedures.

You will use and safeguard the Services, Security Codes, Security Procedures, Supporting Documents and the software (if applicable) in accordance with this Agreement. In connection with such safeguarding obligations, you will implement and

maintain physical, technical and administrative controls and procedures sufficient to prevent impermissible or unauthorized access to or use of any Service, Supporting Document, Security Codes or Security Procedures. Without limiting the foregoing and to the extent any of the Services utilize an electronic interface, you agree to use and maintain at all times up-to-date anti-malware and anti-virus software and properly configured firewalls and otherwise to use commercial “best practices” to prevent your computers or other electronic interfaces from being compromised, including by malware, virus, Trojan horse or other malware. You expressly acknowledge that any wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Services and any information contained therein resulting from such wireless connectivity.

You agree to notify us immediately if you know or suspect that a Security Code or other information pertaining to the Security Procedures is stolen, compromised or misused. You acknowledge that our ability to reverse fraudulent electronic transfers is extremely limited, and in many cases impossible. You acknowledge that we are not an insurer of you and your company against losses associated with unauthorized activity associated with the Services and that you have an independent responsibility to ensure the integrity and security of your systems and to determine whether you should obtain appropriate insurance coverage to protect against unrecoverable losses.

You assume all risks associated with disclosure of any part of the Security Procedures, including a Security Device, to your employees. You agree to limit disclosures of Security Codes to those employees or agents it will authorize to access the Services on your behalf, or who have a specific need to know. You agree to follow all requirements and guidance that may be outlined in the Service Descriptions or Supporting Documents provided or made available to you, including password change policies and practices. Without limiting the foregoing, you further agree to require authorized persons to create new passwords at reasonably frequent periods, based on your assessment of the security requirements appropriate for the Services utilized by you. You agree to promptly change Security Codes and level of authority, as applicable, in the event of any change in personnel or when reasonably prudent to do so.

If applicable, you may be required to select in Supporting Documents, or otherwise, a means of communicating with the Bank in connection with a particular Service (each, a “Communication Link”). Multiple Communication Links may be selected for certain Services, as more specifically described in the Service Description and/or Supporting Documents. Information and instructions may be sent and received by you through those Communication Links.

We may act on a Communication by reference to the account number only, even if the name on the account is also provided and even if the account number does not actually correspond to the name. If an intermediary bank or a beneficiary’s bank is identified on a Communication by both name and identifying number, we and other financial institutions may rely on the number even if the name and the number are not consistent or identify different parties.

We are not obligated to act on a Communication that is not transmitted in accordance with the Security Procedures. We may act on an incomplete Communication at our sole discretion, including if in our reasonable opinion it contains sufficient information. We have no duty to discover, and shall not be liable for, errors or omissions made by you or the duplication of any Communication by you.

We may delay or refuse to execute any Communication or process any requested Service. We may do so for any reason or for no reason. We may provide notice to you of such delay or refusal, but we are not obligated to do so. We may delay or refuse processing of a Communication, for example, if: (i) processing would or may exceed the available funds in your affected Account; (ii) the Communication is not authenticated to our satisfaction or we believe the Communication may not have been

authorized by you; (iii) the Communication contains incorrect, inconsistent, ambiguous or missing information; (iv) processing would or may involve funds that are subject to lien, security interest, claim, hold, dispute or legal process prohibiting withdrawal; (v) processing would or may cause a violation of any laws or rules applicable to you or to us; (vi) for any reason determined by us at our sole discretion; or (vii) for any other reason under this Agreement.

In addition, we shall be excused from failing to transmit or delay a transmittal of a transaction or Communication if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve Board ("FRB") guidelines or in our reasonable judgment otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal. If you inform us that you wish to recall, cancel or amend a Communication after it has been received by us, we may, but will not be required to, use reasonable efforts to assist you to do so; however, we shall not be liable for any loss, cost or expense suffered by you if we do not, or is unable to, amend, cancel or recall a Communication. You hereby agree to indemnify us against any loss, liability, and claim or expenses (including legal fees) we may incur in connection with assisting you to recall, cancel or amend a Communication, and you agree to reimburse us immediately for any monies paid by us associated with such losses, liability, claims or expenses incurred by us.

You assume the sole responsibility for providing us with accurate Communications in the form and format that we require. We are not responsible for confirming Communications or for failing to detect and reject duplicate Communications. If you provide us with a Communication that is incorrect in any way, you agree that we may charge your Accounts for any transactions related to the Communication whether or not the error could have been detected by us. We are not obligated to detect errors in your transfer or payment instructions or other Communications.

Our internal compliance, fraud control and other Bank procedures are for the benefit of us and create no duty to you. We have no duty or obligation under this Agreement to inform you if we are suspicious of activity, including a possible breach of security by your authorized representative(s) or use of Security Codes.

## **6. CONTACT IN EVENT OF LOST OR STOLEN SECURITY CODE(S)**

If you believe any part of your Security Code, including your password, has been lost or stolen, contact us immediately at (562) 344-2370 or, if you are outside of California, at (866) 437-0011 or by fax at (562) 344-2357, or write to the Bank at:

Farmers & Merchants Bank Online Banking Services  
P. O. Box 2400  
Seal Beach, CA 90740

## **7. COMPUTER EQUIPMENT AND SOFTWARE TO ACCESS THE SERVICES**

The Service Description and/or Supporting Documents for each Service shall describe the various means by which you may communicate with us in connection with such Service. Those means may include, without limitation, the use of computer software ("software") licensed or sublicensed by us to you ("license") or the use of an Internet connection. To the extent any of the Services involve us having granted software license usage rights, such grant shall be a non-exclusive, non-transferable right to access and use the Service in connection with your own business operations in accordance with the Supporting Documents.

You are responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. You agree to use equipment that is compatible with our programs, systems and equipment, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any computers or software that you use in connection with the Services, even if we have previously approved their use. You agree to notify us promptly if any software or equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment. For security purposes, you agree to keep your browser and operating system up to date. You agree to install and maintain appropriate firewall and anti-virus software on any equipment you use to access the Service, to protect your data when connected to the Internet. Except to the extent limited by applicable law, you assume sole responsibility for any and all loss, damage or injury arising with respect to any failure of your equipment, software not provided by us, the disruptions or unavailability of connectivity, or viruses, spyware, malware or worms affecting your equipment or software.

To use the Services, you must have sufficiently powerful computer hardware and appropriate software. Some Services may require you to download software from our website; in some cases, we may place software on your computer as part of our security and/or verification tools. You agree to maintain the confidentiality of the Security Codes at all times and not to provide access to them to anyone whom you do not authorize to access your Accounts through the Services.

Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding our efforts to ensure that the Services are secure, you acknowledge that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Services will not be monitored or read by others. You expressly acknowledge that any wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Service and any information contained therein resulting from such wireless connectivity. For commercial accounts (as applicable), you agree to implement and maintain administrative, technical and physical safeguards to protect against unauthorized access to or use of any account information that you may access or store on your computer or other data storage systems.

## **8. USER CONDUCT AND REPRESENTATIONS**

You agree not to use the Services or the content or information in any way that would: (i) infringe any copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) be fraudulent, including use of the Service to impersonate another person or entity; (iii) violate any law, statute, ordinance or regulation (including those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (iv) be false, misleading or inaccurate; (v) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (vi) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (vii) potentially be perceived as illegal, offensive or objectionable; (viii) interfere with or disrupt computer networks connected to the Service; or (ix) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others. Without limiting the generality of the foregoing, you agree not to: (a) make the Service available, or allow use of the Service, in a computer bureau service business, or on a timesharing basis; or (b) otherwise disclose or allow use of the Service by or for the benefit of any third party.

You represent and warrant to us that (i) it is duly organized and validly existing, and is in good standing in every jurisdiction where required; (ii) your execution, delivery and performance of this Agreement and the transactions contemplated herein have been duly authorized by all necessary action and (iii) do not violate any provision of any applicable law, rule or regulation (including any licensing requirement(s) or of your charter or bylaws or other governing documents, as applicable); or result in the breach of, constitute a default under, or require any consent under any agreement or instrument to which you are a party or by which you are bound.

This Agreement is a legal, valid and binding obligation; you are not, and agree not to take any action that would result in you being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business; unless otherwise agreed to in writing by us, the accounts established by you with us and the Services you establish or use in connection with the accounts will only be used for business purposes and not for personal, family or household purposes; and you agree that it shall be deemed to make and renew each representation and warranty made in this section on and as of each day on which it uses the Services. You will inform us in writing immediately upon your becoming aware of facts or circumstances that cause (or with the passage of time would result in) any representation or warranty given by you to cease to be true and correct. You will provide such information or documentation as we may request from time to time to demonstrate compliance by you with your representations and warranties, or other obligations of you under this Agreement.

## **9. INTELLECTUAL PROPERTY**

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

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

## **10. COMPLIANCE WITH LAWS AND RULES**

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

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

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

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

## **11. CUTOFF TIMES**

A number of the Bank’s Services are subject to processing cutoff times. The cutoff times applicable to each Service are reflected in the specific service section or in the Supporting Documents. Communications received after the cutoff time or on a non-business day may be deemed received as of the next business day at our discretion. Alternatively, some Services may require you to resubmit a Communication when it is received after the cutoff time or on a non-business day.

## **12. SERVICE LIMITATIONS, ACCESS RESTRICTION WAIVER**

You acknowledge that the Services may be subject to system and other limitations, including Bank-imposed limitations. You agree not to exceed or otherwise violate any Service limitations, including dollar, frequency, activity or other limits. We may cause a Service to be temporarily unavailable to you, either with or without prior notice, for

site maintenance, security or other reasons, and you acknowledge that factors beyond our reasonable control, such as telecommunications failure or equipment failure, may also cause the Service to be unavailable to you. In such event, you must make alternative arrangements for scheduled and other anticipated transactions and you will be responsible for maintaining procedures and facilities to enable you to do so if any of the Services are unavailable to you. Upon notice from us of a failure of any software, hardware or other equipment necessary for us to perform in accordance with a Service Description, you will as soon as reasonably possible deliver to us all data in your possession or under your control, which we reasonably request in order for us to continue to provide the Service.

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

### **13. REFUSAL TO PROCESS OR DELAY IN PROCESSING**

We may delay or refuse to process any requested Service, including payment orders or other money transactions, or any other Communication from you. We may do so for any reason or for no reason. We may provide notice to you, but are not obligated to do so. We may delay or refuse processing, for example, if: (i) processing would or may exceed the available funds in your affected Account; (ii) the Communication is not authenticated to our satisfaction or we believe it may not have been authorized by you; (iii) the Communication contains incorrect, inconsistent, ambiguous or missing information; (iv) processing would or may involve funds that are subject to lien, security interest, claim, hold, dispute or legal process prohibiting withdrawal; (v) processing would or may cause a violation of any Laws or Rules applicable to you or to us; or (vi) for any other reason under this Agreement. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

### **14. IDEA SUBMISSION**

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

### **15. SUFFICIENT FUNDS**

You must have sufficient available funds in your Account to cover the amount of any transaction that would be charged to your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds or available credit in your Account (if any). We may hold (or “freeze”) funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient funds for completing the Service. If we do hold funds for any reason, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions). Nothing in this

Agreement, or any course of dealing between us, shall be construed as our commitment or obligation to lend you money.

## **16. SERVICE FEES AND CHARGES**

You agree to pay us the fees prescribed in our current Schedule of Fees for each of the Services, a copy of which is available upon request (each a "Schedule of Fees"), as well as all amounts otherwise due under this Agreement. The Schedule of Fees is also available at [www.fmb.com/fees](http://www.fmb.com/fees).

Unless other arrangements are made for payment of such fees and other amounts due, you agree that we may without prior notice or demand automatically debit any Account maintained by you with us in the amount of such fees and other amounts due. We do not in any way extend credit to you under this Agreement. We may amend the Service pricing from time to time. Fees are subject to change without prior notice. Special or additional Services performed at your request will be subject to additional terms and fees. If Accounts are analyzed, you may be able to use available earnings credit to offset certain charges related to the Services.

If analyzed accounts contain funds belonging to third parties, you represent that use of any related earnings credit is not limited by law, regulation or agreement with such third parties. In addition to the fees and other amounts due for the Services, you agree to pay for all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Services, this Agreement and any software or equipment made available to you (excluding any income tax payable by us). You are also responsible for the costs of any communication lines and any data processing charges payable to third parties. If you are required by the laws of any relevant jurisdiction to make any deduction or withholding from any fees, interest or other amounts, on Account of tax or other charges, you shall withhold the same and pay it to the relevant authority, and shall pay us such additional amount as may be necessary to ensure the we receive an amount equal to the amount we would have received had no such deduction been made.

## **17. FINES OR PENALTIES**

You will reimburse us for any fines or penalties (and any associated costs, including reasonable attorneys' fees and costs) imposed on or assessed against us by any Federal Reserve Bank, any network operator, any state or federal regulatory agency or other U.S. or foreign governmental body, or any clearinghouse or other third party having oversight or rulemaking authority over transactions facilitated using the Services, when the fine, penalty or other expense is caused by, or related to your data or use of the Services. Such amounts shall be immediately due and payable by you. Your obligation to pay us remains immediately due and payable whether or not the fine or penalty was imposed or assessed in accordance with any requirements of the Rules or Laws or any laws applicable to any party other than us and notwithstanding any claim you may have against another for breach of the same.

## **18. NOTICES**

Except as otherwise provided in this Agreement, all notices and other Communications by you to us shall be in writing and addressed to:

Farmers and Merchants Bank of Long Beach  
302 Pine Ave.  
Long Beach, CA 90802  
Or at such other address as we may specify in writing.

Notices and Communications to you may be mailed or sent to you electronically at the statement, email or mailing address shown for you in our records.

Any Notice or Communications sent by us to you, whether electronic or written, will be deemed given and effective when sent or otherwise made available to you, or as otherwise stated in the Notice or Communication. You further acknowledge and agree that certain Notices and Communications may be provided to you by telephone, facsimile or electronic transmission at the telephone number, facsimile number or other location or number as shown in our records. You agree to promptly notify us (in a format acceptable to us) whenever your email address, physical address, mobile phone number or other contact information changes.

Any notice, instruction, Communication or other Communication sent by you to us will be effective when we have actually received and have had a reasonable time to act on the notice, instruction, Communication or other Communication. Notwithstanding anything to the contrary herein, we may rely on all notices, instructions, Communications and other Communications sent to us via facsimile or electronic transmission as though they are originals. Without limiting the foregoing, we are entitled to rely on any notice, instruction, Communication or other Communication believed by us in good faith to be genuine or to have been signed or authorized by an authorized representative of you. You agree to access the Services from time to time, in no event less than monthly, to access notices, communications and information made available by us.

## **19. EMAIL**

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

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

Email or messages sent by us to you will be deemed received by you when sent by us to you at your email address as shown on our records. You agree to notify us (using the Service or otherwise in a format that is acceptable to us) whenever your email address changes. You agree that information or messages made available to you via the Services will be deemed received by you when first posted on our website or made available to you. If you fail to update or change an incorrect email address or other contact information, you understand and agree that any email shall nevertheless be deemed to have been provided to you if the email was sent to the email or other contact address we have on file for you.

If you have questions on how to use the Online system and answers to those questions cannot be obtained through the Online Help, you may send your questions to us using the Message Center in the Online system. Messages using this feature are sent securely. To use this feature, you must be logged in to the Online system. If you have questions about your Account or you believe someone else has access to your login ID and/or password or other means of access to your Account, or you have questions about your Account or about transfers or payments to and from your Account, you can speak with an Internet Support Specialist by calling us. You cannot use email to initiate transactions on your Account(s).

For banking transactions, please use the appropriate functions within the Online system. We may act upon your email messages, if we receive them in a manner and in a time that provides us a reasonable opportunity to act. Nevertheless, unless otherwise

provided herein, email messages will not serve as a substitute for any requirement imposed on you to provide us with “written” notice. Email or messages sent by us to you will be deemed received by you when sent by us to you at your email address as shown in our records. You agree to notify us (using the Service or in a format that is otherwise acceptable to us) whenever your email address changes.

## **20. CONTENT**

We reserve the right, but shall have no obligation, to reject, move or delete content that we, in our sole discretion, believe violates this Agreement, or contains content, including malware or viruses, that may interfere with the operation of our website or other systems. We shall have the right, but not the obligation, to disclose content to any third party if required or permitted by law or if we believe reasonably necessary, including to: (i) comply with legal processes; (ii) enforce this Agreement; (iii) respond to claims that any content violates rights of third parties; or (iv) protect our rights, property or personal safety, or those of third parties.

The Services may allow you to access content originally provided or operated by third parties acting on your behalf (collectively referred to as “third-party content,” unless otherwise provided herein). Unless we tell you otherwise in writing, we do not operate or monitor any such content including any of the information, products or services provided or operated by third parties. You acknowledge and agree that: (i) You access and rely on such third-party content at your own risk; (ii) we make no endorsement of, and assume no responsibility for, third-party content uploaded or inputted to the Services by third parties; (iii) although we may have a contractual or other relationship with the providers of third-party content, we will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or the data they make available. You agree to hold us harmless in connection with all of the foregoing.

Without limiting the foregoing, we assume no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any third-party content that you or others upload to the Services or otherwise provide to us, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity associated with the same. We will not have a duty to interpret or evaluate any third-party content transmitted to us or through our website or the Services, except to the limited extent, if any, set forth in this Agreement. We will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any third-party content we receive from you or third parties. We will not have a duty to notify you about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third-party content, even if we have reason to know of its existence.

## **21. INDEMNIFICATION OBLIGATION**

You agree to indemnify and hold us, our affiliates, licensors, processors, third-party contractors and vendors, and their respective directors, officers, shareholders, employees and agents, harmless from and against any and all claims, loss or damage of any nature whatsoever (including attorneys’ fees and court costs) arising directly or indirectly out of: (i) your wrongful acts or omissions, or those of any person acting on your behalf in connection with your use of the Services, including, without limitation (i) the breach by you of any provision, representation or warranty of this Agreement, (ii) the negligence or misconduct (whether by act or omission) of you or your customers or any third party on your behalf, (iii) any misuse of the Services by you, or any third party within the control, or on behalf, of you, (iv) your failure to comply with applicable state and federal laws and regulations, or (v) any fine, penalty or sanction imposed on us by any clearinghouse, or any governmental entity, arising out of or

connected with the Services; (a) any act or omission of ours that is in accordance with this Agreement or instructions from you; (b) actions by third parties, such as the introduction of malware or a virus, that delay, alter or corrupt the transmission of an image or communication to us; (c) any loss or corruption of data in transit from you to us; (d) any claim by any third party claiming that such third party incurred loss due to the Service; or (e) any claims, loss or damage resulting from your breach of, or failure to perform in accordance with, the terms of this Agreement. This indemnity will survive the termination of this Agreement. You agree that you will not assert any claims against us based on theories of negligence, gross negligence, strict liability, misrepresentation or fraud based on or relating to any Communication Link, software or your possession or use thereof or any technical computer service including software installation or de-installation performed by us.

## **22. CUMULATIVE REMEDIES**

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

## **23. FORCE MAJEURE**

Notwithstanding any other provisions of this Agreement, we shall not have any responsibility or liability for any failure, error, malfunction or any delay in carrying out any of our obligations under this Agreement if such failure, error, malfunction or delay results from events due to any cause beyond our reasonable control, including, without limitation, unavailability of any communications system, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes, stoppages of labor or industrial action of any kind, riots, insurrection, war or acts of government, power or equipment failure (including that of any common carrier, transmission line or software), emergency conditions, adverse weather conditions or any other factor, medium, instrumentality, condition or cause not in our control. We will not be liable or responsible for the acts or omissions of any other financial institution or any third party or for any inaccuracy or omission in a notice or communication received by us from you, another financial institution or any other third party. In addition, we shall be excused from failing to transmit, or delaying a transmission of, any transaction, if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future FRB guidelines or otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. We shall not be liable for any failure to perform any of our obligations under this Agreement if such performance would result in it being a breach of any law, regulation, requirement or provision of any government, government agency, banking or taxation authority in accordance with which we are required to act, as shall be determined at our sole discretion.

## **24. RECONCILIATION**

You will inspect all information made available by us in connection with the Services. You agree to promptly, by telephone and in writing, notify us of any errors in such information or any discrepancies between your records and the information, statements or confirmations of transactions made available by us. To the extent not expressly prohibited by applicable law, if you fail to promptly notify us of any such error or discrepancy, in any case no more than ten (10) days from the date on which such information is made available to you, then you agree that we will not be liable for any losses resulting from your failure to give such notice or any resulting loss of interest relating to any transactions. Without limiting the foregoing: (i) if you fail to

notify us of any such error or discrepancy within one (1) year of the date on which such information is made available to you, then you shall be precluded from asserting such error or discrepancy against us; and (ii) we reserve the right to, in our sole discretion, adjust transaction records for good cause after the expiration of said period.

## **25. PROVISIONAL CREDIT**

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

## **26. PRIVACY AND CONFIDENTIALITY**

Unless otherwise provided in the Service Descriptions, all Supporting Documents and software provided pursuant to this Agreement constitute our, our contractors or vendors, or our agent's confidential information ("Confidential Information"). The Bank, our contractors or vendors, or our agents (as applicable) will remain the sole owner of all such Confidential Information, and you will not acquire any interest in or rights to the Confidential Information as a result of your use of any Service except as expressly set forth in the Service Description. You will maintain the confidentiality of the Confidential Information, and will not permit your employees or agents to disclose copy, transfer, and sublicense or otherwise make any of it available to any person or entity, other than your employees who have a need to use the Confidential Information in connection with the applicable Service.

All information gathered from you in connection with using the Service will be governed by the provisions of our Privacy Notice (applicable to consumer accounts only), as well as our Online Privacy Statement, which you agree to review by accessing it on our homepage.

In addition, we will disclose information to third parties about your Account or the transfers you make:

- Where it is necessary for completing transfers;
- In order to verify the existence and condition of your Account for a third party, such as a credit bureau or merchant;
- In order to comply with government agency or court orders; or
- If you give us your written permission.

## **27. CREDIT CRITERIA, FINANCIAL INFORMATION, OWNERSHIP CHANGE NOTICE**

We may act on requests for information, or requests to facilitate any Service requested on or associated with an Account, from any Account owner (including joint owners) or their authorized representatives. You agree not to resell or offer a Service to another, or to process any transactions for others using a Service

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

We may, from time to time, request information from you in order to evaluate a continuation of the Services to be provided by us hereunder and/or adjustment of any limits set by this Agreement. We may, in our sole discretion, and you hereby authorize us to, perform credit reviews of you in accordance with our credit criteria. You shall, upon our request, provide us with any credit-related information and assistance that we may require performing any such review. You agree to provide us with financial statements or other information regarding your financial condition upon our request.

Without limiting the foregoing, if you are a commercial account holder you agree to provide us with at least thirty (30) days' advance written notice of: (i) any material (20% or greater) change in your ownership; (ii) any material change in type, scope or nature of your business; and (iii) any anticipated material (20% or greater) increase in the amount or volume of your use of the Services to facilitate transfers to third parties over the preceding calendar quarter.

## **28. SHADOW ACCESS**

We may, in our sole discretion, make available to you the ability to grant our employees and our service providers with real-time access to your sessions in connection with the Service ("Shadow Access"). You acknowledge and agree that any Shadow Access by our employees or our service providers will only be activated upon your authorization, which may be provided by you or on your behalf by any one of the authorized users on your Account. Once Shadow Access is granted, it will be limited to the session then open by you or your authorized user, at the time of the authorization. Each new session opened will require a new authorization for Shadow Access. You acknowledge that the purpose of Shadow Access is to assist you when troubleshooting system questions presented by you to us or our service provider as it relates to the Service. You expressly agree that you will maintain a physical presence at the computer terminal to which Shadow Access is granted, for the complete duration of the session. If you fail to maintain an authorized presence during the complete duration of the session, you assume all risks associated with unauthorized access to your information and the Services.

In addition to the protections otherwise available to us under this Agreement, you agree to indemnify and hold us, our affiliates, licensors, processors, third-party contractors and vendors, and their respective directors, officers, shareholders, employees and agents, harmless from and against any and all claims, loss or damage of any nature whatsoever (including attorneys' fees and court costs) arising directly or indirectly out of the Shadow Access.

## **29. SECURITY INTEREST; HELD FUNDS**

In addition to any other rights, we may have under this Agreement and otherwise with regard to the Accounts of yours, we may hold and use funds in any Account following termination of this Agreement. Without limitation, you recognize that under the Uniform Commercial Code, Regulation CC, the Electronic Check Clearing House Organization ("ECCCHO") Rules (as applicable) and the rules of any image exchange network, our representations and warranties with regard to Image Exchange Items and Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check.

You grant us a security interest in your Accounts to secure the repayment of any obligation that you incur under this Agreement. The security interest provided under

this Agreement is in addition to any other security interest we may have in your Accounts or other assets. This security interest will survive termination of this Agreement.

### **30. RESERVE ACCOUNT**

You agree that you will, if requested by us at any time, establish one or more reserve accounts to be maintained with us in type (including time deposits) and amount satisfactory to us, to serve as collateral for and to secure your obligations to us under this Agreement. We may restrict or prohibit your access to any reserve account(s) and the funds on deposit in them, and we may hold such accounts following termination of this Agreement for a period of time sufficient to protect us against loss. We may increase or decrease the required reserve account amount from time to time, upon notice to you, and you agree to provide immediately available funds to cover a reserve amount we request. In addition, we may transfer funds from another account of yours, or use funds payable to you or owed by us to you under this Agreement or due to a Service, and credit such funds to a reserve account if a deficiency exists between the available funds in your reserve account(s) and the amounts we specify as the required reserve amount.

### **31. TERMINATION; SUSPENSION; DELAY**

You may terminate some or all of the Services under this Agreement upon thirty (30) days' prior written notice to us; and we may terminate, suspend or restrict some or all of your access to the Services under this Agreement, at any time immediately.

Any termination will not affect any obligations arising prior to termination. Upon termination, we may terminate your access to the Services, and you will terminate your access to and use of the Services, except to the extent necessary to process transactions that were in process prior to the termination date. Within thirty (30) days after termination of this Agreement, you will, at your expense, promptly uninstall and remove all software provided for the Services from your computers and return to us any software, hardware and equipment provided by us for the Services, including the Supporting Documents, procedures, documentation and any materials relating to the Services in your possession or under your control; destroy all copies of the Supporting Documents and materials relating to the Supporting Documents that cannot be returned; and upon request from us certify in writing to us that all such copies have been returned or destroyed. You will be responsible and liable to us for the replacement cost of all lost, stolen or damaged equipment that was provided by us to you in connection with the Services. Upon termination of this Agreement, all Services and any licenses shall automatically terminate. Except to the extent restricted by law, we reserve the right to terminate or to discontinue support of any Service, or delay or refuse processing any transaction, without notice. Without limiting the foregoing, if you do not use this Service for six (6) months, we reserve the right to discontinue your Services without notice to you. To the extent permitted by law, you give us the right to setoff any of your money or property that may be in our possession against any amount owed to us under this Agreement. This right of setoff does not extend to any Keogh, IRA account or similar tax-deferred deposit. Termination of this Agreement will not affect any rights we may have, or any obligations you may have, as to any transaction or Services caused or attempted by you before termination.

### **32. YOUR RECORDS; NOT BACKUP SERVICE**

This Agreement and the Services are not intended to relieve you 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. The Services do not include, and we do not act as, a backup, data recovery

or disaster contingency service. You acknowledge that it is your sole responsibility to make and retain backups of all your data, including before any transmission or upload to the Services. Except as otherwise stated in this Agreement, you agree to retain and provide to us, upon request, all information necessary to remake or reconstruct any deposit, file, entry, transmission, transaction request or order until at least three (3) years following receipt by us of the deposit, file, entry, transmission, transaction request or other order affecting an account.

### **33. SERVICES NOT SUBSTITUTE FOR LEGAL, TAX, OR FINANCIAL ADVICE OR PLANNING**

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

### **34. SUCCESSORS AND ASSIGNS**

This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. However, in all cases the applicability of this Agreement to any of your successors and assigns must be approved in advance by writing to us. We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unenforceable at our election or without the Bank's prior written consent.

### **35. UPLOADED CONTENT, LINKED SITES AND ADVERTISEMENTS**

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

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

Agreement; (iii) respond to claims that any content violates rights of third parties; or (iv) protect our rights, property or personal safety, or those of third parties.

### **36. THIRD PARTIES, THIRD-PARTY CONTENT AND THIRD-PARTY AGREEMENTS**

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

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

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

**Your Use on Behalf of a Third Party.** You will not use the Services or any Accounts to process transactions for third parties or any other person unless we provide advance written approval, which may require you to enter into additional terms and conditions. If any such approval is given, except as may otherwise be specified in writing by us in such approval, you represent and warrant that: (i) you are duly authorized by each third party to act on that party's behalf for all purposes necessary under this Agreement, and the third party is bound by and responsible for all acts or omissions taken by you; (ii) you have obtained from the third party agreement to terms and conditions substantially similar to those contained in this Agreement; (iii) the security interest given in Accounts is legal, valid and binding on the third party (to the extent of any property rights the third party may have in the Accounts or funds in them); (iv) the third party will cooperate with us in all ways reasonably requested by us, including the execution and delivery of such contracts and agreements between us and the third

party as we may reasonably request; and (v) you and the third party are in compliance with all applicable Laws and Rules as it may apply to your processing for the third party. You will from time to time provide us evidence reasonably satisfactory to us of the accuracy of each of the foregoing if requested by us.

Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.

### **37. WAIVER**

No party's failure or delay in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy, and no single or partial exercise of any right or remedy under this Agreement will preclude any additional or further exercise of such right or remedy or the exercise of any other right. No waiver by either party of any breach of this Agreement will operate as a waiver of any prior, current or subsequent breach. No waiver will be effective unless made in writing.

### **38. ELECTRONIC SIGNATURES, CONTRACTS AND RECORDS**

When any Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions or Communications resulting from your instructions that we receive in your name and under your credentials shall be deemed to have been "a writing" and authenticated by you "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been "signed" and to constitute an "original" when printed from records established and maintained by us or our authorized agent in the normal course of business.

You agree that we may contract and communicate electronically with you, including execution and retention of contracts, documents and certifications, electronically. You agree not to contest the authorization for, or validity or enforceability of, our electronic records, contracts and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records, contracts and electronically "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our request, you agree to manually sign or place your signature on any paper original of any record, contract or "signed" document that we provide to you containing your purported signature.

### **39. LINKING ACCOUNTS**

We reserve the right to limit which Accounts may be "linked" under the Services. Any signer on any linked Account, acting alone, is authorized by you to access and use Services for any other linked Account, whether or not that person would be authorized to transact on the other linked Account in the absence of this Agreement.

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

#### **40. AMENDING/CANCELING A TRANSACTION**

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

#### **41. DATA SECURITY IN TRANSITION AND STORAGE**

You expressly acknowledge that any wireless access to your Accounts may not be secure and, as such, you assume the risk associated with unauthorized access to mobile banking and any information contained therein resulting from such wireless connectivity. You assume all risk that any information you download or otherwise store on your wireless access device may be accessed by unauthorized third parties. Without limiting the foregoing, you acknowledge that your wireless access device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

We are not responsible for the security and confidentiality of information when you: (i) use wireless connections to download your Account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded; or (ii) allow other persons access to your wireless access device. You agree that any account information that you download is done at your own risk, and you are solely responsible for any damage that might occur to the electronic device to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

#### **42. DISCLAIMER OF WARRANTY**

YOU ACKNOWLEDGE THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE ARE NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM YOUR USE OF THE SERVICES. WE MAKE NO, AND EXPRESSLY DISCLAIM ALL, WARRANTIES (EXPRESS OR IMPLIED) REGARDING YOUR USE OF THE SERVICES AND THE EQUIPMENT, INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DISCLAIM ANY WARRANTIES REGARDING ANY SOFTWARE, ANY COMMUNICATION LINK, AND THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICES AND THE EQUIPMENT, INCLUDING ANY WARRANTY THAT THE SERVICES AND THE EQUIPMENT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. YOU ACKNOWLEDGE THAT THERE ARE CERTAIN SECURITY, TRANSMISSION-ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING THE SERVICES AND ASSUME ALL RISKS RELATING TO THE FOREGOING.

#### **43. AUDIT AND INSPECTION**

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

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

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

#### **44. LIMITATION ON LIABILITY**

Except to the extent otherwise restricted by applicable law, we are only responsible for performing Services as expressly stated in this Agreement, and will only be liable for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct. In no event shall we be liable for: (i) the acts or omissions of a contractor, vendor, processor, third-party servicer or vendor used by you or us, or any loss, cost, damage or expense incurred by any person or entity in connection therewith; (ii) your negligence or breach of any agreement with us; (iii) any loss, cost, expense or damage to you in connection with any Communication Link, software or any technical computer service, including software installation or de-installation performed by us, you, or any third party designated by us or you, or you or our use thereof; (iv) any ambiguity, inaccuracy or omission in any instruction or information provided to us; (v) the application of any government or funds-transfer system rule, guideline, policy or regulation; (vi) the lack of available funds in your Account to complete a transaction; (vii) our inability to confirm to the Bank's satisfaction the authority of any person to act on your behalf; (viii) your failure to follow any applicable software manufacturer's recommendations or our Service instructions; or (ix) any Internet sites related to the Services or maintained or operated by us or the use thereof or the inability to use such sites by any party, or in connection with any failure of performance, error, omission, interruption, defect, delaying in operation or transmission, computer malware, virus or system failure, even if we, or our representatives thereof, is advised of the possibility of such damage, loss or expense. There may be other exceptions to our liability, as stated in your Account agreement or other service agreements with us. Without limiting the foregoing, we will not be responsible for determining the compatibility of any installed software with other system components or for any failure of any technical servicing or software installation to provide access to the particular Service, which the technical servicing or software installation was intended to make available.

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

EXCEPT TO THE EXTENT RESTRICTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT,

REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE THE LESSER OF THE FEES PAID DURING THE SIX (6) MONTHS PRECEDING THE DATE OF THE ALLEGED ACTIVITY GIVING RISE TO THE CLAIM; OR THE SUM OF \$50,000.00.

Subject to the foregoing limitations, our liability for loss of interest, if any, resulting from our error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. At our option, payment of such interest resulting from or arising out of any claim of any person that we are responsible for may be made by crediting any of your Accounts.

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

In addition to our right to reject transactions as provided elsewhere in this Agreement and our other agreements with you, we will not be obligated to honor, in whole or in part, any transaction or instruction or Communication that:

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

#### **45. HEADINGS**

Headings are for reference only and are not part of this Agreement.

#### **46. INSURANCE**

If requested by us, you agree to obtain and maintain comprehensive general liability, fidelity and error and omission insurance coverage, or such other coverage as directed by us, in an amount reasonably satisfactory to us, to cover (at a minimum) losses due to action or inaction by you, your employees and agents, or any person given access to the Services by you (including unauthorized access by the same), and to name us as an additional insured on such policy. You will provide evidence reasonably satisfactory to us of the existence of such insurance promptly upon request.

#### **47. SEVERABILITY**

Wherever possible, each provision of this Agreement shall be interpreted in a manner that makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or

provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

#### **48. CHOICE OF LAW**

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

#### **49. FINAL AGREEMENT; AMENDMENTS**

This Agreement constitutes the final and complete agreement between us and you with respect to the Services, and supersedes all other oral or written agreements, understandings and representations pertaining to the subject matter hereto. We may amend, add, delete or change the terms of this Agreement, including the terms of any Service Description, and the applicable fees.

We may make such amendments, additions, changes or deletions at any time and at our sole discretion. If we deem it reasonably practicable to do so and if the change adversely affects your usage of the Service, we may notify you of the change in advance. Otherwise, we will notify you of the change as soon as reasonably practicable after it is implemented and such notice may be given electronically. Your continued use of the Services will evidence your consent to any amendments, including additions, changes or deletions.

# BUSINESS ONLINE BANKING

## **50. BUSINESS ONLINE BANKING**

Business Online Banking is an Internet-based service that enables you to access your Accounts and facilitate certain electronic services online. Business Online Banking may include the following available service (subject to our prior approval and system limitations):

- Manage multiple accounts with a single sign-on
- Ability to have multiple log-in credentials
- Access periodic statements and notices (view and print capability)
- Access account history (view, print, and export capability)
- Access check images (view and print capability)
- Access deposited items and deposit slips (view and print capability);
- Transfer funds between linked Accounts (“Internal Electronic Transfers”), excluding certificates of deposit
- Make advances from and initiate loan payments to eligible linked Accounts (collectively, “Loan Transfers”)
- Initiate check stop payment instructions
- Order checks and change contact information, such as phone number and email address
- Initiate bill payments (“Bill Payments”) and electronic bill presentment
- Access some of the Services and deposit checks to your linked accounts using your wireless access device (“Mobile Banking”)

Some services may not be available without a separate application and approval from us, and may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated. We may make other services available to you and you agree to be bound by the terms and conditions of the additional services, as they apply, in addition to the terms of this Agreement.

### *Administrator and Authorized User(s)*

If prompted by Business Online Banking, you will appoint an individual to act as an Administrator with the authority to determine who will be authorized to use the Business Online Banking on your behalf. The Administrator will be able to designate additional Authorized Users and remove existing Authorized Users. The Administrator will also determine what Business Online Banking Services will be available to particular Authorized Users, when to change passwords and any limitations on the use of the Services by individual Authorized Users. You agree that passwords will be changed with sufficient frequency to protect confidentiality, and in any event no less frequently than every one hundred and eighty (180) days.

We will not control or oversee the Administrator function. You agree to all action taken by the Administrator or any Authorized User designated or authorized by the Administrator, and all such persons are your agents for purposes of Business Online

Banking, each authorized to act individually or in concert. The fact that we are, or may be made aware of, or could have discovered, any limitation on access to Business Online Banking does not make us obligated to enforce or attempt to enforce any limitation. You understand that the Administrator and each Authorized User may utilize Business Online Banking (including inquiries, transfers and account verification) without regard to any restrictions otherwise applicable to an Account. For example, the Administrator and each Authorized User will be able to utilize Business Online Banking regardless of whether they are also authorized signers on your signature card.

#### *Account Information Services*

The Services include the ability to obtain Account information, subject to system limitations. Balances and transaction information reflected in the Service may not reflect all transactions against an Account on the day the transaction occurs. Some transactions may not be reflected by the system until the following business day. Services performed during nightly processing may not succeed when applied to your actual balance at the end of the nightly processing. Posted transactions may be reversed due to insufficient funds, stop payment orders, legal process or other reasons. Certain balances may not be subject to immediate withdrawal, may include deposits still subject to verification or other items in the process of being posted to the Account, and may not include outstanding checks, debits or credits. You understand and agree that Account information may not reflect transfers made by multiple users from the same Account if different login credentials are used for the same Account. You agree to communicate to other persons with authorized access to your Accounts concerning any transfers from your Accounts, in order to avoid overdrafts. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in your access to online information. If you are unable to access the Services for any reason, you may contact us directly.

#### *Electronic Statements and Notices*

Electronic statements offer you a convenient way to view, save and print your periodic statements and notices. If you elect to receive electronic statements and notices, we may discontinue sending paper statements or notices, and make periodic statements and notices available to you in electronic form only. This includes ongoing disclosures currently provided on the back of your paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. You agree to review your electronic statements and notices in a timely manner, just as you would paper statements or notices, and to promptly notify us of any errors, unauthorized activity or other problems, as provided in our agreement with you. You will be deemed to receive electronic statements when they are made available to you. Any time periods within which you must notify us of any problems or errors reflected on your statement(s) will begin on the date we make the electronic statement available to you, regardless of when it is actually viewed by you. We reserve the right to determine from time to time, which Accounts are eligible for electronic statements. A valid email address is required, if you fail to maintain a valid email address with us, you acknowledge and agree that any electronic statement shall nevertheless be deemed to have been provided to you if emailed to the email address we have on file for you. We reserve the right, in our sole discretion, to discontinue providing statements in electronic form. If you receive images of checks or receive canceled checks with your paper statements, you understand that paper copies of these items will not be available once you elect to receive electronic statements. Electronic images of these items will be available for a limited time, subject to system limitations, through the system. You agree to periodically log on and check on the delivery of new statements. If you cannot access, print or view your electronic statements, you must immediately contact us to make alternate arrangements.

#### *Internal Electronic Transfers*

You may only transfer funds within the United States. You must not transfer funds to or from an account that you do not own. Transactions posted to your Account as of a certain business day may not be reflected in account balances until the following business day. Information on transfers to or from your accounts with us will be reflected on your periodic statements, will be available to you online and can be obtained by calling us. We do not provide any other notice of the receipt, transmittal or debiting of funds transfers.

*Scheduling Funds Transfers.* You may instruct us to initiate single or recurring funds transfers on any business day (the "Transfer Process Date"). If the Transfer Process Date for an automatic transfer falls on a weekend or holiday, the transfer may be sent the following business day. To initiate a transfer, you must specify the Account to be debited, the Account to be credited, the transfer amount and the Transfer Process Date.

*Erroneous Transfer Instructions.* You assume sole responsibility for accurately describing transfer amounts, dates, accounts, financial institutions and addresses. We are not responsible for confirming such information, or for identifying or refusing to process duplicate transfer instructions. If you give us a transfer instruction that is incorrect in any way, you agree that we may charge your Account for the transfer whether or not the error could have been detected by us. We are not obligated to detect or correct errors in your transfer instructions.

*Rejecting Transfer Instructions.* We may reject transfer instructions with or without cause or prior notice. We may reject a transfer instruction, for example, if you do not have sufficient available funds to cover the transfer or the transfer instruction is unclear, ambiguous or incomplete. If we reject a transfer, you may need to reenter the information if you wish to make the transfer later.

*Changing or Canceling Transfer Instructions.* For same-day transfers between your eligible Accounts with us, once submitted, cannot be canceled. For future dated transfers, the transfers can be canceled anytime up to the same day of the scheduled transfer date.

#### *Online Tax Payment Service*

To originate federal and state tax payments, you must first register with the tax authorities and appoint the Bank to act as your agent for making tax payments and deposits on your behalf. These payments are processed as ACH Credit transactions and will be subject to the terms and conditions applicable to our ACH Service. Upon the Bank's request, you agree to execute such additional enrollment forms and authorizations as the Bank may request. You authorize the Bank to release account and tax payment information to any taxing authority in performing the Online Tax Payment Service and to confirm payments.

YOU MUST BE PRE-ENROLLED WITH THE FEDERAL AND/OR STATE TAXING AUTHORITIES PRIOR TO USING THE ONLINE TAX PAYMENT SERVICE. You warrant that you are enrolled in the Electronic Federal Tax Payment System ("EFTPS") and have selected the ACH Credit option. You warrant that all special requirements of the EFTPS system have been met. You also warrant that you have completed appropriate enrollment requirements with each state taxing authority, as applicable.

You are solely responsible for determining the amount of any taxes due and transmitting the correct payment information in accordance with the Service requirements. You must furnish the Bank with complete and accurate tax payment information. The Bank is not responsible for: (i) determining the correctness of any tax computation or payment; (ii) questioning the timing or amount of the payment; (iii) determining or questioning the correctness of any report or information submitted by you (even if it appears incorrect on its face); or (iv) any penalty that may be imposed

if you instruct the Bank to make a payment after the Bank's cutoff time or the date the tax payment is due.

The Bank will notify you orally, electronically or in writing if the Bank is unable to process any payment in the manner attempted by the Online Tax Payment Service, and will do so no later than the business day following the payment date. If you fail to maintain sufficient collected and available funds in your Account, the Bank may refuse to perform the tax payment. If any payment is rejected, it will be your responsibility to resubmit the payment instruction. If you do not have sufficient or available funds, you may be charged an insufficient funds fee and any other fees or charges applicable to the transaction.

When the Bank receives your payment instruction to make a tax payment, the Bank will charge your Account for the payment(s). The funds may be held by the Bank as a non-interest-bearing deposit liability to you, but will not be held in trust. Until the Bank makes your tax payment(s), your funds will be subject to offset for legal process, or any debts owed to the Bank.

You assume the risk of any failure to submit payment instructions to the Bank in a timely and correct manner. Payments should be submitted at least two (2) business days prior to the due date. Any interruption of the Online Tax Payment Service, regardless of the reason, will not relieve you of your obligation to make a tax payment or report. You are ultimately responsible for promptly making any required tax payment or report. You are responsible for promptly making required tax payments by another means in the event there is an interruption in the Online Tax Payment Service. You agree to be bound by the Rules, as amended from time to time, and all laws and regulations of the United States.

You acknowledge that the Bank's employees are not authorized or permitted to give tax advice to you. You agree not to seek or place any reliance upon tax advice from the Bank or the Bank's employees. If the Online Tax Payment Service is not used for a period of ninety (90) days, the Online Tax Payment Service may be removed or disabled. To cancel an Online Tax Payment Service Communication and the payment instruction that you have scheduled, you must cancel online prior to the cutoff time on the processing date. Payments cannot be canceled after this time. The Bank may seek to assist you in attempting to cancel or amend any payment but is not obligated to do so at Bank's discretion. If the Bank does, you will indemnify the Bank in accordance with the Service Description for any losses the Bank may suffer in connection with the Bank's efforts

## **51. MOBILE BANKING**

Mobile banking enables you to access Business Online Banking; in addition, you will be able to do the following:

- Scan and submit eligible items for deposit to linked checking, savings or money market accounts;
- Locate Farmers and Merchants Bank of Long Beach branches and ATMs;
- Set up automated notifications ("Alerts");
- Change your password.

Business Online Banking (including Mobile Banking) may be added to or removed by us from time to time. We may allow loans and lines of credit to be linked; in which case, you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. We may process transactions from loan accounts without regard to access limitations in any loan documentation or agreements.

Some Services may not be accessible while using your wireless access device. Some mobile banking Services may not be available without special application to and approval by us, may be limited to specific types of accounts, and may require you to agree to additional terms and conditions, which may be presented online at the time the feature is activated.

**Access and Use.** To utilize mobile banking, you must download the F&M Bank mobile application. Once you have downloaded the mobile application for mobile banking, designated Accounts linked to your Security Codes will be accessible through your wireless access device. Additionally, to access and utilize mobile banking, you will need a compatible wireless access device. Your wireless access device must be Internet enabled and connected to the Internet through your mobile communications service provider. In order to properly use mobile banking, you should review and follow the instructions provided in our Online system. You agree to accept responsibility for learning how to use mobile banking in accordance with the online and mobile application instructions and agree that you will contact us directly if you have any problems with mobile banking. You also accept responsibility for making sure that you, and anyone acting on your behalf, know how to properly use the wireless access device. If you obtain a different wireless access device, you will be required to download and install software to that different wireless Access Device, under the same terms set forth in this Agreement, as amended. You agree to delete all such software from your wireless access device promptly if the licenses or this Agreement terminates for any reason. We reserve the right to change, add to or terminate services with our third-party software providers, to substitute different software providers, and to enter into or arrange for the provision of mobile banking by other licensors and third parties.

You agree to exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by us or otherwise required for use of mobile banking and shall further prevent the use of mobile banking by unauthorized persons. You assume full responsibility for the consequences of any missing or unauthorized use of or access to mobile banking or disclosure of any confidential information or instructions by you, or anyone acting on your behalf.

**Hardware and Software.** You are responsible for obtaining and maintaining the compatible wireless access device required for mobile banking. To the extent, we, in our sole discretion, provide any hardware in conjunction with mobile banking; the hardware will at all times remain the sole property of Bank. Upon termination of mobile banking, you must promptly return any hardware that we provided to you.

To the extent mobile banking involves our having granted you software license usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use mobile banking in connection with your use in accordance with this Agreement. Mobile banking does not involve the sale of software. Nothing in this Agreement will entitle you to receive technical support, telephone assistance regarding the software or updates to software. Upon termination, you agree to immediately destroy all copies of any software that had been downloaded to your wireless access device or otherwise in your possession and control as part of your access and use of mobile banking. You acknowledge that your license to use any software that may be required for mobile banking is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by you or otherwise provided to you. By enrolling in portions of mobile banking relating to those software systems and programs, and by downloading and installing mobile banking software, you will be evidencing your acceptance of the terms and conditions of those licenses. We may also condition your use of mobile banking upon you affirming such licenses by the use of "I Accept" or similar dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

**Mobile Deposit.** The Mobile Deposit feature enables you to use a software application together with your wireless access device to create electronic images of the front and back of certain Original Checks (defined below) and transmit those images and other information, including, without limitation, information captured from the magnetic ink character recognition (“MICR”) line, to us for review and processing in accordance with this Agreement.

**Definitions.** In addition to the terms otherwise defined in this Agreement, the following terms will have the meaning provided in this “Mobile Deposit” section:

- “**Check**” means an Original Check, as defined in Regulation CC.
- “**Endpoint**” means any Federal Reserve Bank, financial institution, local clearinghouse, courier, or other entity or location for the delivery of cash letters or other presentment of Imaged Items or Substitute Checks (defined below).
- “**Imaged Item**” means the digitized image of a Check that is created by you and transmitted to us using the Mobile Deposit Service.
- “**Image Exchange Item**” means a digitized image of an Item (defined below) cleared and settled directly with a Payor Financial Institution (defined below) 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 (defined below) and payable or endorsed to you, and includes Original Checks, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items (defined below) or Items payable in a medium other than United States money.
- “**Mobile Deposit Services**” means the Mobile Deposit Services described in this Agreement, to be provided by us to you to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols and software used by us and its licensors and contractors in connection with the electronic processing of Items.
- “**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, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six (6) 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 your transaction limitations as established by us from time to time.

- “*Original*” with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
- “*Payor Financial Institution*” means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.
- “*Regulation CC*” means 12 C.F.R. Part 229, as it may be amended from time to time.
- “*Substitute Check*” means a paper reproduction of an Item that satisfies the requirements and definition of “substitute check” set forth in Regulation CC.
- “*UCC*” means the Uniform Commercial Code as enacted and amended in California.
- “*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.

*Your Responsibilities.* In connection with the Mobile Deposit Services, you agree to comply with the following:

- Each processed Imaged Item must be transmitted in compliance with the terms and conditions of this Agreement;
- The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time you converted the Original Check to an Imaged Item;
- The Imaged Item contains all endorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and you will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. You agree to indemnify and defend us against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check. Except as otherwise specifically disclosed in writing to us, you are not now engaged, and will not during the term of this Agreement engage, in any business that would result in you being or becoming a “money service business” as defined in the Federal Bank Secrecy Act and its implementing regulations;
- You will not engage in any activity directly or indirectly related to the use of the Mobile Deposit Service that is illegal or fraudulent;
- You will only submit Checks for processing to us 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 Standards Institute (“ANSI”) required by Regulation CC, or other standards established or required by us or applicable law, as amended from time to time. You will not process any Non-qualifying Items. Our processing of any Non-qualifying Items shall not constitute a waiver by us or obligate us to process such Non-qualifying Items in the future. You agree that we may discontinue processing of Non-qualifying Items at any time, without cause or prior notice;

- You will not attempt to scan and transmit to us any third-party checks, or any Item that is drawn on a deposit account of yours with us or any other financial institution, or a deposit account of any business entity of which you are a principal, officer or authorized signer;
- You will not attempt to scan and transmit to us any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substitute Check must be physically deposited with us. Notwithstanding the foregoing, we may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the Deposit Agreement;
- You will: (i) ensure that, prior to scanning, Items are restrictively endorsed "FOR MOBILE DEPOSIT ONLY AT FARMERS & MERCHANTS BANK"; (ii) handle, process, maintain and destroy Original Checks as set forth in this Agreement and in the supporting documentation; and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of an item, or otherwise is charged for an Item more than once in any form (no second presentment);
- You will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to us;
- You will: (i) maintain a daily control record of all Checks, including transaction counts and dollar amounts; and (ii) balance transactions transmitted from the previous day and immediately notify us of any error or discrepancy discovered;
- You shall be responsible for verifying our receipt of your transmission(s) by verifying that deposits have been posted to the appropriate Accounts, in addition to cooperating with us in any investigation and resolving any unsuccessful or lost transmissions;
- You shall be responsible for installing and implementing any changes and upgrades to the Mobile Deposit Service as required by us within five (5) days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Mobile Deposit Services. You will ensure that your wireless access device 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;
- If not directed otherwise by us, you will store Original Checks in a safe and secure environment for fourteen (14) days after such Items have been digitized and processed. You shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to Original Checks; (ii) the information contained on such Original Checks or on any corresponding Imaged Items is not disclosed to third parties; (iii) such Checks will not be duplicated or scanned more than one time; and (iv) such Checks will not be redeposited or renegotiated in any form. You will promptly (but in any event within five (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 us as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as we otherwise deem necessary. You will use a commercially reasonable method that is consistent with any requirements of Regulation CC and the Bank to securely and permanently destroy Original Checks after your retention period has expired;

- You understand and agree that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will at our discretion be: (i) re-presented to the Payor Financial Institution; or (ii) returned to you and your Account will be charged for the amount of the Item plus any associated fees as disclosed in our applicable Schedule of Fees, which may be changed from time to time at our discretion. You agree that Items may be returned as Image Exchange Items, rather than Substitute Checks. Our right to charge your Account will apply without regard to whether the Item is returned to us in a timely manner or whether there is any other claim or defense that the Item has been improperly returned to us; and
- You agree to make all encoding, transfer, presentment and other warranties made under applicable law, including, without limitation, those under the UCC, Regulation CC and the rules of any image exchange network.

**Processing.** For all Imaged Items processed pursuant to this Agreement, either: (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints; or (ii) Image Exchange Items will be presented for payment through image exchange networks. We may determine the manner of processing at our sole discretion. Your Account will be provisionally credited upon our acceptance of Imaged Items for deposit.

We will process any returned Items in accordance with applicable law and the Deposit Agreement. Availability of credit from Items processed under this Agreement will be subject to our then-current availability schedule, which may be amended by us from time to time. We may at our sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. We may, from time to time, establish and amend exposure limitations and assign them to you.

Notwithstanding any provisional credit that may be applied to an Account in connection with your transmitted Imaged Items, Imaged Items processed for deposit through the Mobile Deposit Service will be deemed to have been received by us for deposit at the time the Imaged Items are actually received and accepted at the location where we or our designated agent posts the credit to the Account. A deposit of Imaged Items will be deemed to have been received and accepted by us for deposit when all of the following have occurred: (i) we have preliminarily verified that the image quality of the Imaged Item is acceptable to us at our discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) we have successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by us for deposit may be rejected by us in our sole discretion.

You agree to view the images of each scanned Item that is sent to us. If Item information received by us is not complete or cannot be processed by us for any reason, we may reject the Imaged Item, notwithstanding any transmission confirmation, and charge the amount back against any provisional credit to your Account. You will be responsible for verifying our receipt of your transmissions by verifying that deposits have been posted to your Account.

If an Imaged Item is not accepted for deposit, you may then submit the Original Check to us for processing or contact the maker to reissue the Check. If you submit the Original Check for processing, we reserve the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require you to have the maker reissue the Check.

## **52. BUSINESS CHECKING PLUS**

In addition to Business Online Banking, the following are available to Business Checking Plus clients:

- Multiple login IDs
- Account reconciliation
- Management of multiple business accounts based on ownership
- ACH Origination
- Payment of federal and state taxes
- Initiation of domestic and international wire transfers in U.S. currency
- Mobile Remote Deposit Capture
- Positive Pay

Some services may not be available without a separate application and approval from us, and may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated. We may make other services available to you and you agree to be bound by the terms and conditions of the additional services, as they apply, in addition to the terms of this Agreement.

## **53. TREASURY MANAGEMENT SERVICES**

In addition to the Business Online Banking services, the following are available to Treasury Management Clients who are enrolled in Business Online Banking with Cash Manager:

- Account reconciliation
- Management of multiple business accounts based on ownership
- ACH Origination
- Ability to manage employee access levels
- Initiation of domestic and international wire transfers in U.S. currency
- Positive Pay
- Remote Deposit Capture

Some services may not be available without a separate application and approval from us, and may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated. We may make other services available to you and you agree to be bound by the terms and conditions of the additional services, as they apply, in addition to the terms of this Agreement.

### **A. Online Wire Transfer**

Online Wire Transfer. You may submit wire transfer requests (“Requests”) to us in accordance with the terms and conditions of this Online Wire Transfer Service. A Request includes a “payment order,” as defined in Division 11 of the California Commercial Code. You are responsible for all Requests to the fullest extent provided by law and as set forth in this Service Description. The Bank may choose the funds

transfer mechanism (for example, Fedwire, correspondent bank transfer, internal transfer) to be used when acting upon your Request. Defined terms in this Service Description shall have the meaning provided in this Agreement, unless otherwise defined in this Service Description.

**Transmission; Related Service Descriptions for Funds Transfers.** All Requests must be provided to the Bank through the Online System by an Authorized User or Administrator and must be in a form or format as prescribed by the Bank. Any such Requests will be further subject to the Supporting Documents, which may include user guides, user manuals and other online terms and information.

**Account Designation.** You authorize us to debit your designated Account, or any other Account maintained by you with us, for any fees or other amounts due in connection with the Services.

**Accuracy.** You assume the sole responsibility for providing us with accurate transaction information in the form and format we require. We are not responsible for confirming such information, or for failing to detect and reject duplicate Requests. If you provide us with a Request that is incorrect in any way, you agree that we may charge your Accounts for the transaction whether or not the error could have been detected by us. We are not obligated to detect errors in your transfer or payment instructions.

**Communications; Security Procedures.** For the purpose of this Service, Communications shall have the meaning provided in this Agreement and shall include Requests to us in connection with the Wire Transfer Service. For the purpose of this Service, Security Procedures shall have the meaning provided in this Agreement and shall include but not be limited to any Security Procedures used to access Accounts and to use the Wire Transfer Services. We may offer to you or require you to use additional authentication tools or methods from time to time (for example, challenge questions and phrases for employees). If you choose not to implement supplemental authentication tools, your access to some or all Wire Transfer Services may be limited.

**Wire Transfer Limitations.** All transfers to and from an Account will be subject to the terms and conditions applicable to the Account as set forth in the deposit agreement governing the Account, including transfer limitations.

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

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

## **B. ACH Origination**

You agree to initiate credit and/or debit Entries as the Originator by means of the Automated Clearing House ("ACH") Network pursuant to the terms of this Service Description and the rules of the National Automated Clearing House Association ("NACHA") and the local Automated Clearing House Association (the "Rules"), and that we are willing to act as an Originating Depository Financial Institution ("ODFI") with

respect to such Entries. You further agree that you are bound by the provisions and requirements of the Rules and the applicable NACHA Operating Guidelines. Accordingly, you may submit ACH Entries to us in accordance with the terms and conditions of this Service Description. You are responsible for all Entries to the fullest extent provided by law and as set forth in this Service Description. Defined terms in this Service Description shall have the meaning provided in this Agreement and as defined in the Rules, unless otherwise defined in this Service Description. The term “Entry” or “Entries” shall have the meaning provided in the Rules and shall mean the data received from you hereunder from which we prepare Entries. Furthermore, except as otherwise provided in this Agreement, other capitalized terms in this Section shall have the meaning provided in the Rules.

**The Rules.** A copy of the Corporate Edition of the Rules can be purchased from NACHA at [www.NACHA.org](http://www.NACHA.org). You agree to obtain a copy, to understand and be familiar with the Rules, and to be responsible for keeping up to date with changes in the Rules. You agree that information or advice received by you from us as to the Rules or the operation of the Rules is not legal advice and is not a substitute for your obligation independently to understand and comply with the Rules.

**Processing Entries.** You shall transmit Entries to us to the location(s) and in compliance with the formatting and other requirements set forth in the Rules and the Supporting Documents. The ACH Service will start on a date agreeable to you and to us after all setup requirements have been completed.

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

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

**Authorization for Debit Entries to Consumer Accounts.** For all debit entries to consumer accounts, you agree to ensure that each consumer debit authorization includes the following minimum information:

- Language clearly stating whether the authorization obtained from the Receiver is for a single entry, recurring entries, or one or more subsequent entries initiated under the terms of a standing authorization;
- The amount of the entry or entries, or a reference to the method of determining the amount of the entry(ies);
- The timing of the entries, including the start date, number of entries, and frequency of the entries;
- The Receiver’s name or identity;

- The account to be debited (this should include whether the account is a demand deposit account or a savings account);
- The date of the Receiver's authorization; and
- Language that instructs the Receiver how to revoke the authorization directly with the Originator. This must include the time and manner in which the Receiver must communicate the revocation to the Originator. For a single entry authorized in advance, the right of the Receiver to revoke authorization must provide the Originator a reasonable opportunity to act on the revocation instruction prior to initiating the entry.

### **Supplemental SEC Rules Provisions.**

Telephone Initiated (TEL) Entries. If Company initiates TEL Entries, the following apply in addition to applicable provisions of the Rules.

Company will not submit individual or total monthly TEL entries in excess of the amounts that the Bank designates from time to time. Company will not divide a transaction into more than one TEL Entry in order to avoid these limitations. The Bank may adjust these limitations from time to time by providing notice to Company. The Bank processing of TEL Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision; the Bank may cease processing TEL Entries in a greater amount at any time without prior notice.

Company will obtain the Receiver's oral authorization for each TEL Entry to the Receiver's account. A TEL Entry may be transmitted only in circumstances in which: (i) there is an existing relationship between Company and the Receiver, or (ii) there is not an existing relationship, but the Receiver has initiated the call to Company. A TEL Entry may not be used by Company when there is no existing relationship between Company and the Receiver, and Company has initiated the telephone call. Company and the Receiver are considered to have an existing relationship when either: (iii) there is a written agreement in place between Company and the Receiver for the provision of goods or services, or (iv) the Receiver has purchased goods or services from Company within the past two (2) years.

Authorization must conform to the requirements of the Rules and must provide evidence of the Receiver's identity and assent to the authorization. The authorization must be readily identifiable as an ACH debit authorization, and have clear and readily understandable terms. As part of the oral authorization process for TEL single entries, recurring TEL entries, and for a Receiver's standing authorization obtained orally via a telephone call, the Originator must clearly state during the telephone conversation that the consumer is authorizing one or more ACH debit entries to the consumer's account. The Originator must ensure that the Receiver explicitly express consent. Silence is not express consent. For an authorization related to recurring TEL Entries, Company must comply with the writing and signature requirements of Regulation E for preauthorized transfers, including the requirements to send a copy of the authorization to the Receiver.

The following minimum requirements must be followed as part of the authorization of a Single Entry TEL Entries: For Single Entry TEL entries you must either audio record the Receiver's oral authorization or to provide, prior to the settlement of the entry, written notice to the Receiver that confirms the oral authorization. When you elect to provide the Receiver with written notice confirming the Receiver's oral authorization, that notice must include the minimum authorization requirements for a consumer debit entry discussed above. You should disclose to the Receiver the method by which written notice will be provided if you use this option.

The following minimum requirements must be followed as part of the authorization of standing TEL authorizations and subsequent Entries: When you obtain standing TEL

authorizations you must either audio record the Receiver's oral authorization or provide, prior to the settlement of the first subsequent entry, written notice to the Receiver that confirms the oral authorization. When you elect to provide the Receiver with written notice confirming the Receiver's oral authorization, that notice must include the minimum authorization requirements for all consumer debit entries discussed above. You should disclose to the Receiver the method by which written notice will be provided if you use this option. When initiating a subsequent entry, you must retain proof that the Receiver affirmatively initiated each payment in accordance with the terms of the standing authorization. You must retain this proof for two years following the Settlement Date of the subsequent entry.

The following minimum requirements must be followed as part of the authorization of recurring TEL Entries: For recurring TEL entries you must both audio record the Receiver's oral authorization and provide a written copy of the authorization to the Receiver, to the extent required by Regulation E. You should disclose to the Receiver the method by which the written copy will be provided. The authorization must meet the minimum authorization requirements for consumer debit entries discussed above and include a telephone number that is available to the Receiver and answered during normal business hours for customer inquiries. Authorizations for recurring TEL Entries also need to meet the writing and signature requirements of Regulation E for preauthorized transfers, which generally can be done by conforming to the e-Sign Act.

Company will use commercially reasonable procedures to verify the identity of the Receiver. Company will use a commercially reasonable method (e.g., use of a directory, database, etc.) to verify the Receiver's name, address, and telephone number. Company also will verify the Receiver's identity by verifying pertinent information with the Receiver (e.g., past buying history, mother's maiden name, Caller ID information, etc.).

Company will use commercially reasonable procedures to verify that routing numbers are valid. If appropriate, this may include the use of available databases or directories, or contact with the Receiver's financial institution. Company also will employ reasonable procedures (if available) to verify the validity of account number structures.

In addition to any other warranties given by Company under the Agreement and the Rules, Company warrants the following to the Bank with respect to each TEL Entry: (i) Company used a commercially reasonable method to establish the identity of the Receiver; and (ii) Company took commercially reasonable steps to verify that the routing number is valid.

Internet Initiated (WEB) Entries. If Company initiates WEB Entries, the following apply in addition to applicable provisions of the Rules.

Company will not submit individual or total monthly WEB Entries in excess of the amounts that the Bank designates from time to time. Company will not divide a transaction (other than for regular recurring payments) into more than one WEB Entry in order to avoid these limitations. The Bank may adjust these limitations from time to time by providing notice to Company. Processing WEB Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision; the Bank may cease processing WEB Entries in a greater amount at any time without prior notice.

Authorization for WEB Entries must conform to the requirements of the Rules and the authorization requirements for debit entries to consumer accounts provided above. Company must also provide evidence of the Receiver's identity and assent to the authorization. Each authorization must be obtained prior to initiating the debit entry and comply with the following: (i) the authorization must be in a writing that is signed or similarly authenticated by the Receiver via the Internet or a Wireless Network, or (ii) the authorization is obtained in any manner permissible for other Standard Entry Class Codes, but the Receiver's instructions for the initiation of the debit entry is

communicated via a Wireless Network (other than by an oral communication), and (iii) the authorization includes the minimum required information for a consumer authorization provided above. To meet the first requirement that the authorization be in writing, in the context of WEB entries, the Receiver must be able to read the authorization language displayed on a computer screen or other visual display. Company should prompt the Receiver to print the authorization and retain a hard copy or electronic copy. Company must be able to provide the Receiver with a hard copy of the authorization if requested to do so. Only a consumer may authorize a WEB Entry, and not a Third Party Service Provider on behalf of the consumer.

Company will employ a commercially reasonable, fraudulent-transaction detection system to screen each WEB Entry in order to minimize the risk of fraud. The level of authentication used shall reflect the risk of the transaction, based on factors such as the transaction amount, the type of goods being offered, whether consumers are new or existing Receivers, and a method of delivery. The system must authenticate Company's identity as well as that of the Receiver. Company agrees to provide the Bank with a description of the system, upon request, and evidence that the system is commercially reasonable. Company will use commercially reasonable procedures to verify that routing numbers are valid. If appropriate, this may include the use of available databases or directories. Company also will employ reasonable procedures (if available) to verify the validity of account number structures.

Company shall establish a secure Internet session with each Receiver using commercially reasonable security technology that, at a minimum, is equivalent to with the most current standards for encryption when accessing a secure Internet session. As technological advancements drive the commercially reasonable standard to change, Company must comply with the new standard. The secure session must be in place from the time the Receiver enters his or her banking information through the time of transmission to the Bank. This requirement also applies to any transmission to an agent or service provider. Company will conduct an annual or more frequent security audit to ensure that the financial information obtained from Receivers is protected by security practices and procedures that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; and (iii) network security to ensure secure capture, transmission, distribution and storage until destruction of financial information. Company's audit will at a minimum include and cover those items identified in the Operating Guidelines of NACHA as the minimum components that must be addressed in the audit report. Company must provide the Bank with a copy of each audit within thirty (30) days from Company's receipt of the audit.

In addition to any other warranties given by Company under this Agreement and the Rules, Company warrants the following to the Bank with respect to each WEB Entry: (i) Company employed a commercially reasonable fraudulent transaction detection system to screen the Entry; (ii) Company used a commercially reasonable method to establish the identity of the Receiver; (iii) Company took commercially reasonable steps to verify that the routing number is valid; (iv) Company established a secure Internet session prior to and during the key Entry by the Receiver of any banking information; and (v) there has been no change in Company's operations or other circumstance that would have a negative effect on the security practices identified or examined during Company's last security audit.

Except as provided below for On-Us Entries, we shall: (i) process Entries received from you to conform with the file specifications set forth in the Rules; (ii) transmit such Entries as an ODFI to an ACH Operator selected by us at the Bank's sole discretion ("ACH Operator"); and (iii) settle for such Entries as provided in the Rules. We shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, provided: (a) such Entries are received by our related cutoff time on a business day, (b) **the Effective Entry Date is one (1) to two (2) business days**

**after such business day**, unless you are set up with same-day ACH origination, and (c) the ACH Operator is open for business on such business day. Entries shall be deemed received by us when the transmission and compliance with any related Security Procedures are completed. If any of the requirements of this paragraph are not met, we may use reasonable efforts to transmit such Entries by the next deadline of the ACH Operator, which is a business day, and a day on which the ACH Operator is open for business.

**Same-Day Credit Entries.** Subject to our approval, the ACH Service permits you to elect to have your ACH credit or debit Entries originated on a “same-day” basis, for settlement on the same day as the Effective Entry Date. Eligible ACH Entries received on a business day by the applicable cutoff time for same-day Entries will be treated as a “same-day” ACH Entry. For this purpose, “eligible ACH Entries” will mean ACH Entries that: (i) are received on a business day by the cutoff hour for same-day Entries; (ii) are less than \$25,000 (effective March 20, 2020, \$100,000 or less); and (iii) contain an Effective Entry Date for the same day as receipt, or a stale or invalid date. You agree that when determining whether an ACH Entry qualifies as an eligible ACH Entry for same-day processing purposes, we are not required to consider any other information provided in the Entry or file or any other Communication from you to us, and we may process any eligible ACH Entry utilizing same-day processing. While you may request that we cancel or delay processing an eligible ACH Entry on a same-day basis, we may, in our sole discretion, comply with such a request but are not obligated to do so. We do not represent, warrant or otherwise guarantee that receiving depository financial institutions will post same-day ACH Entries by applicable deadlines. We may utilize same-day processing for any Entry that qualifies as an eligible same-day Entry even if you did not intend the Entry to be processed using same-day processing. In such cases, you are still responsible for all fees associated with same-day processing.

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

**Notice of Returned Entries.** We shall notify you by phone or electronic transmission, including email of the receipt, of a returned Entry from the ACH **no later than one (1) business day after the business day of receipt**. Except for an Entry retransmitted by you in accordance with the requirements of this Service Description, we shall have no obligation to retransmit a returned Entry to the ACH if we complied with the terms of this Service Description with respect to the original Entry.

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

**Notifications of Change.** We shall notify you of all Notifications of Change (NOC) received by us relating to Entries transmitted by you, **no later than two (2) business days** after the business day of receipt. Notice by us, in our discretion, may include notice by email to you. You must make the changes specified in an NOC or corrected NOC: (i) within six (6) business days of receipt or prior to initiating another Entry to the Receiver’s account, whichever is later; or (ii) as otherwise required in the Rules, if the Rules specify a different time for correction.

**Prefunding Payment.** We may designate you as “ACH Prefunding,” and we may change your designation to or from ACH Prefunding at any time, with or without cause and at our sole discretion. We will inform you of your designation as ACH Prefunding, and of any change in the designation. You will pay us, in immediately available funds, an amount equal to the sum of all credit Entries or debit Reversals related to Entry data delivered to us at such time as we may, from time to time, designate no later than the date of transmittal of the related Entry data to us, or at such other time as we may have established for you.

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

**Your Representations and Warranties.** In addition to the representations and warranties provided by you under this Agreement with respect to each and every Entry initiated by you, you represent and warrant to us and agree that you shall obtain all consents and authorizations required under the Rules, and in compliance with Regulation E (as applicable), and shall retain such consents and authorizations for two (2) years after they expire and other documents related to Entries for a period of six (6) years. Without limiting the foregoing, each person as the Receiver of an Entry received by us from you have authorized the initiation of such Entry, and the crediting or debiting of your Account in the amount and on the Effective Entry Date shown on such Entry. You will provide us with a copy of such authorization within five (5) business days whenever requested to do so. Such authorization is operative at the time of transmittal or crediting/debiting by us Bank as provided herein. Entries transmitted to us by you are limited to those types of credit or debit Entries set forth in this Service Description.

If the amount of a debit Entry to a Receiver’s account varies in amount from the previous debit Entry relating to the same authorization or preauthorized amount, you will, at least ten (10) days before the Effective Entry Date of such debit Entry, send the Receiver written notice of the amount of such debit Entry and its Effective Entry Date, unless the Receiver has previously been notified of the Receiver’s right to receive such notice and the Receiver has elected to receive such notice only when the debit Entry does not fall within a specified range of amounts or varies from the most recent debit Entry by an agreed amount.

If any change is made by you in the scheduled Effective Entry Date of one or more debit Entries, you will, at least seven (7) days before the Effective Entry Date of the first such debit Entry to be affected by such change, send the Receiver a written notice of the new Effective Entry Date(s) of such Entry or Entries; you shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the treatment of a payment of an Entry by the Receiving Depository Financial Institution (“RDFI”) to the Receiver as provisional until receipt by the RDFI of final settlement for such Entry.

You will not use the ACH Service to collect: (i) payments for goods or services sold by third parties; (ii) payments relating to adult entertainment, gambling services or child pornography; (iii) obligations owing to third parties; or (iv) obligations related to cash advances by you.

You hereby make the same representations and warranties to us with respect to Entries sent by us to an ACH Operator upon your authorization as we are deemed to make under the Rules, and we shall have no responsibility with respect to matters so represented and warranted by you; and except as previously disclosed in writing by you

to us: (i) you are not a “money-services business” (as defined at 31 CFR 103.11(uu) or successor regulation) and are not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (ii) no Entry data is submitted by you on behalf of, or as agent, service bureau or processor for another. By way of example, you will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver.

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

**Retention.** You agree to retain and make readily available to us, upon request, all information necessary to remake any files of Entries for ten (10) business days following the Settlement Date.

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

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

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

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

## **C. Remote Deposit Capture**

We will provide you the Remote Deposit Capture Services described in this Service Description to enable you to transmit Imaged Items to us or our designated processor to be cleared as Substitute Checks or Image Exchange Items.

**Access.** The RDC enables you to use an approved software application, together with a compatible wireless access device or other compatible scanning hardware maintained by you, to create electronic images of the front and back of Original Checks and transmit those images and other information, including, without limitation, information captured from the magnetic ink character recognition (“MICR”) line, to us for review and processing in accordance with this Service Description.

You agree to exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by us or otherwise required for use of the RDC and shall further prevent the use of the same by unauthorized persons. You assume full responsibility for the consequences of any missing or unauthorized use of or access to the RDC or disclosure of any confidential information or instructions by you, or anyone acting on your behalf.

**Wireless Access.** Your access to the RDC via your wireless access device ("Wireless RDC") is subject to our prior and ongoing approval. We may deny your access to all or any part of the Remote Deposit Capture Service, at our sole discretion, including wireless access. To access and utilize Wireless RDC you will need a compatible wireless access device that is connected to the Internet through your mobile communications service provider. If you obtain a different wireless access device, you will be required to download and install software, to that different wireless access device, under the same terms set forth in this Service Description, as amended. You agree to delete all such software from your wireless access device promptly if the licenses or this Service Description terminates for any reason. The availability, timeliness and proper functioning of Wireless RDC depend on many factors, including your wireless access device location; wireless network availability and signal strength; and the proper functioning and configuration of hardware, software and your wireless access device. Neither we nor any of our service providers warrant that Wireless RDC will operate without interruption, and neither the Bank nor the Bank's service providers shall be liable for any loss or damage caused by any unavailability of Wireless RDC, including service interruptions, delays or loss of personalized settings. Neither we nor any of our service providers assume responsibility for the operation, security, functionality or availability of any wireless access device or mobile network that you utilize to access the RDC. You agree that, when you use Wireless RDC, you remain subject to the terms and conditions of your existing agreements with any unaffiliated service providers, including your mobile service provider. You understand that those agreements may be provided for fees, limitations and restrictions that might impact your use of Wireless RDC (such as data usage or text messaging charges imposed on you by your mobile service provider), and you agree to be solely responsible for all such fees, limitations and restrictions. You also agree that only your mobile service provider is responsible for its products and services. Accordingly, you agree to resolve any problems pertaining to your wireless access device or mobile services with your provider directly.

**Security of Data in Transition and Storage.** You expressly acknowledge that any wireless access to your Accounts may not be secure and, as such, you assume the risk associated with unauthorized access to the RDC and any information contained therein resulting from such wireless connectivity. You assume all risk that any information you download or otherwise store on your wireless access device may be accessed by unauthorized third parties. Without limiting the foregoing, you acknowledge that your wireless access device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

We are not responsible for the security and confidentiality of information when you: (i) use wireless connections to download your Account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded; or (ii) allow other persons access to your wireless access device. You agree that any account information that you download is done at your own risk, and you are solely responsible for any damage that might occur to the electronic device to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

YOU AGREE TO TERMINATE THE REMOTE DEPOSIT CAPTURE SERVICE OR DISABLE YOUR REGISTERED WIRELESS ACCESS DEVICE FROM THE REMOTE DEPOSIT CAPTURE SERVICE

IMMEDIATELY IN THE EVENT YOUR REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY YOU.

***Primary Account Designation.*** You may use the RDC to facilitate a deposit to any deposit account you have with us (other than those with deposit restrictions, such as certificates of deposit). The Account to which you designate a deposit shall be referred to as the “RDC Account” for the purpose of this Service Description and the deposit transaction. You authorize us to debit the RDC Account (or any other account maintained by you at the Bank) for any fees or other amounts due us in connection with the Remote Deposit Capture Services. If the RDC Account is closed for any reason, your Remote Deposit Capture Services will be stopped along with any unprocessed Remote Deposit Capture Services transfers. To reinstate your Remote Deposit Capture Services, you must designate a new RDC Account.

***Your Rights.*** Subject to the terms of this Service Description, we hereby grant you a non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with your own business operations in accordance with the Supporting Documents.

***Definitions.*** Unless otherwise defined below or in this Service Description, terms in this Service Description shall have the meaning provided in this Agreement. For the purpose of this Service Description, the following words shall have the meanings provided here:

- “*Communications*” shall have the meaning provided in this Agreement and shall include Communications to the Bank in connection with the Remote Deposit Capture Service, including transmission of output files from you to the Bank
- “*Security Procedures*” and “*Security Codes*” shall have the meaning provided in this Agreement and shall include but not be limited to any Security Procedures and Security Codes used to access the RDC Account and to use the Remote Deposit Capture Service.
- “*Check*” means an Original Check, as defined in Regulation CC.
- “*Endpoint*” means any Federal Reserve Bank, financial institution, local clearinghouse, courier, or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.
- “*Image Exchange Item*” means a digitized image of an Item cleared and settled directly with a Paying Bank without conversion to a Substitute Check.
- “*Imaged Item*” means the digitized image of a Check that is created by you and transmitted to the Bank using the Remote Deposit Capture Service.
- “*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 you, and includes Original Checks, Substitute Checks and Image Exchange Items.
- “*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 Paying Bank.
- “*Non-qualifying Item*” means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third

parties, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), 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 your 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 United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.
- “*Remote Deposit Capture Services*” means the services described in this Service Description, to be provided by the Bank to you to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including, collectively, the procedures, protocols, and software used by the Bank and its licensors and contractors in connection with the electronic processing of Items.
- “*Software*” means any software that 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.
- “*UCC*” means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Service Description.
- “*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.

**Your Responsibilities.** In connection with the Remote Deposit Capture Services, you shall comply with the following:

- You will create images of Checks at your location by use of scanning hardware and software, if any, approved or provided by the Bank (as applicable). You will enter all amounts and any other required information correctly and as provided in the Supporting Documents.
- You will transmit the electronic images of Checks to the Bank, or the Bank’s authorized processor, over the Internet through a secure web-based interface.
- Your RDC Account will be provisionally credited upon the Bank’s acceptance of the Imaged Items for deposit, which are received by the Bank from you through the Remote Deposit Capture Service.
- You will maintain the RDC Account for you to receive credit and provide other specific information required by the Bank related to the Remote Deposit Capture Service. As set forth in this Service Description, all deposits received by the Bank are accepted subject to the Bank’s verification and final inspection and may be rejected by the Bank at the Bank’s sole discretion. All

deposits are subject to the terms of the deposit account agreement governing your Accounts.

- You will maintain the RDC Account at the Bank for the receipt of deposits of Items.
- You will only submit Checks for processing to the Bank that meet the definition of “Item” as provided in this Service Description 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, as amended from time to time. You 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.
- Unless prior approval by the Bank in writing, you will not attempt to scan and transmit to the Bank any Item that is drawn on your deposit account at the Bank or any other financial institution, or a deposit account of any business entity of which you are a principal, officer or authorized signer. You will only use the Remote Deposit Capture Service for your own purposes and in accordance with this Service Description.
- You will not attempt to scan and transmit to the Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substitute 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 agreement governing your Accounts.
- You will: (i) ensure that, prior to scanning, Items are restrictively endorsed “FOR REMOTE DEPOSIT ONLY AT FARMERS & MERCHANTS BANK”; (ii) handle, process, maintain and destroy Original Checks as set forth in this Service Description and in the Supporting Documents; and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.
- Except to the extent otherwise expressly agreed by the Bank, you will provide, at your own expense, a broadband Internet connection, such as via a digital subscriber line (“DSL”) or other connectivity having equivalent or greater bandwidth, and all other computer hardware and software, including a compatible web browser, and other equipment and supplies required to use the Remote Deposit Capture Service, all of which must satisfy any minimum requirements set forth in the Supporting Documents or as otherwise may be acceptable to the Bank. Except to the extent otherwise provided in this Service Description or the Supporting Documents, you will provide, or obtain from another party selected by you at your expense, support and maintenance of such Internet connection and all other computer hardware, software and equipment required to use the Remote Deposit Capture Service, including, without limitation, troubleshooting Internet connectivity issues with your Internet service provider (“ISP”).
- You will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to the Bank.

- You 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.
- Unless the Bank specifically agrees otherwise in writing, you will not use the Service to deposit any Check or Checks that exceed the transaction limits established by the Bank from time to time. The Bank may communicate the transaction limits, including changes to the same, by written or electronic notice to you.
- You will be responsible for verifying the Bank's receipt of your transmission(s) by verifying that deposits have been posted to the RDC Account, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
- You will maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform your obligations under this Service Description.
- You 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 Remote Deposit Capture Service and shall further prevent the use of the same by unauthorized persons. You assume full responsibility for the consequences of any missing or unauthorized use of or access to the Remote Deposit Capture Service or disclosure of any confidential information or instructions by you, your employees and agents (as applicable).
- You agree to comply with all existing and future operating procedures used by the Bank for processing of RDC transactions. You further agree to comply with and be bound by all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts, including all rules and procedural guidelines established by the Federal Trade Commission ("FTC"), the Board of Governors of the Federal Reserve, National Check Exchange ("NCE"), Small Value Payment Customer ("SVPCO"), Viewpointe, Endpoint Exchange, Electronic Check Clearing Houses Organization ("ECCHO"), and any other clearinghouse or other organization in which the Bank is a member or to which rules the Bank has agreed to be bound. These procedures, rules and regulations are incorporated herein by reference.

**RDC Procedures.** The Bank will provide you with operating procedures that the Bank require you to use in connection with the Remote Deposit Capture Service ("RCD Procedures"). You agree to comply with the RDC Procedures, maintain the most current version and agree to take reasonable steps to safeguard the information. You will complete the customer assessment that will certify that you are in compliance with the RDC Procedures on an annual basis. The RDC Procedures may be amended from time to time by the Bank and will be made available to you. It will be your responsibility to train all users to any changes in the Services.

**Equipment.** You are responsible for obtaining and maintaining the compatible and Bank-approved scanner equipment to facilitate the Remote Deposit Capture Service. You agree to use only scanner equipment and software that meet the Bank's service specifications, and shall not use any scanner equipment purchased or provided by a third party without the Bank's prior written consent. "Scanner equipment" will mean any compatible and Bank-approved hardware, including a wireless access device. You will ensure that the equipment is clean and operating properly, and will inspect and

verify the quality of images and ensure that the digitized images of Original Checks are legible for all posting and clearing purposes. You will be solely responsible for verifying the compatibility of any equipment used with the Remote Deposit Capture Service.

To the extent the Bank provides access to equipment for your use of the Remote Deposit Capture Service ("Bank-Provided Equipment"), you agree not to remove Bank-Provided Equipment from your place of business, you are responsible for the maintenance of Bank-Provided Equipment, and the Bank may require your use of the same to be subject to additional terms. The Bank's provision of Bank-Provided Equipment may be subject to separate terms and conditions. If any Bank-Provided Equipment is lost, stolen or damaged in such a manner that you cannot comply with the capture, transmission, processing and other applicable procedures and requirements of this Service Description, you agree to inform the Bank and to then obtain and substitute new equipment that is acceptable as shown in the supporting documentation, before you continue using the equipment and the Remote Deposit Capture Services. If your use or maintenance resulted in damage to any Bank-Provided Equipment, you agree to reimburse the Bank on demand for the Bank's costs to repair the equipment, or to replace the equipment if repair is not reasonably feasible. Upon termination of this Service Description, your right to use Bank-Provided Equipment shall terminate and you agree to return the scanner and all program materials within ten (10) calendar days (or the Bank shall charge you the replacement cost of the scanner).

The Bank assumes no liability for any computer virus or related problems arising in connection with your use of equipment, including Bank-Provided Equipment, and you shall indemnify, defend and hold harmless the Bank for any losses, damages, costs and expenses resulting directly from any computer virus or related problems the Bank may suffer or incur from any computer virus or related problem caused by you.

**Software.** At any time during the term of this Service Description, the Bank may require, in the Bank's sole discretion, the use of software in connection with the Remote Deposit Capture Services. The Bank may require you to upgrade the software, which you agree to do within thirty (30) days of notice, or sooner if directed by the Bank. You will implement and use the software, as set forth in the Supporting Documents and any applicable materials relating to the Supporting Documents, to transmit output files to the Bank.

To the extent the Remote Deposit Capture Service involves the Bank's having granted you software license usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with your use in accordance with this Service Description. The Remote Deposit Capture Service does not involve the sale of software. Nothing in this Service Description will entitle you to receive technical support, telephone assistance regarding the software, or updates to software.

You acknowledge that: (i) license to any software that may be required for the Remote Deposit Capture Service is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by you or otherwise provided to you; (ii) the Bank may, but is not obligated to, provide certain "first level" support to you with respect to the software, but that the Bank will have no responsibility for maintenance, support, infringement protection, or otherwise to you with respect to the software.

You will look strictly to the software provider, or its successors, with respect to any issues concerning the software that cannot be satisfactorily resolved with the Bank's assistance.

You will use the software solely for transmitting output files to the Bank consistent with this Service Description and not for communications with any other party. You will not allow access to the software or the use of the Remote Deposit Capture Service by any person other than you, and will only process Items arising from a transaction or

obligation between you and your direct payor. Without limiting the foregoing, you agree to implement and maintain separation of duties and dual control procedures at your location(s) to ensure compliance with the limitation on access commitments provided under this Service Description.

You acknowledge and agree that the software and content used by the Bank in the operation of the Bank's website and provision of the Remote Deposit Capture Service, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics and trademarks included by the Bank on the Bank's website and as part of the Remote Deposit Capture Service and the Bank's name and product names and the website's URL (collectively, the "Intellectual Property"), are owned by the Bank and the Bank's licensors. As such, you will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Service Description or otherwise. You may not use, reproduce, duplicate, copy or distribute the content found at the Bank's website or provided by the Remote Deposit Capture Service.

You may not distribute, reuse, reproduce, duplicate, copy, publish, sell or otherwise transfer: (i) any portion or element of the Remote Deposit Capture Service or the Intellectual Property; or (ii) access to the Bank's Remote Deposit Capture Service or Intellectual Property. Further, you may not (a) create derivative works of any portion or element of the Remote Deposit Capture Service or Intellectual Property; (b) reverse-engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology the Bank incorporates in the Remote Deposit Capture Service; (d) modify or erase any copyright or trademark notice the Bank places in connection with the Remote Deposit Capture Service; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided through the Remote Deposit Capture Service (sometimes known as "scrapers," "spiders," "robots" or "bots") to systematically access and download data; (f) access the Remote Deposit Capture Service by any means other than via your wireless access device; (g) frame any content provided through the Remote Deposit Capture Service or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing the Bank's name, trademark, URL, product name or other Intellectual Property. You agree to comply with the terms of any license agreement made available to you through the Remote Deposit Capture Service.

You will promptly return all copies of the software and Supporting Documents, including materials related to the Supporting Documents, to the Bank upon termination of the Service Description.

To ensure your retention obligations under this Service Description, you agree to implement and maintain business continuity procedures, including those needed to ensure proper backup of data and periodic testing of the same.

The Bank reserves the right to change, add to, or terminate services with the Bank's third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Remote Deposit Capture Services by other licensors and third parties.

**Retention and Destruction of Original Checks.** You will retain each Original Check in accordance with the Supporting Documents. If not directed otherwise by the Bank, you will store Original Checks in a safe and secure environment for forty five (45) days after such Item has been digitized and processed. You shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to Original Checks; and (ii) the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties. You will promptly (but in any event within five (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, with the copy indicating that it is a copy on its face) 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. If you fail to produce the Original Check upon the Bank's request, you agree that the Bank may deduct the amount of the Original Check from any of your Accounts. You will use a commercially reasonable method, which is consistent with any requirements of Regulation CC and approved by the Bank to securely and permanently destroy Original Checks after your retention period has expired. You agree to mark Original Checks "VOID" just before destroying as provided in this section.

***Processing Times.*** Notwithstanding any provisional credit that may be applied to the RDC Account in connection with your transmitted Imaged Items, Imaged Items processed for deposit through the Remote Deposit Capture Service will be deemed to have been received by the Bank for deposit at the time the Imaged Items are actually received and accepted at the location where the Bank or its designated agent posts the credit to the RDC Account. A deposit of Imaged Items will be deemed to have been received and accepted by the Bank for deposit when all of the following have occurred: (i) the Bank has preliminarily verified that the image quality of the Imaged Items is acceptable to the Bank in the Bank's discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) the Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by the Bank for deposit may be rejected by the Bank at the Bank's sole discretion.

Items will be processed and ready for presentment by the Bank after the Bank receives all good digitized images and associated data for any given transmission from you. You agree to view the images of each scanned Item that is sent to the Bank. If Item information received by the Bank is not complete or cannot be processed by the Bank for any reason, the Bank may reject the Imaged Item, notwithstanding any transmission confirmation, and charge the amount back against any provisional credit to your RDC Account. You will be responsible for verifying the Bank's receipt of your transmissions by verifying that deposits have been posted to your RDC Account. The Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.

If an Imaged Item is not accepted for deposit, you may then submit the Original Check to the Bank for processing or contact the maker to reissue the Check. If you submit the Original Check for processing, the Bank reserves the right to refuse to process the Check for deposit and presentment to the Paying Bank and may instead require you to have the maker reissue the Check.

It is your responsibility to understand and build into your transmission schedules the appropriate deadlines necessary to meet the availability schedules of the Bank as set forth in this Agreement or as otherwise established by the Bank. You are further responsible for understanding and building into your transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

***Returned Items.*** You understand and agree that an Item that is not paid by a Paying Bank, or is otherwise returned for any reason, will at the Bank's discretion be: (i) re-presented to the Paying Bank; or (ii) returned to you and your RDC Account charged for the amount of the Item plus any associated fees as disclosed in the Bank's applicable Schedule of Fees, which may be changed from time to time at the Bank's discretion. You agree that Items may be returned as Image Exchange Items rather than Substitute Checks. The Bank's right to charge your RDC Account will apply without regard to whether the Item is returned to the Bank in a timely manner or whether there is any other claim or defense that the Item has been improperly returned to the Bank.

**Bank Rights and Responsibilities.** For all Imaged Items processed by you pursuant to this Service Description, either: (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints; or (ii) Image Exchange Items will be presented for payment through image exchange networks.

The Bank may, at the Bank's sole discretion, determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Supporting Documents and as otherwise established by the Bank from time to time.

Unless otherwise agreed by you and the Bank, the Bank will process any returned Items in accordance with applicable law and this Agreement.

Subject to the terms of this Service Description, availability of credit from Items processed under this Service Description will be subject to the availability schedule of the Bank, which may be amended from time to time.

The Bank may, at the Bank's sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. The Bank may, from time to time, establish transaction limitations and assign them to you.

In addition to any other rights, we may have under this Agreement and otherwise with regard to the Accounts of yours, we may hold and use funds in any Account following termination of this Agreement. Without limitation, you recognize that under the Uniform Commercial Code, Regulation CC, the Electronic Check Clearing House Organization ("ECCO") Rules (as applicable) and the rules of any image exchange network, our representations and warranties with regard to Image Exchange Items and Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check.

**Your Representations and Warranties.** You make the following representations and warranties with respect to each Item, including Non-qualifying Items, processed by you pursuant to this Service Description:

- The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time you converted the Original Check to an Imaged Item;
- The Imaged Item contains all endorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- Except as otherwise specifically disclosed in writing to the Bank, you are not now engaged, and will not during the term of this Service Description engage, in any business that would result in you being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations;
- All encoding, transfer, presentment and other warranties made under applicable law, including, without limitation, those under the UCC, Regulation CC. and the rules of any image exchange network.

There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise, and you will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. You agree to indemnify and defend the Bank against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check; and you will not engage in any activity directly or indirectly related to the use of the Remote Deposit Capture Service that is illegal or fraudulent.

**Indemnification.** In addition to any indemnification obligations you have under this Agreement, and except to the extent expressly prohibited by applicable law, you agree that you will indemnify and hold us harmless against any and all third-party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) any fine, penalty or sanction imposed on us by any clearinghouse, or any governmental entity, arising out of or connected with any Imaged Item processed by us for you or at your instruction; (ii) actions by third parties, such as the introduction of a virus that delays, alters or corrupts the transmission of an Imaged Item to us; (iii) any loss or corruption of data in transit from you to us; (iv) any claim by a third party resulting from our breach of warranty regarding the paid status or image quality of a check you have presented through the Service; or (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by you under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check.

**Bank's Liability.** In addition to any limitations in this Agreement, the Bank will not be liable to you for: (i) any refusal of a Paying Bank to pay an Image Exchange Item or Substitute Check for any reason (other than the gross negligence or willful misconduct of the Bank), including, without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered or had a forged signature; or (ii) the Bank acting as a "reconverting bank" under the Check 21 Act through the creation of Substitute Checks or purported substitute checks using an electronic image or an illegible electronic image or an Image Exchange Item.

## **D. Positive Pay**

Positive Pay provides certain account services through an automated matching system. Your lists of checks or ACH entries recently issued will be compared against the amount and check number of the checks and all information on the rules you created for an ACH entry that actually clear against the specified Account(s) activated for the Positive Pay Service and listed in the supporting documentation. You agree that the Bank will only be obligated to match the check number and dollar amount from the Check Issue File (defined below) and that the Bank may, at the Bank's sole discretion, but is not obligated to, match additional data provided in the Check Issue File ("Additional Data"), including payee name. Regardless of whether the Bank decides to match against Additional Data, and notwithstanding the fact that Additional Data may be included in the Check Issue File, you further agree that the Bank will not be liable to you and you agree to hold the Bank harmless from loss or liability resulting from the Bank's action or inaction with respect to Additional Data. The Bank's determination to match Additional Data in any case will not obligate the Bank to continue to do so in other instances. Notwithstanding the foregoing, the Bank and you may agree to the Bank's review of Additional Data, subject to additional terms, fees and conditions.

Unless the parties agree to other default provisions, the Bank shall default to a "return" decision for any Exception Item for which you have not submitted a decision on the same business day by the deadline specified in the Supporting Documentation.

### **Definitions:**

- "**Customer Information File Number**" ("**CIF**") means a unique identification number assigned to each Primary or Related Entity.
- "**Authorized Accounts**" means the deposit accounts to which the CIF identified in the Business Application form is related as the Primary Account Holder. Additional Authorized Accounts may be added by notifying the Bank and providing the Bank with any information or approval it will require.

- **“Primary or Related Entity”** means each Account Holder identified as an Account Holder on the Business Application form. Additional Account Holders may be added by notifying the Bank and providing the Bank with any information or approval it will require. The Account Holder does not mean authorized signers on the Account signature card that are non-owners of the Authorized Accounts.
- **“Check Information”** means information identifying an issued check.
- **“Issued Check File”** means a list of all issued checks uploaded by you to the Bank’s Online system (the “System”).
- **“Single Entry Input”** means a single Item entry by you through the System to the Bank.
- **“Exception Item”** means a Presented Item (Check or ACH transaction) that does not match the Issued Check File, Single Entry Input or the Payment Rules provided to the Bank.
- **“Presented Item”** means a check drawn on the Authorized Account or an ACH transaction presented to the Bank for payment.
- **“Payment Rules”** means conditions for paying or blocking ACH transactions, such as originating company, Standard Entry Class Code, transaction type and maximum dollar amount you enter into the System.

#### Type of Positive Pay Services.

- **Traditional Positive Pay:** With the Traditional Positive Pay Services, on each business day, you will provide the Bank with a file or manual entry detailing all checks you have issued. Using this information, on each business day we will provide you with a list of Exception Items.
- **Payee Positive Pay:** In addition to the issued item, information provided by you for the Traditional Positive Pay Service, you will provide us with the payee name for each item issued. Using this information, on each business day we will make reasonable efforts to report to you any payee names that do not match the Issued Check File and Single Entry Input. You acknowledge that the Bank will not be able to validate payee information for electronically converted items presented to the Bank for payment.
- **ACH Positive Pay:** ACH Positive Pay allows you to create Payment Rules, which will determine whether an ACH transaction will be paid or blocked. If a transaction matches the Payment Rules, it will be processed. Blocked transactions will be presented to you as an Exception Item.

**Issued Check File, Single Entry Input and Payment Rules.** An Issued Check File or Single Entry Input for each Authorized Account must be submitted to the Bank before 5:00 PM (PST) each business day you issue checks. Any Issued Check File(s), Single Entry Input or Payment Rules uploaded after 5:00 PM (PST) may not be included with the Bank’s end-of-day processing and will be processed the next business day.

**Payment of Presented Items and Reporting of Exception Items.** The Bank will compare each Presented Item against each Issued Check File, Single Entry Input or Payment Rules received by the Bank. Each business day, the Bank will:

- Pay and charge to the Authorized Account each Presented Item that is matched in the Issued Check File, Single Entry Input or Payment Rules if there are sufficient funds in the Authorized Account for payment.

- Provide you with notification of all Exception Items presented for payment that do not match the Check Information or Payment Rules provided by you. The Bank will communicate all Exception Items within the System each business day by 6:00 AM (PST).

**Pay Request/Return Request.** You will review the list of all Exception Items and use the System to communicate your request to pay or return the Item by 2:00 PM (PST) of the business day on which the notification of Exception Checks was presented to you.

**Default.** If you do not assign an Exception Item as a pay or return request within the System before 2:00 PM (PST) on the business day of presentation of the Presented Items, and you have not previously established a “pay all” or “return all” default, we will return all Exception Items. To establish a default you must provide us instructions in the manner we require and give us a reasonable opportunity to act on your request. If the default is “pay all,” we will pay items subject to the availability of funds on deposit. We may overdraw your Account, in our sole discretion.

**Not Covered.** This Service does not cover an Item the Bank has already cashed, negotiated or paid, or which the Bank is already committed to honor or pay under applicable laws, regulations or rules governing such items. In addition, you understand that the Service may not identify altered, counterfeit or duplicate checks or checks with forged or unauthorized signatures. As such, you agree to review promptly all statements, returned checks, reports, and other check and transaction information we make available to you.

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

**Notices and Communications.** You agree that this Agreement and any notice or other communication by the Bank or you in connection with this Agreement may be sent electronically. The Bank will communicate with you at the email address shown for you in the Bank’s records. You are responsible for providing accurate email addresses for communication. Any email Communication sent by the Bank to your designated email address for such Communications shall be deemed received when sent by the Bank. You agree to provide the Bank with your current email address and provide advance notice of any change in your mail or email address. You agree to notify us immediately if you discover; (i) any error or discrepancy between your records and the information the Bank provides to you about your Authorized Accounts or transactions; (ii) unauthorized transactions involving your Account; or (iii) a breach in the confidentiality of the password or Security Codes.

**Damaged Checks.** Any Presented Item that is damaged, lost or destroyed (“Damaged Checks”) so as to be rejected by automated processing systems during processing will not be covered by this Agreement. You and the Bank will cooperate in the payment decision regarding processed Damaged Checks. You agree 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 you. You further agree 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 you of a Damaged Check.

**Rightful Payment and Dishonor.** If the Bank dishonors a Presented Item that is identified as an Exception Item, provided the Bank has not received a pay or return request from you as provided in this Agreement, the dishonor shall be rightful, and you waive any right you may have to assert that the dishonor was wrongful under California Commercial Code Section 4-402. If the Bank honors a Presented Item that is listed on an Issued Check File, Single Entry Input or Payment Rules, or honors a pay or return request in response to an Exception Item, such honor shall be rightful, and you waive any right you may have to assert that the Presented Item was not properly payable under California Commercial Code Section 4-401. You agree that the Bank exercises ordinary care whenever it rightfully pays or returns a Presented Item consistent with the provisions of this Agreement.

## **E. Lockbox Services**

**Lockbox Services Generally.** You acknowledge that this Service Description covers the Lockbox Check Service and the Lockbox Portal Payment Solution that may be provided by the Bank and, except as specifically provided in this Service Description, does not cover the handling of your account associated with the Lockbox services (“Lockbox Account”) or the processing of other transactions for the Lockbox Account not reflected in this Lockbox Services section. As a result, your Lockbox Account will be subject to, and the Bank’s operation of the Lockbox Account will be in accordance with, the terms and provisions of separate agreements with the Bank, including the Bank’s deposit account agreement governing the Lockbox Account or other agreements referenced herein, copies of which you acknowledge having received.

**Collections.** Unless otherwise agreed, while you receive Lockbox Services, all funds held in the Lockbox Account shall be deemed to be your funds for all purposes, including adjustment, attachment, set-off, security interests, execution, garnishment and other forms of legal process. The crediting and collection of transactions will be handled under the same agreement as applied to other commercial deposits.

**Processor(s).** You authorize the Bank to use Processors (which, for purposes of the Lockbox Services may include other banks, financial institutions and third parties, and their subcontractors) to provide any one or more of the Lockbox Services to you. You authorize the Bank to act (such as opening accounts and providing instructions) as your agent and on your behalf with Processors as necessary or appropriate to do so. Wherever under this Service Description you authorize the Bank to take action or inaction, such authorization shall also serve as authorization for a Processor to take such action or inaction. At the Bank’s option, the Bank may use a commingled account at a Processor and process as agent for you and for others through the commingled account, or the Bank may establish a separate account for you at a Processor and process as your agent through the separate account. The Bank’s responsibility for Processors and liability for action or inaction by a Processor is limited as set forth in this Agreement.

If the Bank uses a correspondent financial institution to process payments, deposits to a Lockbox Account: (i) may be delayed by one banking day; (ii) may be affected by local bank holidays; and (iii) the availability may depend on the availability of the correspondent institution and any required third-party service provider or funds transfer system.

**Protected Health Information.** Except with prior notice to and written approval by the Bank, you shall ensure that protected health information is not provided to the Bank and that the provision of Lockbox Services does not result in the Bank being deemed a “business associate” or otherwise subject to the Health Insurance Portability and Accountability Act (“HIPAA”), or otherwise under medical privacy and securities laws, rules or regulations. You shall provide to the Bank such assistance as the Bank may request should the Bank’s provision of the Lockbox Service subject the Bank to any

compliance obligations under HIPAA or otherwise under medical privacy and security laws, rules or regulations.

*Limitation on Liability for Lockbox Service.* The Bank's duties and responsibilities shall be limited to those set forth in this Agreement. In no event shall the Bank be liable for: (i) any punitive, indirect, consequential, or special damages or lost profits, even if the Bank has been advised of the possibility of such damages; (ii) the acts or omissions of a contractor, vendor, processor, third-party servicer or vendor used by you or the Bank or any loss, cost, damage or expense incurred by any person or entity in connection therewith; (iii) your negligence or breach of any agreement with the Bank; (iv) any loss, cost, expense or damage to you in connection with any Communication link, software or any technical computer service, or your use or the Bank's use thereof; (v) any ambiguity, inaccuracy or omission in any instruction or information provided to the Bank; or (vi) the application of any government rule, guideline, policy or regulation. There may be other exceptions to the Bank's liability, as stated in your Account agreement or other service agreements with the Bank.

The Bank's liability and your remedy for actual costs and losses resulting from the Bank's gross negligence or willful misconduct, whether the claim is in contract or tort, will not exceed the lesser of: (i) six times the average monthly charge for the Lockbox Services in question, for the three months immediately preceding the cost or loss; or (ii) \$25,000. Any claim, action or proceeding by you to enforce the terms of this Agreement or to recover for any Service-related loss must commence within one year from the date of that the event. You agree 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 Lockbox Services. You acknowledge that Service fees have been established in contemplation of (i) these limitations on the Bank's liability; (ii) your agreement to review statements, confirmations and notices promptly and to notify the Bank immediately of any discrepancies or problem, and (iii) your agreement to assist the Bank in any loss recovery effort.

*Lockbox Check Services.*

You shall direct your customers to mail their payments in the form of checks or other payment instruments (the "Checks") to you to the United States Post Office address identified in the Supporting Documents, or otherwise identified in writing by the Bank to you. The Bank (including the Bank's processors) will have unrestricted and exclusive access to the mail directed to the Lockbox. You authorize the Bank to endorse Checks received at the Lockbox, and to deposit them into your Account designated in the Supporting Documents.

*Commencement of Lockbox Check Service.* The Lockbox Check Service covered by this Service Description will start on the date separately agreed to by the Bank and you, if all of the following events have occurred prior to such date:

- The Bank has established a Lockbox with the number and at the address specified by the Bank to you;
- You maintain one or more accounts in good standing with the Bank;
- You have designated to the Bank in writing the names of Acceptable Payees. "Acceptable Payee" means your name and any other payee name provided to the Bank by you as an acceptable payee for Checks to be processed under the Lockbox;
- You have completed all Supporting Documents applicable to the Lockbox Service and such other information and documents in a time and manner as the Bank requests to enable the Bank to commence and operate the Lockbox for you and to enable the Bank to comply with the Bank's other obligations under this Service Description;

- The Bank has completed all steps necessary to enable its Processor (as applicable) to service the Lockbox pursuant to this Service Description.

**Unacceptable Checks.** The Bank will not process Checks in the following categories using Lockbox Service:

- Checks on which the name or designation of the payee is not the same or as specified as an Acceptable Payee.
- Checks that do not bear a drawer's signature and are otherwise not a traveler's check, money order or other universal item that includes the drawers. In any event, the Bank will not review checks for drawer's signature(s), and therefore all such checks will be processed, unless otherwise unprocessable pursuant to this Electronic Lockbox (eLockbox) Service Description, and you agree to indemnify, defend and hold harmless the Bank, the drawee bank and any intervening collecting bank against any claim resulting from the Bank's having processed the check.
- Checks with alterations.

Notwithstanding the foregoing, the Bank will only use reasonable efforts to identify Checks as Unacceptable Checks and prevent deposits. As a result, the Bank will have no liability whatsoever, despite anything to the contrary in the Service Description, for deposit of Unacceptable Checks unless the deposit results directly from the willful misconduct of the Bank's officers or employees. You agree to indemnify, defend and hold harmless the Bank, the drawee bank (which may include the Bank) and any intervening collecting bank against any claim resulting from the Bank's having processed an Unacceptable Check.

**Processable Checks.** Certain Checks as listed below maybe acceptable in the Lockbox check process:

- Checks missing a date deposited in the Lockbox will be processed and considered by the Bank as of the date the check is collected from the Lockbox, unless they also fall into the categories of Unacceptable Checks, in which case they may not be processed.
- Checks will be processed regardless of their date, including checks that are postdated or stale-dated checks after the date they are collected from the Lockbox.
- Checks with a discrepancy in amount will be processed into the Lockbox Service designated account in any manner deemed appropriate by the Bank or the Bank's Processor, which may include depositing the check in the amount that corresponds to the written amount (rather than the numerical amount or the amount identified in the Remittance Materials (defined below)). The Bank reserves the right to forward the Checks as unprocessed checks that the Bank or the Bank's processor are unable to determine the amount of the check.

The Bank will disregard restrictive notations, such as "Paid in Full," and such checks will be processed as if the restrictive notations did not appear. The Bank will have no liability whatsoever, despite anything to the contrary in this Agreement, for the Bank's failure to comply with such restrictive notations.

Without limiting the foregoing, you expressly acknowledge that the Lockbox Service is for Check processing only; your payor may not send cash (currency and/or coin), credit transaction authorizations, or automated clearinghouse authorizations to the Lockbox except with the Bank's specific and prior written approval. Absent an express agreement with the Bank providing otherwise, you agree to instruct your customers

and other obligors not to send cash, credit transaction authorizations or automated clearinghouse authorizations to the Lockbox. If cash is sent to the Lockbox with any Remittance Materials, the cash will be removed from the envelope containing the Remittance Materials and a credit advice for the cash will be placed in such envelope.

If the Bank receives any mail containing your Lockbox number at the Bank's operations locations (instead of the Lockbox), the Bank may, in the Bank's sole discretion, handle the mail as if it had been received at the Lockbox.

The Bank may treat as an Acceptable Payee any variation of any Acceptable Payee's name that the Bank deems to be reasonable. If any payee on the list of Acceptable Payees delivered to the Bank pursuant to the Supporting Documents is a legal entity other than you, you represent and warrant to the Bank and Processor(s) that you have the proper authorization from such payee: (i) to have such Check endorsed for deposit, and deposited, into the Lockbox Account; and (ii) for the Bank and any processor(s) to perform the Lockbox Service under this Service Description for such Acceptable Payee. You agree to indemnify the Bank and Processor(s), along with their officers, employees, agents, representatives and Processors (individually and collectively, the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, any losses, liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including attorneys' fees, suffered or incurred by any of the Indemnified Parties as a result of, or in connection with, the Bank's or any Processor(s) failure to have such authorization. The indemnification set forth in this section shall be in addition to, and not in lieu of, indemnification and other rights of the Bank under this Agreement.

**Your Responsibilities.** Your responsibilities under this Service Description include each of the following:

- You agree to encode remittance documents to meet the Bank or Processors' requirements if you require electronic data capture of information on remittance documents;
- You agree to duly complete the Supporting Documents and all special instructions, and provide the same to the Bank before start of the Lockbox Services.
- You will notify the Bank in writing of any modification, addition or deletion to the list of Acceptable Payees for the Checks being received in the Lockbox. The Bank will not be obligated to implement any changes until the Bank has actually received the change and had a reasonable opportunity to act upon the change. Such time to act may be a minimum of thirty (30) days from the Bank's receipt of notice of such changes. All changes are subject to the Bank's rights to reject any addition, deletion or modification to the list of Acceptable Payees.

**Foreign Checks.** You agree that checks drawn on a foreign bank or in a currency other than United States dollars may be processed by the Bank or Processor through collection systems and at exchange rates chosen by the Bank or Processor, and the Bank may impose fees and charges for the service. You acknowledge that the currency conversion and collection process may take a long time depending on the foreign bank and adjustment for returned foreign items or otherwise may result in different currency exchange rate, and you could lose or gain due to the changes in the exchange rates.

**Remittance Materials.** Papers accompanying each remittance, including copies of additional correspondence, together with all unprocessed or rejected items (collectively, "Remittance Materials") will be available for viewing to you through the eLockbox portal. If cash is sent to the Lockbox with any Remittance Materials, the cash will be removed from the envelope containing the Remittance Materials and a credit

advice for the cash will be placed in such envelope with the remainder of the envelope's contents. Except as otherwise specifically provided in this Agreement, the Bank will not reconcile the checks, cash or other items in the envelopes to invoices, to Remittance Materials, or to any other documents or papers in the envelopes or elsewhere in the lockbox.

**Lockbox Authorization.** You agree and authorize the Bank to endorse checks received at the Lockbox and process the deposit to the designated account. The Bank will credit the account with funds no later than the second business day following the day the checks were accessed and processed, subject to the Bank's funds availability policy. If any checks or images of the checks processed are returned unpaid for any reason, the Bank may charge any one of the designated accounts for the returned checks plus applicable handling fees, without regard to whether the institution on which the checks were drawn processed a timely return before the midnight deadline. If the check is returned unpaid due to insufficient funds or uncollected funds, the Bank may either redeposit the check or return the check to you. If any of the checks are returned due to the endorsement being missing, the Bank may, but will not be obligated to, supply an endorsement and the checks will be re-presented to the depository bank. You agree and authorize the Bank to create ledger suspense entries, deposit corrections or other such entries to balance transactions as may be necessary for the efficient processing of the checks. You acknowledge that if the Bank uses a correspondent financial institution to process payments, checks deposited to an account through Lockbox Services: (i) may be delayed by one additional banking day; (ii) may be affected by local bank holidays; and (iii) the availability may depend on the availability of the correspondent institution and any required third-party service provider or funds transfer system.

**Lockbox Portal Payment Solution.**

To the extent you are authorized by the Bank to utilize the Lockbox Portal Payment Solution, you shall direct your customers to submit their payment information through the Bank's Cash Management Solutions (CMS) Lockbox Portal ("CMS Lockbox Portal").

Subject to prior approval of the Bank, the payment information may be in the form of a) eCheck ACH originations; or b) debit and credit card payments. The Bank (including the Bank's processors) will have unrestricted and exclusive access to the payment and related information input by your payee customers to the CMS Lockbox Portal. You authorize the Bank to direct the processing of the transactions consistent with the payment information input into the CMS Lockbox Portal and to provisionally credit those payment transactions into your Lockbox Account as provided herein.

To use the Lockbox Portal Payment Solution, you may use the Lockbox secure email function to submit electronic invoices (known as eBills) to your customers with the requisite instructions for your customers to submit select payments for processing through the CMS Lockbox Portal. While the emails may be subject to such form and detail as determined by the Bank from time to time, any such email communications will be deemed to have come from you and not from the Bank. Any email sent through the use of the secure email function of the Lockbox Portal Payment Solution are not reviewed by our personnel either before or after they are sent. You will be solely responsible for the accuracy of your customers' email addresses and related eBill information that are provided through the CMS Lockbox email function. The failure to provide accurate email address or related eBill information may cause a delay or failure in payments being provided by your customers through the Lockbox Portal Payment Solution. The Lockbox Portal Payment Solution email function is not intended for use by you to initiate a transaction on your account(s), including check stop payment orders, or for any purposes other than as stated herein.

You agree that your customers that submit payments through the CMS Lockbox Portal must first agree to the Payment Service Terms & Conditions ("Payment Terms") which

will appear when your customers access the CMS Lockbox Portal. No representations are made by the Bank regarding the legal adequacy of the Payment Terms as a contractual matter between you and your customer. You further agree that prior to directing any of your customers to the CMS Lockbox Portal, you will have first reviewed the Payment Terms, including having had an opportunity to review the same with your legal counsel, and determined that its provisions are acceptable to you. eCheck ACH Originations. You agree that the CMS Lockbox Portal may not be used to process ACH originations (referred to as “eCheck ACH Originations”), unless the Bank has expressly agreed to permit you to originate ACH WEB Entries, including through the CMS Lockbox Portal. The processing of the eCheck ACH Originations shall be subject to, and you agree to comply with, the provisions of his Agreement relating to ACH Origination, including the specific provisions relating to the origination of WEB Entries. All necessary and required information and authorization, where required, must be provided by your customers through the CMS Lockbox Portal to enable the processing of eCheck ACH Origination. Any failure to provide the information necessary may result in the Bank not processing the transactions. Any credit provided to your Lockbox Account for the eCheck ACH Origination transactions will be pursuant to the terms and conditions of the ACH Origination terms in this Agreement.

Card Transactions. You agree that the CMS Lockbox Portal may not be used to process credit and debit card payments (referred to as “card transactions”), unless the Bank has expressly agreed to such processing.. To the extent you are approved to have your customers submit card transactions through the CMS Lockbox Portal, you must first have a Lockbox Account. Additionally, you must have a merchant deposit account for the processing of card transactions either with the Bank or another financial institution.

If the Bank and you agree to the processing of card transactions through the Lockbox consistent with the terms of this section, all card transactions/payments must be legible and contain: (i) the merchant’s name and account number; (ii) the information embossed on the card presented by the Cardholder; (iii) the date of the transaction; (iv) the description of the goods or services; (v) the transaction authorization number; (vi) the total sale amount; and (vii) the Cardholder signature. Any card transactions/payments missing the required information may not be processed by the Bank as provided below.

Merchant eSolutions Service. For the Bank to process card transactions provided through the CMS Lockbox Portal on your behalf to facilitate payments to you, you must first be approved by the Bank to use the Bank’s Merchant eSolutions Service and you have agreed to the Bank’s separate merchant card processing terms and conditions. The card transaction information provided through the CMS Lockbox Portal will then be processed by the Bank as part of the Merchant eSolutions Service. Any card transactions processed through the CMS Lockbox Portal and the Merchant eSolutions will be subject to the separate merchant card processing terms and conditions entered into between you and the Bank. To the extent of any inconsistencies between this Agreement and the separate Merchant Processing Agreement, the terms of this Agreement shall control.

Separate Merchant Account. To the extent you maintain a merchant account with another financial institution (“Merchant Bank”) for the processing of card transactions based on information received by your customers through the CMS Lockbox Portal, all such processing shall not be subject to any separate merchant card processing terms and conditions with the Bank and the Bank will not be acting as a card processor as defined by the applicable card networks. The Bank will merely submit the relevant card transaction information provided by your customers through the CMS Lockbox Portal to your Merchant Bank for processing. You will be required to provide to the Bank all identifying information of your Merchant Bank necessary for the Bank to provide the card transaction information received through the CMS Lockbox Portal.

The Bank will not provide credit to you either directly or to your Lockbox Account for the amount of any card transactions that are processed through your Merchant Bank. You will look to your Merchant Bank for the credit or debit of any such card transactions. The Bank will merely submit to your Merchant Bank the relevant card transaction data and information received through the CMS Lockbox Portal and the Bank does not make any representations as to the accuracy of that data and information or whether the card payments will be paid by the relevant card issuer. The Bank will also not process any chargebacks to the Lockbox Account or other accounts you maintain with the Bank for any transactions that are subject to chargeback to your Merchant Bank. Any such attempted chargebacks will be rejected and declined.

**eLockbox Access Requirements.** To use the eLockbox system, you must have at least one Lockbox at the Bank, access to Internet service and an email address. The minimum system requirements must be met in order to display images and data correctly, as follows:

- Screen resolution of 1024 x 768 or higher
- At minimum, Internet Explorer 7, Firefox 3.6, Opera 10 or Safari 3
- 128-bit encryption capable browser
- Microsoft Silverlight plugin for images (if not installed, a link is provided at the login page and search area)
- Adobe Acrobat Reader 8.0 or higher

The eLockbox system can be used to access only the Lockbox account(s) that you have designated for access on the Lockbox Service. You can add or delete any of your Accounts from the eLockbox system by contacting the Bank. You will be required to designate at least one initial Administrator at enrollment, who then controls the Lockbox Service and access on behalf of you. The Bank will not control or oversee the Administrator or any activity or function of an Administrator or users. You agree to all action taken by any user and by any person given access to one or more Lockbox Services by an Administrator, and all such persons are your agent for purposes of use of the eLockbox Service.

**eLockbox Service Details.** You can use the eLockbox system to check the amount of your Lockbox deposits, view check images, create related downloads and create related reports; information is available at the time the deposit is completed. For an addition fee 835/837 filings can be provided, subject to you entering a separate addendum as required by the Bank. Original copies are stored for 90 days on site and destroyed thereafter. Images are available for viewing online for up to seven (7) years from the point of enrollment in the eLockbox system.

**eLockbox Limits.** You understand and agree that the Bank will establish eLockbox limits, which the Bank may amend at its discretion, and assign them to you based on volume, transaction history and an internal credit review.

**eLockbox Reports.** The online information available in reports reflects the type of Lockbox option you choose at time of enrollment. The options are as follows:

- Extract - An OCR scan line will be printed on the payment coupons so that the information of your choice can be extracted into a report and/or uploaded to your accounting system. Coupon specifications will be provided at enrollment;
- Image only - Ability to view images online; no reports available;
- Amount due and amount paid extract - The amount due and amount received will be extracted into a report and /or uploaded to your accounting software;

- Custom - A standard coupon with information you require will be extracted into a report and/or uploaded to your accounting software;
- Invoice - The invoice number, amount paid, payee name and check number will be extracted into a report and/or uploaded to your accounting software.

**Email for eLockbox System.** If you have questions about how to use the eLockbox system, you may send questions to the Bank via email at Lockboxservices@fmb.com. This email is not secure and should not be used. If you have questions about your Account or you believe someone else has access for login ID and/or password or other means of access to your Account. If you have questions about Lockbox transactions and need to contact the Bank immediately, you can speak with a Lockbox Specialist by calling (562) 344-2362 during customer service hours.

**Termination of eLockbox Services.** Within thirty (30) days after termination of the eLockbox Service, you will, at your expense, promptly uninstall and remove all software provided for the eLockbox system from your computers and return to the Bank any software, hardware and equipment provided by the Bank for the Lockbox Service, including the supporting documents, procedures, documentation and any materials relating to the Lockbox Services in your possession or under your control, destroy all copies of the supporting documents and materials that cannot be returned and upon request from the Bank certify in writing to the Bank that all copies have been returned or destroyed. You will be responsible and liable to the Bank for the replacement cost of all lost, stolen or damaged equipment that was provided by the Bank to you in connection with the eLockbox Service. Upon termination of this Agreement, all eLockbox Services and any software licenses shall automatically terminate.

**Termination.** The Bank may terminate, suspend or restrict some or all of your access to the Lockbox Services, with or without cause, at any time immediately upon notice to you. You have the right to terminate the Lockbox Service, with or without cause, upon sixty (60) days written notice provided to the Bank. Should you terminate this Service Description without prior notice, you will owe the Bank two (2) times the minimum monthly fees as reflected in the Bank's then-current Lockbox schedule. Upon termination of the Lockbox Service the Bank will dispose of the mail addressed to the Lockbox according to written instructions provided by you for a period of three (3) months after the termination date, unless arranged otherwise between you and the Bank. Lockbox Service fees with respect to such disposition will be based on the Bank's estimate and prepaid directly to the Bank at the time of such termination by a check made payable to the Bank.

## **F. Medical Electronic Lockbox**

**Access Requirements.** To use the Electronic Lockbox via the Med eSolutions system, you must have at least one Lockbox at the Bank, access to Internet service and an email address. You must also have agreed to the terms of the Electronic Lockbox (eLockbox) Service Description. The minimum system requirements are as follows:

Minimum System Requirements	
Windows	
Operating System:	Hardware:  Processor: 1.5 GHZ Intel Core +  Memory: 2 GB RAM +  Monitor: 15-inch+ color display  Video: XGA (1280 x 720 resolution)  Internet: High-speed Internet connection
Windows 8.1 and above	
Browser:	
Microsoft Internet Explorer (version 8 or higher)	
Google Chrome (version 10 or higher)	
Mozilla Firefox (all versions)	
Safari (all versions)	
Other Software:	
Adobe Acrobat Reader version 9 or higher	
Macintosh	
Operating System:	Hardware:  Processor: 1.5 GHz +  Memory: 2 GB RAM +  Monitor: 15-inch color display  Video: XGA : XGA (1280 x 720 resolution)  Internet: High-speed Internet connection
Mac OS X 10.5 or later	
Browser:	
Safari (all versions)	
Mozilla Firefox (all versions)	
Other Software:	
Adobe Acrobat Reader version 9 or higher	

The Med eSolutions system can be used to access only the Lockbox account(s), you have designated for access on the Lockbox Agreement. You can add or delete any of your Aaccounts from the Med eSolutions system by contacting the Bank. You will be required to designate at least one initial Administrator at enrollment, who then controls the Lockbox Service and access on behalf of you. The Bank will not control or oversee the Administrator or any activity or function of an Administrator or users. You agree to all action taken by any user and by any person given access to one or more Lockbox Services by an Administrator, and all such persons are your agent for purposes of use of the Med eSolutions Service.

**Med eSolutions Services.** Subject to the Bank's approval and eligibility requirements, the Med eSolutions system provides services such as the following:

- Explanation of Benefit (EOB) Processing - Transforms paper EOBs into a digital 835 file

- Electronic Remittance Advice (ERA) Processing - Processes ERAs and delivers auto posting 835 file
- Paper2ERA Fast Forward Process - Converts payers who submit paper EOBs into electronic format
- Online Payment Portal - Allows your customers to pay online and integrates their payments directly into the Med eSolutions system
- Transaction Auto Posting - Insurance and patient payments can be uploaded into multiple billing systems
- 837 Claim Presentment - Presents all insurance claims to payers via Med eSolutions
- Trending Denial Tool - Looks for specific procedure codes that are denied to address long-term trends

All processed items original copies are stored for ninety (90) days on site and destroyed thereafter. Images are available for viewing online for up to seven (7) years from the point of enrollment in Med eSolutions Services.

## **G. Merchant Processing**

Merchant Processing is subject to the terms and conditions of a separate Merchant Processing Agreement.

## **H. Cash Vault Services**

Cash Vault Services (the "Service") allows clients to have cash and non-cash deposits delivered to F&M's cash vault for processing. Clients may also order currency and coins ("Order(s)") for pick-up and delivery from F&M's cash vault.

**Transportation.** Only a Bank-approved courier or Bank-approved armored courier ("Courier") contracted by you or the Bank is authorized to enter the Bank's cash vault.

Bank may contract with a Courier of its choice, on terms acceptable to Bank. If this option approved by the Bank and is used, you agree to indemnify and hold harmless Bank from any claims, losses or liabilities Bank incurs as a result of providing the Courier portion of this Service.

In either event, the Courier must meet Bank cash vault requirements. The Bank reserves the right to deny a Courier access to the Bank's cash vault.

**Deposits.** You agree to make deposits in accordance with any user materials, schedules, and set-up documents we may provide to you. Failure to follow our instructions may delay the posting of your deposit(s).

You are responsible for all deposits until received by the Bank at its cash vault. All deposits must be enclosed in a sealed, tamper-evident, shipment bag furnished by the Bank ("Courier Bag"). Until the Bank accepts the Courier Bag(s) by signing Courier's receipt book, Bank has no liability to you. The Bank will not process the deposit until the contents have been verified. If there is a discrepancy in the contents of the Courier Bag and your records, you agree that the records of the Bank will control. You will be notified if there is a discrepancy.

You authorize Bank to open the Courier Bag and to process the contents for deposit. Bank may refuse to accept a Courier Bag it reasonably believes to have been tampered.

**Scheduled Pick-Ups (Bank Contracted Couriers).** All pick-up times are subject to Bank approval and may change at any time with or without advance notice. You agree to have deposits ready for Courier on the days and times and at the locations agreed to by you on the Service Schedule provided to you by the Bank.

**Currency & Change Orders.** Orders may be requested by submitting to Bank a Change Order Request Form, via Online Banking or if approved by Bank, email and/or facsimile. Orders will not be processed if there are not sufficient collected funds in your Account. Courier will provide Bank with a receipt detailing either the actual amount of the Order, or the receipt of a sealed bag(s) containing the unverified Order. This receipt will be conclusive evidence of the amount received by the Courier and will relieve Bank of any further liability with regard to the Order, whether Courier services were contracted by you or the Bank.

**Terms and Termination.** The Service may be terminated by either party by providing thirty (30) days written notice.

### **Smart Safe Service.**

Bank offers a Smart Safe Service ("Smart Safe") in connection with the Service. Smart Safe allows currency to be deposited into a vault at your business location and receive daily provisional credit in your Account for the currency deposited.

To utilize Smart Safe, you must contract with a third party service provider selected by you and approved by the Bank (the "Smart Safe Vendor") for currency removal, validation and transportation services. You agree to comply with the terms of the vendor agreement between you and the Smart Safe Vendor. The Smart Safe Vendor is not an agent of the Bank.

**Deposits.** Only United States currency may be deposited into the Smart Safe. Once the currency has been inserted into the Smart Safe only a representative of the Smart Safe Vendor can remove it.

No more than \$100,000.00 may be deposited in the Smart Safe weekly and the contents of the Smart Safe are to be removed and transported to the Bank's cash vault at least once each calendar week.

The currency removed from the Smart Safe will be verified by the Smart Safe Vendor and by the Bank in dual control once received. If there is a discrepancy in the amount of the deposit between that of the Smart Safe Vendor, Bank and you, the records of the Bank will control.

**Provisional Credit.** Bank will process a provisional credit to a designated account based on the Smart Safe Vendor's electronic journal daily if the information is received by Bank's established cut-off time. Bank reserves the right to not provide provisional credit in its sole discretion. You agree that all credits based on the declared amount are provisional until verified by the Bank. You will be notified if there is a discrepancy.

**Fees.** The fees for the Service will be charged through Account Analysis. You agree to pay Bank the fees for the Service, Smart Safe, and any charges assessed by the Courier if contracted by Bank. Couriers may charge additional fees, which you agree to pay.

**Third Party Service Providers.** All third party service provider changes must be reported to the Bank as soon as possible.

### **Definitions.**

- "Account(s)" means the deposit accounts identified by you on a Bank provided form where each Account Holder affirmatively agrees to the Service for the respective accounts.

- “Account Holders” means the Company on the Master Company Resolution who owns the Account(s).
- “Authorized Agent” means an individual designated by the Company on the Master Company Resolution.

**Notices.** All notices and other communications are to be given in writing (including by facsimile or electronically) at the address listed below:

Farmers & Merchants Bank of Long Beach

Attn: Cash Center

1695 Adolfo Lopez Drive

Seal Beach, CA 90740

Telephone: (562) 344-2332

Facsimile: (562) 344-2361

E-mail: [Cash.Center@FMB.com](mailto:Cash.Center@FMB.com)







## HOW TO CONTACT US

Questions: 1-866-437-0011 Monday through Friday  
7am - 9pm

Saturday  
8am - 9pm

Sunday  
8am - 8pm

(All times listed in PT)

Automated Telephone Banking: 1-855-416-5747

If you believe your debit or credit card has been lost or stolen: 1-800-556-5678

Website: [www.FMB.com](http://www.FMB.com)

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