



# TREASURY MANAGEMENT

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## Services Agreement

April 2011

**Bank of Nevada** Phone: (702) 248-4200  
cashmanagement@bankofnevada.com  
2700 West Sahara Avenue  
Las Vegas, NV 89102

**Torrey Pines Bank** Phone: (858) 259-5347  
cashmanagement@torreypinesbank.com  
12220 El Camino Real, Suite 100  
San Diego, CA 92130

**Alliance Bank of Arizona** Phone: (602) 797-3640  
cashmgmt@alliancebankofarizona.com  
One East Washington Street, Suite 1400  
Phoenix, AZ 85004

**First Independent Bank** Phone: (775) 828-2000  
info@firstindependentnv.com  
5335 Kietzke Lane  
Reno, NV 89511

## Treasury Management Services Agreement

This Treasury Management Services Agreement (“*Agreement*”) sets forth the terms of and governs any and all cash management services Bank of Nevada, Torrey Pines Bank, Alliance Bank of Arizona or First Independent Bank<sup>1</sup> (each referred to herein as “*Bank*”, “*us*”, or “*we*”) may provide to you (“*you*” or “*User*”) for your Bank account(s). When you sign this Agreement or use any of the Services, or authorize or allow others to use them, you agree to the terms and conditions of the entire Agreement.

### 1) IMPORTANT INFORMATION ABOUT THIS AGREEMENT.

- a) **This Agreement applies to and governs: (1) any Service you may use at any time, whether or not the specific Service was selected in a written Service Request, and (2) any and all of your accounts with us or our affiliates for which you use any of the cash management services described in this Agreement at any time, whether or not you have formally designated the account(s) as subject to the Agreement.**
- b) **This Agreement constitutes the entire Agreement between you and us for the Services, and supersedes any and all previous written or oral agreements between you and us with respect to the Services. This is the sole agreement governing your use of the Services, and in the event of any conflict with any other agreement you may have with us, this Agreement will prevail. The Agreement does not change other agreements you have entered into with Bank for non-cash management services, including the Deposit Account Agreement and Disclosures governing your Bank account(s).**
- c) **SECURITY PROCEDURES: Each time you make a transfer or payment with a Service, you agree and warrant that the security procedures established in accordance with this Agreement and the User Guide are commercially reasonable. You agree to be bound by, and accept sole responsibility for any loss or liability associated with, any transfer, instruction or payment order we receive for Services, even if it is not authorized by you, if it is otherwise processed by us in accordance with the security procedures. You agree to indemnify and hold us harmless from any such loss or liability. You further acknowledge that these procedures do not require other affirmative action on our part. We may, in our sole discretion and as part of our internal controls, institute (and, thereafter, cease or change from time to time) additional authentication procedures. These internal procedures, if any, are in addition to the agreed upon security procedures and you agree that we are not liable for failing to take or to correctly perform such additional actions.**
- d) **RISKS: You further acknowledge and agree that you fully understand and have evaluated the inherent security risks associated with the Services, including, without limitation, the ability to directly initiate funds transfers over the internet, and you agree to assume those risks. Some of our Services allow you or your Administrator to set transaction limitations and establish security controls. We strongly encourage you to consider the risks associated with your use of the Services and to establish limitations and controls appropriate for those risks. Your failure to set such limitations and implement such controls increases your exposure to, and potential losses from, unauthorized transactions.**
- e) **We may change this Agreement at any time. For example, we may add, delete or amend terms or services. We will notify you of such changes by mail or electronic message. Your use of any of the Services after the effective date of a change will indicate your agreement to the change. If you do not agree to any such change, you must immediately stop using the Services and notify Bank of your termination of this Agreement. You may not use any Service under terms of the Agreement that has**

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<sup>1</sup> Alliance Bank of Arizona and First Independent Bank are divisions of Western Alliance Bank.

**been amended or superseded. You may request the most current version of the Agreement at any time by contacting the Treasury Management Department at the Bank where you opened your account(s):**

- i) Bank of Nevada: (702) 248-4200 or [cashmanagement@bankofnevada.com](mailto:cashmanagement@bankofnevada.com)
- ii) Torrey Pines Bank: (858) 259-5347 or [cashmanagement@torreypinesbank.com](mailto:cashmanagement@torreypinesbank.com)
- iii) Alliance Bank of Arizona: (602) 797-3640 or [cashmgmt@alliancebankofarizona.com](mailto:cashmgmt@alliancebankofarizona.com)
- iv) First Independent Bank: (775) 828-2000 or [info@firstindependentnv.com](mailto:info@firstindependentnv.com)

- f) **This Agreement applies to each person or legal entity named as a party to this Agreement on the signature page at the end of this Agreement. Each party will be required to execute this Agreement and you warrant to us that each person signing on behalf of a named party is fully and duly authorized to do so. Upon doing so, you may link the accounts of the businesses so that you may elect, at your sole risk and that of the entities, but not of Bank, to use a common Online ID and Password for all linked accounts. You should do this only if you are authorized to link the accounts of the different business and to use the Services for each business. You understand and agree to accept all security and other risks associated with linking accounts in this manner. You further agree to inform Bank if the authority of any Administrator for any linked account changes.**
- g) **When the Services are linked to one or more joint accounts, we may act on the verbal, written or electronic instructions of any authorized individual on the joint account.**

2) **Equipment and Software.** 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.

- a) EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER WE NOR OUR SUPPLIERS OR VENDORS MAKE ANY WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE (COLLECTIVELY "EQUIPMENT") MADE AVAILABLE TO YOU. You agree to notify us promptly if any Equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to replace or repair the defective Equipment. We do not warrant that the Equipment provided to you will be error free or that the Services will be uninterrupted.
- b) You agree to comply with the terms of any software license provided to you in connection with the Services. You may not transfer, distribute, copy, reverse compile, modify or alter such software. Unless otherwise agreed by us in writing, the Equipment, Service guides, security procedures, and systems provided to you in connection with a Service represent our proprietary property and must be returned to us upon request. We and/or our suppliers retain all right, title and interest in and to the intellectual property rights associated with the Services and the Equipment. Your license to use Equipment will end with the termination of this Agreement or upon our earlier notice to you. You may only use the Equipment in connection with your use of the Services. You may not use or move the Equipment outside the United States without our written consent. You may not use the Equipment in a service bureau, time-sharing or outsourcing capacity.

- 3) **Your Administrator.** You may appoint an individual (an “*Administrator*”) for certain Services with the authority to determine who will be authorized to use the Services on your behalf. Your Administrator can establish separate Passwords (defined below) for you and each user, as well as limits on each user’s authority to access information and conduct transactions. The Company Administrator has the responsibility to limit each user’s access by account and/or by function (e.g. account information, book transfers, funds transfers, ACH, etc.) You assume sole responsibility for the actions of your Administrator, the authority he or she gives others to act on your behalf, and the actions of the persons designated by the Administrator to use the Services.

You or your Administrator will need to designate which accounts will be utilized for Service payments and transfers. If your Administrator designates an account that requires more than one signature for the withdrawal or transfer of funds, you agree that we may act upon any Service instruction that is accompanied by the Password designated by you or your Administrator for that account and the Service in question. Note: This may mean that we will act upon the instruction of only ONE person (e.g., to wire funds), even though the signature card for the account in question requires two or more signatures on checks. As long as an instruction is accompanied by the designated Password, the transaction will be deemed authorized by you.

- 4) **Accounts.** You will need to designate certain accounts for specific purposes in connection with some of the Services. If you fail to do so, we may designate the accounts. Your Service application may list certain accounts that you wish to access with the Services. However, you understand and agree that this Agreement (as it may be amended or replaced from time to time) will govern any and all of accounts with us or our affiliates for which you use any of the cash management services described in this Agreement at any time, whether or not the accounts have been formally designated as linked to the Agreement. If these include the accounts of your parent company, subsidiaries or affiliates, you warrant that they have authorized you to access their accounts through the Services in the same manner as your own accounts. You agree to provide us with their written authorization, in form and substance acceptable to us, evidencing that authority, and to notify us immediately in writing of any change to that authorization.

- 5) **Security Procedure and User Guides.** We may provide you with one or more temporary numbers, passwords and/or other means of identification and authentication (collectively “*Password*”) to initially access our Services. We also may provide you with operating procedures and user guides (“*User Guides*”) in connection with certain Services. You agree to: (a) comply with the User Guides and procedures that we provide to you; (b) take reasonable steps to safeguard the confidentiality and security of the Password, the User Guide, and any other proprietary property or information we provide to you in connection with the Services; (c) limit access to your Password to persons who have a need to know such information; (d) closely and regularly monitor the activities of employees who access the Services; (e) notify us immediately if you have any reason to believe the security or confidentiality required by this provision has been or may be breached; and (f) immediately change your Password if you know or suspect that the confidentiality of the Password has been compromised in any way. Our security procedures are not designed for the detection of errors (e.g., duplicate payments or errors in your funds transfer instructions). We will not be obligated to detect errors by you or others, even if we take certain actions from time to time to do so.

- a) You agree to change any temporary Password we give you promptly after you are given access to the Services for the first time and whenever anyone who has had access to any Password is no longer employed or authorized by you to use the Services. You also agree to change the Passwords you assign to your employees on a regular basis. We may require you to change your Password at any time.

- b) As an alternative to verifying transactions by means of a Password, we may elect to verify the authenticity or content of any order or instruction by placing a call to any authorized signer on your account or any other person designated by you for that purpose. We may deny access to the Services without prior notice if we are unable to confirm to our satisfaction any person's authority to access the Services or if we believe such action is necessary for security reasons.
  - c) Each time you make a transfer or payment with a Service, you agree and warrant that the security procedures established in accordance with this Agreement and the User Guide are commercially reasonable. You agree to be bound by, and accept sole responsibility for any loss or liability associated with, any transfer, instruction or payment order we receive through the Services, even if it is not authorized by you, if it includes your Password or is otherwise processed by us in accordance with the security procedures. You agree to indemnify and hold us harmless from any such loss or liability. You further acknowledge and agree that you fully understand and have evaluated the inherent security risks associated with the Services, including, without limitation, the ability to directly initiate funds transfers over the internet, and you agree to assume those risks. Some of our Services allow you or your Administrator to set transaction limitations and establish security controls. We strongly encourage you to consider the risks associated with your use of the Services and to establish limitations and controls appropriate for those risks. Your failure to set such limitations and implement such controls increases your exposure to, and potential losses from, unauthorized transactions. You further acknowledge that these procedures do not require a callback or other affirmative action on our part. We may, in our sole discretion and as part of our internal controls, institute (and, thereafter, cease or change from time to time) additional authentication procedures. These internal procedures, if any, are in addition to the agreed upon security procedures and you agree that we are not liable for failing to take or to correctly perform such additional actions.
- 6) **Account Information Service.** You can use our Online Banking Service to obtain balance, transaction and other account information. Since certain information and transactions are not processed by us until after the close of our business day, some transactions may not be reflected in the system until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in our information Service. If you are unable to access our system for any reason, you can contact your branch or call the Treasury Management Department at the Bank where you opened your account(s) at the phone number listed in Section 1 of this Agreement.
- 7) **Account Reconciliation Service.** We offer both a full and a paid account reconciliation service, as well as a deposit reconciliation plan. With paid reconciliation, we provide you with information about the checks paid against your account. With full reconciliation, if you provide us with check issue data in accordance with our guidelines, we will provide you with one or more reports regarding your account activity (e.g., containing details of paid and outstanding checks, the status of voided checks, and stop payments). With deposit reconciliation, we provide you with a report of paper credit items. Reports are available online for viewing, printing and/or downloading.
- a) Before the Service begins, and periodically thereafter, we may require you to submit a sample of checks and/or deposit slips. You agree to use only checks and deposit slips that meet our specifications.
  - b) Your sole and exclusive remedy for any error, damage or loss in any way connected with this Service, however arising, shall be limited (at our option) to either a re-performance of the Service for the period in question or a return or credit of an appropriate portion of the fees associated with such Service.

- 8) **Bill Pay Service.** This internet-based Service allows you to make current, future and recurring payments to others from one or more of your designated Bank checking accounts.
- a) Eligible Payees. You may only designate payees with United States addresses. We reserve the right to determine who may be a payee.
  - b) Initiating Payments. To initiate a payment, you must specify the person or business you are paying, the payment date, the amount to be paid, and (if you have one) your account number with the payee. The first time you request a payment to be made to a payee, you must also specify the payee's address and the number of the account from which the payment is to be made.
    - i) We will make a payment on the business day you instruct us to make the payment (the "*Payment Date*") by initiating an electronic payment through the automated clearing house.
    - ii) We do not have to make a payment if you do not have sufficient funds or credit available for the payment on the Payment Date. Although you can enter a payment request 24 hours a day, 7 days a week, transaction requests that we receive after our processing cutoff hour on a business day or at any time on a non-business day may be deemed received as of the next business day. If you direct us to make a payment on a day other than a business day, we may initiate the payment on the following business day.
  - c) Automatic Recurring Payments. You may use the bill payment function to arrange for the automatic payment of bills that have a fixed frequency and amount. Once your automatic bill payment arrangements are established, they will be made without the need for further requests by you. If the payment due date for an automatic payment falls on a weekend or holiday, the payment may be made the following business day.
  - d) Errors in Your Instructions. If you give us a payment instruction that is incorrect in any way, you agree that we may charge your account for the payment, 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 to bring apparent errors to your attention. You agree to indemnify and hold us harmless from any loss or liability resulting from or related to such an error.
  - e) Scheduling Payments. You should schedule payments sufficiently in advance to ensure that they are received and credited by your payee by the payment due date. We can generally pay approved payees within two business days of the Payment Date. You are solely responsible for any damages, such as late fees, that may be imposed as a result of your failure to identify the correct Payment Date and transmit your payment instruction to us in a timely manner.
  - f) Changing or Canceling Payments. You may cancel or change any scheduled payment by giving us an instruction through the Service by no later than our cutoff hour on the business day prior to the scheduled Payment Date.
  - g) Rejecting Payment Requests. We may reject any payment request with or without cause or prior notice. If we do, we will notify you promptly of the rejection orally, electronically or in writing. Without limiting the foregoing, we may reject any ACH credit Order or an entire file of entries if you do not have sufficient collected funds in your designated account to cover the entire file or if the file contains a Payment Date more than 365 calendar days after the business day that it is received by us.
- 9) **Cash Vault.** Our Cash Vault Service provides you with an efficient means of making deposits as well as placing orders for coins and currency.

- a) **Deposits.** You will contract separately with an armored car service acceptable to us to pick up your deposits (including cash, coins, checks, and/or food coupons) (the “*Deposits*”). The armored car service will deliver the Deposits to us or to a Cash Vault Processor we have designated (the “*CVP*”) for credit to your designated account. You will segregate the Deposits into separate transmittal bags in accordance with the User Guide and will archive or photocopy each check sent for deposit through this Service in order to be able to reconstruct any lost or missing Deposits. You agree to use the transmittal bags and tags that we make available to you. Unless otherwise specified on the transmittal tag and deposit slip, all Deposits will be made into the account you have designated for this Service.
- i) Your Deposits will not be deemed to be received by us unless they are received, counted and reconciled against your deposit tickets by us or the CVP, and we have confirmed that the shipments have been verified as correct. We may charge your account with us for any adjustments made to your Deposits (e.g., for counterfeit currency).
- ii) For Deposits received before the cutoff time on a business day, you will receive provisional credit on that business day. For Deposits received after the cutoff time or on a non-business day, you will receive provisional credit on the next business day. You agree that we may make adjustments to your account at any time after the initial deposit if discrepancies resulting from mis-strapped denominations or counterfeit currency are discovered.
- b) **Cash Delivery.** You may use this Service to order and obtain a delivery of cash. A request for a “Regular Delivery,” as defined in the User Guide, which is received prior to the Service cutoff hour will be delivered on the next business day. All deliveries will be made by armored car service. The armored car service will be considered your agent for all purposes connected to the Service, even if we have assisted you in obtaining the armored car service. Cash will be deemed received by you when given to the armored car service. We assume no risk, and you hold us harmless from any loss, occurring after the armored car service gives written receipt for the cash delivery.
- c) **Your Instructions.** You authorize us to accept Service instructions from any authorized signer on your account and/or from any other person you designate for that purpose. We also may act upon any online or telephone instructions that are made in accordance with our prescribed security procedures. We may refuse any Service instruction that we cannot confirm to our satisfaction. You agree to comply with the Service procedures that we adopt from time to time. We or the CVP may reject any shipment that we or it considers unacceptable or irregular (e.g., shipment bags that have holes or are not properly sealed).
- 10) **Funds Transfer Services.** We offer funds transfer Services that allow you to make payments to others and to transfer funds between accounts through the Automated Clearing House (“*ACH*”), by wire, or by internal transfer.
- a) **Orders and Charging Your Account.** When you transmit a transfer or payment request (“*Order*”), you authorize us to charge the designated account for the amount indicated. In order to comply with National Automated Clearing House Association (“*NACHA*”) guidelines, all ACH originations are governed by the Automated Clearing House Origination Services Addendum attached to this Agreement and incorporated herein by reference.
- b) **Available Funds.** We may refuse an Order if there are not sufficient collected and available funds in your account on the date we initiate the transaction or on the payment date. We may place a hold on funds pending our processing of your Order. Nothing in this Agreement, or any course of dealing between us, shall be construed as our commitment or obligation to lend money to you.

- c) Your Instructions. Your Orders must comply with the form, format and other requirements set forth in your User Guide and any security procedures that we establish for the Service. We are not responsible for detecting or rejecting duplicate Orders. If you give us an Order that is incorrect in any way, you agree that we may charge your account for the payment whether or not the error could have been detected by us.
- i) You must accurately describe transaction beneficiaries, intermediary financial institutions, and the beneficiary's financial institution in your Orders. If you describe any beneficiary or institution inconsistently by name and number, we and other institutions may process the Order solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution.
- ii) If your Order involves a foreign transfer, we may execute the Order in the currency of the country of the payee's financial institution at either our buying rate of exchange for U.S. dollar transfers or the exchange rate of the payee institution. If the transfer is returned for any reason, you agree to accept the refund in U.S. dollars in the amount of the foreign money credit, based on the current buying rate on the day of the refund, less any charges and expenses incurred by us. Foreign transfers may be subject to delays, internal security reviews, changes in foreign currency exchange rates, and charges imposed by other financial institutions. A portion of those charges may be shared with us.
- iii) You will not allow others to initiate Orders on your behalf without our prior written consent. You will be solely responsible for the acts and omissions of such agents. You agree to indemnify, defend and hold us harmless from any actions, claims, proceedings, damages, losses and costs which you or we incur as a result of their actions or omissions.
- d) Authorization and Record Retention. You may initiate Orders only with the prior written authorization of the owners of the accounts affected by such Orders. You agree to maintain a copy of each authorization for a period of two years following its termination, and to provide us with a copy upon request. You warrant to us what we are deemed to warrant to others regarding your Orders.
- e) Internal Transfers. Transfers between your deposit accounts with us are subject to the terms of your account agreement. Although you may instruct our online system to make transfers between your accounts at any time on any day, transfers occurring after our Service cutoff hour or on non-banking days may not be posted until the next banking day.
- f) Transaction Limits and Safeguards. You agree not to exceed the transaction limits we establish from time to time for your account or any Service. You agree that you will not allow anyone to initiate Orders without proper supervision and adequate safeguards, and that you will regularly audit the actions of your Administrator and authorized representatives.
- g) Cancellation and Amendment of Orders. You may not cancel or amend an Order after we receive it. If we attempt to reverse an Order at your request, we assume no liability for any interest or losses that result if the reversal is not affected. 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 reversal. You are solely responsible for providing notice to receivers that a reversal is being transmitted and the reason for the reversal no later than the settlement date of the reversing entry.
- h) Refusal of Orders. We may refuse any Order with or without cause or prior notice. For example, we may refuse an Order if there are not sufficient collected and available funds in your account on the date we initiate the transaction or on the settlement date. We may notify you of such refusal electronically, in writing, by telephone, or otherwise no later than two business days after the date the Order was to be

effected. We are not required to pay you interest on a rejected Order for the period from refusal of the Order to your receipt of the notice of refusal.

- i) Notice of Returned Orders. We may notify you electronically, in writing, by telephone, or otherwise regarding any Order that is rejected or returned for any reason. We will not be obligated to credit your account with any interest, unless the return is caused by our failure to properly execute the Order. We may attempt to remake the Order if the return is due to our error and we have sufficient data to remake the Order. You agree to reimburse us promptly for the amount of any Orders that are reversed, adjusted or returned. You may not submit any Order where the payment was stopped by the accountholder.
- j) Notices and Statements. Information on transfers to or from your accounts will be reflected on your periodic statements and may be available to you on-line. We are not required to provide you with any other notice of the receipt, transmittal or debiting of Orders.
- k) Unauthorized Order. We may process any Order (including an amendment or cancellation Order) we believe is transmitted or authorized by you pursuant to the security procedure established in accordance with this Agreement and the User Guide. Such Orders will be deemed effective as if made by you, and you will be obligated to pay us in the amount of such Orders, even though they are not transmitted or authorized by you. We strongly recommend that you impose a dual control environment in connection with the transmission and confirmation of Orders. If you elect not to do so, you agree to be subject to a higher standard of care with respect to your accounts, transactions and statements.

11) **Positive Pay Service**. If you are approved for this online Service, and you provide us with a Check Issue Report containing the serial numbers and amounts (exact dollars and cents) of the checks that you issue, we will compare the list with the information that is encoded on items presented to us for payment against your designated account. If the information matches, we will treat the matching items as validly issued and properly payable, and will process such items for payment. If the information does not match or the item is otherwise deemed to be an exception item (defined below), we will use the Service to provide you with an Exception Check Report that describes each exception item *and the reason for the exception*. Upon receipt of an Exception Check Report, you must instruct us if you want us to pay or return an exception item by the designated cutoff hour. Upon initiation of the Positive Pay Service, you will make a default election to pay or return exception items. If we do not receive your instructions regarding items on an Exception Check Report by the designated cutoff hour, we will process the items according to your default election. You may change your default election upon providing reasonable written notice to us. We may refuse to pay any item if there are insufficient collected and available funds in your account to cover the item.

- a) Checks Covered by Service. This Service applies to checks that are presented for payment through normal interbank check clearing procedures (e.g., local clearinghouse, Federal Reserve, or direct send presentment cash letter) and posted to your account each night. It is not designed to compare your list of issued checks against items that are presented in any other manner (e.g., at a teller window). Although we may occasionally attempt to compare your list with such items, we will not be liable for our failure or refusal to do so.
- b) Exception Items. Exception items may include duplicate checks, checks that do not match your Check Issue Report, checks with duplicate serial numbers, misencoded items, checks lacking an encoded serial number, and any other items that you advise us to treat as exception items in the Service setup form. The Service does not apply to items that have been finally paid before the effective date of any listing. Note: Our stop payment and Positive Pay systems operate separately. As such, if you ask us by

telephone or online to stop the payment of a check, the item may not show up as an exception. You agree not to use this Service (via a Return Report) as a substitute for a stop-payment order.

- c) Reliance on MICR Encoding. We will not be obligated to verify signatures on any checks that match the information you provide or that you fail to reject. You understand and agree that we may compare your information on approved checks with information that is encoded on the items presented to us for payment. We will not be required to physically examine matching checks to confirm that they are properly signed, completed and encoded. You agree that we may rely on the process described above and that it will be deemed an acceptable standard of care for this Service and your account. You understand that the Service may not identify counterfeit or duplicate checks which contain the same check serial number and amount as the items described in your Check Issue Report. As such, you agree to review promptly all statements, returned checks, reports and other check and transaction information that we make available to you.
- d) Issue Information and Timing. You agree to provide check information and instructions to us in the manner, form and format that we specify for the Service. You assume full responsibility for the completeness and accuracy of all information furnished to us. 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. We must receive your Check Issue Report on or before our designated cutoff hour each business day. Reports received after that hour or on non-business days may not be processed by us until the following business day. We will provide you with information on exception items on the morning of the following business day. You must instruct us to pay or return exception items by the cutoff hour for such instructions on the same business day.
- e) Stale-Dated and Postdated Checks. We may pay stale-dated and postdated checks unless you place a stop payment or postdated check order on such items, remove them from your list of checks approved for payment, or fail to notify us through this Service not to pay the items.
- f) Security. You agree to implement reasonable internal security procedures in connection with this Service. We strongly recommend that you impose a dual control environment in connection with the transmission of Check Issue Reports and decision instructions. If you elect not to do so, you agree to be subject to a higher standard of care with respect to your accounts, transactions and statements.
- g) Indemnification. In addition to the general indemnification provision in Section 27) below, you agree to indemnify, defend, and hold harmless Bank and its employees, officers, directors and affiliates against any and all actions, proceedings, liabilities, losses, costs (including attorneys' fees) and claims, including (without limitation) warranty claims, that result from or arise in connection with:
  - i) Our processing of Checks in accordance with this Agreement or your instructions;
  - ii) Any ambiguity, inaccuracy or omission in any information or instructions provided to us;
  - iii) Your failure to provide us complete and correct data in accordance with this Agreement and the applicable User Guide; or
  - iv) Actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of information to us.

12) **Remittance Processing (Lockbox) Service**. We will process payments which you receive by mail from others ("Customers") by: establishing a post office box address where Customers may mail payments to you; arranging for the collection of such payments at least once each business day; endorsing checks on your

behalf; depositing payments to your designated account; and providing related accounting and record keeping services.

- a) Commencement of the Service. Once we notify you that we are ready to commence the Service, you may direct customers to mail payments to you at the post office box address we designate. We will have exclusive and unrestricted access as your agent to the mail at such address.
- b) Our Processing of Checks. You authorize us to endorse all checks we receive on your behalf through this Service. We may accept checks for deposit to your account without endorsement and regardless of any difference between the name of the payee and your legal name (e.g., "Acme", as opposed to "Acme Publishing, Inc."). You will be deemed to warrant the endorsement of all items we receive through this Service, as well as your right to receive such items for deposit to your account.
- c) Deposit of Checks. We will deposit customer payments to the account you have designated, pursuant to the terms of your account agreement. We may process items received after our cutoff hour on a business day or on a Saturday, Sunday or holiday as of the next business day.
- d) Copies of Checks. We will make a copy or record of each check processed pursuant to this Service and will retain the record for five years. At your request and expense, we will prepare copies of checks and remittance documents on a CD-ROM disk for you. You acknowledge that image processing is subject to error on occasion and agree to hold us and any third party processor we use harmless from all claims, actions, damages, attorney's fees and costs associated with our inability to produce copies of checks.
- e) Irregular Items. We may reject items for deposit that are irregular in any way. At our discretion, we may process, send for collection, or forward to you for disposition: checks that contain discrepancies or minor errors (e.g., a difference between the written and numerical amounts), postdated checks, stale dated checks, checks bearing payee names different from your name, checks that do not bear the drawer's signature, altered checks, checks drawn on a foreign bank or in a foreign currency, and other irregular items. Although we may attempt to discover and forward (without processing) items bearing notations such as "Payment in Full," you agree that we will not be liable for our failure to do so, even if we could have done so with the exercise of ordinary care (Note: Some Customers imprint such notations on checks as a normal business practice. We generally process such items, but may refuse to do so at any time without prior notice.) We assume no duty to confirm that any payment equals the amount shown on any remittance document, statement or invoice. You agree not to send or have others send demand drafts (items that do not bear the maker's signature, but purport to be authorized by the maker) to the Lockbox.
- f) Your Instructions to Customers. You agree to instruct customers not to send cash, returned merchandise, notices, communications or other materials (not previously approved by us in writing) with their payments to the address specified for this Service. Unless we agree otherwise in writing, you also agree that you will not provide customers with marketing reply forms or other materials in connection with your billing process that customers may return with their payments to the Service address. You agree to notify us at least 30 days in advance of any change in your remittance statements and/or mailing schedule.

Unless otherwise agreed in writing, we assume no duty to you or others with respect to returned merchandise, property, or correspondence mailed to the address provided for this Service. We may return such items to the sender (if known by us) or, at your request, forward them to you at your sole risk and expense.

g) Post-Termination. You agree to notify Customers to stop sending payments through the Lockbox following the termination of this Service. At your request, we may (in our sole discretion) agree to continue processing payments and/or will forward mail received through the Lockbox to you for a short period of time following the date of termination. Such processing will be subject to the terms of this Agreement in effect on the date of termination. Otherwise: (a) we may terminate the Lockbox and/or refuse to pick up any further mail from the Lockbox; (b) we may forward or send to you by courier (at your expense) any Lockbox mail that comes into our possession; and (c) if you fail or refuse to pay our expense for sending you such mail, we may return or send, at your expense, any Lockbox mail to the sender (if known).

13) **Remote Deposit Capture**. You can use the Remote Deposit Capture Service to make deposits to your account(s) from a remote location by scanning checks ("*Checks*") and delivering the images and associated deposit information to Bank or Bank's designated processor.

a) Equipment and Software. We may provide you with equipment and/or software (collectively, "*Equipment*") that you can use to scan and transmit images of the front and back of Checks and other information (e.g., MICR line data) to us. Any equipment or software you obtain from a third party must conform to our Service specifications and requirements. In either event, you will be responsible for all other materials necessary for the Service, such as a telephone, terminal, modem, Internet connectivity, consumables (e.g., ink cartridges and other supplies), and computer.

i) You may use the Equipment only for the purpose of processing Checks and information in the manner permitted by this Agreement. You may not: (a) use the Equipment to process Checks through other institutions; (b) use the Equipment at a location other than your regular place of business; (c) perform or allow others to perform alterations or repairs to the Equipment without our written consent; or (d) attempt to bypass or disable any security feature of the Equipment. When this Agreement ends, your right to use the Equipment also will terminate automatically. You must maintain the Equipment we provide to you in good condition, subject to normal wear and tear, and return it to us at the address we direct.

ii) Except for Equipment that we provide to you and agree to maintain, we will not be responsible for repairing or replacing defective Equipment. We also assume no responsibility for any computer virus or related problems that may occur with your use of this Service, whether you obtain equipment or software from us or from a third party.

b) Using the Service. You agree to:

i) Only use equipment and software that meet our Service specifications, as they change from time to time.

ii) Follow our Service instructions for capturing and transmitting Check images and other information to us.

iii) View each Check as it is scanned to ensure that the images (front and back) are being captured properly. The image of an item transmitted to Bank using the Service must be legible. The image quality of the items must comply with the requirements established from time to time by the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association.

iv) Upon reasonable notice, allow a Bank employee or representative to perform periodic audits of your processes and procedures related to the Service during normal business hours.

- c) Endorsements. You agree to restrictively endorse any item transmitted through the services as “For Deposit Only, Bank account # [insert your account number]” or as otherwise instructed by Bank.
- d) Eligible Items. You agree to scan and deposit only checks as that term is defined in Federal Reserve Regulation CC, 12 CFR Part 229 (“Reg CC”). You agree that the image of the check transmitted to Bank shall be deemed an “item” within the meaning of Article 4 of the Uniform Commercial Code, as adopted in the state where you opened your Account(s).
  - i) You agree that, unless we specifically agree otherwise in writing, you may not use the Service to deposit:
    - (1) Checks or items payable to any person or entity other than you.
    - (2) Checks or items containing obvious alteration to any of the fields on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn.
    - (3) Checks that are irregular in any way (e.g., where the numerical and written amounts are different).
    - (4) Checks or items previously converted to a substitute check, as defined in Reg CC, (i.e., paper checks created from an electronic image).
    - (5) Checks or items that are demand drafts or remotely created checks, as defined in Reg CC, (i.e., checks lacking the original signature of the drawer).
    - (6) Checks or items drawn on a foreign bank or payable in a foreign currency.
    - (7) Checks or items that have previously been returned unpaid for any reason.
    - (8) Checks or items that are postdated or more than 6 months old.
    - (9) Checks or items payable to “Cash.”
- e) Deposit Limits. You agree not to deposit a Check or Checks that exceed the transaction limitation(s) that we establish from time to time. We also may refuse to accept a Check that we cannot process electronically. Our processing of any of the Checks described above shall not obligate us to continue that practice, and we may stop doing so without cause or prior notice.
- f) Receipt of Items. We reserve the right to reject any item transmitted through the Service, at our discretion, without liability to you. We are not responsible for items we do not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from Bank that we have received the image. Receipt of such confirmation does not mean that the transmission was error free or complete.
- g) Disposal of Transmitted Items.
  - i) Upon your receipt of a confirmation from Bank that we have received the image of an item, you agree to prominently mark the item as “Electronically Presented” or “Processed” to ensure that it is not re-presented for payment. You agree never to re-present the item.
  - ii) You agree to:
    - (1) Securely store the original Checks for no more than sixty (60) days after you have received notice from Bank that the Checks have been accepted, such storage must be maintained under

procedures at least as secure as those to which you maintain other confidential or proprietary information.

- (2) During the sixty (60) day period, you shall take appropriate security measures to ensure that only authorized personnel shall have access to the original Checks, that the information contained on the Checks shall not be disclosed, and that the original Checks will not be duplicated, will not be scanned more than one time, and will not be deposited or negotiated in any form.
- (3) You shall destroy, by shredding, the original Checks upon the expiration of the sixty (60) day period.
- (4) You will promptly provide us with the original Check (if it is within your possession), or a sufficient copy of the Check, as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any Check, or for Bank's audit purposes. A "sufficient copy" of a Check is a paper reproduction of an original Check that accurately represents all of the information on the front and back of the original Check as of the time the image was transmitted to us by means of this Service.

- h) Your Representations. You represent and warrant the following with respect to each Check that you transmit electronically to us:
- i) You have the legal right to accept the Check for deposit and negotiation, regardless of the name of the payee shown on the Check.
  - ii) The images and information that you transmit accurately represent all of the information on the front and back of the original Check, including (without limitation) all endorsements, at the time of transmission.
  - iii) You have not taken any action that would obscure, alter or impair the capture or transmission of information on the front or back of the Check or that otherwise may prevent us or another institution from capturing or processing such information.
  - iv) You make all warranties that would otherwise apply to the Check if it had been a paper item deposited with us.
  - v) You make all encoding, transfer, presentment and other warranties that we (or any correspondent bank we use) are deemed to provide to others.
  - vi) The Check will not be presented for deposit or payment more than once.
  - vii) If we agree that you may process previously truncated and reconverted substitute checks through this Service, you will ensure that the identification of previous truncating and reconvert banks are preserved and that returned substitute checks meet the requirements for legal equivalency under Federal Reserve Regulation CC.
- i) Hours of Operation. The Service can be utilized 24 hours a day, seven days a week, except when our system is unavailable due to needed maintenance or system outages. Deposit information received on or after our Service cutoff hour (which we may change from time to time) or on a Saturday, Sunday, state banking or federal holiday, may be deemed received by us as of the next business day. We are not responsible for the unavailability of the Service or any damages that may result from its unavailability. If the Service is not available for any reason or a Check cannot be processed by means of the Service, you may deposit your Checks directly with your branch of account.

- j) Your Review of Transactions. You agree to view the images of each scanned Check (front and back) that you send to us. Although we will not send you a confirmation for each Check we receive, you can use our online service to confirm our receipt of your batch file. If Check information received by us is not complete or cannot be processed by us for any reason, we may reject the check, notwithstanding any file receipt information shown at our website, and charge the amount back against any provisional credit to your account.
- k) Errors. You agree to notify Bank of any suspected errors regarding items deposited through the Services right away, and in no event later than 40 days after the applicable Bank account statement is provided. Unless you notify Bank within 40 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against Bank for any alleged error.
- l) Availability.
- i) You agree that items transmitted using the Services are not subject to the funds availability requirements of Reg CC. We may refuse any Check for deposit, with or without cause, or may elect to take a Check on a collection basis only. If we accept a Check for collection, we will send it to the institution upon which it is drawn, but will not credit your account for the amount until we receive the funds from the other institution. If we elect to credit your account before then, we may charge the amount back against your account if we do not receive payment for any reason. Please see your deposit account agreement for other restrictions on deposits.
- ii) If we receive your Check information on a business day before our Service cutoff hour, we will consider that day to be the day of your deposit. If we receive your transmission after our cutoff hour or on a non-business day, we may treat the deposit as received the next succeeding business day. If the drawee of a Check or another third party makes a claim against us or seeks a re-credit with respect to any Check processed through this Service, we may provisionally freeze or hold aside a like amount in your account pending our investigation and resolution of the claim. We also may charge your account for any Check that is returned, whether or not the return is timely or proper.
- m) Indemnification. In addition to the general indemnification provision in Section 27) below, you agree to indemnify, defend, and hold harmless Bank and its employees, officers, directors and affiliates against any and all actions, proceedings, liabilities, losses, costs (including attorneys' fees) and claims, including (without limitation) warranty claims, that result from or arise in connection with:
- i) Our processing of Checks in accordance with this Agreement or your instructions.
- ii) Your actions or omissions, including your breach of any representation or failure to comply with this Agreement.
- iii) The security of all Checks and Check images maintained by you.
- iv) Any modifications or changes you make to the Equipment without our written consent.
- v) Any misuse of the Equipment by you, your employees or agents.
- vi) Your failure to comply with applicable state and federal laws and regulations.
- vii) Actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of Check images or information to us.
- viii) Any claim by a recipient of a substitute check corresponding to a Check processed through the Service, that the recipient incurred a loss due to (1) the receipt of the substitute check instead of the original Check, or (2) multiple payments with respect to the same original Check, based on any

combination of the original Check, the substitute check and/or any paper or electronic copy of either.

- n) **Reserve Account.** We may require that you establish and maintain a reserve account (“*Reserve Account*”) with us to cover your obligations under this Agreement, including (without limitation) Service transactions which: (1) the ostensible drawers of Checks claim lack their endorsement or authorization; (2) the drawers of Checks claim are in an amount and/or on terms not authorized by them; and/or (3) are subject to claims of breach of warranty.
- i) You grant us a security interest in the Reserve Account for all obligations owing to us under this Agreement. The Reserve Account will only bear interest if it is opened by you and us as an interest-bearing account. You shall deposit an amount (the “*Initial Reserve Amount*”) that we designate in the Reserve Account within five days from our request. If we determine that your reserves may not be sufficient to cover our risk for potential claims (e.g., based on factors such as the volume and amount of past or current returns/claims, your financial condition, the risk of new product offerings by you, fraud losses, substantial increases in the average number or amount of Checks, and other relevant circumstances), we may increase the amount of the Initial Reserve Amount by providing notice to you.
- ii) If you fail or refuse to deposit sufficient reserves promptly upon our request, we may transfer funds to the Reserve Account from the proceeds of your deposits or from your other accounts with us. We may charge any of your accounts, including the Reserve Account, for any returned Substitute Check or claim. Your obligation to us for any return or claim, and our right to charge your accounts, will not be limited by the balance or existence of any reserve.
- iii) Upon the termination of this Agreement, we may require, and you shall promptly deposit, funds in the Reserve Account that we estimate may be needed to cover potential returns and claims that may arise after termination. This provision shall survive the termination of this Agreement.

14) **Stop Payment Service.** With this Service, you can stop payment on a check (or cancel a stop payment request) by following the procedures established for the Service. You must provide us with timely, complete and accurate information on the account number, date of the item, item number, payee, and EXACT amount (dollars and cents) of the item. If any information is incomplete or incorrect, we will not be responsible for failing to stop payment on the item. Requests become effective when we confirm their receipt. There is a fee for each request (effective for six months), whether or not we receive your request in time to act upon it. Requests received after our cutoff hour or on non-business days may be deemed received by us as of the start of the next business day. If our on-line system is not available for any reason, you can contact us at (877) 299-2265 to make your request.

15) **Sweep Investment Service – Mutual Fund.** With this Service, we transfer or “sweep” funds between your designated checking account and the mutual fund that you select for investments (the “*Fund*” or “*Fund Account*”) in order to maintain the target balance you designate in your checking account (the “*Target Balance*”). This is how the Service works:

- a) **Purchase of Investments.** At the end of each banking day, we will withdraw any collected and available funds that are in excess of the Target Balance from your checking account. On the following banking day, we will transfer that amount to your Fund Account.
- b) **Sale of Investments.** If you have less than the Target Balance in your checking account at the end of any banking day, we will transmit a redemption order on the following banking day for Fund shares with a market value equal to the difference between the Target Balance and your collected checking account

balance. We will credit the proceeds to your checking account on the banking day that we receive the funds (or earlier on a provisional basis). Note: If you require additional funds during the business day, we may attempt (at our sole discretion) to perform a manual redemption or cancel an earlier purchase prior to the cutoff hour. This Agreement does not require us to maintain the Target Balance in your checking account by any means other than the purchase or redemption of Fund shares. We generally transmit orders to purchase or redeem Fund shares only on the banking days that we and any other party necessary for the order are open for business. All transactions involving the Fund must be made through us. You may not withdraw funds directly from, send funds to, or write checks against, the Fund Account.

- c) Your Authorization. You authorize us to: (a) submit orders to buy, hold and redeem Fund shares as your agent; (b) hold Fund shares either in your name or in our name as shareholder of record and nominee for your sole benefit; (c) deposit Fund dividends that we receive to your checking account; (d) sign any declarations, affidavits, certificates and other documents that may be reasonable in connection with the Service on your behalf; and (d) take such other steps as are reasonable in providing the Service.
- d) No Advice by Us. The Funds are managed, sponsored, advised, directed, or administered by Federated Investment. You acknowledge that: (a) we will not provide investment advice to you or select the Fund for you to purchase; (b) we will not make any representation to you as to the appropriateness or quality of the Fund, nor discuss the portfolio composition, investment objectives or past or anticipated performance of the Fund with you; (c) Fund purchases will be made at your own risk and will be without recourse to the Bank; (d) you have made and will make an independent investigation concerning the merits and suitability of any Fund that you purchase; (e) our employees are not authorized to provide investment, tax or legal advice; (f) we do not act as the Fund's agent; and (g) any statement or representation by anyone, including without limitation our employees, that contradicts (a) through (f), above, is incorrect and without our approval.
- e) Service Fees. We receive a fee from Federated Investment with respect to Fund shares sold through your account. The fees paid to us are described in the prospectus for each Fund. See our schedule of fees for other fees related to the service. In addition to our Service fees, you are responsible for all expenses, taxes, or other charges or liabilities that we incur in handling your Fund Account transactions pursuant to this Agreement.
- f) Fund Prospectus. You acknowledge, understand and represent that: (a) you have received and read a prospectus for the Fund; (b) you have independently decided to invest in the Fund you designate to us; (c) Fund share values may fluctuate; values are not guaranteed; and past results do not indicate future performance; (d) we do not prepare any prospectus and do not review any information found in a prospectus for accuracy, timeliness or completeness; (e) we assume no responsibility for the content of any prospectus; and (f) we make no representations regarding yields and returns on investments.
- g) Agency Status. We act solely as your agent, and in no other capacity for you, in connection with the purchase and redemption of Fund shares. Nothing in this Agreement shall be deemed to create a fiduciary or quasi-fiduciary relationship between you and us.
- h) Payment of Dividends. Although Fund dividends may accrue daily, they will be paid only once each month. Dividends are normally determined on the last business day of the calendar month, and are reinvested in the Fund or deposited to your Bank account on the first business day of the following month. The calculation method for dividends is disclosed in your Fund prospectus.
- i) Security Interest. You grant us a security interest in your Fund shares and agree that we may set-off such shares for any obligation that you owe to us.

- 16) **Sweep Investment Service – Repurchase Agreements.** At the end of each business day, we will transfer excess collected funds from your designated checking account to make overnight investments by means of a repurchase agreement, and then transfer the proceeds of the transaction to your checking account on the morning of the following business day. Additional terms and conditions related to the repurchase agreement are set forth in a separate addendum or agreement.

**IMPORTANT NOTE. INVESTMENTS: (A) ARE NOT INSURED OR GUARANTEED BY THE FDIC OR ANY OTHER GOVERNMENT AGENCY; (B) ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY, THE BANK OR ANY OF ITS AFFILIATES; AND (C) INVOLVE AN INVESTMENT RISK, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNTS INVESTED.**

- 17) **Zero Balance Account Service.** With this Service, you designate one demand deposit account as your “Master Account” and one or more other, tied accounts as “Subsidiary Account(s).” You then direct us to transfer funds between the Master and Subsidiary Accounts to cover transactions and/or bring one or more of their balances to zero or a predetermined “target balance” at the close of each business day.
- 18) **Sweep Service – Lines of Credit.** At the end of each business day, we will sweep available funds between your designated checking accounts and commercial lines of credit, based on their ending balances and the target balances you establish for each.
- 19) **Amendments.** We may amend (add to, delete or change) the terms of this Agreement, the Service fees, and the User Guides by providing you with prior notice. We may amend our security procedures without prior notice if immediate changes are required for security reasons or the changes do not have a material affect on your use of the Services.
- 20) **Assignment.** We may assign our rights and delegate our duties under this agreement to a company affiliated with us or to a third party. You may not assign any right or delegate any obligation under this Agreement without our prior written consent.
- 21) **Cutoff Hours and Business Days.** Some of our Services are subject to processing cutoff hours. Information on cutoff hours can be found in certain User Guides and Service schedules. You also can obtain information by calling us at the phone number for your Bank listed in Section 1. Our business days are Monday through Friday, excluding holidays. Instructions received after the cutoff hour or on a non-business day may be deemed received as of the next business day. Services may occasionally be unavailable due to needed maintenance or system/network interruptions.
- 22) **Electronic Mail/Internet.** If you send us electronic mail (“e-mail”), we may not receive or review it immediately. We will have a reasonable time to act upon any e-mail request or notice, and reserve the right to reject any transaction or request received by e-mail (e.g., a request to wire funds). You acknowledge that, even though e-mail may be encrypted, we cannot ensure that it will not be intercepted or affected by the actions or omissions of others, such as third party networks or persons with access to the Internet. Our service providers and we assume no responsibility for viruses created by third parties, or for any third party’s unauthorized access to, or use of, your computer system. Please do not include any sensitive information about yourself or your accounts in e-mail that is not encrypted and sent through a secure e-mail system.
- 23) **Entire Agreement.** This Agreement incorporates, supplements, and supersedes where inconsistent the terms of your account agreement with us. Unless we provide otherwise in writing, it constitutes (along with any related addendums, Service applications, setup forms, User Guides, and schedules) the entire agreement between you and us with respect to the Services.

**24) Fees.**

- a) You agree to pay us the fees we establish for each of the Services (see our related fee schedules for details). If your accounts with us are analyzed, you may be able to use your available earnings credit to offset certain Service charges. If your analyzed accounts contain funds belonging to third parties, you represent that your use of any related earnings credit is not limited by law, regulation or any agreement with such third parties, and that you have any required authorization by such third parties for such use.
- b) In addition to the Service fees, 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/or the software or equipment made available to you (excluding any income tax payable by us). You also are responsible for the costs of any communication lines and any data processing charges payable to third parties.

**25) Financial Statement.** You agree to provide us with a current financial statement and other information regarding your financial condition upon our request.

**26) Governing Law/Compliance.** This Agreement shall be governed by and construed in accordance with all applicable federal laws and all applicable substantive laws of the state in which you opened your account, without reference to conflict of law provisions. You agree not to conduct any transactions that would violate the laws of any state or the United States, including the economic sanctions administered by the U.S. Treasury's Office of Foreign Assets Control.

**27) Indemnification.** You agree to indemnify, defend and hold us, our parent company, affiliates, and subsidiaries, and our respective directors, officers, employees and agents, harmless from and against any claim, damage, loss, liability and cost (including, without limitation, attorney's fees) of any kind which results directly or indirectly, in whole or in part, from: (a) our actions or omissions, if they are in accordance with your instructions or the terms of this Agreement; (b) the actions or omissions of you, your agents or employees; (c) any warranty that we or a correspondent bank are required to make to a third party in connection with a Service; or (d) your use or distribution of any equipment or software made available to you through a Service that is inconsistent with the license or sublicense that you receive. This provision shall survive the termination of this Agreement.

**28) Information Processing and Reporting.** We offer a number of Services that require us to receive, process and report information involving your accounts and transactions. We will not be responsible for determining the accuracy, timeliness or completeness of any information that you, your agents or others provide to us. We will not have a duty to interpret the content of any data transmitted to us, except to the limited extent set forth in this Agreement. Unless otherwise agreed in writing, we will not be required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information we receive from you or third parties. Our sole responsibility for any reporting errors caused by us will be to reprocess the information for the period in question and to provide corrected reports at our own expense. You agree to maintain adequate backup files of the data you submit for a reasonable period of time in order to facilitate any needed reconstruction of your transactions (e.g., due to a telecommunications failure). If we are unable to provide a Service for any reason, we will promptly inform you of the problem and will take reasonable steps to resume processing.

**29) Limitation of Liability.**

- a) Except as otherwise stated in this Agreement, we will be liable to you only for damages arising directly from our willful misconduct or gross negligence in the performance of the Services. We will not be

responsible for any loss, delay, cost or liability to the extent that it arises, directly or indirectly, in whole or in part, from: (a) your actions or omissions, or those of third parties which are not within our immediate and reasonable control; (b) your negligence or breach of any agreement with us; (c) any ambiguity, inaccuracy or omission in any instruction or information provided to us; (d) any error, failure or delay in the transmission or delivery of data, records or items due to a breakdown in any computer or communications facility; (e) accidents, strikes, labor disputes, terrorism, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God; (f) causes beyond our reasonable control; (g) the application of any government or funds-transfer system rule, guideline, policy or regulation; (h) the lack of available funds in your account to complete a transaction; (i) our inability to confirm to our satisfaction the authority of any person to act on your behalf; or (j) your failure to follow any applicable software manufacturer's recommendations or our Service instructions. There may be other exceptions to our liability, as stated in your account or other Service agreements with us.

- b) We will not be responsible under any circumstances for special, indirect, or consequential damages which you incur as a result of our actions or omissions, even if we are aware of the possibility for such damages. Our liability and your remedy for actual costs and losses resulting from our failure to transmit funds in the correct amount or to the correct beneficiary listed in your funds transfer Orders shall not exceed the direct money damages that you incur as a result of the failure (e.g., the amount of a wire transfer that is sent to the wrong party, or the amount by which a transfer exceeds the amount you authorized, plus interest as permitted by law). In all other cases, our liability and your remedy for actual costs and losses resulting from our actions and/or omissions, whether the claim is in contract or tort, will not exceed the lesser of (i) six times the average monthly charge for the Service(s) in question for the three months immediately preceding the cost or loss, or (ii) \$25,000.
- c) Any claim, action or proceeding by you to enforce the terms of this Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs. You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with your Services. You acknowledge that our Service fees have been established in contemplation of: (a) these limitations on our liability; (b) your agreement to review statements, confirmations, and notices promptly and to notify us immediately of any discrepancies or problems; and (c) your agreement to assist us in any loss recovery effort.

30) **Notices.** You agree to notify us immediately if you discover: (a) any error or discrepancy between your records and the information we provide to you about your accounts or transactions (e.g., in a statement, confirmation, or electronic report); (b) unauthorized transactions involving any account; (c) a breach in the confidentiality of any Password; or (d) other problems related to the Services. You must send us a written notice of any discrepancy or other problem, including a statement of the relevant facts, within a reasonable time (not to exceed 15 days from the date you first discover the problem or receive information reflecting the problem, whichever occurs first). If you fail to notify us within 15 days, you agree that, in addition to any other limitations on our liability: (a) in the case of an erroneous funds transfer, you will be liable for all losses up to the amount thereof (as well as any loss of interest), which result from your failure to give us such notice or which might have been prevented by your giving us such notice; and (b) in the case of an unauthorized funds transfer, we will not be liable for any loss of interest which results from your failure to give us such notice or which might have been prevented by your giving us such notice.

- a) You agree to provide us with at least 30 days' advance notice of: (i) any material (20% or greater) change in your ownership; (ii) any material change in the type, scope or nature of your business; or (iii) any

anticipated (20% or greater) increase in the amount or volume of your automated clearing house transactions over the preceding calendar quarter (if applicable).

- b) Unless otherwise agreed, notices required by this Agreement must be in writing. Notices to you may be mailed or sent to you at the statement, e-mail or mailing address shown for you in our deposit or Service records, or by posting the notice at our website. You agree to provide us with advance notice of any change in your address or email address. Notices to us must be sent to the Treasury Management Department at the Bank where you opened your account(s) and sent by United States registered or certified mail, postage prepaid, or by commercially recognized overnight carrier with tracking capabilities:
- i) Bank of Nevada, Attn: Treasury Management, 777 North Rainbow Boulevard, Las Vegas NV 89107
  - ii) Torrey Pines Bank, Attn: Treasury Management, 12220 El Camino Real Ste 100 San Diego, CA 92130
  - iii) Alliance Bank of Arizona, Attn: Treasury Management, One East Washington St, Suite 1400, Phoenix, AZ 85004
  - iv) First Independent Bank, Attn: Treasury Management, 5335 N Kietzke Ln, Reno, NV 89511

Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

- c) You agree on behalf of yourself, your employees and agents that we may monitor and record your telephone and electronic communications in connection with the Services at any time.
- 31) **Records.** Unless a different period is provided in a User Guide, you will retain and provide to us, upon request, all information necessary to remake or reconstruct any transaction, transmission, file or entry until ten business days following receipt by us of the transaction document, tape, file, entry, transmission, or other order affecting an account.
- 32) **Reliance on Third Parties.** Our ability to provide certain Services is dependent upon our ability to obtain or provide access to third party vendors and networks. In the event any third party is unavailable or we determine, in our discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through a different party. In such situations, we will have no liability for the delay or unavailability of access. We will not be responsible for any services you receive from third party vendors.
- 33) **Security Interest.** You grant us a security interest in your accounts with us (other than fiduciary accounts maintained for the benefit of others) to secure the repayment of any overdraft or other obligation that you incur under this Agreement.
- 34) **Termination.** Either party may terminate this Agreement as to some or all of the Services, with or without cause, by giving 30 days prior notice to the other party. We may suspend or terminate any Service or this Agreement immediately and without prior notice if: (a) you breach any agreement with us; (b) the confidentiality of your Password is compromised; (c) we have reason to believe that an unauthorized transaction has taken or may take place involving any of your accounts or any of the Services; (d) you become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; or (e) we are uncertain as to any person's authority to give us instructions regarding your accounts or the Services. The termination of this Agreement will not affect the rights or obligations of the parties that arise prior to termination (e.g., the indemnification and record retention requirements).

- 35) **Third Parties.** This Agreement is made for the exclusive benefit of you and us. No third party has any rights under this Agreement. Unless you have our prior written consent, you may not use the Services to process transactions for third parties or permit others to initiate Service transactions on your behalf.
- 36) **Transaction Limits and Safeguards.** You agree not to exceed the transaction limits we establish from time to time for your account or any Service. You will not allow anyone to initiate transactions on your behalf without proper supervision and adequate safeguards. You agree to review pending instructions prior to their submission to ensure that they are complete, accurate and properly authorized.
- 37) **Validity/Waivers/Overdrafts.** If any provision of this Agreement is found to be void or invalid, the remainder of this Agreement will remain in full force and effect. Any waiver by us must be in writing to be effective. Our waiver of any right will not be deemed a waiver of other rights or of the same right at another time. Our practice of allowing overdrafts will not obligate us to continue the practice at a later date. We may discontinue permitting overdrafts at any time and without prior notice.

## **AUTOMATED CLEARING HOUSE ORIGINATION SERVICES ADDENDUM**

You wish to initiate Credit and/or Debit Entries by means of the Automated Clearing House Network pursuant to the terms of this Addendum, the rules of the National Automated Clearing House Association, ("NACHA") and the laws administered by the United States of America in existence as of the date of the Treasury Management Services Agreement ("Agreement") and as amended from time to time (herein collectively referred to as the "Rules"), and Bank is willing to act as an Originating Depository Financial Institution with respect to such Entries.

Unless otherwise defined herein or the Agreement, capitalized terms shall have the meanings provided in the rules of the NACHA. The term "Entry" shall have the meaning provided in the rules of the NACHA and shall also mean the data received from you hereunder from which Bank initiates each Entry.

1. Transmittal of Entries By You. You shall transmit credit and/or debit Entries to Bank to the location(s) and in compliance with the formatting and other requirements set forth in Schedule A attached hereto. You agree that your ability to originate entries under this agreement is subject to exposure limits in accordance with the Rules and as set forth in Schedule A attached hereto.

2. Security Procedures.

(a) You and Bank shall comply with the security procedures requirements described in Schedule B attached hereto with respect to Entries transmitted by you to Bank. You acknowledge that the purpose of such security procedures is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedures for the detection of any such error have been agreed upon between the Bank and you.

(b) You are strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. You warrant that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by Bank in connection with the security procedures described in Schedule B. If you believe or suspect that any such information or instructions have been known or accessed by unauthorized persons, you agree to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank.

3. Compliance with Security Procedures.

(a) If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by you, it will be deemed effective as your Entry (or request) and you shall be obligated to pay Bank the amount of such Entry even though the Entry (or request) was not authorized by you, provided Bank accepted the Entry in good faith and acted in compliance with the security procedures referred to in Schedule B with respect to such entry. If signature comparison is to be used as a part of those security procedures, Bank shall be deemed to have complied with that part of such procedures if it

compares the signature accompanying a file of Entries (or request for cancellation or amendment of an Entry) received with the signature of your authorized representative (an "Authorized Representative") and, on the basis of such comparison, believes the signature sending such file to be that of such authorized representative.

b) If an Entry (or request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by you, you shall pay Bank the amount of the Entry, whether or not Bank complied with the security procedures referred to in Schedule B with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with such procedures.

4. Recording and Use of Communications. You and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Addendum may be electronically recorded and retained by either party by use of any reasonable means.
5. Right to Audit Originators. In addition to any other rights set forth in any agreement between you and Bank, the Bank may audit your compliance at any time with respect to the Rules and this Addendum.
6. Credit Review. You are subject to satisfactory credit review by Bank from time to time, at Bank's sole option and discretion, and in accordance with Bank's established credit criteria. You shall, upon Bank's request, provide to Bank any such credit-related information and assistance as Bank may require in order to perform any such review. Failure of you to meet such standards in the sole discretion of Bank or to provide such information or assistance when requested shall constitute a breach of this Addendum and the Agreement and shall permit Bank to terminate the Agreement.
7. Processing, Transmittal And Settlement By Bank.
  - (a) Except as provided in Section 8, On-Ups Entries and Section 9, Rejection of Entries, Bank shall (i) process Entries received from you to conform with the file specifications set forth in the Rules, (ii) transmit such Entries as an Originating Depository Financial Institution to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.
  - (b) Bank shall transmit such Entries to the ACH Operator by the deadline of the ACH Operator no less than **one business day** prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received by Bank's related cut-off time set forth on Schedule C on a business day, (ii) the Effective Entry Date is at least one day after such business day, and (iii) the ACH Operator is open for business on such business day. For purposes of this Addendum, Entries shall be deemed received by Bank when the transmission (and compliance with any related security procedures provided for herein) is completed as provided in Schedule A.
  - (c) If any of the requirements of clause (i), (ii) or (iii) of Section 7(b) is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator following that specified in Schedule C.

8. On-Us Entries. Except as provided in Section 9, Rejection of Entries, in the case of an Entry received for credit or debit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (i) and (ii) of Section 7(b) are met. If either of those requirements is not met, Bank shall use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.
9. Rejection of Entries. Bank may reject any Entry which does not comply with the requirements of Section 1, Transmittal of Entries By You, or Section 2, Security Procedures, or which contains an Effective Entry Date more than one day after the business day such Entry is received by Bank. Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. Bank may reject any Entry if you have failed to comply with its account balance obligations under Section 13, The Account. Bank may reject any entry if you does not adhere to security procedures as described in Schedule B. Bank shall notify you either electronically, in writing, by telephone or as otherwise agreed to by Bank and you of such rejection no later than the business day such Entry would otherwise have been transmitted by Bank to the ACH Operator or, in the case of an On-Us entry, its Effective Entry Date. Notices of rejection shall be effective when given. Bank shall have no liability to you by reason of rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.
10. Cancellation or Amendment By You. You shall have no right to cancel or amend any Entry after its receipt by Bank. However, if such request complies with the security procedures described in Schedule B for the cancellation of Data, Bank shall use reasonable efforts to act on a request by you for cancellation of an Entry prior to transmitting it to the ACH Operator or, in the case of an On-Us Entry, prior to crediting or debiting a Receiver's account, but shall have no liability if such cancellation is not affected. You shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.
11. Notice of Returned Entries and Notifications of Change. Bank shall notify you either electronically, in writing, by telephone or as otherwise agreed to by Bank and you of the receipt of a returned entry from the ACH Operator no later than one (1) business day after the business day of such receipt. Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Addendum with respect to the original Entry.

Bank shall provide you all information, as required by the *NACHA Operating Rules*, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Bank relating to Entries transmitted by you. Bank must provide such information to you within two banking days of the Settlement Date of each NOC or Corrected NOC Entry. You shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of your receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

12. Payment by You for Entries; Payment by ODFI for Entries.

(a) You shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Addendum at such time on the **Settlement Date with respect to** such credit Entry as Bank, in its discretion, may determine.

(b) You shall promptly pay Bank the amount of each debit entry returned by an RDFI that was transmitted by Bank pursuant to this Addendum.

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

(d) Bank shall promptly pay You the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Addendum.

13. The Account. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Addendum by debiting the account(s) of you identified in the ACH Specification Sheet attached hereto and made a part hereof. You shall at all times maintain a balance of available funds in the Account sufficient to cover its payment obligations under this Addendum. In the event there are not sufficient available funds in the Account to cover your obligations under this Addendum, agree that Bank may debit any account maintained by you with Bank or any affiliate of Bank or that Bank may set off against any amount it owes to you, in order to obtain payment of your obligations under this Addendum. Upon request of Bank, you agree to promptly provide to Bank such information pertaining to your financial condition as Bank may reasonably request.

14. Account Reconciliation. Entries transmitted by Bank or credited to a Receiver's account maintained with Bank will be reflected on your periodic statement issued by Bank with respect to the Account pursuant to the agreement between Bank and you. You agree to notify Bank promptly of any discrepancy between your records and the information shown on any periodic statement. If you fail to notify Bank of any discrepancy within fourteen (14) days of receipt of a periodic statement containing such information, you agree that Bank shall not be liable for any other losses resulting from your failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement. If you fail to notify Bank of any such discrepancy within fourteen (14 ) days of receipt of such periodic statement, you shall be precluded from asserting such discrepancy against Bank.

15. Your Representations And Agreements; Indemnity. With respect to each and every Entry transmitted by you, you represents and warrants to Bank and agrees that (a) each person shown as the Receiver on an Entry received by Bank from you has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein, (c) Entries transmitted to

Bank by you are limited to those types of credit and debit Entries set forth in Section 1, Transmittal of Entries By You, (d) you shall perform its obligations under this Addendum in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered by FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, and (e) you shall be bound by and comply with the provision of the Rules (among other provisions of the Rules) making payment of an entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such entry. You specifically acknowledge that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and you shall not be deemed to have paid the Receiver the amount of the entry. **You shall indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any breach of any of the foregoing warranties, representations, or agreements. You specifically agree to indemnify Bank for any penalties and/or fines imposed by the National Association against the Bank based on your failure to comply with the Rules.**

16. Bank Responsibilities; Liability; Limitations on Liability; Indemnity.

(a) **Performance of Bank.** In the performance of the services required by this Addendum, Bank shall be entitled to rely solely on the information, representations, and warranties provided by you pursuant to this Addendum and the Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the services expressly provided for in this Addendum, and shall be liable only for its gross negligence or willful misconduct in performing those services. Bank shall not be responsible for your acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from you) or those of any other person, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. You agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any claim of any person that the Bank is responsible for any act or omission of you or any other person described in this Section 14(a).

(b) **Limit on Damages.** Bank shall be liable only for your actual damages due to claims arising solely from Bank's obligations to you with respect to Entries transmitted pursuant to this Addendum; in no event shall Bank be liable for any consequential, special, incidental, punitive or indirect loss or damage which you may incur or suffer in connection with this Addendum, whether or not the likelihood of such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which you may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Addendum.

c) **Force Majeure.** Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

(d) **Interest.** Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its 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 Bank's option, payment of such interest may be made by crediting the Account.

17. Inconsistency of Name And Account Number. You acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI may be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number supplied by the You, even if it identifies a person different from the named Receiver, and that your obligation to pay the amount of the Entry to Bank is not excused in such circumstances.
18. Payment for Services. You agree to pay us the fees we establish for each of the Services (see our related fee schedules for details).
19. Amendments. From time to time Bank may amend any of the terms and conditions contained in this Addendum, including, without limitation, any cut-off time, any business day, and any part of Schedules A through C attached hereto. Such amendments shall become effective upon receipt of notice by you or such later date as may be stated in Bank's notice to you.
20. Notices, Instructions, Etc.

(a) Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from you or any other person, or to provide any notice or advice to you or any other person with respect to any matter.

(b) Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in the ACH Specification Sheet attached hereto and made a part hereof. You may add or delete any Authorized Representative by written notice to Bank signed by at least one Authorized Representative other than that being added or deleted. Such notice shall be effective on the third business day following the day of Bank's receipt thereof.

(c) Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Addendum shall be sent in accordance with the Notices section of the Agreement.

21. Data Retention. You shall retain data on file adequate to permit remaking of Entries for ten (10) business days following the date of their transmittal by Bank as provided herein, and shall provide such data to Bank upon its request. Without limiting the generality of the foregoing provision, you specifically agree to be bound by and comply with all applicable provisions of the *Rules* regarding the retention of documents or any record, including, without limitation, your responsibilities to retain all items, source documents, and records of authorization in accordance with the *Rules*.
22. Tapes and Records. All Entries, security procedures and related records used by Bank for transactions contemplated by this Addendum shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon your request. Any expenses incurred by Bank in making such information available to you shall be paid by you.
23. Evidence of Authorization. You shall obtain all consents and authorizations required under the *Rules* and shall retain such consents and authorizations for two years after they expire.
24. Cooperation in Loss Recovery Efforts. In the event of any damages for which Bank or you may be liable to each other or to a third party pursuant to the services provided under this Addendum, Bank and you will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.
25. Termination and Suspension. You may terminate this Addendum at any time. Such termination shall be effective on the third business day following the day of Bank's receipt of written notice of such termination or such later date as is specified in that notice. Bank reserves the right to terminate this Addendum immediately upon providing written notice of such termination to you. Bank may suspend this Addendum immediately without notice if you breach any of your obligations under this Addendum or the *Rules*, or causes the Bank to breach any of its obligations under this Addendum or the *Rules*. Any termination or suspension of this Addendum shall not affect any of Bank's rights and your obligations with respect to Entries initiated by you prior to such termination or suspension, or the payment obligations of you with respect to services performed by Bank prior to termination, or any other obligations that survive termination of this Addendum.
26. Entire Agreement. This Addendum (including the Schedules attached hereto), together with the Agreement, is the complete and exclusive statement of the agreement between Bank and you with respect to the subject matter of this Addendum and supersedes any prior agreement(s) between Bank and you with respect to such subject matter. In the event of any inconsistency between the terms of this Addendum and Agreement, the terms of this Addendum shall govern. In the event performance of the services provided herein in accordance with the terms of this Addendum would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs

or affects the transactions contemplated by this Addendum, then this Addendum shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to you as a result of such violation or amendment. No course of dealing between Bank and you will constitute a modification of this Addendum, the *Rules*, or the security procedures or constitute an agreement between the Bank and you, regardless of whatever practices and procedures Bank and you may use.

**AUTOMATED CLEARING HOUSE (ACH) ORIGINATION SERVICES AGREEMENT  
SCHEDULE A  
ACH FILE REQUIREMENTS**

Formatting Requirements

2. **FORMAT.**

2.1 You agrees that all ACH Entries sent to Bank shall comply with the Operating Rules of WesPay, the Operating Rules of the National Automated Clearing House Association (“NACHA”), and the rules of the Federal Reserve Bank (“Federal Reserve”) in existence as of the date of the Agreement and as amended from time to time (herein collectively referred to as the “Rules”). All ACH Entries shall be transmitted in standard format which is acceptable under WesPay, NACHA, and Federal Reserve Rules. You shall have sole responsibility to obtain copies of and determine the requirements imposed by WesPay, NACHA, and the Federal Reserve Rules and any revisions thereto necessary to comply with this Addendum. Access to the Operating Rules of the National Automated Clearing House Association is available by registering for basic online access at [www.achrulesonline.org](http://www.achrulesonline.org). You may also purchase a Corporate Edition of the ACH Rules and Guidelines in book or CD format at [www.wespay.org](http://www.wespay.org).

2.2 The total amount of ACH Entries in the transmission shall be exactly equal to either an offsetting item in the Entries to be posted to your account or to actually and finally collected funds presented to Bank at the same time the Entries to process are transmitted.

You agree to use the format/record layout as set forth in NACHA Rules. Regardless of input method, all ACH entry files shall contain the following control information:

- Debit dollar amount total
- Credit dollar amount total
- Total amount
- Item counts
- Entry “ID” number
- Effective Date

File Dollar Limits

Bank has approved a daily ACH Origination dollar limit for you. You have agreed not to exceed the total file dollar limit for the aggregate amount of all payment orders received by Bank and in process of settlement. Payment order greater than the total file dollar limit will be processed only upon Bank’s validation of the file by confirmation from your authorized representative as listed on the “ACH Origination Spec sheet”, set forth as attached hereto, and authorization by an approved representative of the Bank. Processing delays may result if Bank is unable to perform this validation. Bank has no liability for any such processing delays. In the event you exceed your limit three (3) times within a 12-month period, you will be subject to additional review and ACH Services may be subject to suspension during such review.

Indication of complete transmission: ACH entry files will be considered transmitted when System reflects “File Created”.

**AUTOMATED CLEARING HOUSE (ACH) ORIGINATION SERVICES AGREEMENT**  
**SCHEDULE B**  
**Security Procedures**

Bank provides a mechanism (“System”) by which you can affect the transfer of funds via the Automated Clearing House network and in which certain security features and procedures are incorporated. You agree to the security procedures incorporated in the System. Accordingly, you will maintain the password and other aspects of the System confidential and secure, and will prevent access to them by unauthorized persons.

You acknowledge the System contains multiple security features in an attempt to prevent unauthorized transmissions. You shall not disassemble, decompile, manipulate or reverse engineer Financial Institution’s System, software or any portion of the services used to submit Entries. You shall take all necessary steps to prevent unauthorized use or disclosure or disassembly, decompiling, manipulation or reverse engineering of Bank’s System, software or any portion of the services used to submit Entries.

Daily file dollar limits have been implemented as an additional Security Procedure. Bank will not process ACH entry files over the established file dollar limits without proper authorization as described in Schedule A.

The following Standard Entry Class (SEC) Codes are authorized by Bank. No other SEC codes, including but not limited to WEB, TEL, RCK, ARC and IAT, will be accepted:

- CCD Credits
- CCD Debits
- PPD Credits
- PPD Debits
- CTX Credits

In addition to the security features incorporated into the System, Bank strongly recommends you take the following actions with regard to your originated ACH Entries. You acknowledge that the failure to follow these recommendations is at your own risk and may subject it to losses that you could have otherwise prevented.

- Bank recommends you utilize a stand-alone PC for all online banking and ACH origination activity. You are solely responsible for the accurate creation, modification, and deletion of the account information maintained on any of your personal computers and user for the origination of ACH entries.
- Bank recommends utilizing a secondary approver for all ACH entries as a Security Procedure.
- Bank recommends establishing transaction-level as well as file-level dollar limits specific to each user as applicable to their specific job function.

**AUTOMATED CLEARING HOUSE (ACH) ORIGINATION SERVICES AGREEMENT**  
**SCHEDULE B**  
**Security Procedures**

These security features and procedures are hereby deemed to be commercially reasonable pursuant to Section 4A-202 (C) of Article UCC 4-A. By executing the Agreement, you agree that your participation in self-originated ACH Entries will be governed by the Agreement including this Addendum, all Schedules, the Rules, and agrees to the ACH service in which you participate. Your participation in self-originated ACH Entries constitutes acceptance of these Security Procedures and agreement that the Security Procedures are commercially reasonable pursuant to Section 4A-202 (C) of Article UCC 4-A.

**Unlawful Internet Gambling Enforcement Act (UIGEA), Regulation GG Certification Statement**

You hereby certify compliance with Reg GG and attest that you are not engaged in any activities that Reg GG defines as “unlawful internet gambling” nor accepting payments in connection with the participation of another person in unlawful internet gambling.

**Cancellation of Data**

You may request Bank to cancel an ACH entry file that has already been transmitted to the Bank. Request must be made by an authorized representative indicated on the ACH Specification Sheet. Bank will make a reasonable attempt to cancel the file but cannot guarantee cancellation. Bank shall have no liability for its inability to cancel an ACH entry file.

**Compliance Audits**

Bank may audit you for the purpose of ensuring your compliance with the terms and conditions of this Addendum and the Security Procedures, upon five days prior written notice. Bank may conduct the audit or choose the auditor in its sole discretion. If the audit indicates there is a breach in your compliance with this Addendum: (i) Bank may immediately terminate the Agreement and pursue its legal remedies, and (ii) you shall pay for the cost of such audit. If you do not cooperate with Bank’s request to audit for compliance, you shall be deemed to have conclusively admitted to a material breach in your compliance.

**AUTOMATED CLEARING HOUSE (ACH) ORIGINATION SERVICES AGREEMENT**  
**SCHEDULE C**  
**Schedule and Deadlines**

1. **SCHEDULE.** ACH Entries must be initiated at least one (1) business days prior to transaction effective date. A business day is defined as any day the Bank is open for business. You shall deliver electronic media defined below as direct data transmission to Bank by the Submission Deadline on any day the Bank is open for business as follows:

<u>MEDIA</u>	<u>DELIVERY METHOD</u>	<u>SUBMISSION DEADLINE</u>
Electronic data	FTP	2:00 p.m. PST
Electronic data	Online Banking	4:00 p.m. PST

Unless a later processing date is requested by you, Entries received by Bank Submission Deadline will be processed by Bank the same day they are received. Entries received after Submission Deadline will be processed by Bank before the close of business on the next business day. To fully complete the transaction, Entries must also be processed by the RDFI over which Bank has no control. Bank cannot and does not guarantee the date a transaction will be completed. To increase the likelihood that Entries will be fully completed by desired effective date, you shall deliver electronic media to Bank no less than one (1) business banking days prior to effective date.

Location for physical delivery:

Contact the Treasury Management Department for delivery instructions.

Email address for delivery of encrypted files:

Contact the Treasury Management Department for delivery instructions.



## CONTACT INFORMATION

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<b>Bank of Nevada</b>	Phone: (702) 248-4200 service@bankofnevada.com 2700 West Sahara Avenue Las Vegas, NV 89102
<b>Torrey Pines Bank</b>	Phone: (858) 259-5347 cashmanagement@torreypinesbank.com 12220 El Camino Real, Suite 100 San Diego, CA 92130
<b>Alliance Bank of Arizona</b>	Phone: (602) 797-3640 cashmgmt@alliancebankofarizona.com One East Washington Street, Suite 1400 Phoenix, AZ 85004
<b>First Independent Bank</b>	Phone: (775) 828-2000 info@firstindependentnv.com 5335 Kietzke Lane Reno, NV 89511