



## BAC Community Bank In-Office Deposit Agreement

This In-Office Deposit Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ between BAC Community Bank (“Bank”), headquartered at 517 E. Weber Avenue, Stockton, California and:

_____	City: _____	State: _____
Account Name	Headquarters	
_____	City: _____	State: _____
Account Name	Headquarters	
_____	City: _____	State: _____
Account Name	Headquarters	
_____	City: _____	State: _____
Account Name	Headquarters	
_____	City: _____	State: _____
Account Name	Headquarters	
_____	City: _____	State: _____
Account Name	Headquarters	

herein collectively referred to as “Customer”, and forms part of the Deposit Agreement and Disclosure (“Deposit Account Agreement”) applicable to each of Customer’s accounts as to which Customer utilizes the Product and Services defined below.

### RECITALS OF FACT

Bank provides commercial deposit services to Customer. As part of such services, Bank offers, and Customer has elected to utilize equipment, software, licenses and procedures which shall allow Customer to create electronic images of paper checks Customer receives in the course of its business, and to transmit those images to Bank, by electronic means. Upon receipt of such images, Bank is able to and shall accept the same as deposits, subject to the terms of the Deposit Account Agreement without the need for physical delivery of the paper checks to Bank.

### AGREEMENT

1. **Recitals of Fact** The Recitals set forth above are agreed to be true and incorporated herein by reference.
2. **Definitions** The following capitalized terms shall have the ascribed meanings set forth for them within this Agreement.
  - a. “Affiliate” means any person or entity that is controlled by or controls Customer, including, without limitation, Customer’s direct and indirect parent company and Customer’s direct and indirect subsidiaries, any of Customer’s shareholders, partners or other owners who, individually or collectively hold 20% or more of the ownership interests in Customer, and any executive officer or manager of Customer.
  - b. “ANSI” means American National Standards Institute.



- c. "Authorized User" is any person designated by the Customer to the Bank as being authorized to initiate, amend or cancel RDC transmissions. Customer is responsible for all transactions made through any established User ID and password. Customer and Authorized Users will not make any passwords available to any non-authorized persons. Company agrees to inform Bank in writing of the termination of any Authorized Users.
- d. "Business Day" means every day except for Saturdays, Sundays and holidays observed by the Federal Reserve Bank of San Francisco.
- e. "Check 21" means the laws and regulations established by or under the Check Clearing for the 21<sup>st</sup> Century Act, 12 USC § 5001 *et seq.*, and all implementing and related regulations, such as Regulation CC.
- f. "Confidential Information" means any information obtained by Customer or disclosed or made available to Customer (whether in writing, verbally or by observation of objects or processes) from or by Bank and relating to the Documentation and any materials relating to the Documentation. Confidential Information does not include information that:
  - i. Is or becomes generally available to the public other than as a result of a disclosure by Customer;
  - ii. Was in Customer's possession before the time of disclosure;
  - iii. Becomes available to Customer on a non-confidential basis from another source, provided that Customer has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or
  - iv. Is independently developed by Customer without reference to or use of any other Confidential Information.
- g. "Documentation" means all documentation, the user manual, any other manuals, all instructions (including on-line instructions) relating to the Product and Services which Bank may provide to Customer from time-to-time in connection with the Product or Services.
- h. "Electronically Created Item" means an electronic Image that has all the attributes of an electronic check or electronically returned check but was created electronically and not derived from a paper check.
- i. "Electronic Item" means a digitized image of an Item, including an Image Exchange Item, or other electronic data arising from an Item.
- j. "Endorsement/Indorsement" means the payee's signature and/or depository account information on the back of check indicating that the payee has received the check.
  - i. "Restrictive Endorsement/Indorsement" refers to the above endorsement/indorsement to further include the statement "For Remote Deposit at BAC Community Bank Only".
- k. "Endpoint" means any Federal Reserve Bank, Financial Institution, local clearing house, courier or other entity or location for the delivery of Items prior to their presentment to the Payor Financial Institution.
- l. "Financial Institution" means (i) any person, located and engaged in the business of banking within the United States, (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service or a State or local government.
- m. "Chargeback" means an amount that is charged to Customer's account pursuant to Section 6.g.
- n. "Image Exchange Item" means a digitized image of an Item cleared and settled, or capable of being cleared and settled, by a collecting Financial Institution with another Financial Institution or the Payor Financial Institution without being Reconverted into a Substitute Check. An Image Exchange Item



must be capable of being Reconverted into a Substitute Check; following such Reconversion, the Item would no longer be an Image Exchange Item.

- o. "Image Exchange Network" means an entity other than an Financial Institution that acts as an intermediary between Financial Institutions in the processing of Image Exchange Items.
- p. "Item" means a check or other draft that is payable on demand, drawn on or payable through or at an office of a Financial Institution, whether negotiable or not, and payable or endorsed to Customer's order. The term includes Original Checks, Substitute Checks and Image Exchange Items, but does not include:
  - i. Noncash Items;
  - ii. Checks or other drafts drawn on another deposit account maintained by Customer or by an Affiliate, whether the other account is maintained at Bank or at another Financial Institution;
  - iii. Savings bonds, food coupons or stamps;
  - iv. Government or corporate warrants;
  - v. Photocopies or other copies of checks or drafts that would otherwise be an Item but for this exclusion;
  - vi. Checks or other drafts payable in a medium other than United States money; or
  - vii. Checks or other drafts not drawn on or payable through a Financial Institution.
  - viii. Third Party Checks.
- q. "Licensor" means a party from which Bank has obtained a license or other authorization to use Software, including without limitation a license or other authorization to permit Customer to use the Software.
- r. "Noncash Item" means an Item that would otherwise be an Item, except that:
  - i. A passbook, certificate or other document is attached;
  - ii. It is accompanied by special instructions, such as a request for special advice of payment or dishonor;
  - iii. It consists of more than a single thickness of paper, the Item nevertheless is capable of being handled by Bank's automated check processing equipment; or
  - iv. It has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.
- s. "Original Check" means the first paper Item issued with respect to a particular payment transaction.
- t. "Payor Financial Institution" means the Financial Institution ordered in an Item to make payment to, or as otherwise directed by, the payee(s) named on the Item.
- u. "Product" means collectively the procedures, protocols and Software used by Bank and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the Services.
- v. "Reconversion" or "Reconvert" shall have the meanings attributable to such terms by Regulation CC.
- w. "Regulation CC" means 12 CFR, Part 229, as it may be amended from time to time.
- x. "Services" means the services described in this Agreement and to be provided by Bank to Customer to enable:



- i. The processing of Items as Image Exchange Items through Image Exchange Networks or through creation of Substitute Checks, and
    - ii. Forwarding of such Items to established Endpoints for ultimate presentment of the same to the Payor Financial Institution.
  - y. "Software" means the software provided by Bank for Customer's use in scanning, validating and packaging images and data to be forwarded to Bank for additional processing. Customer understands and acknowledges that the Software was developed by one or more third parties and that Bank is licensed or otherwise authorized to make such Software available to Customer exclusively for use in processing Items pursuant to this Agreement. Any trademark associated with the Software is the property of its Licensor.
  - z. "Substitute Check" has the meaning ascribed to that term in Regulation CC, § 229.2.
  - aa. "Third Party Check" means a check or other draft written in favor of a party other than Customer, which instrument is thereafter negotiated to Customer.
  - bb. "UCC" means the Uniform Commercial Code as enacted and amended from time-to-time by the State of California.
- 3. Services** Bank shall provide to Customer the Product and Services described in this Agreement and in the Documents to enable Customer to transmit and clear Items through the check collection system as Substitute Checks or Image Exchange Items.
- 4. Implementation** Customer shall capture digitized images of Items using the Software and equipment provided by or through Bank and Bank shall accept and process such Items subject to the terms herein.
- 5. Customer's Responsibilities** In connection with the Product and the Services, Customer shall:
- a. Be responsible for purchasing an approved scanner (equipment) compatible with Bank's RDC Services. Customer shall be solely responsible for the operation, maintenance, and accuracy of such equipment.
  - b. Agree that Bank representative(s) may physically visit the site of the Customer to review agreed upon security policies and procedures prior to installing the RDC service and to perform periodic site audits, as prearranged and is mutually convenient for both Customer and Bank.
  - c. Be responsible for training its own employees in the use of the Product and Services.
  - d. Before scanning an Item, place a legible restrictive endorsement thereon.
  - e. Create images of Items at Customer's location by use of the Software and hardware provided by or through Bank. Customer shall correctly enter all amounts and any other required information.
  - f. As provided in the Documentation, transmit Electronic Items to Bank or to Bank's authorized processor, which transmission shall be conducted over the Internet through a web-based interface. When received by Bank or its processor, such Electronic Items shall be processed for deposit, as Image Exchange Items or Substitute Checks, into the account designated by Customer in its transmission.
  - g. Not submit to Bank for processing under this Agreement any Item that does not meet the ANSI standards for image quality required by Regulation CC or such other standards as may be established by Bank. Bank's intentional or inadvertent processing of any transactions described in this Section 5.g shall not constitute a waiver by Bank or obligate it to process such transactions in the future, whether or not advance notice regarding Customer's previous breach of this restriction is given to Customer.
  - h. Not scan or transmit to Bank pursuant to this Agreement:
    - i. Any Item consisting of a Substitute Check; or
    - ii. Any check or draft not consisting of an Item.



iii. Any electronically created items.

Rather, such Items must be physically deposited with the Bank.

- i. Ensure that Items are restrictively endorsed or otherwise processed to permit only Financial Institutions to acquire rights of a holder-in-due-course in the collection process of Items.
- j. Handle, process, maintain and destroy Original Checks and Electronic Items as set forth in the Documentation.
- k. Ensure that no Item is processed under this Agreement more than once, and that no Item successfully processed under this Agreement is physically tendered in paper form in an effort to achieve collection thereof.
- l. Use the Product and Services, including the entering, processing and transmittal of Items, in accordance with the Documentation.
- m. Retain each Original Check in accordance with the Documentation. If not otherwise directed by Bank, Customer shall store Original Checks in a safe and secure environment for such time as Customer deems necessary and advisable, but not for a period shorter than seventy five (75) days after such Item has been digitized and processed. Customer shall use a commercially reasonable method to destroy Items after Customer's retention period has expired.
- n. As requested by Bank to aid in the clearing and collection process, to resolve claims by third parties with respect to any Item or as Bank otherwise deems necessary, promptly (but in any event within three (3) Business Days) provide to Bank any retained Original Check (or, if the Original Check is no longer in existence, a legible and complete copy of the front and back of the Item).
- o. Maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Agreement.
- p. Not use any software, other than the Software, to perform the functions the Software is capable of performing.
- q. Maintain any software, other than the Software, necessary to the implementation (e.g., Internet browser, Windows operating system, etc.) not provided by or through Bank, except as the parties may otherwise agree in writing, and meet all technical specifications required by Bank.
- r. Complete any audit assessment requested by Bank within the time requested by Bank.

## **6. Bank Rights and Responsibilities**

- a. Following their transmission and confirmation by Bank or its processor that the Item appears to conform to the requirements of this Agreement and the Deposit Account Agreement, Bank shall provisionally credit the Item to Customer's designated deposit account, subject to Bank's further verification, inspection and final collection of the Item.
- b. At Bank's sole discretion, Electronic Items created by Customer pursuant to this Agreement shall be forwarded for ultimate presentment to the Payor Financial Institution (i) after Reconversion into Substitute Checks, or (ii) as Image Exchange Items to be processed through Image Exchange Networks. All such processing and presentment shall be done in accordance with timeframes and deadlines agreed to by the parties, including but not limited to those specified in Section 10.a, below.
- c. Unless otherwise agreed by Customer and Bank, Bank shall process any returned Items in accordance with applicable law and the Deposit Account Agreement. If Customer desires special return processing, Customer shall provide information as required by Bank to describe such special processing, which shall remain subject to approval by Bank.



- d. Availability of credit from Items processed under this Agreement shall be subject to the availability schedule of Bank, which may be amended without notice.
- e. Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process Items. Bank may from time to time establish exposure limitations and assign them to Customer. Without limitation, Bank may limit or refuse Items that would cause Customer to exceed these exposure limitations.
- f. In addition to any other rights Bank may have, Bank may hold and use funds in any account maintained by Customer with Bank following termination of this Agreement for such time as Bank reasonably determines that any Item processed by Bank prior to termination could be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible under Check 21.
- g. Bank shall have the right to charge Customer's account for any Item that, for any reason, is not finally paid by the Payor Financial Institution or is otherwise returned for any reason, in the same manner, and subject to the payment of the same fees, as would be applicable had the Item been physically deposited by Customer outside of the parameters of this Agreement. Bank's right to charge the account of Customer shall apply without regard to whether the Item or corresponding Electronic Item is timely returned to Bank or whether there is any other claim or defense that the Item or Electronic Item has been improperly returned to Bank.
- h. Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In the event of any of the foregoing failure or delays, Customer acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

## **7. Compliance with Laws, Regulations and Rules**

- a. Customer shall comply with all laws, rules and regulations applicable to Customer, its business and operations and to the Products and Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an Image Exchange Network through which Image Exchange Items are processed pursuant to this Agreement.

Customer shall fulfill all compliance requirements and obligations applicable to Bank or Customer with respect to the Service under all applicable federal and state laws, regulations, rulings and other requirements relating to anti-money laundering, including, but not limited to, the Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as well as any regulations of the Office of Foreign Assets Control of the U.S. Treasury Department, as any of the same may be amended from time to time.

## **8. Software**

- a. Bank shall provide to Customer, and Customer shall use, the Software in accordance with the Documentation and any applicable materials relating to the Documentation or Software. Bank may, from time to time, change the Software required for this purpose, upon thirty (30) days advance notice to Customer.
- b. Customer shall use the Software solely for the purpose of transmitting Items to Bank or its processor consistent with this Agreement and not for communications with any other party.



Customer shall not allow access to the Software or the use of the Product by any person other than Customer, and shall not process Items except Items arising from a transaction or obligation between Customer and its direct payor. Customer shall not process any third-party Items.

- c. Customer shall promptly return to Bank all copies of the Software and Documentation, including materials related to the Documentation or Software upon termination of this Agreement.

## 9. Reserve and Collateral

- a. Bank may from time to time establish minimum amounts to be funded by Customer as reserve amounts to protect Bank against losses that may result from Chargebacks. Bank shall provide notice to Customer of any reserve requirement, and Customer shall immediately fund the reserve amount with good funds. Bank may withhold and use any amounts due to Customer to maintain any reserve amounts at levels specified by Bank.
- b. To secure all obligations of Customer to Bank arising from this Agreement, Customer grants to Bank a security interest in all accounts of Customer at Bank, all funds in those accounts, any reserve accounts or funds therein, all Items and, if Customer processes Automated Clearing House entries through Bank, all such entries (including any funds in process of settlement), whether now or hereafter established by or for the benefit of Customer at Bank, and all proceeds of the foregoing. Bank's security interest shall survive after termination of this Agreement. This security interest is supplemental to and not in lieu of any security interest granted by Customer to Bank under any other agreement.

## 10. Processing

- a. The deposit cut-off time is 5:00pm Pacific Time each Business Day. Transmissions received by Bank after cut-off time on a Business Day, or on any day that is not a Business Day, shall be treated as occurring on the next Business Day.
- b. Items shall be processed and ready for collection through the check collection system after Bank receives good digitized images and associated data for such Items through any given transmission from Customer. Bank shall use commercially reasonable efforts to enter such Items or corresponding Electronic Items into the check collection system for forwarding and presentment to the applicable Endpoint within a reasonable period of time following such receipt.
- c. If a digitized image is incomplete, is illegible or is otherwise not useable by Bank, the image may not be processed by Bank, in which case Customer's deposit shall be adjusted, accordingly. Customer may then:
  - i. Reprocess the Original Check;
  - ii. Physically deposit the Original Check outside of the purview of this Agreement; or
  - iii. Contact the drawer of the Item to obtain a replacement Item.

Customer understands and agrees that Bank shall have no responsibility or liability to Customer if Customer is unable to reprocess the Original Check in a manner that will permit Bank to accept the Item pursuant to this Agreement, if Customer no longer possesses the Original Check or if the drawer of the item is unwilling or unable to replace it.

- d. It is Customer's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank.
- e. Customer is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with conversion to or from Daylight Savings Time.



## 11. Security Procedures

- a. Customer shall be solely responsible for establishing, maintaining and following such security protocols as it deems necessary to ensure that output files transmitted directly to Bank are intact, secure and confidential until received by Bank.
- b. Customer and Bank shall implement all security procedures that Bank establishes to verify the authenticity of any output files transmitted to Bank in the name of Customer. It is Customer's responsibility to consistently use these procedures to safeguard its data and transactions and to protect passwords to limit use of the system to authorized individuals. Customer must notify Bank immediately when any password is compromised or Customer becomes aware of any breach in security.
- c. Customer shall:
  - i. Implement and impose physical workstation security policies on all locations and users.
  - ii. Utilize an anti-virus product with up-to-date pattern files and regular workstation scans for viruses, including spyware and adware.
  - iii. Establish a policy to protect Bank-supplied file transfer passwords from unauthorized disclosure.
  - iv. Utilize commercially reasonable controls over workstations, including:
    1. Passwords containing 6 or more characters, including both (a) letters and (b) numbers and/or special characters.
    2. Changing passwords no less frequently than every ninety (90) days.
    3. Allowing no more than 3 unsuccessful log-on attempts before lockout.
    4. Retaining at least 6 old passwords in history.
  - v. Utilize a suitable workstation-based firewall protection product when the desktop workstation is directly connected to the Internet and not protected by a corporate internet firewall facility.
  - vi. Follow wireless industry security standards.
- d. If Bank follows its security procedures to verify the authenticity of an output file and the files appears to be authentic, Bank may conclusively assume that the file is authentic, whether or not the output file was authorized by Customer.
- e. If Customer authorizes an output file, Customer shall be obligated on the output file even if Bank does not verify its authenticity.
- f. Customer understands that these security procedures are intended to verify authenticity and not to detect error.

## 12. Customer Representations and Warranties Customer makes the following representations and warranties:

- a. Customer is duly organized and validly existing under the laws of the State of California, and has the full legal right and power under the laws of the State of California to enter into this Agreement, and by proper action Customer has duly authorized the execution and delivery of this Agreement;
- b. The representatives of Customer executing this Agreement have been fully authorized to execute this Agreement under a resolution or official action duly adopted by Customer;





- c. This Agreement has been duly authorized, executed and delivered by Customer and constitutes the legal, valid and binding Agreement of Customer enforceable against Customer in accordance with its terms;
- d. With respect to each Item processed by Customer pursuant to this Agreement;
  - i. The Electronic Item is a digitized image of the front and back of the Item and accurately and legibly represents all of the information on the front and back of the Item as of the time Customer converted the Item to an Electronic Item;
  - ii. The Electronic Item reflects all endorsements applied by parties that previously handled the Item in any form for forward collection or return;
  - iii. Customer understands that:
    - 1. The same UCC and Check 21 warranties that are made by Bank to collecting Financial Institutions and to the Payor Financial Institution when Bank undertakes collection or processes the return of Original Checks originally deposited by Customer in paper form are also made to the same parties by Bank when it undertakes collection or processes the return of Items deposited by Customer pursuant to this Agreement. Customer makes those same warranties to all collecting Financial Institutions (including Bank) and to the Payor Financial Institution (which, in some instances, may be Bank) even if such warranties are not provided by the UCC or Check 21;
    - 2. In addition to the warranties made by Bank as stated in Section 12.d.iii.1, when it undertakes collection or processes the return of an Item deposited by Customer pursuant to this Agreement, Check 21 requires that Bank also warrant that no Financial Institution (including the Payor Financial Institution and all collecting Financial Institutions), the drawer of the Item or any endorser will receive presentment or return of, or otherwise be charged for, the Item such that the person will be asked to make a payment based upon an Item that it has already paid. In this respect, should Bank or another Financial Institution subsequently handling the Item be claimed or deemed to have breached a Check 21 warranty traceable to a failure of Customer to fully comply with its responsibilities under this Agreement, Customer shall be deemed to have warranted to Bank or the other Financial Institution against such failure; and
    - 3. In addition to the warranties made by Bank as stated in Section 12.d.iii.1 and 12.d.iii.2, when it undertakes collection or processes the return of an Item deposited by Customer pursuant to this Agreement, Bank may be required by an Image Exchange Network handling the Item to make additional warranties in connection with the Item. Customer makes those same warranties to all collecting Financial Institutions (including Bank) and to the Payor Financial Institution (which, in some instances, may be Bank) even if such warranties are not provided by the UCC or Check 21;
    - 4. By scanning an item for In-Office Deposit (remote deposit capture), you guarantee that the item has not already been deposited and will not subsequently be deposited at another financial institution and you assume all liability for items remotely deposited into your account.
- e. Bank will not violate any of the warranties described in Section 12.d.iii by processing collecting, or processing and forwarding the return, of any Item pursuant to this Agreement, except that this warranty will not cover breaches by Bank of any warranty if such breach is directly attributable to Bank's own acts or omissions.



- f. All encoding, transfer, presentment and other standard warranties made under applicable law, including without limitation those under the UCC, Regulation CC, and the rules of any Image Exchange Network.
- g. There shall be no duplicate deposit of an Item, nor shall any Item processed pursuant to this Agreement be again presented to the Payor Financial Institution pursuant to this Agreement or in any other manner.
- h. Unless Bank gives Customer its expressly and written agreement to the contrary, the Item was not received by Customer in connection with any business that would result in Customer being or becoming a “money service business” as defined in the Federal Bank Secrecy Act and its implementing regulations, and Customer is not now engaged, and shall not during the term of this Agreement engage, in such a business.

**13. Fees** Customer shall pay to Bank the license and service fees stated in the Business Deposit Accounts Fee and Information Schedule. Bank may increase, alter, add or otherwise change fees and other amounts payable by Customer under this Agreement upon thirty (30) days advance notice.

#### **14. Term and Termination**

- a. The term of this Agreement shall commence upon full execution of this Agreement and shall continue thereafter until terminated as follows:
  - i. Customer may terminate this Agreement at any time immediately upon notice to Bank, for cause, in the event of a material breach of this Agreement by Bank that remains uncured for a period of thirty (30) days after notice thereof from Customer;
  - ii. Bank may terminate this Agreement at any time immediately upon notice to Customer, in the event of a material breach of this Agreement by Customer that remains uncured for a period of thirty (30) days after notice thereof from Bank, provided that during such (30) day cure period, Bank may suspend its acceptance of Items processed pursuant to this Agreement if Bank, in its absolute discretion, determines that continued acceptance of Items prior to the cure of the subject breach would or might expose Bank to potential losses beyond the exposure that would be present if all Items were to be physically deposited with Bank rather than pursuant to this Agreement.
  - iii. After the anniversary of the commencement of this Agreement, either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other party; and
- b. Regardless of the reason for termination of this Agreement, such termination shall not affect any obligations arising prior to termination, such as:
  - i. The obligation to process any Items or corresponding Electronic Items, that were processed or in the process of being transmitted or collected prior to the termination date, or any later returns of the same;
  - ii. All warranty and indemnification obligations relating to Items previously processed pursuant to this Agreement.
- c. Upon termination, Bank may terminate Customer’s access to the Product and Services, and Customer shall terminate its use of the Product and Services, except to the extent necessary to process and collect Electronic Items that were in process prior to the termination.

Within the thirty (30) day period following termination of this Agreement, Customer shall, at its expense, return to Bank the Software, the scanning equipment provided by Bank and the



Documentation and any materials relating to the Documentation in its possession or under its control, destroy all copies of the Documentation and materials relating to the Documentation that cannot be returned and certify in writing to Bank that all such copies have been returned or destroyed.

## 15. Confidentiality

- a. Customer shall not use or disclose any Confidential Information other than in furtherance of the performance of its obligations under this Agreement. Such disclosures shall be limited to:
  - i. Customer's employees or agents, provided that:
    1. All such employees and agents have given Customer their express written agreement to maintain the Confidential Information in confidence, which written agreement shall expressly provide that Bank is a third party beneficiary of the confidentiality agreement; and
    2. The employee or agent has a need to know the information.
  - ii. In response to a subpoena or other court order, provided that Bank shall have been given immediate notice of the subpoena or order and that the disclosure shall not be made prior to the time stated in the subpoena or order or after the Bank has furnished Customer with evidence that such objecting party is seeking or has obtained a contrary court order restricting or quashing the subpoena or order.
- b. Customer shall immediately notify Bank upon discovery of any breach of this agreement or of any unauthorized use or disclosure of confidential information.

## 16. Customer Indemnification

Customer shall indemnify and hold harmless Bank, its Licensors and providers of the Product and Services, and their respective directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of:

- a. The wrongful acts or omissions of Customer, or any person acting on Customer's behalf in connection with Customer's use of the Product or Services or processing of Items under this Agreement, including without limitation:
  - i. The breach by Customer of any provision, representation or warranty of this Agreement;
  - ii. The negligence or willful misconduct (whether by act or omission) of Customer or its customers or any third party on behalf of Customer;
  - iii. Any misuse of the Product or Services by Customer, or any third party within the control or on behalf of Customer;
  - iv. The failure by Customer to comply with applicable state and federal laws and regulations; or
  - v. Any fine, penalty or sanction imposed on Bank by any governmental entity, arising out of or connected with any Item processed by Bank for Customer or at Customer's instruction;
- b. Any act or omission of Bank that is in accordance with this Agreement or instructions from Customer;
- c. Actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Electronic Item to Bank;
- d. Any loss or corruption of data in transit from Customer to Bank;



- e. Any claim by any recipient of a Substitute Check corresponding to an Item processed by Customer under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check; or
- f. Any claims, loss or damage resulting from Customer's breach of, or failure to perform in accordance with, the terms of this Agreement.

## **17. Bank's Liability**

- a. Bank shall not be liable to Customer for any of the following:
  - i. Any damages, costs or other consequences caused by or related to Bank's actions that are based on information or instructions that Customer provides to Bank;
  - ii. Any unauthorized actions initiated or caused by Customer or its employees or agents;
  - iii. The failure of third persons or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of specific obligations provided in this Agreement;
  - iv. Any refusal of a Payor Financial Institution to pay an Item for any reason (other than the breach of contract, gross negligence or willful misconduct of Bank), including without limitation, that the Item was allegedly unauthorized, was a counterfeit, had been altered or had a forged signature;
  - v. Any other party's lack of access to the Internet or inability to transmit or receive data;
  - vi. Failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems;
  - vii. Any of the matters described in Section 20.
- b. Bank's liability for errors or omissions with respect to the data transmitted or printed by Bank in connection with this Agreement shall be limited to correcting the errors or omissions. Correction shall be limited to reprocessing, reprinting and/or representing the Electronic Items or Substitute Checks to the Payor Financial Institution through the check collection system.
- c. Notwithstanding anything to the contrary in this Agreement, Bank's aggregate liability for claims related to this Agreement, whether for breach, negligence, infringement, in tort or otherwise, arising during any twelve (12) month period shall be limited to an amount equal to the amount of fees paid by Customer to Bank under this Agreement for such twelve (12) month period.

## **18. Liability, Generally**

- a. Except as otherwise specifically provided in this Agreement, in no event shall either party be liable to the other for any consequential, indirect, incidental, special, exemplary or punitive damages, including without limitation any loss of use or loss of business, revenue, profits, opportunity or goodwill shall, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if such party has been advised or should have known of the possibility of such damages.
- b. Customer and Bank acknowledge and agree that the limitations of liability in Section 17 and this Section 18 are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into this Agreement without the limitations of liability set forth in Section 17 and this Section 18.



## 19. Miscellaneous Provisions

### a. Assignment

- i. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party; provided, however, Bank may assign or transfer this Agreement, by operation of law or otherwise, to any person that becomes the successor entity of Bank, in connection with a change of control (which shall include a direct or indirect transfer of all or substantially all of Bank's stock or assets to a third party, a merger, reorganization or other such transaction, or any such transaction by a parent corporation of Bank) and Customer hereby consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer shall succeed to and be bound by this Agreement.
- ii. Either party may subcontract any of the work, services, or other performance required under this Agreement, provided that no such subcontract shall relieve the subcontracting party of any of its responsibilities to Customer hereunder.

b. **Consent to Breach Not Waived** Neither party shall, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.

c. **Notices** Notices required or permitted under this Agreement must be in writing and shall be deemed given on the date of delivery (i) from Bank to Customer at Customer's address on Bank's records, and from Customer to Bank at Bank's branch at which Customer's account(s) are maintained, or to such other address as is indicated in a notice of change of address furnished to the party giving the notice.

d. **Force Majeure** Neither party shall be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

e. **Amendment** Bank may amend this Agreement at any time and from time to time as determined in its sole discretion. Unless a longer period is so designated by Bank, any amendments shall become effective thirty (30) days following Bank's notification to Customer of the amendment, provided that Bank may implement amendments sooner than thirty (30) days following notice thereof if, in Bank's absolute discretion, it has determined that such amendment(s) is(are) necessary to protect the security of the system contemplated hereby or otherwise to prevent loss to either party.

f. **Construction** This Agreement shall not be more strongly construed against either party, regardless of who is more responsible for its preparation.

g. **Conflicts** In the event of conflicts between the terms of this Agreement and the terms of a Deposit Account Agreement, the terms of this Agreement shall control.

h. **Severability** If any part of this Agreement is found to be illegal or unenforceable, then that part shall be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.

i. **Applicable Law** This Agreement shall be governed by federal law, and to the extent not preempted, by the internal laws of the State of California (without regard to its principles of conflicts of law).

j. **Independent Contractor** Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties.

No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.



k. **Headings** The titles or captions used in this Agreement are for convenience only and shall not be used to construe or interpret any provision hereof.

**20. DISCLAIMER BANK’S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER’S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND CUSTOMER HEREBY WAIVES AND RELEASES BANK, ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS, EMPLOYEES AND AGENTS FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE PRODUCTS, OR OTHER MATTERS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION:**

- a. **ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY;**
- b. **ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE;**
- c. **ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND**
- d. **ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PRODUCT SHALL BE ERROR-FREE OR THAT ITS OPERATION SHALL BE UNINTERRUPTED.**

**Executed as of the date indicated above**

Account Name \_\_\_\_\_  
Signer Name \_\_\_\_\_

Account Name \_\_\_\_\_  
Signer Name \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Account Name \_\_\_\_\_  
Signer Name \_\_\_\_\_

Account Name \_\_\_\_\_  
Signer Name \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**BAC Community Bank**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature