

BAC COMMUNITY BANK POSITIVE PAY SERVICE DESCRIPTION

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Bank hereby offers its Client and Client hereby accepts the positive pay service with check and ACH reconciliation features (“Positive Pay Service”). Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.

1. Definitions

(a) **Statutory Definitions.** Unless otherwise defined in this Service Description, words or phrases shall have the meanings set forth in CA Commercial Code Division 3— “Negotiable Instruments” and Division 4— “Bank Deposits and Collections.”

(b) **Definitions.**

- (i) **Positive Pay Account** means the account(s) of the Client, maintained at the Bank to which the positive pay services rendered by the Bank will apply.
- (ii) **ACH** means automated clearing house network.
- (iii) **ACH Block Service** means that the Bank will, based upon Client instructions, block ACH entries from posting to the account. These entries will require Client to communicate a “Pay Request” or “Return Request” decision to the Bank.
- (iv) **ACH Notification Service** means that the Bank will, based upon Client’s instructions, notify Client of ACH entries received by the Bank that will post to the Client’s Positive Pay Account.
- (v) **ACH Entries** means electronic debit or credit transactions received by Bank through the automated clearing house for Client’s Positive Pay Account.
- (vi) **ACH Rules** means the rules published and governed by Nacha-The Electronic Payments Association
- (vii) **Exception Check** means a Presented Check that does not match a check included in an Issued Check File.
- (viii) **Exception Check Report** means a record describing Exception Checks, which is provided by the Bank to the Client under Section 2(c)(ii).
- (ix) **Exception Item** means ACH Entries that meet the criteria provided in Schedule B.
- (x) **Exception Item Report** means a record describing Exception Items that is provided by Bank to Client under Section 3(b)(ii).
- (xi) **Check Filter Service** means that, based upon Client instructions, notification will be sent to the Client regarding Exception Check(s) that occur on the Positive Pay Account. Client must communicate a “Pay Request” or “Return Request” decision to the Bank for each Exception Check.
- (xii) **Ineligible Checks** means checks which are (i) presented over-the-counter, (ii) presented by mail for collection, (iii) misencoded or duplicate items, (iv) items which Bank has already cashed, negotiated or paid or which Bank is already committed to honor or pay under applicable laws, regulations or the ACH rules.

- (xiii) **Issued Check File** means a record describing checks written by the Client on a Positive Pay Account, provided by the Client to the Bank under Section 2(b).
- (xiv) **Pay Request** means the instructions of the Client to the Bank requesting the Bank to pay an Exception Check or Exception Item.
- (xv) **Presented Check** means a check drawn on a Positive Pay Account and presented to the Bank for payment through the check collection system.
- (xvi) **PST** means Pacific Standard Time or Pacific Daylight Time.
- (xvii) **Return Request** means the instructions of the Client to the Bank instructing the Bank not to pay an Exception Check or Exception Item.

2. Check Filter Service

- (a) **Check Filter Service.** If Client elects to utilize Check Filter Service, Client will complete Positive Pay Service Description Schedule A, indicating the Positive Pay Accounts that will be subject to Check Filter Service. Client must provide Bank with all information required by Bank in order to permit Bank to deliver Check Filter Service.
- (b) **Issued Check File.** The Client shall submit an Issued Check File to the Bank. Client will update the Issued Check File as necessary when Client issues additional checks. To be effective, the Issued Check File must be received on the Business Day prior to Bank receiving a Presented Check.
 - (i) The Issued Check File shall accurately state the check number, date, and the exact dollar amount of each check drawn on a Positive Pay Account since the last Issued Check File was submitted. Each Positive Pay Account shall require an Issued Check File for all checks issued.
 - (ii) The Client shall create and electronically send the Issued Check File to the Bank in a mutually agreed upon format.
 - (iii) In the event of system failure, either that of the Client's or of the Bank's, and the Issued Check File cannot be received by the Bank or the Bank cannot process the file, the file shall be considered as not received, even if the Bank has possession of the file.
- (c) **Payment of Presented Checks and Reporting of Exception Checks.** The Bank shall compare each Presented Check by check number and amount against each Issued Check File received by the Bank. Client agrees that Bank will only be obligated to match the check number and dollar amount from the Issued Check File and that Bank may in its sole discretion, but it not obligated to, match additional data provided in the Issued Check File ("Additional Data"), including but not limited to payee name. Regardless of whether Bank decides to match against Additional Data, and notwithstanding the fact that Additional Data may be included in the issued Check File, Client further agrees that Bank will not be liable to Client and Client agrees to hold Bank harmless from loss or liability resulting from Bank's action or inaction with respect to Additional Data. Bank's determination to match Additional Data in any case will not obligate Bank to continue to do so in other instances. On each Business Day, the Bank:
 - (i) may pay and charge to the Positive Pay Account each Presented Check that matched by check number and amount a check shown in any Issued Check File.
 - (ii) shall provide the Client with an electronic notification of any exception checks presented for payment that do not exactly match to the Issued Check File items by 9:00 A.M. PST each business day allowing Client sufficient time to review such exceptions and electronically communicate Pay Request(s) or Return Request(s) by 11:00 A.M. PST. In the event of system problems and Bank cannot have the Exception Check activity information in sufficient time for Client to respond by deadline, deadline will be extended accordingly. The extended deadline will be communicated to Client via e-mail.
- (d) **Incomplete Issued Check File.** If Client does not provide an Issued Check File or submit updated Issued Check Files, it will cause most or all Presented Checks to be Exception Checks requiring a Pay Request or Return Request decision by the Client.
- (e) **Pay Default.** If Client misses the deadline in Section 2(c)(ii) or if Bank otherwise does not receive a Return or Pay Request, Bank will follow Client's instructions as indicated in Schedule C. Default check returns will be returned with the default reason code of unauthorized.
- (f) **Not Covered.** This Service Description does not cover a check if the Bank has already cashed the check or is already committed to honor or pay the item under applicable laws, regulations or rules governing checks.
- (g) **Check Supply.** Client agrees not to reuse check numbers that have previously been issued or negotiated from the Positive Pay Account. If Client orders or prints checks from any check-printing vendor other than a Bank selected vendor, Client agrees to meet the Bank's MICR encoding specifications.
- (h) **Ineligible Checks.** The Positive Pay Service applies to checks that are presented for payment to Bank through normal interbank automated clearings. Client acknowledges that the Positive Pay Services do not cover Ineligible Checks.

Bank may, in its sole discretion, attempt to compare Issued Check File data, as otherwise provide in this Service Description, against Ineligible Checks, but Bank will not be liable for its failure or refusal to do so.

3. ACH Service

- (a) **ACH Notification Service.** ACH Entries will be subject to ACH Notification Service as set forth on Schedule B. Client must provide Bank with all information required by Bank in order to permit the Bank to deliver the ACH Notification Service.
- (i) Bank will provide Client with an email notifying Client of ACH Entries received by the Bank that meet the criteria specified on Positive Pay Service Description Schedule B (“Schedule B”). These ACH Entries will be debited or credited to Client’s Positive Pay Account unless Client notifies the Bank before 11:00am that the ACH Entries are unauthorized.
- (b) **ACH Block Service.** ACH Entries will be subject to ACH Block Service as set forth on Schedule B. Client must provide Bank with all information required by Bank in order to permit the Bank to deliver the ACH Block Service.
- (i) Unless Client has provided Bank with sufficient information to block ACH entries, Bank may pay and debit or credit to the Positive Pay Account each ACH Entry that is not blocked as set forth on Schedule B.
- (ii) On each Business Day, the Bank will provide Client with an electronic notification of any Exception Item that meets the criteria as specified on Schedule B by 9:00 A.M. PST allowing Client sufficient time to review such exceptions and electronically communicate Pay Requests or Pay Returns by 11:00 A.M. PST. In the event of system problems and Bank cannot have the Exception Item activity information in sufficient time for Client to respond by deadline, deadline may be extended accordingly. The extended deadline will be communicated to Client via e-mail.
- (iii) Client shall review the Exception Item Report and electronically communicate Pay Requests and Return Requests for all exceptions as outlined in Schedule B.
- (iv) If Client misses the deadline in Section 3(b)(ii) or if Bank otherwise does not receive a Return or Pay Request, Bank will follow Client’s instructions as indicated in Positive Pay Service Description Schedule C (“Schedule C”). Default ACH returns will be returned with the default reason code of unauthorized.
- (c) **Instructions.** No instructions for ACH Notification Service or ACH Block Service shall be binding on Bank unless they are in writing, on such forms as Bank may require from time to time, and are received in such time as to provide Bank a reasonable opportunity to act thereon. Bank shall be entitled to rely exclusively on the originator identification number provided in Client’s written instruction in implementing any ACH Block Service or ACH Notification Service, and Client understands that any error made by Client in furnishing the identification number will make the instructions ineffective.
- (d) **Not Covered.** Notwithstanding any instruction received by Bank in connection with the ACH Block or ACH Notification Services, Bank may charge Client’s account via ACH for any fees, charges, or payments in connection with transactions or services provided to Client for any ACH transactions that Bank has already paid or finalized or which Bank is already committed to pay or honor under applicable laws, regulations or the ACH Rules.

4. Client and Bank Communications

- (a) The Client or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Service Description. The revised communication must (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent (ii) identify the original communication, and (iii) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.
- (b) The Bank shall use only Issued Check Files that comply with Section 2(b) and have not been revoked in accordance with Section 4(a) in the preparation of Exception Check Reports under this Service Description.
- (c) The Client shall use only Exception Check Reports and Exception Item Reports provided by the Bank under Sections 2(c)(ii) and 3(b)(ii) and have not been revoked in accordance with Section 4(a) in the preparation of Pay Requests and Return Requests. The Bank shall not be obligated to comply with any Pay Request or Return Request received in a format or medium, after a deadline, or at a place not permitted under this Service Description but may instead treat such a Pay Request or Return Request as though it had not been received.

5. Check Stop Payments

- (a) Client can request a check stop payment through the Positive Pay Service. To do so, Client's stop payment request must be sent through the Positive Pay Service so that the Bank receives it before the check has been paid. The deadline for placing a stop payment is 3:00 P.M. PST each Business Day. Stop Payment requests received after 3:00 P.M. PST will be processed the following Business Day. If Client is concerned that the check may be paid before the order is effective, Client should call the Bank. To be effective, Client's stop payment must be timely placed, and must include the payee's name, the check number, the amount and date reflected on the check. The Bank may also require Client to confirm its stop payment order in writing sent by mail or personal delivery.

Client cannot request an ACH stop payment through the Positive Pay service. To request an ACH stop payment or file a claim regarding unauthorized ACH Entries, contact our Customer Service Department at 877-226-5820.

6. Responsibility to Review Account Activity

- (a) Client agrees to review account activity as soon as reasonably possible and report any irregularities or unauthorized transactions to Bank immediately. Client's failure to report discrepancies to the Bank promptly may affect Client's right to reimbursement in the event that forgeries, altered checks, or other unauthorized transactions have been posted to the account. Client understands that services provided under this Service Description cannot detect all unauthorized transactions on an account. Client understands that the services provided are not a substitute for reviewing account activity.

7. Responsibility to Review Account Activity

- (a) When using Positive Pay Service, the Bank will follow Client's instructions as provided by a Senior Administrator on the Bank's required forms. Following these instructions may result in (1) the Bank returning checks or ACH debit items that Client may have otherwise wanted to be paid or (2) in the Bank paying checks and ACH debit items Client may have otherwise wanted returned.

8. Remedies

- (a) **CA Commercial Code Liability.** To the extent applicable, the liability provisions of CA Commercial Code Division 3 and 4 shall govern this Service Description, except as modified below.
- (b) **Wrongful Honor.** It shall constitute wrongful honor by the Bank if the Bank pays an Exception Check listed in a timely Exception Check Report and Client notifies the Bank by the deadline as stated in Section 2(c)(ii) of its desire to return the item(s).
- (i) The Bank shall be liable to the Client for the lesser of the amount of the wrongfully paid Exception Check or the Client's actual damages resulting from the Bank's payment of the Exception Check.
 - (ii) The Bank expressly waives any right it may have to assert that the Client is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under CA Commercial Code section 4401.
 - (iii) The Bank retains the right to assert the Client's failure to exercise reasonable care under CA Commercial Code sections 3406(a) and 4406(c). The Bank's wrongful honor shall, however, constitute a failure of the Bank to have exercised ordinary care under the loss allocation provisions of CA Commercial Code sections 3406(b) and 4406(e).
 - (iv) The Bank retains the right to assert the defense that the Client has sustained no actual damages because the Bank's honor of the Exception Check discharged for value an indebtedness of the Client.
- (c) **Wrongful Dishonor.** Except as provided below, it shall constitute wrongful dishonor by the Bank if the Bank dishonors an Exception Check that the Bank has been ordered by the Client to pay pursuant to a Pay Request sent to the Bank by the deadline as stated in Section 2(c)(ii).
- (i) The Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under CA Commercial Code Division 3 and 4.
 - (ii) Notwithstanding Section 8(c)(i), the Bank shall have no liability to the Client for wrongful dishonor when the Bank, acting in good faith, returns an Exception Check:
 - 1. that it reasonably believed was not properly payable; or
 - 2. if there are insufficient available funds on deposit in the Positive Pay Account; or
 - 3. if required to do so by the service of legal process on the Bank or the instructions of regulatory or government authorities or courts.

9. General Provisions

- (a) **Termination.** Either party may terminate this Service Description by written notice to the other sent at least five (5) Business Days prior to the termination date specified in such notice. Notwithstanding such termination, this Service Description shall remain in full force and effect as to all Presented Checks that have been presented to the Bank prior to the date of termination. Upon termination, if requested by the Client, the Bank will provide the Client (or its representative) with outstanding items.
- (b) **Client Errors.** The Bank is not responsible for detecting any Client error contained in any Issued Check File, Schedules, Pay Request or Return Request sent by the Client to the Bank.
- (c) **Access to Services.** Client or Senior Administrator(s) designated by Client, shall assign access privileges to designated employee(s) or other representative(s) on Positive Pay Service Description Schedule D.

**SCHEDULE A
POSITIVE PAY SERVICE DESCRIPTION
POSITIVE PAY ACCOUNTS**

The Client designates the following accounts as "Positive Pay Accounts":

<input type="checkbox"/> Initial Account Designation	<input type="checkbox"/> Additional Account Designation	<input type="checkbox"/> Replacement of all prior Account Designations
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<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE	
Account Number:		
Account Title:		

<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE	
Account Number:		
Account Title:		

<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE	
Account Number:		
Account Title:		

<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE	
Account Number:		
Account Title:		

Date:

Name:

Signature:

This Schedule A will be effective at such time as the Bank has had a reasonable opportunity to act thereon.

**SCHEDULE B
POSITIVE PAY SERVICE DESCRIPTION
ACH BLOCK AND NOTIFICATION SERVICE**

Company hereby instructs Bank to (check only one box in each section and complete as appropriate):

- provide only a courtesy email notification to Company (ACH Notification Service)
- provide an email notification and require Company to make a pay/return decision (ACH Block Service)

... when ...

- a specific ACH originator (ID # _ _)
- any ACH originator

... posts or attempts to post against Company's account (# _ _) ...

- an ACH debit entry
- an ACH credit entry
- either an ACH debit or an ACH credit entry

... with ...

- a Standard Entry Code ("SEC") of _ _
- any Standard Entry Code ("SEC")

... if the amount of the ACH entry equals or exceeds \$ _ _ ...

...except for the following ACH originator(s) who are authorized to originate ACH entries against Company's account....

Name _ _ ACH ID # _ _ Max ACH amount \$ _ _

Name _ _ ACH ID # _ _ Max ACH amount \$ _ _

Name _ _ ACH ID # _ _ Max ACH amount \$ _ _

Name _ _ ACH ID # _ _ Max ACH amount \$ _ _

Date:

Name:

Signature:

This Schedule will supersede any prior Schedule B and will be effective as such time as the Bank has had a reasonable opportunity to act thereon.

**SCHEDULE C
POSITIVE PAY SERVICE DESCRIPTION
PAY DEFAULT ELECTION**

Check Filter Services. If the Company misses the deadline as outlined in Section 2(c)(ii), the Bank will

____ not make final payment of the Exception Check(s) and will return the Exception Check(s) OR

____ make final payment of the Exception Check(s) without further review by the Bank. In doing so, the Company will hold the Bank harmless and assumes responsibility for any losses that may occur for the payment of fraudulent or unauthorized items against the account(s).

ACH Block Services. If the Company misses the deadline as outlined in Section 3 (b)(ii), the Bank will

____ not make final payment of any Exception Item(s) and will return the Exception Item(s) OR

____ make final payment of any Exception Item(s) without further review by the Bank. In doing so, the Company will hold the Bank harmless and assumes responsibility for any losses that may occur for the payment of fraudulent or unauthorized items against the account(s).

Date:

Name:

Signature:

This Schedule will supersede any prior Schedule C and will be effective as such time as the Bank has had a reasonable opportunity to act thereon.

**SCHEDULE D
POSITIVE PAY SERVICE DESCRIPTION
AUTHORIZED USERS**

Client authorizes the following persons to perform the following functions:

<input type="checkbox"/> Initial Authorization	<input type="checkbox"/> Additional Authorization	<input type="checkbox"/> Replacement of all prior Authorization
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<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE
<input type="checkbox"/> Submit Issued Check Files	
<input type="checkbox"/> Process Check/ACH Exceptions	
<input type="checkbox"/> View Account/Check & ACH Reports	
Name:	
Title:	
Email Address:	
Phone Number:	
Secondary Phone Number:	

<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE
<input type="checkbox"/> Submit Issued Check Files	
<input type="checkbox"/> Process Check/ACH Exceptions	
<input type="checkbox"/> View Account/Check & ACH Reports	
Name:	
Title:	
Email Address:	
Phone Number:	
Secondary Phone Number:	

<input type="checkbox"/> ADD	<input type="checkbox"/> REMOVE
<input type="checkbox"/> Submit Issued Check Files	
<input type="checkbox"/> Process Check/ACH Exceptions	
<input type="checkbox"/> View Account/Check & ACH Reports	
Name:	
Title:	
Email Address:	
Phone Number:	
Secondary Phone Number:	

<input type="checkbox"/>	ADD	<input type="checkbox"/>	REMOVE
<input type="checkbox"/>	Submit Issued Check Files		
<input type="checkbox"/>	Process Check/ACH Exceptions		
<input type="checkbox"/>	View Account/Check & ACH Reports		
Name:			
Title:			
Email Address:			
Phone Number:			
Secondary Phone Number:			

<input type="checkbox"/>	ADD	<input type="checkbox"/>	REMOVE
<input type="checkbox"/>	Submit Issued Check Files		
<input type="checkbox"/>	Process Check/ACH Exceptions		
<input type="checkbox"/>	View Account/Check & ACH Reports		
Name:			
Title:			
Email Address:			
Phone Number:			
Secondary Phone Number:			

Date:

Name:

Signature:

This Schedule D will be effective at such time as the Bank has had a reasonable opportunity to act thereon.

California residents have certain rights under the California Consumer Privacy Act (CCPA). To learn more about the personal information we collect, how we may use such information, or to exercise your rights, please visit www.bankbac.com/ccpa.