



Business Online Banking and Cash Management Services Agreement

This Agreement sets forth the terms of the cash management services (the “**Services**”) offered to you by Fremont Bank (“**us**”). By applying for any Service, you agree to be bound by this Agreement. Your use of any Service will be additional evidence of your agreement to its terms. We will let you know when the Services you request become available. If you request additional Services in the future, they will be governed by this Agreement, unless we advise you otherwise.

GETTING ESTABLISHED

- 1. Equipment and Software.** You are responsible for obtaining 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, with or without notice. 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.

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**”). 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.

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 promptly 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 and Services 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.

- 2. Your Administrator.** You must 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 for you and each user, as well as limits on each user’s authority to access information and conduct transactions. You are strongly encouraged to use these controls to help reduce losses or damages that may arise out of improper or unauthorized use of a Service by designated users and others. 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. We strongly recommend that you impose a dual control environment in connection with the transmission of check issuance data and payment 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.

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.

It is your responsibility to understand the capabilities built into each Service to prevent unauthorized transactions, and to decide which accounts and Services to link to each Password. You should keep in mind the importance of separation of duties as a means for protecting yourself against losses or damages. You have reviewed the relevant security procedures and have determined (based on the type, frequency and amount of transactions you will have with us) that they are a commercially reasonable means of protection against unauthorized transactions and potential losses.

3. **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 or setup form may list certain accounts that you wish to access with the Services. If it includes 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.
4. **Security Procedure and User Guides.** We may provide you with one or more numbers, passwords, tokens and/or other means of identification and authentication (collectively "**Password**") to 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 make available 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.

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. For security reasons, you also agree to change the Passwords you assign to your employees on a regular basis, but no less frequently than every 120 days. We may require you to change your Password at any time.

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.

Each time you make a transfer or payment with a Service, you warrant that our security procedures are commercially reasonable (based on the normal size, type, and frequency of your transactions). Some of our Services allow you or your Administrator to set transaction limitations and establish internal controls. Your failure to set such limitations and implement such controls increases your exposure to, and responsibility for, unauthorized transactions. You agree to be bound by 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 our security procedures.

Your Internal Security. You agree to establish, maintain and update commercially reasonable policies, procedures, equipment and software ("**Internal Security Controls**") that will safeguard the security and integrity of your computer system and information from unauthorized use, intrusion, takeover or theft, and prevent your Password from unauthorized discovery or use (collectively "**Internal Security Breaches**"). You bear all risk of fraudulent transfers and other losses arising from your Internal Security Breaches or from the interception of your communications prior to their receipt by us (collectively "**Internal Security Losses**"). We will not reimburse you in connection with Internal Security Losses. You agree that we are authorized to execute, and it is commercially reasonable for us to execute, any instruction received by us with your Password. You are encouraged to consider purchasing insurance to cover your Internal Security Losses. Please see your User Guides for suggestions on the Internal Security Controls that you should adopt to protect your system from Internal Security Breaches.

You remain solely responsible at all times for your Internal Security Controls, Internal Security Breaches and Internal Security Losses. Although we may employ various systems and procedures from time to time to prevent losses to us, we assume no obligation for Internal Security Breaches or Internal Security Losses, provided we have acted in accordance with this Agreement and/or instructions that are accompanied by your Password.

OUR SERVICES

We may offer the following Services to you separately or as part of a suite of Services.

5. **Account Information Service.** You can use our online Service to obtain balance 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 business 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 us at (510) 723-5831.
6. **ACH Monitoring Service.** This Service allows you block some or all Automated Clearing House ("ACH") debit and/or credit entries by third parties to your designated accounts.
 - i. **Entry Information.** We will make ACH entry information available to you each business day. You will need to respond to us with your "pay" or "return" decision for each reported entry by the cutoff hour specified by the Service.
 - ii. **Your Instructions to Us.** You must provide us with instructions identifying the ACH debit and/or credit entries by third parties that you wish us to honor or return. Your instruction must be

sent in the form, format and manner we designate from time to time. If you fail to provide us with your instruction by the cutoff hour we specify for this Service, we may accept or return entries based on your default pay or return instruction.

- iii. **Not Covered.** This Agreement does not cover an ACH entry if we have already committed to honor or pay the entry under applicable laws, regulations or the rules governing ACH transactions. Although our Service is not designed to affect any paper draft or check, including any remotely created checks or demand drafts, it may cause us to reject items that are converted to ACH entries (e.g., POP or BOC ACH transactions). As such, you should take appropriate steps to ensure that persons making purchases with checks drawn on your designated accounts do not permit their conversion to electronic form, especially if you employ a return default decision. Notwithstanding any return default instruction you make, you agree that we may process our own ACH debit and credit entries for the purpose of making transfers that you authorize us to process and to charge your accounts in accordance with our agreement with you.

7. **Bill Payment.** We may offer to facilitate your use of bill payment services provided by third parties, such as CheckFree Services Corporation. We assume no obligation, and make no representation or warranty, in connection with such services or the parties that offer them. Your contract will be directly between you and the third party service processor; we are not a party to that agreement.
8. **Electronic Data Interchange Service.** If you are approved for this Service, you may originate or receive data transmissions that consist of documents and payment instructions. This Agreement applies only to the Electronic Data Interchange Services that we provide to you. The legal relationships, and the terms and conditions relating thereto, between you and your trading partners will be governed by the terms of the Electronic Data Interchange contracts between you and them, and will not be binding on us.
9. **Funds Transfer Services (Wire/ACH/Internal Transfers).** 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.

Your Payment Orders. When you transmit a transfer or payment request (“**Order**”), you authorize us to charge the designated account for the amount indicated. To ensure that your ACH transactions are timely, you should submit ACH consumer credit Orders to us two business days before the payment date and all other ACH Orders one business day prior to the payment date. You agree not to submit ACH debit Orders for accounts receivable, represented check, international, back-office conversion, telephone-initiated, Internet-initiated, or point-of-purchase entries without our prior written consent.

Your Orders must comply with the form, format, content and other requirements set forth in your User Guide, the Rules (if applicable), 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.

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.



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.

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 (usually the day we receive your file – See your User Guide for full details). ACH credit transactions typically must be prefunded two business days prior to the settlement 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. We may discontinue processing transactions without adequate prefunding at any time and without prior notice to you.

ACH Transaction Rules. You agree to comply with the operating rules (the “**Rules**”) of NACHA when you conduct transactions through the ACH. You can obtain a copy of the Rules at pubs.nacha.org or by telephoning NACHA at 800-487-9180.

Foreign Transfers. 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, changes in foreign currency exchange rates, and charges imposed by other financial institutions. A portion of those charges may be shared with us.

Authorization and Record Retention. You may initiate ACH and drawdown wire Orders only with the prior authorization of the owners of the accounts affected by such Orders. You agree to maintain a record of each authorization for a period of two years following its termination, and to provide us with a copy upon request. Unless we agree otherwise, you will not submit ACH debit Orders to collect funds for checks or other paper items which have been dishonored and returned for any reason, even if such represented check Orders are permitted under the Rules.

Internal Transfers. Transfers between your deposit accounts with us are subject to the terms of your deposit 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.

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.

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 effected. 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.

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 an ACH Order was to be effected (one business day for wire Orders). 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.

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 send our notice no later than two business days after the business day we receive notice of a return. 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.

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. Please note that, although we may issue an online ACH or wire confirmation number for tracking purposes, it does not mean that your Order meets our requirements or will be processed.

Provisional Credit. Credit for an ACH transfer is provisional until the receiving financial institution obtains final settlement. If final settlement doesn't occur, the originator of the transfer is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit.

Unauthorized Order. We may process any Order (including an amendment or cancellation Order) we believe is transmitted or authorized by you if we act in compliance with the security procedure (including any callback procedure) agreed upon by you and us. 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.

ACH Monitoring Service. If you subscribe to this Service, we will pay or reject ACH entries based on your instructions. See your ACH Monitoring Service Addendum for more details.

- 10. Lockbox Service.** We will process payments which you receive by mail or other preapproved methods from others (“Customers”) by: establishing a post office box address where Customers may mail payments to you; arranging for the collection of such payments each business day; endorsing checks on your behalf; depositing payments to your designated account; and providing related accounting and record keeping services.

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.

Our Processing of Checks. You authorize us to endorse all checks we receive on your behalf through this Service. We may refuse or accept checks for deposit to your account if there is 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.

Deposit of Checks. We will deposit customer payments to the account you have designated, pursuant to the terms of your deposit 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.

Copies of Checks. We will make a copy or record of each check processed pursuant to this Service and will retain the record for several years. At your request and expense, we will prepare copies of checks for you. You acknowledge that microfilm or 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.

Irregular Items. We may reject items for deposit that are irregular in any way. Unless we agree otherwise in writing, 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 assume no obligation to identify and/or return items bearing notations such as "Payment in Full," we may attempt to do so if requested by you. Unless we agree otherwise in writing, we assume no duty to confirm that any payment equals the amount of any accompanying payment coupon, statement or invoice. You agree not to send or have others send registered state warrants or demand drafts (items that do not bear the maker's signature, but purport to be authorized by the maker) to the Lockbox.

Your Instructions to Customers. Unless we agree otherwise in writing with you, you agree: (a) to instruct customers not to send cash, returned merchandise, notices, communications or other materials with their payments to the address specified for this Service; (b) 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; and (c) 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 forward them to you at your request, sole risk and expense). You agree to notify us at least 30 days in advance of any change in your remittance statements and/or mailing schedule.

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).

- 11. Positive Pay Service.** This Service provides you with a way to identify and prevent the payment of checks that you have not authorized.

Issued Check File. You agree to provide us with a list of the serial numbers, issue dates and the exact amounts (dollars and cents) of the checks that you have issued (“**Issued Check File**”). We will match the check numbers and amounts against items presented to us through normal interbank check clearing procedures (e.g., local clearinghouse, Federal Reserve, or direct send presentment cash letter) (“**Presented Checks**”). You authorize and instruct us to pay Presented Checks that match the serial numbers and amounts set forth in an Issued Checks File received by us in your name, without further investigation or review by us. You agree that: (a) Presented Checks that match the check numbers and amounts are, and should be treated by us as, properly payable; (b) we have no duty to inspect Presented Checks for unauthorized or improper signatures or alterations or otherwise to take steps to determine whether they are properly payable; and (c) we may compare Issued Check File information with information that is encoded on Presented Checks.

We assume no duty to identify and/or return duplicate checks, checks with duplicate serial numbers, misencoded items, checks with non-matching issue dates, or checks lacking an encoded serial number. 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.

Return of Presented Checks if No Issued Check File. All items presented for payment against your accounts will be deemed to be unauthorized and will be dishonored and returned without payment unless they appear as part of a Issued Check File received by us in a timely manner (or are an Exception Check subject to a Pay decision, as described below). You agree that we may return all items, and that our dishonor of them will not be wrongful, unless they appear as part of an Issued Check File or a Pay decision that we have received in time for us to act. In these circumstances, even a properly payable item may be returned. You agree that this is acceptable to and authorized by you, and you waive any right you may have to claim that the dishonored item was properly payable.

Exception Checks. If you submit a Check Issued File and there are Presented Checks that do not match the information you provide in the file, we will treat them as exceptions (“**Exception Checks**”). We will dishonor and return all Exception Checks unless otherwise instructed with a Pay Decision (as described below). We will send you an e-mail if there are Exception Checks. The e-mail notice will inform you that an Exception Check report (“**Exception Check Report**”) may be accessed using the Service. The e-mail notice will be sent to the most current e-mail address we have for you in our Service files. This could be the address of your Administrator or another User. You agree to ensure that the appropriate e-mail address is kept up-to-date and is accurate at all times.

Items Not Covered. This Service does not match your Checks Issued File information against items that have been finally paid (e.g., checks presented over-the-counter at one of our branches). Accordingly, finally paid items are not included in Service reports and will not show as Exception Checks. This Service also does not cover checks that we are committed to honor or pay under the applicable laws, regulations or rules governing such items.

Reviewing your Exceptions. You will review your Exception Checks and provide us with your “Pay” or “Return” decisions no later than our cutoff hour each business day, whether or not you receive an e-mail notification from us. You understand and agree that it is your responsibility to monitor the Exception Checks each business day, and that our e-mail notification is a customer service that may or may not be completed; the notice is not a prerequisite to your obligation to

review Exception Checks each day and provide “Pay” or “Return” instructions to us if there are any Exception Checks.

Return of Exception Checks. We will return all Exception Checks unless we receive a Pay decision on the items by our cutoff hour on the business day the checks are first reported in an Exception Check Report. If you take no action on an Exception Check Report or on any individual Exception Check, or your Pay decision is not received by us before our cutoff hour, we may treat that as an instruction from you to pay or dishonor your checks according to the default option chosen by you.

Payment of Exception Checks. If we pay an Exception Check in error, we will be liable to you for the lesser of the amount of the wrongfully paid Exception Check or the actual damages you suffer from our payment of the Exception Check. However, if payment of the Exception Check discharged an indebtedness or obligation of yours and because of this you have no actual damages or reduced damages, then you agree that our liability to you is reduced to the same extent.

Faulty Information. You agree to provide check information to us in the form, format and manner that we specify. You assume full responsibility for the completeness and accuracy of all information furnished to us. You understand that it is important for the information to be exact (for example, the correct amount of an item must include both dollars and cents). 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.

Stop Payment. This Service is not a substitute for placing a stop payment order on checks. Any stop payment or return instructions that you give to us will be governed by your deposit account agreement and the other provisions of this Agreement.

- 12. Remote Deposit Capture Service.** You can use this Service to scan images of checks and other items (“**Checks**”) and then transmit those images and other data to us electronically for deposit to your account. The Checks will then either be processed electronically or converted to substitute checks (“**Substitute Checks**”) based on the information you provide.

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. 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.

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.

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.

Using the Service. You agree to: (a) only use equipment and software that meet our Service specifications, as they change from time to time; (b) follow our Service instructions for capturing and transmitting Check images and other information to us; (c) ensure that “For Deposit Only to Account [*insert your account number with us*]” or similar wording is clearly printed above the endorsement on all Checks; (d) view each Check as it is scanned to ensure that the images (front and back) are being captured and accurately and legibly depict all information on the original Check; (e) retain original Checks for no more than 45 days; (f) no later than the 45th day, promptly destroy (by shredding) the original Checks; (g) adopt commercially reasonable security procedures in connection with the storage and destruction of original Checks and any copies of such Checks; (h) allow us to examine the physical location where you capture and transmit Check images and store original Checks to confirm your compliance with this Agreement; (i) adequately train your employees on the use of the Service and evaluate the need for separation of employee duties to reduce the risk of fraud; (j) allow us to inspect any audit report related to your operational process for the Service; and (k) provide us with the original Check (if it is within your possession) or a sufficient copy of the Check within 5 business days of our request. 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. Once you transmit Check information to us, you agree that you will not attempt, directly or indirectly, to negotiate, deliver, transfer or deposit the original Checks (or copies of such Checks, whether in paper or electronic form) with us or others.

Certain Checks Not Permitted. You may use the Service only to process the deposit of original paper Checks that are payable to you. Unless we specifically agree otherwise in writing, you may not use the Service to deposit: (a) Checks payable to a third party; (b) demand drafts or remotely created checks (i.e., checks lacking the original signature of the drawer); (c) substitute checks (i.e., paper checks created from an electronic image); (d) Checks that are irregular in any way (e.g., where the numerical and written amounts are different); (e) Checks that have previously been returned unpaid for any reason; (f) Checks that are postdated or more than 6 months old; (g) Checks drawn on a foreign bank or payable in a foreign currency; (h) Checks payable to “Cash;” (i) Checks issued by you or any company affiliated with you through 20% or greater common ownership or control; (j) registered government warrants; (k) any Check that you suspect is fraudulent or not properly authorized; or (l) any Check or Checks that exceed the transaction limitation(s) that we establish from time to time. 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.

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.

Your Representations. You represent and warrant the following with respect to each Check that you transmit electronically to us: (a) you have the legal right to accept the Check for deposit and negotiation, regardless of the name of the payee shown on the Check; (b) 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;

(c) 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; (d) you make all warranties that would otherwise apply to the Check if it had been a paper item deposited with us; (e) you make all encoding, transfer, presentment and other warranties that we (or any correspondent bank we use) are deemed to provide to others (e.g., as a reconverting bank) under any law, clearing house rule, or image exchange network or agreement to which we are a party; (f) the Check will not be presented for deposit or payment more than once; (g) you will not submit files with malicious code; and (h) 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 reconverting banks are preserved and that returned substitute checks meet the requirements for legal equivalency under Federal Reserve Regulation CC.

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.

Confirmations. 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 deposit, notwithstanding any file receipt information shown at our website, and charge the amount back against any provisional credit to your account.

Returned Checks. If a Check is returned unpaid to us for any reason, we may return it to you in the form of a Substitute Check. If you decide to redeposit the returned item, you may only redeposit the Substitute Check; you may not deposit the original Check.

Archives. Our Service contains an archival component for your convenience. You can use it to store Check images electronically. We assume no liability if this archiving component fails to perform for any reason.

Availability. 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.

Indemnification. You will indemnify, defend, and hold us harmless 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: (a) our processing of Checks in accordance with this Agreement or your instructions; (b) your actions or omissions, including your breach of any representation or failure to comply with this Agreement; (c) any modifications or changes you make to the Equipment without our written consent; (d) any misuse

of the Equipment by you, your employees or agents; (e) your failure to comply with applicable state and federal laws and regulations; (f) 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; or (g) 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 (i) the receipt of the substitute check instead of the original Check, or (ii) 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.

13. **Stop Payment Service.** You may stop the payment of a check or other transaction by following the procedures established for the specific Service. For ACH stop payments, call 1-510-723-5831 or visit one of our branches. To stop payment on a check, you must provide us with timely, complete and accurate information on: the number of the account in question; the date of the item; the item number; the payee information and the EXACT amount of the item (dollars and cents). If any information is incomplete or incorrect, we will not be responsible for failing to stop payment on the transaction. Requests become effective when we confirm their receipt and have verified that the item has not been paid. 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 your Business Financial Center of account to make your request.

GENERAL PROVISIONS

14. **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.
15. **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.
16. **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 on cutoff hours by calling us at 1-510-723-5831. Our business days are Monday through Friday, excluding holidays. Instructions received after a cutoff hour or on a non-business day may be deemed received as of the next business day. We may occasionally shorten our cutoff hours due to early closure of the Bank in observance of legal holidays. If we do, we will post an online notice of the change or send a notice to you in advance. Services may occasionally be unavailable due to needed maintenance or system/network interruptions.
17. **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 malware 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.

18. **Entire Agreement.** This Agreement incorporates, supplements, and supersedes where inconsistent the terms of your deposit account agreement with us. Please see your deposit account agreement with respect to waivers, severability, overdrafts, and dispute resolution. Unless we provide otherwise in writing, they constitute (along with any related Service applications, addenda, setup forms, User Guides, and schedules) the entire agreement between you and us with respect to the Services.
19. **Fees.** 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.
- In addition to the Service fees, you agree to pay for all taxes, tariffs, fines, penalties 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.
20. **Financial Statement.** You agree to provide us with a current financial statement and other information regarding your financial condition upon our request.
21. **Governing Law/Compliance.** This Agreement will be governed by and construed in accordance with the laws of California, without reference to its 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. You may not use your account or any account-related service to process Internet gambling transactions or facilitate any activity that would violate applicable law.
22. **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.
23. **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.

We are not responsible for the manner in which you use any information provided or made available to you through a Service. We are not responsible for any cash management program or financial software used by you. We do not commit to continue to provide information in any particular format or otherwise in a manner that is compatible with any program used by you.

- 24. Judicial Reference.** If a dispute involving \$25,000 or more arises between us with respect to this Agreement, its enforcement or our Services, either of us may require that it be resolved by judicial reference in accordance with the terms of your deposit account agreement.
- 25. Limitation of Liability.** Except as otherwise stated in this Agreement, we will be liable to you only for damages arising directly from our intentional 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 (including, but not limited to, any Internal Security Breaches or the interception, corruption and/or modification of instructions that you send to us); (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 transmission error or a breakdown in any computer or communications facility; (e) accidents, strikes, labor disputes, 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.

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.

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.

26. **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 in writing 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.

You agree to provide us with at least 30 days' advance notice of: (a) any material (20% or greater) change in your ownership; (b) any material change in the type, scope or nature of your business; or (c) any anticipated (20% or greater) increase in the amount or volume of your automated clearing house transactions over the preceding calendar quarter (if applicable).

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 us at Fremont Bank, Corporate Services, 35151 Clawiter Rd., Hayward, CA 94545.

We may monitor and record your telephone and electronic communications in connection with the Services at any time.

27. **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.
28. **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. You acknowledge that your rights under this Agreement are solely and exclusively against the Bank; you have no right or recourse against any third party service provider that we may use in providing our Services. We will not be responsible for any services you receive from third party vendors.
29. **Reserve Account.** We may require that you establish and maintain a reserve account (“**Reserve Account**”) with us to cover your obligations under this Agreement. For our Remote Deposit Capture Service, this includes (without limitation) Service transactions which: (a) the ostensible drawers of Checks claim lack their endorsement or authorization; (b) the drawers of Checks claim are in an amount and/or on terms not authorized by them; and/or (c) are subject to claims of breach of warranty. 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 the 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 transactions, and other relevant circumstances), we may increase the amount of the required reserve by providing a notice to you. 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 loss or claim. Your obligation to us for any loss or claim, and our right to charge your accounts, will not be limited by the balance or existence of any reserve.

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.

- 30. 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.
- 31. 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).
- 32. 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.
- 33. 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.