

# **PACIFIC ALLIANCE BANK**

## **Business Online Banking Agreement**

This Business Online Banking Agreement ("Agreement") includes certain disclosures for electronic transfers and transactions. This Agreement will be effective as of the first day we make the Services accessible to you.

This Agreement is in addition to other agreements between Pacific Alliance Bank and you, including but not limited to (as applicable), your checking, savings, and other deposit account agreements, as may be modified from time to time ("Other Agreements"). If there is a conflict between the terms and conditions of this Agreement and the Other Agreements, this Agreement will control. References to time in this Agreement shall mean Pacific Standard Time.

Each time you use our Services or you permit any other person to use our Services, you are agreeing to the terms and conditions that we have set out in this Agreement, including any instructional materials regarding the Services, as amended. You agree not to resell or offer a Service to another, or to process any transactions for others using a Service.

### **1. Definitions**

In this Agreement, defined terms have the meaning given to them. In addition:

- An "account" means any deposit account you maintain with us and can include all accounts and products you use with us. Your "Account" is the account you have designated as the account accessible to the Services.
- The "Administrator" is a person who is able to provide Security Codes, to and establish access and use authority and/or limitations for Sub-Users.
- An "authorized representative" is a person with authority of any kind with respect to an Account.
- Your "available balance", "available funds" and similar words mean the balance in your Account as determined under our funds availability policy.
- A "business" is anyone other than a consumer who owns an Account with respect to which a Service is requested. A business includes a sole proprietor, corporation, partnership, limited liability company, unincorporated association or any person not a consumer.
- "Communication(s)" means instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.
- A "payment order" is a payment order as defined under Section 11103(a)(1), as amended or revised, of the California Commercial Code, and includes a Communication received by us instructing us to pay, or to cause another bank to pay, a fixed or determinable amount of money to a you, to a third party or to any other beneficiary.
- Your "Security Codes" are the credentials (such as codes and passwords) that are associated with you and used by us to verify the authenticity of Communications from you. Security Codes are used to access Accounts and to use the Services. The Security Codes include any supplemental or alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.
- The "Service(s)" are the on-line banking interface and the banking services described in this Agreement.

- A "Sub-User" is a person other than the Administrator who uses Security Codes to access a Service. The Administrator (and not the Bank) controls the designation of Sub-Users and the access or other limitations (if any) placed on a Sub-User's use of the Services.
- The word "includes" means "including but not limited to" the examples given.
- The word "may," when used in reference to us, means at our option and sole discretion. Action (or inaction) that we "may" take is authorized by you and allowed to us, but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.
- The words "we," "us", "our", "Bank" and similar terms are used to refer to Pacific Alliance Bank.
- The words "you", "your," "Company" and similar terms are used to refer to the person entering into this Agreement and to each person who is an owner of or has an interest in an Account together with the owner's authorized representatives.

## **2. Available Services; Dollar Limitations & Cut-off Hours**

You may use the Services (subject to system limitations) to:

- Obtain Account information. Balances reflected may not include transactions that have not been posted, or in the process of nightly processing. Balances may include funds that are not finally collected or available for immediate withdrawal. Account information allows you to view check images, Account summary data and view Account statements. You may also access limited Account histories.
- Transfer funds between linked Accounts (excluding certificates of deposit). (Transfers that have been completed cannot be canceled. A reverse transfer transaction must be processed.) Initiate check stop-payment instructions.
- Initiate and cancel check stop-payment instructions.
- Initiate funds transfer requests ("funds transfers") which may include funds transfers to your accounts or third-party accounts with Pacific Alliance Bank, as well as other financial institutions.

Services performed during nightly processing may not succeed when applied to your actual balance at the end of the nightly processing. A Communication received by us after the cut-off time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At our option, however, we may treat it as received the same day as the day of receipt. There can be a delay between the time when you send a Communication to us and the time we receive it. Our current cut-off hour for transfers between Accounts and for stop payments is 5:00 PM Pacific Time. The current cut-off hour for funds transfers is 2:00 PM.

## **3. Eligible Accounts**

Only Accounts designated by you will be made accessible to you via the Services, and Accounts will only be made accessible after we have received a request from you to make the Account(s) available. The request must be made using our Enrollment Application. If you wish to add a new Account to, or remove an existing Account from, Service access, you must modify your Enrollment Application. We are not, however, obligated to establish access to any or all of your Accounts, and not all Services may be available with all Accounts. Some Services may not be available without special application to and approval by us, or may be limited to specific types of

Accounts. We may act on requests for information, or requests to facilitate any Service requested on or associated with an Account, from any Account owner (including joint owners) or their authorized

representatives. Eligible Accounts may include the following types: checking, money market, savings and time deposits. Certificates of deposit are time deposits where early withdrawals may result. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use. You agree to review the configuration of your Account(s) at commencement of the Services, and periodically thereafter, and to restrict Sub-User access to Accounts and to specific Services on these Accounts in accordance with your risk assessment.

*WAIVER OF TWO SIGNATURES AND OTHER ACCESS RESTRICTIONS:* Your Accounts may be subject to access restrictions when you conduct transactions in person or when you are using systems other than with a Service. For example, there may be a requirement for two signatures on checks. If access restrictions exist, they do not apply to your use of the Services. We may limit or deny Services to you if there are access restrictions (for example, requirements for two signatures). Conversely, we may process your transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to your Accounts. For example, we may ignore requirements for two signatures.

#### **4. Sufficient Funds**

You must have sufficient available funds in your Account to cover the amount of any transaction that would be charged to your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds or available credit in your Account. We may hold (or "freeze") funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient funds for completing the Service. If we do hold funds, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions) in any order we choose. We may allow overdrafts/overlimits or negative balances, but we also may discontinue the practice at any time with or without prior notice to you. We may prevent or reverse any payments or other Service in any order that we choose as a means of preventing or recovering any overdrafts or other similar exposures. If you do not have sufficient or available funds or credit, you may be charged an overdraft or other similar fee, as set forth in our current Deposit Account Fee Schedule. Nothing in this Agreement shall be construed as our commitment or obligation to lend you money.

#### **5. Limitations on Frequency of Transfers**

For security reasons, there are limits on the number of transfers you can make using the Service. Also, for certain types of transactions/transfers from a money market or savings account, you are permitted to make no more than six transfers and withdrawals, or combination of them, per calendar month or statement cycle, to another account or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, including by check, draft, debit card or similar order by you and payable to third parties. If you exceed these limits, we may impose a fee, close or convert your Account, limit your use of the Services, or any combination of the foregoing.

#### **6. Linking Accounts**

If you have more than one Account, you can request that we "link" the relationships together for access through the Services. Your request to link Accounts will be and remain subject to approval by us. You may also be required to enter into supplemental agreements with us. Accounts which are "linked" under the Services must have identical owners and authorized signers. Any signer on any linked Account, acting alone, is authorized by you to access and use Services for any other linked Account, whether or not that person would be authorized to transact on the other linked Account in the absence of this Agreement. You represent and warrant that you have authorization from the Account owner to engage in each Service used

by you affecting an Account that is linked. You make this representation and warranty at the time the Accounts are linked and each time you use a Service to access or transact on an Account. These representations and warranties are in addition to any others contained in this Agreement or in any supplemental agreements that may be required by us. A business account cannot be linked to a personal account with the exception of a sole proprietor relationship.

## **7. Computer Equipment and Software to Access the Services**

To use the Services, you must have sufficiently powerful computer hardware and appropriate software. At this time, this includes an internet browser that supports 128-bit encryption. Some Services may require you to download software from our website; in some cases, we may place software on your computer as part of our security and/or verification tools. You agree to abide by the intellectual property rights of others with respect to all software used by you or us in connection with the Services; among other things, you will not transfer, use, copy, disseminate, reverse compile, modify or alter, or otherwise appropriate any software code or program except as allowed and for the purpose of performing approved Services. You agree to maintain the confidentiality of the Security Codes at all times and not to provide access to them to anyone that you do not authorize to access your Accounts through the Services. You agree to implement and maintain administrative, technical and physical safeguards to protect against unauthorized access to or use of any Account information which you may access or store on your computer or other data storage systems. You expressly acknowledge that any wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Service and any information contained therein, resulting from such wireless connectivity.

## **8. Electronic Records and Signatures**

When any payment order or other Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions resulting from your instructions which we receive in your name and under your credentials shall be deemed to have been "a writing" and authenticated by you "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been "signed" and to constitute an "original" when printed from records established and maintained by us or our authorized agent in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, our electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our written request, you agree to manually sign or place your signature on any paper original of any record or "signed" document which we provide to you containing your purported signature.

## **9. Privacy and Confidentiality**

All information gathered from you in connection with using the Service will be governed by the provisions of our internet privacy policy, which you agree to review by accessing on our homepage. In addition, we will disclose information to third parties about your account or the transfers you make

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

- As otherwise permitted by law.

## **10. Security Code Credentials; Security Generally**

During your enrollment for the Services, you are required to select or will be assigned certain numbers, codes, marks, signs, public keys or other means of authenticating your identity and electronic communications in your name. We may assign a customer number to be used by you, but you control the logon name and password. These credentials, with the other components of your Security Codes, will give access to your Accounts through the Service. The password must be changed by you as part of your initial use of the Service. You agree to change all passwords with sufficient frequency so as to protect confidentiality, and in any event no less frequently than every 90 days. You agree to keep all Security Codes confidential; you agree not to write them down. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. It is also recommended you do not have your browser automatically remember your password. We may offer to you or require you to use additional authentication tools or methods from time to time. For example, we may provide the opportunity for you to enable a dual authentication feature which will allow you to require two separate authorized representatives to authorize a funds transfer request. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited and you expressly acknowledge any risk associated with your failure to implement such additional authentication tools. The term "Security Codes" will include any supplemental authentication tools.

You understand the importance of your role in preventing misuse of your accounts through the Service, and you agree to examine the statement for each of your accounts. You agree to protect the confidentiality of your account and account number, and your personal identification information. You understand that personal identification information by itself or together with information related to your account may allow unauthorized access to your account. Data transferred via the Service is encrypted in an effort to provide transmission security. Notwithstanding our efforts to ensure that the Service is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and can potentially be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Service, or email transmitted to and from us, will not be monitored or read by others. INTERNET E-MAIL IS NOT A SECURE METHOD OF COMMUNICATION AND WE RECOMMEND YOU DO NOT SEND CONFIDENTIAL INFORMATION BY INTERNET E-MAIL. YOU CANNOT USE INTERNET E-MAIL TO INITIATE TRANSACTIONS ON YOUR ACCOUNT(S).

## **11. Compliance with Laws and Rules**

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

- The terms or instructions appearing on a screen when using a Service;

- Our "Terms and Conditions" account agreement, and our rules, procedures and policies; and

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

## **12. Contact In Event of Unauthorized Transfer**

If you believe any part of your Security Code (including your password) has been lost or stolen call:

(626)773-8888

or write: 641 W. Las Tunas Dr., San Gabriel, CA 91776

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

## **13. E-Mail**

While access to us through the secure e-mail function of the Services is "on-line," messages sent to us through e-mail are not reviewed by Bank personnel immediately after they are sent. If immediate attention is required, you must contact us by telephone or in person.

Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding our efforts to ensure that the Services are secure, you acknowledge that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers can potentially be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Services will not be monitored or read by others.

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

E-mail or messages sent by us to you will be deemed received by you when sent by us to you at your e-mail address as shown on our records. You agree to notify us (using the Service or otherwise in form acceptable to us) whenever your e-mail address changes. You agree that information or messages made available to you via the Services will be deemed received by you when first posted on our website or made available to you. You agree to access the Service from time to time, in no event less than monthly, to access this information or the messages.

## **14. Check Stop Payment Services**

You may request or cancel a stop payment on a check issued on your Account(s) by completing the form presented as part of the check stop payment Service and submitting all the required information to us ("Check Stop Payment"). Check Stop Payments must be received by us in sufficient time prior to presentment of the relevant item for payment that we have a reasonable opportunity to act on the request. All Check Stop Payment orders, renewals and revocations of stop orders will be subject to our current policy on stop payment orders. Requests received after our cut-off hour, currently 5:00 PM Pacific Time or on a day that is not a business day may be deemed received the following business day. For significant or material items, contact us by coming to one of our branches or by telephone in addition to using the Services for Check Stop Payment requests. There will be a fee assessed for each Check Stop Payment request whether or not we receive the request in time to place the Check Stop Payment. Refer to the Deposit Account Fee Schedule for details.

You must complete the online form for placing your Check Stop Payment and must give us timely, complete and accurate information. If any information is incomplete or inaccurate, we will not be responsible for failing to stop payment on the check. You may use the Check Stop Payment Service to stop payment on checks that you have written against your Accounts. If you wish to cancel or amend any other Service transaction, you should use the process applicable to that Service and you will be subject to any limitations or inability to stop applicable to that Service. You may not use the Check Stop Payment Service to stop payment on any EFT transfer; cashier's check, certified check or other official institution check purchased from the Bank or any check which we have guaranteed. You understand that your Check Stop Payment request is conditional and will not be effective if we have not had a reasonable opportunity to respond to your request, or that stopping payment may subject us to risk of loss or damages under any law or regulation (including clearing house or other processor rules). A Check Stop Payment order is effective for six (6) months only and will expire automatically, at which time you are responsible for any renewal desired by you for another six (6) month term.

## **15. Funds Transfer Services**

When you initiate a funds transfer request you authorize us to charge the designated Account for the amount of the payment, plus any applicable fees and charges imposed by us or by any intermediary bank (whether chosen by us or by you). Each request for a funds transfer authorizes us and any intermediary bank to obtain payment for fees and expenses, including our and those of any (including subsequent) intermediary bank(s). We and any intermediary bank may obtain payment by issuing a payment order in an amount that is reduced by the amount of these fees and charges. We may but are not obligated to provide you with advance notice of intermediary bank fees and charges. You agree that we may retain or be paid a portion of any fees or charges imposed or collected by an intermediary bank, including those chosen by us. You agree that if an intermediary bank is used whose fees and charges are not disclosed to you in advance, then we are not liable in any manner whatsoever for any losses or damages you may suffer as a result of that bank's processing a payment order in an amount less than the payment order given requested by you. We may use any payment system or intermediary bank which we deem reasonable under the circumstances to facilitate your payment order. You agree to be bound by the rules of the funds transfer system utilized.

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

We have no obligation to notify you of credits or debits to your account resulting from payment orders. We will provide you with notice of payments to and transfers from your account as part of your account periodic statement.

When we give you credit for an incoming payment order, it is provisional until we receive final settlement for the entry. If we do not receive final settlement, you must return the funds previously credited to your account to us, and the person who sent the funds transfer entry will not be treated as having paid you.

#### **16. Service Fees and Charges**

Our fees and charges are shown on our Deposit Account Fee Schedule. We may impose new fees and charges, or increase or change existing fees and charges. We will provide advance notice of these changes to you as required by law. Other fees may be assessed and billed separately by your internet and/or telephone service provider. You agree to pay all fees and charges we impose. You authorize us to charge the designated Account and/or any other account you hold with us to cover your fees and charges. You also authorize us to charge you according to our then-current fee schedule. If you do not use this Service for any three-month period, we reserve the right to discontinue your Service without notice to you. To the extent permitted by law, you give us the right to set off any of your money or property which may be in our possession against any amount owed to us under this Agreement. This right of set off does not extend to any Keogh, IRA account, or similar tax-deferred deposits.

#### **17. Business Days & Hours of Operation**

For the purpose of this Agreement, our business days are Monday through Friday. Federal bank holidays are not included.

You will generally be able to use Services seven days a week, 24 hours a day. However, a Service may not be available due to system maintenance or circumstances beyond our control. Services may be added, cancelled or limited at any time or from time to time, with or without cause or notice (except as required by law).

#### **18. Changes/Interruptions in Services**

We may, on a regular basis, perform maintenance on our equipment or system, which may result in interrupted Service or errors in a Service. We also may need to change the scope of our Services from time to time. We will attempt to provide prior notice of such interruptions and changes but cannot guarantee that such notice will be provided.

#### **19. Harm to Computer Systems/Data**

You agree that we will not be liable for viruses, worms, trojan horses, or other similar harmful components that may enter your computer system by downloading information, software, or other materials from our site. We will not be responsible or liable for any indirect, incidental or consequential damages that may result from such harmful components.

#### **20. Performance of Software and Electronic Service**

We make every commercially reasonable effort to provide reliable information on our website. Due to the possibility of human and mechanical errors, as well as other factors, the site is not error-free, and all information is provided "as-is," without warranty of any kind. We make no representation and specifically disclaim any express or implied warranties to users of any third parties, including but not limited to,

warranties as to accuracy, timeliness, completeness, merchantability, or fitness for any particular purpose. The content of the site may not be used for commercial or non-commercial use without the express written consent of the Bank.

## **21. Ownership of Material**

The reproduction or distribution of the content and information on our site is strictly prohibited.

## **22. Cumulative Remedies**

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

## **23. Delays/Force Majeure**

The obligations of the Bank shall be suspended to the extent and for so long as such obligations are hindered or prevented from being performed on account of labor disputes, war, riots, civil commotion, acts of God, fires, floods, failure of suppliers and/or subcontractors to perform, failure of power, restrictive governmental law and/or regulations, storms, accidents or any other cause which is reasonably beyond the control of the Bank.

## **24. Communications**

You are responsible for and bound by any Communication we receive in your name through a Service if the Communication: (a) comes from an authorized representative, Administrator or Sub-User; or (b) is authenticated using security procedures, described herein, even if not authorized by you; or (c) is legally binding on you under the laws of agency, contract or otherwise.

## **25. Authorized Representatives**

Your "authorized representative" includes each person who is (1) authorized by you to conduct business with us, including as part of your Account resolution(s); or (2) a principal officer of yours (such as your CEO if you are a corporation, or a partner in a partnership, or a manager in an LLC); or (3) otherwise authorized (or deemed authorized) to act on your behalf, whether under this Agreement or any other agreement with us, by the laws of agency, or under by any other state or federal law, rule or regulation.

## **26. Administrator**

You will be required to designate at least one initial Administrator. You (through the Administrator) then control the Services and access to them. Your Administrator may establish Sub-Users. The Administrator will be able to and will be responsible for maintaining your Service settings and Sub-User security. Access to your Account(s) through the Service will be based upon authority established by the Administrator, who you agree may specify usage levels (without filling out a new business resolution). You must notify us if you terminate or change the Administrator. You must also notify us if you add or delete Accounts or functionalities. The Service will allow the Administrator to establish authority levels to help you manage additional Sub-Users and control use of various Services. The levels are used to specify who can access specific Accounts, what dollar amounts Sub-Users are authorized to handle and what functions a Sub-User can access when transacting on an Account using the Services. The Administrator is responsible for setting up your Sub-Users. The Administrator is also responsible for assigning all persons with the Security Codes that are necessary to access Services and for establishing

what, if any, limitations will apply (including what level of activity is appropriate for each Account). The Administrator(s) will have full access to your Accounts and to any future Accounts you may open. We will not control or oversee the Administrator or any activity or function of an Administrator or other Sub-User. You agree to the creation of an Administrator and to all action taken by the Administrator. You agree to all action taken by any Sub-User and by any person given access to one or more Services by the Administrator or by a Sub-User, and all such persons are your agent for purposes of use of the Services.

You further agree to assume all risks associated with providing Security Codes to your Administrator, understanding that this can result in Sub-Users and possibly other persons obtaining access to your Account without control or monitoring by us. You must establish authorization parameters and/or limits for each person you authorize to use the Service. You agree to develop, and implement controls (including template management, verification, access, use of maximum process settings, security, audit and review procedures) to prevent unauthorized persons gaining access to Security Codes or your Accounts.

#### **27. Responsibility for Communications in Your Name or Not Authorized By You**

The Security Codes are security procedures. You agree that we may use the security procedures to verify the authenticity of Communications that are received by us in your name. If we verify the authenticity of a Communication or instruction received in your name using the security procedures, we may rely on it and you will be obligated on the Communication or instruction, whether or not it was authorized by you.

On the other hand, if a Communication or instruction was authorized by you or if you would otherwise be bound by it under this Agreement, you will be obligated on it even if we did not verify its authenticity using the security procedures and even if the security procedures would have prevented error. You agree that the security procedures are intended to verify authenticity and not to detect error. You are solely responsible for the accuracy of all information input into the online system.

#### **28. Responsibility for Security Procedures**

In addition to the Security Codes as security procedures, you may choose additional security procedures. We may from time to time offer supplemental security procedures, and you agree to consider them. You agree to follow any instructions we provide to you about using, storing or otherwise related to security procedures.

You agree to consider the size, type and frequency of the payment orders or other money transactions you will or intend to use Services to accomplish. You agree to consider the risks presented by the possibility of unauthorized access to these Services, including the risk loss to you that we may process Communications and instructions that are your responsibility even though they were not authorized by you. You agree to use Services only after determining, and only for so long as you continue to determine, that the security procedures are a commercially reasonable method of providing security against unauthorized payment orders or other Communications. You agree and acknowledge that the security procedures are commercially reasonable for you and that you will be bound by instructions or Communications in your name, as set forth above.

You agree to take appropriate steps to ensure that all Security Codes are protected and kept confidential. In your review of the Services, including those aspects of the Services pertaining to the issuance, use, and protection of Security Codes and security procedures, you agree to notify us if your use of the Services would necessitate or be better served by a level of security that exceeds that offered by the Services. If you fail to notify us, then you acknowledge and agree that the security procedures of the Services are

appropriate for your needs and will provide you with a commercially reasonable degree of security against unauthorized use.

### **29. Refusal to Process Communications**

We may delay or refuse to process any requested Service, including payment orders or other money transactions, or any other Communication from you. We may do so for any reason or for no reason. We may provide notice to you, but are not obligated to do so. We may delay or refuse processing, for example, if: (a) processing would or may exceed the available funds in your affected Account; (b) the Communication is not authenticated to our satisfaction or we believe it may not have been authorized by you; (c) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (d) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (e) processing would or may cause a violation of any Laws or Rules applicable to you or to us; or (f) for any other reason under this Agreement. In addition, we shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

### **30. Limitations on Liability**

Unless otherwise required by applicable law, we are only responsible for performing Services as expressly stated in this Agreement, and will only be liable for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct.

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

THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE THE LESSER OF THE AMOUNT YOU ORIGINALLY PAID FOR THE SERVICE, PRODUCTS OR MATERIALS OR \$25,000.00. You expressly acknowledge and agree that calculating anticipated damages resulting from breach of contract under this Agreement would be speculative and difficult to determine and that the foregoing liquidated damages amount reflects the parties' reasonable effort to provide compensation in the event of breach, in light of the fee structure of the Services.

### **31. Indemnification**

Except to the extent that we are liable under the terms of this Agreement, you agree to indemnify and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from any and all third party claims, liability, damages and/or costs (including but not limited to reasonable attorney's fees) arising from: (1) an Account; (2) the performance of a Service; (3) a third

party claim, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; (4) any fraud, manipulation, or other breach of these terms; (5) any third party claim, action, or allegation brought against us arising out of or relating to a dispute with you over the terms and conditions of an agreement, purchase or sale of any goods or services; (6) your violation of any Law or Rule or of the rights of a third party; (7) your use, or the provision of Services or use of your Account by any third party; or (8) any transaction or instruction or Communication from you to us. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. You will not settle any action or claims on our behalf without the prior written consent from us. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your authorized representative. This survives termination of this Agreement.

### **32. Data Retention**

You will retain data on file adequate to permit remaking or reconstruction of all requested Services (including payment orders or other money transactions) for one year following the date of the execution of the request to which such data relate, and will provide the data to us upon our request. You agree to determine promptly the accuracy of all records and information regarding a Service and to notify us immediately of any errors in such records or information. Nothing in this Agreement relieves you from: (a) any responsibility imposed by law, regulation or contract with regard to the maintenance records; or (b) any responsibility to perform audits and account reviews customarily conducted by persons or entities whose businesses are similar to your business.

### **33. Duty to Examine**

You agree to examine any records or monthly account statements promptly upon receipt. You will notify us immediately, and in no event later than 14 days after receipt of the record or account statement, whichever is earlier, of the existence of any errors, unauthorized transactions, or irregularities reflected on the record or on the account statement. If you fail to notify us of any such discrepancy with 14 calendar days of receipt of the record or statement containing such information, you agree that we will not be liable for any other losses resulting from your failure to give such notice or for any loss of interest with respect to a transaction that is or should have been shown. If you fail to notify us of any such discrepancy within one year of receipt of such statement or report, you will be precluded from asserting the discrepancy against us. For purposes of this Section, you will be deemed to have "received" a periodic statement at the earlier of the time that: (a) we first make it available to you for pick-up by you; or (b) the statement or the information is mailed or otherwise made available to you electronically by means of a Service.

### **34. Collection**

If we initiate collection proceedings against you in an effort to recover any amounts owed, you agree to reimburse us for all costs and expenses, including attorneys' fees.

### **35. Providing Personal and Financial Information**

You agree to provide true, accurate, current and complete personal and financial information about yourself and, about affiliates as requested. You agree to not misrepresent your identity.

### **36. Corporate Authority; Partnership Authority**

If you are a corporation or LLC, the person signing this Agreement on behalf of the corporation or LLC represents and warrants that he or she has full authority to do so and that this Agreement binds the corporation or LLC. If you are a partnership, the person signing this Agreement for you represents and warrants that he or she is a general partner of the partnership, that he or she has full authority to sign for the partnership and that this Agreement binds the partnership and all general partners of the partnership. You shall give written notice to us of any general partner's withdrawal from the partnership.

### **37. Additional Terms and Conditions**

- a) **Waiver:** We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future.
- b) **Assignment:** We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unenforceable at our election.
- c) **Termination; Suspension; Delay:** Except to the extent restricted by law, we reserve the right to terminate or to discontinue support of any Service, or delay or refuse processing any transaction, without written notice. You may terminate this Agreement upon written notice to us. Termination of this Agreement will not affect any rights we may have, or any obligations you may have, as to any transaction or Services caused or attempted by you before termination.
- d) **Choice of Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, except where preempted by federal law.
- e) **Severability:** Wherever possible, each provision of this Agreement shall be interpreted in a manner which makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- f) **Entire Agreement:** This Agreement contains the entire agreement between the parties and no statements, promises or inducements made by either party or agent of either party that are not contained in this written Agreement or other documents referenced by this Agreement.
- g) **Amendments to this Agreement:** We may amend, add to or change this Agreement (including changes in its fees and charges hereunder). We will provide notice of amendments, additions or changes if required by law. Your continued use of the Services will constitute your consent to the amendments, additions or changes.