



## Online Cash Management and Access Agreement

This Online Cash Management Access Agreement (this “**Access Agreement**”) sets forth the terms and conditions governing Cash Management Services as well as the other Services. The term “**Cash Management Services**” means the services provided by Bank under this Access Agreement other than the other Services offered through the Schedule Agreements (defined below). “**Services**” means any and all of the services provided by Bank under this Access Agreement and the Schedule Agreements. By using Cash Management Services, you agree to the terms and conditions of this Access Agreement and by using any of the Services offered by us under an agreement attached as a Schedule to this Access Agreement, you also agree to the terms and conditions of that agreement and all exhibits, schedules, appendices, addenda and other attachments thereto. All agreements attached as Schedules to this Access Agreement are part of this Access Agreement and this Access Agreement is a part of each of those agreements. In the event of a conflict between the terms of this Access Agreement and the terms of a Schedule Agreement or the terms of another agreement between you and Bank, the agreement that most specifically governs the transactions at issue will govern. The terms “**we**,” “**us**,” “**our**,” “**River City Bank**” and “**Bank**” refer to River City Bank. The terms “**Customer**,” “**you**” and “**your**” refer to each signer on an Account and all owners and beneficiaries of the Accounts.

Each of your Accounts at River City Bank is also governed by the applicable account agreement(s) and disclosure statement(s) (collectively, the “**Deposit Agreement and Disclosure**”).

### 1. Instructions and Notices

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

1.2 Bank may rely on any oral or written notice, response, or other communication believed by it to be genuine and to have been provided by an Authorized Agent and any such communication shall be deemed to have been provided by such person on your behalf.

“**Account**” means a deposit account at River City Bank through which you access or use Services or which are otherwise subject to this Agreement.

“**Appointment Form**” means an Appointment of Agent and System Administrator form (or similar form approved by Bank) executed by you or on your behalf. If the only appointment of an agent or administrator in effect is pursuant to an agreement superseded by this Access Agreement, then such appointment will remain in effect until superseded by the execution of a new Appointment Form.

“**Authorized Agents**” means the agents and system administrators named as such in an Appointment Form, as well as the individuals granted authority by those named agents and system administrators to provide instructions and to effect transactions with respect to your Accounts or your credit facilities with Bank. A person will remain an Authorized Agent until you notify Bank of the revocation of such appointment and Bank has a reasonable period to act on such revocation.

“**Loan Advance Agreement**” means agreements or arrangements related to requesting or obtaining loan advances or disbursements from Bank if you can request advances or disbursements under the relevant credit facilities by using any of the Services or any of Bank’s website, online or mobile procedures, systems or services.

“**Schedule Agreement**” means each of Schedules 1-5, including the attachment to a Schedule.

### 2. Protecting Your Accounts and Loans

#### 2.1 Preventing Misuse of Your Accounts or Loans



Your role is extremely important in the prevention of any wrongful use of your Accounts or Loans (defined below). You must promptly examine your statement upon receipt. If you find that your records and ours disagree, you must immediately call River City Bank at (916) 567-2899.

2.1.1 Protecting Personal Information. In addition to protecting your Account and Loan information, you should also take precautions to protect your personal identification information, such as your driver's license, Social Security Number, etc. This information by itself or together with information on your Account or Loan may allow unauthorized access to your Accounts or Loans. It is your responsibility to protect personal information with the same level of care that you protect your Account or Loan information. Section 6.7 of the Schedule 2 - EFT Agreement is incorporated by reference here.

2.1.2 Taking Care of Your Password. The password that is used to gain access to Cash Management Services should also be kept confidential. We strongly recommend that you not disclose it to others, as doing so gives the person or company to whom you have given this sensitive information the power to access and perform transactions on your Accounts or Loans. In fact, if you make such a disclosure along with other pertinent information about your Accounts or Loans and any Service, neither we, nor you will be able to prevent that person or company from accessing or performing transactions on your Accounts or Loans whether or not you actually authorize or even know about such activity, and the access and transactions so performed will be considered authorized. You are solely responsible for the confidentiality and use of your assigned User ID and/or passwords (a "**Security Code**"). You are solely responsible for all instructions received by us through and under your Security Code.

2.1.3 Authorized Agents. An Authorized Agent is responsible for assigning the levels of security necessary for you. The Authorized Agents will be required to change the initial passwords the first time they use their IDs to login into our cash management system. It is the Authorized Agents' responsibility to understand the security capabilities built into the Service and to assign and, as appropriate to your business and security needs, restrict access to the various applications only to those employees who have a need to know, keeping in mind the importance of separation of duties as an important way of protecting you.

## 2.2 Online Security Best Practice Recommendations

You are responsible for implementing effective security systems to protect your Accounts and Loans. The following are a few recommended online security best practices to consider with your own security professionals:

Ensure your systems are updated – All your workstations and networks should have the latest software and hardware to protect against all types of malware and cybercrime, including software to protect against viruses, adware and spyware, and the latest firewall protection. All security patches and updates should be installed as soon as they are available.

1. Use dual controls – Have one individual create your outgoing online banking transactions (wires / ACH) and another individual approve each transaction.
2. Perform a daily reconciliation – Review the transactions in your Accounts and Loans on at least a daily basis and alert us immediately if there is any suspicious activity.
3. Read your electronic notices – These notices are for your own protection and are meant to alert you of your real online banking activity. If you receive a notice and did not perform or authorize the activity, you must immediately call us to report suspicious activity.

4. Use dedicated work stations – Isolate a workstation in your office to conduct all online banking activity. Do not use the workstation for personal use, web browsing, or email and do not place administrative rights on the users' work stations. These steps will help prevent unknown downloading of malware.
5. Beware of the “official” email and ensure your staff is trained accordingly - Never open an email or click on a link in an email where you are unsure of the sender. Cyber criminals send phishing emails to place viruses on your computer and obtain relevant Account or Loan information. When in doubt, don't click.
6. Use a bookmark to access our website. Avoid “direct navigation,” which involves manually typing our web address into a browser.
7. Contact your business insurance provider – Review your business insurance policy to determine if it provides the necessary coverage for fraudulent cyber activity.

2.3 Additional Security Precautions Offered by River City Bank. Security experts and even federal banking regulators recommend that bank customers take security precautions in addition to “single factor” authentication such as a username and password. Bank offers its business customers the opportunity to implement additional security precautions in addition to the security procedures otherwise applicable to online transactions from Accounts and Loans.

2.3.1 Dual Control. One such additional security precaution is dual control. The term “dual control” refers to a process in which the active involvement of two people is required to complete a particular transaction. Dual control is one of the foundations of online banking and information security because it is based upon the premise that both parties would have to be in collusion for a security breach to occur. The system enables your Authorized Agents to set rights and privileges for the your users to be initiators and/or approvers of online banking transactions. If dual control is implemented, then a transaction requires one individual to initiate the transaction and a separate individual to approve the transaction in order for Bank to process the transaction. Because no one security method or combination of methods is failsafe, you must ensure that your network and all computer systems are updated, protected against intrusion and otherwise administered in accord with best practices.

2.3.2 Additional Login Code. Another additional security precaution is the generation of a numeric code at the point of login if the computer is unrecognized. Our online system calls the phone number on record in the cash management system to confirm the code presented by the system or, if you choose, will send a one-time code to the mobile device number designated in our online cash management system. You must input the code (in addition to your usual Security Credentials) in order to complete the login process and gain access to our online system. If the code is not input correctly, access will not be granted and you cannot log in. Because no one security method or combination of methods is failsafe, you must ensure that your network and all computer systems are updated, protected against intrusion and otherwise administered in accord with best practices.

2.3.3 Related Accounts and Loans. Bank may, but is not required to, apply the additional security precautions you request not only to the Accounts and Loans of the named Customer but also to the Accounts and Loans of persons and entities treated as affiliates of the named Customer in our online system. It is solely your responsibility to give Bank written notice of instructions to apply security procedures to Accounts and Loans in a manner different than what Bank does in the absence of such instructions.

## 2.4 Your Responsibility for Security

It is solely your responsibility to ensure that your computers, network, servers, firewalls, telephone lines, passwords, identification numbers, and all other items and facilities needed by you to



transmit a transaction request to Bank and to receive confirmations thereof from Bank (collectively, the “**Customer Systems**”) are secure and have not been compromised. You represent and warrant that you have established and maintain physical and electronic security and controls to protect against fraud perpetrated by insiders and outsiders, including fraud perpetrated by means of physical or electronic intrusion, insider complicity and by means of impersonation of your Authorized Agents and other personnel. If Bank receives any transaction request purporting to be made on your behalf and which request was able to be sent to Bank due to any failure or deficiency in Customer Systems, then Bank will have no liability to you for honoring such transaction request and you must indemnify Bank from any and all losses, attorney’s fees and other costs arising from Bank’s acting on that transaction request. You represent and warrant that you considered the size, type, value and frequency of the transactions and related communications that you anticipate making in connection with this Access Agreement and agrees that our security procedures are commercially reasonable in light of those anticipated transactions.

## 2.5 Unauthorized Access or Transactions in Your River City Bank Accounts or Loans

Notify us immediately if you believe another person has improperly obtained access to any security credentials, including password or username, or other information that could allow the person to access or debit your Accounts or obtain Advances under your Loans. Also notify us if someone has transferred or may transfer money from your Accounts or may have obtained an Advance without your permission, or if you suspect any fraudulent activity on your Accounts or Loans. Only reveal your Account number or Loan number to a legitimate entity for a purpose you authorize (such as your insurance company for automatic payments). To notify us, call River City Bank at (916) 567-2899, or write River City Bank, Attention: Cash Management, 2485 Natomas Park Drive, Sacramento, CA 95833.

## 2.6 Unauthorized Loan Advances

You agree that each draw, advance and disbursement (each, an “**Advance**”) made under a loan, credit facility or other extension of credit (each, a “**Loan**”) from Bank constitutes indebtedness outstanding under that Loan and must be repaid in full if Bank made such Advance in good faith reliance on instructions or a request made by an actual or apparent Authorized Agent using our website or other online or mobile systems (such systems collectively, the “**Online System**”), even if the Advance was requested fraudulently, without your knowledge, inconsistently with your instructions or it was made by an unauthorized person. You acknowledge the heightened risks you assume by allowing any person to request an Advance using the Online System. You acknowledge that the Authorized Agents named in a Loan Advance Agreement may differ from the Authorized Agents named in an Appointment Form if you do not ensure that they are consistent. You agree that Bank may rely on the information stated on either a Loan Advance Agreement or on an Appointment Form in evaluating whether a person is an Authorized Agent. If there is a conflict between the terms of, or information on, (1) a Loan Advance Agreement and (2) this Access Agreement or an Appointment Form, then the terms of this Access Agreement and the Appointment Form will control for any Loan Advance that is transacted online. You agree that you will ensure that Bank has up to date Appointment Forms and that your Loan Advance Agreements are consistent with your Appointment Forms at all times.

You agree that you will ensure that all Advances will be requested to be disbursed to a demand deposit account at Bank owned by the borrower under the relevant Loan. You must notify us immediately upon your discovery of any unauthorized Advance and you must fully cooperate with us at your cost if we choose to investigate any Advance alleged or believed by any person to be unauthorized or improper.

Bank may allow any particular Advance to be obtained (or not obtained) through the Online System in its sole discretion without notice to you. Allowing Advances through the Online System in some instances is not a guarantee or commitment that such Advances will be allowed in other instances.

You grant Bank a security interest in all Accounts to secure your obligations, indebtedness and liabilities under this Access Agreement and under all your Loans. Bank may place a hold on some or all funds in those Accounts during such time that Bank reasonably believes it may need to apply those funds to your outstanding or reasonably expected obligations to Bank.



## 2.7 Optional Security by Bank

Bank may in its sole discretion decide to use or apply one or more security or authentication measures with respect to your Accounts or Loans even though those measures are not required under your agreements with Bank. You acknowledge and agree that Bank's choice do so on one or more occasions will not give rise to any obligation to do so on another occasion, even if Bank personnel tell you that the measures are being used or you are otherwise aware of such usage.

## 3. Privacy Policy

See our Privacy Statement (as named or renamed from time to time) at [www.rivercitybank.com](http://www.rivercitybank.com), which Privacy Statement is incorporated by reference herein, as and when the same may be modified from time to time.

## 4. Accessing Your River City Bank Accounts or Loans through Cash Management

### 4.1 Requirements

To access your Accounts or Loans through Cash Management Services, you must have the appropriate security credentials.

### 4.2 River City Bank Secure Message Center

Sending secure messages through the River City Bank Secure Message Center is a way to communicate with Bank. Secure messaging is provided for you to ask questions about your Accounts or Loans and provide general feedback and is accessible by logging into the River City Bank Secure Message Center found on [www.rivercitybank.com](http://www.rivercitybank.com). To ensure the security of your Account and Loan information, we recommend that you use secure messaging when asking specific questions about your Accounts or Loans. You cannot use the Secure Message Center to initiate transactions on your Accounts or Loans. For banking transactions, please use the appropriate functions within the cash management system or call (916) 567-2899.

### 4.3 Fees

See the Cash Management Schedule of Fees attached as Attachment A to this Access Agreement, as the same is modified from time to time (the "**Cash Management Schedule of Fees**"). The fees on the Cash Management Schedule of Fees apply in addition to all fees that apply under the Deposit Agreement and Disclosure.

Please note that other fees may be assessed by your Internet Service Provider.

## 5. Terms and Conditions

The first time you access your Accounts or Loans through Cash Management Services you agree to be bound by all the terms and conditions of this Access Agreement and you acknowledge your receipt and understanding of this disclosure.

### 5.1 Your Password

You will be given a temporary password that will give you access to Cash Management Services for your Accounts and Loans. You will be prompted to create a new password at your first logon attempt. This password can be changed within the cash management system using the administration menu. We recommend that you change your password regularly and you will be prompted to change your password at least every 90 days or other interval established by Bank in its sole discretion. River City Bank will act on instructions received under your password. For security purposes, it is recommended that you



memorize this password and do not write it down. You are responsible for keeping your password, Account and Loan numbers and other Account and Loan data confidential.

## 5.2 Payment Account

You may be asked to designate a payment account for selected Services provided under this Access Agreement. You agree to pay promptly all fees and charges for those Services and authorize us to charge the Account that you have designated as the payment account or any other Account for the fees.

If you close the payment account, you must notify River City Bank and identify a new payment account for the selected Services. If you do not notify us of a new payment account, then we will apply charges to any of your open Accounts. Additionally, if you close all Accounts, you must notify our Cash Management Department to cancel Cash Management Services and we will bill you for unpaid charges, which you agree to pay upon receipt.

Your Cash Management Services access may be canceled at any time without prior notice due to insufficient funds in one of your Accounts. After cancellation, Cash Management Services may be reinstated once sufficient funds are available in your Accounts to cover any fees and other pending transfers or debits. In order to reinstate your Services, you must call River City Bank at (916) 567-2899.

If you do not access your Accounts or Loans through Cash Management Services for any 6-month period, River City Bank reserves the right to disconnect your Service without notice. Please note that your ACH, wire, and bill payment information will be lost if you are disconnected.

You agree to be responsible for any telephone charges incurred by accessing your Accounts or Loans through Cash Management Services.

If you wish to cancel any of the Services offered through Cash Management Services, please contact River City Bank at (916) 567-2899 or send us cancellation instructions in writing to River City Bank, Attention: Cash Management, 2485 Natomas Park Drive, Sacramento, CA 95833.

## 5.3 Overdrafts: Order of Payments, Transfers, and Other Withdrawals

If an Account has insufficient funds to perform all electronic funds transfers (ATM withdrawals, pre-authorized transactions, cash management transfers and bill payments, etc.) that you have requested for a given banking day, then certain electronic funds transfers involving currency disbursement, like ATM withdrawals, will have priority.

When you schedule a payment or transfer, you authorize River City Bank to withdraw the necessary funds from your Accounts. You agree that you will instruct River City Bank to make a withdrawal only when a sufficient balance is or will be available in the applicable Account at the time of withdrawal. If you do not have a sufficient balance, including available credit under any overdraft protection plan, we may either complete the transfer or payment - creating an overdraft - or refuse to complete the transfer or payment. In either case, we reserve the right to impose a non-sufficient funds (NSF) fee.

## 5.4 Hours of Accessibility

You can access your Accounts and Loans through Cash Management Services seven days a week, 24 hours a day. However, at certain times, some or all of Cash Management Services may not be available due to system maintenance. You may be notified via email or an online posting when this occurs.



## 5.5 Additional Terms and Conditions

5.5.1 Obtaining Account or Loan Balance and Transaction History. You can obtain balance and transaction history on all eligible Accounts and Loans. Current balance and activity information is available as of the close of the previous banking day.

5.5.2 Transferring Funds. The number of transfers from a savings account is limited as described in the applicable Deposit Agreement and Disclosure. If a hold has been placed on deposits made to an Account from which you wish to transfer funds, you cannot transfer the portion of the funds held until the hold expires.

5.5.3 Online Loan Payments - Prepayment Premiums. The terms and conditions of any prepayment premium, prepayment fee or other charge contained in your loan agreement will apply for loan payments made online.

## 6. Bill Pay Service

### 6.1 Using the Service

The Bill Payment Service allows you to schedule bill payments through Cash Management Services. You can schedule, at your option, for the payment of your current, future and recurring bills from any of your eligible River City Bank checking accounts. There is no limit to the number of payments that may be authorized from your checking accounts. Other account types may have transaction limitations as described in your Deposit Agreement and Disclosure. You may pay any merchant or individual through the use of Bill Payment Service. By furnishing us with the names of payees/merchants, you authorize us to follow the payment instructions to these payee/merchants that you provide us through Cash Management Services. The earlier of (a) the date you request payment to be sent and (b) the date the bill payment system can send payment under our normal operating procedures is called the “**Send Date**”. When we receive a payment instruction (for the current or a future date), we will transfer funds to the payee on your behalf from the funds in your bill payment Account on the Send Date.

For payments directed to third parties, such as other lenders, credit card companies, etc., you must allow sufficient time for the payee to receive the payment. Some payees will receive your payment through the ACH, while others will receive a paper draft (“**Draft**”), which is similar to a check.

We will use commercially reasonable efforts to process all your payments properly, but it is your sole responsibility to ensure compliance with applicable rules, policies and/or procedures of the payee or their agent (such as the U.S. Treasury / Internal Revenue Service). We make no representations or warranties about our ability to process any payments to federal, state, or local tax agencies and you should assume that we cannot process such payments at all.

You may stop or change any scheduled payment. You must cancel the payment by no later than 12 PM Noon (Pacific Time), on the Send Date, by using the CANCEL function on the cash management system’s “Pending Payment” screen.

River City Bank reserves the right to terminate your use of cash management Bill Payment Service in whole or part, at any time without prior notice.

If, for any reason, you should ever wish to cancel cash management Bill Payment Service, we strongly suggest that you cancel all future bill payments at the same time that you cancel your Service, either by deleting those payments yourself using the cash management system or calling River City Bank’s Customer Service at (916) 567-2899. This will ensure that future payments and transfers made by you will not be duplicated. We will automatically cancel all outstanding payment orders (all individual payments and all recurring payments) once we have been notified that your Service has been terminated. We will continue to maintain your Accounts until you notify us otherwise.

## 6.2 Bill Pay Fees

See the Cash Management Schedule of Fees for applicable fees and charges.

Additionally, you agree to pay any special charges in effect as announced by Bank from time to time. These charges are in addition to the fees and service charges specified in your applicable checking, savings, and overdraft protection account agreements (for example, uncollected or overdraft charges on your checking account).

If the payment account has insufficient funds to cover fees, Bank will deduct the fee from any other checking account linked to Cash Management Services (in any order we may choose). If the fee cannot be paid, we may cancel your bill pay service. After cancellation, your bill pay service may be reinstated by contacting River City Bank at (916) 567-2899 once sufficient funds are available in your payment account to cover the bill payment fees and any other pending transfers or debits.

## 7. General Terms

### 7.1 Changes to Charges, Fees or Other Terms

We reserve the right to supplement and change the charges, fees or other terms of this Access Agreement (including Schedules and attachments hereto) and related documents upon providing notice to you, by email or by an online posting on our Cash Management Services website. However, when increases are made to any fees or charges, we will notify you online, or send a notice to you at the address shown on our records, or send you an electronic mail message (email). The notice will be posted or sent in advance of the effective date of any additional fees for Services or of any stricter limits on the type, amount or frequency of transactions, unless (a) an immediate change is necessary to maintain the security of the system, (b) the changes do not have a material effect on your use of Services or (c) we are adding a new schedule or exhibit to the Agreement for which prior notice is not otherwise required. If a change requiring disclosure is made but it cannot be disclosed in advance without jeopardizing the security of the system in our judgment, then we will provide you with electronic or written notice within 30 days after the change. As always, you may choose to accept or decline changes by continuing or discontinuing the Accounts or Services to which these changes relate. Changes to fees applicable to specific Accounts are governed by the applicable Deposit Agreement and Disclosure.

If performance of Services provided herein in accordance with the terms of this Access Agreement would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Access Agreement, then this Access Agreement will be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank will incur no liability to you as a result of such violation or amendment.

If prior to the date we provide you a copy of or notice regarding this Access Agreement, you and Bank were parties to a prior version of this Access Agreement, then this Access Agreement will replace such prior agreement after you use any Services or provides any instructions provided for in this Agreement following receipt of a copy of or notice regarding this Access Agreement, which receipt will be deemed to have occurred 5 banking days after Bank sends a copy of this Agreement to your email address of record with Bank or posts this Access Agreement online. Exhibits, schedules and other attachments to the prior version of this Access Agreement (and the previous versions of the Schedule Agreements) with customer-specific information, and customer-specific information incorporated into such previous agreements, will remain in effect until Bank and you agree in writing upon replacement exhibits, schedules and attachments and information, respectively.

### 7.2 Changes to Services and Bank Systems



You agree that Bank may, in its sole discretion, periodically modify any or all of its hardware, software, processes and procedures and any or all other systems and system settings, configurations, limits, downtime or hours of operation involved in or related to providing Services to you.

### 7.3 Privacy and Disclosure of Account and Loan Information

River City Bank recognizes that our customers and others visiting our website have an expectation of their privacy in their dealings with us. For these reasons River City Bank takes security and privacy of our customer information very seriously. You understand that in addition to information furnished pursuant to legal process, some information about your Accounts and Loans may automatically be disclosed to others. For example, the tax laws require disclosure to the government of the amount of the interest you earn, and some transactions, such as certain large currency and foreign transactions, must be reported to the government. Bank may also provide information about your Accounts and Loans to persons or companies Bank believes would use the information for reasonable purposes, such as when a prospective creditor seeks to verify information you may have given in a credit application or a merchant calls to verify a check you have written. In addition, Bank routinely informs a credit bureau when Accounts are closed by Bank because they were not handled properly. Bank may also seek information about you from others, such as a credit bureau, in connection with the opening or maintaining an Account or Loan. You authorize these transfers of information. For additional information regarding River City Bank's privacy and security policies please visit [www.rivercitybank.com](http://www.rivercitybank.com) and click on the Privacy Statement link.

### 7.4 Questions or Error Correction on Cash Management Services Transactions; Notifying Us of a Problem

You agree to notify us immediately if you discover: (a) any error or discrepancy between your records and the information we provide or make available to you about your Accounts, Loans or transactions (including information in your online transaction register or in a paper or electronic statement, printout, file, confirmation or report (each, a "**Report**")); (b) unauthorized transactions involving any Account or Loan; (c) a breach in the confidentiality or security of any Security Code, including a lost or stolen Security Code or unauthorized use thereof; or (d) any other problems related to Services, including unauthorized use of a Service. You must provide such notification by one of the following methods:

Telephone River City Bank at **(916) 567-2899** OR

Write River City Bank, Attention: Cash Management at 2485 Natomas Park Drive, Sacramento, CA 95833;

Such notification must be provided to us within a reasonable time, not to exceed 15 days from the date you first discover the problem or 15 days after we send or you review the first paper or electronic statement, online transaction register, confirmation or other Report on which the problem or error appeared, whichever occurs first. If you provide that notification verbally, then we may require that you send us your complaint or question in writing within 10 banking days from the date you provide verbal notice. Such notification must include a statement of the relevant facts, including the following:

Your name and Account or Loan number, as applicable.

A description of the error or the transaction you are unsure about, and an explanation as to why you believe it is in error or why you need more information.

The dollar amount of the suspected error.

For a bill payment, the checking account number used to pay the bill, payee name, date the payment was sent, payment amount, reference number, and payee account number for the payment in question.



Here's what we will endeavor to do. We will endeavor to tell you the results of our investigation within 15 banking days after we hear from you and will endeavor to promptly correct any error we made. However, if we need more time, we may take a reasonable period (which can be 45 days or more) to investigate your complaint or question. If we decide to do this, we may (but are not obligated to) credit your Account for the amount we understand is in error to give you use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive a reasonably detailed response within 10 banking days, then we will not credit your Account. If we determine that there was no error, then we will send you a written explanation within 5 banking days after we finish our investigation and debit the amount of the error that we previously credited. You may request copies of the non-privileged documents that we used in our investigation.

#### 7.5 Your Failure to Timely Notify

You agree that any delay in providing notification to Bank will negatively impact our ability to properly handle (return) any exception item or other unauthorized or disputed transaction. Accordingly, this Access Agreement specifically stipulates and you agree to the following:

7.5.1 Your failure to discover and report any suspected error, discrepancy or unauthorized transaction in connection with any Service, Loan or Account on the same day the Report was made available to you (for Positive Pay and ACH transactions) or by the 15<sup>th</sup> day after the Report was made available to you (for all other transactions) will bar any claim against Bank with respect to any such error, discrepancy or unauthorized transaction and such transactions will be considered correct as between Bank and you.

7.5.2 If you fail to notify Bank about a forgery, alteration or unauthorized transaction in the manner and within the time frames required by this Access Agreement, then you will be precluded from asserting subsequent forgeries, alterations or unauthorized transactions with respect to any of the Accounts or Loans covered by this Access Agreement.

7.5.3 Accordingly, Bank and you agree that any claim, action or proceeding against the other for damages arising from or in any way related to an act or omission of the other in connection with a Service or the performance of a Service, including any claim based on negligence, must be brought within 30 days from the date the transaction(s) appeared in the Report.

#### 7.6 Other General Terms

7.6.1 Other Agreements. In addition to this Access Agreement you agree to be bound by and will comply with the requirements of the applicable Deposit Agreement and Disclosure, our rules and regulations, the rules and regulations of any funds transfer system in which Bank participates or belongs, and applicable State and Federal laws and regulations. We agree to be bound by them also.

7.6.2 Bank's Right to Audit You. Bank may periodically audit your technology and other systems, procedures and processes related to your use of or access to Services at any or all of your locations for the purpose of confirming your compliance with the terms of this Access Agreement, applicable laws and any agreements or rules incorporated into or referenced by this Access Agreement. All information provided to Bank or obtained by Bank in connection with such audits is subject to the confidentiality provisions of Section 9.7 (Confidential Information and Proprietary Right in Data). Bank may require you to implement internal controls as a condition to continuing to access or use Services. You are solely responsible for determining whether such internal controls and continued use of Services are appropriate for your business and for complying with law. You agree to cooperate with such audits, implement internal controls required by Bank and to promptly provide the information and access requested by Bank.

## 8. Business Services

### 8.1 Systems

You are responsible for providing and maintaining at your own expense, all equipment necessary in connection with the Services. This includes, but is not limited to, telephones, terminals, modems, Internet connectivity, and computers. We assume no responsibility for any errors, failures, or malfunctions of your computer or software, or for any computer virus or related problems that may occur during your use of the Services that is not proven to have originated from Bank.

### 8.2 Business Accounts

You are only allowed to access Accounts and Loans on the cash management system that are directly related to your tax identification number. If you request access to accounts or loans of your parent company, subsidiaries or affiliates, you are thereby warranting that they have authorized you to access their accounts through Cash Management Services in the same manner as your own Accounts and Loans and that their accounts and loans may be considered "Accounts" and "Loans," respectively, under this Access Agreement. You agree to provide us with their written authorization, in form and substance acceptable to us, evidencing your authority.

### 8.3 Fees

You agree to pay us the Service fees described in the Cash Management Schedule of Fees. We will charge these fees directly to your Accounts with us. If you fail to pay any amount owing to us under this Access Agreement, the amount will bear interest at the rate of 12% per year until paid. We may amend our Service fees from time to time as set forth above.

### 8.4 Access to Account and Loan Data

You can obtain balance and other Account and Loan information through Cash Management Services. Since certain information and transactions are not processed by us until after the close of our banking day, some transactions may not be reflected in the system until the next banking day. "Posted" items may be reversed due to insufficient funds, stop payments etc. Items may appear as paid, yet may be reversed the next day. 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 of Cash Management Services.

### 8.5 Information Processing and Reporting

We offer a number of Services that require us to receive, process and report information involving your Accounts, Loans and transactions. We will not be responsible for determining the accuracy, timeliness or completeness of any information that you 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 Access 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.

You acknowledge that it is not possible for the Services to be totally free from operator, programming or equipment error, and that errors in processing and compiling data may occasionally occur (e.g., due to the failure of others to provide accurate information, telecommunication failures, or a breakdown in an electronic data interchange). As such, you agree to review and verify all results and to maintain adequate controls for insuring both the accuracy of data transmissions and the detection of errors. Unless otherwise required by law, our sole responsibility for any reporting errors caused by us will be to reprocess the information for the period in question and to submit 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., in the event of a telecommunication 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.

#### 8.6 Inaccurate/Conflicting Information

If you submit a funds transfer request which describes an intermediary financial institution, beneficiary financial institution or beneficiary by name and identifying account number, we and other financial institutions may process the request on the basis of the identifying number, rather than the name, even if the number identifies a different person, entity, account or financial institution. We are not obligated to review any funds transfer request for inconsistencies or to confirm the correctness of any such request, except to the extent provided in this Access Agreement.

#### 8.7 Security Codes and Procedures

We will provide you with a Security Code to access Cash Management Services. You agree to: (a) change your Security Code immediately upon accessing the site; (b) comply with all security procedures we provide to you in connection with Cash Management Services; (c) take reasonable steps to safeguard the confidentiality and security of the Security Code and any other proprietary property or information we provide to you in connection with the Services; (d) limit access to your Security Codes to persons who have a need to know such information; (e) closely and regularly monitor the activities of employees who access Cash Management Services.

Your Security Code(s) may be changed by you or your Authorized Agents from time to time. You agree to change your Security Code(s) immediately if someone who has had access to a Security Code is no longer employed by you or is no longer authorized to use Cash Management Services. We may also require you to change your Security Code at any time. We may deny access to Cash Management Services without prior notice if we are unable to confirm (to our satisfaction) any person's authority to access Cash Management Services or if we believe such action is necessary for security reasons. **YOUR BEST COURSE OF ACTION IS TO KEEP ALL SECURITY CODES SEPARATE AND CONFIDENTIAL FOR EACH EMPLOYEE WITH ACCESS TO CASH MANAGEMENT SERVICES. BANK WILL HAVE NO LIABILITY TO YOU FOR ANY UNAUTHORIZED PAYMENT OR TRANSFER MADE USING YOUR SECURITY CODE THAT OCCURS BEFORE YOU HAVE NOTIFIED US OF POSSIBLE UNAUTHORIZED USE AND WE HAVE HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE.**

Each time you perform a funds transfer with Cash Management Services, you warrant that the Security Code procedures are commercially reasonable for the transaction, based on the circumstances involved (e.g., the size, type, and frequency of your transfers, as well as your internal controls). We may process any funds transfer request we receive through Cash Management Services, which includes your Security Code(s) with access rights. Fund transfer requests submitted with the Security Code(s) will be deemed effective as if made by you, and you will be obligated to pay us the amount of such orders, even if they are subsequently determined to be unauthorized.

You agree that you control the addition and deletion of users and the level of user authority for transactions. You agree to utilize the security and audit features we provide and/or recommend related to Cash Management Services.

### 9. Miscellaneous

#### 9.1 Cutoff Hours

A number of our Services are subject to processing cutoff hours. The cutoff hour for wire transfers is 1:45 p.m. (Pacific time) on our banking days. The cutoff hour for ACH transactions and tax



payments is 3:00 p.m. (Pacific time) on our banking days. Instructions received after the cutoff hour or on a non-banking day may be deemed received as of the next banking day.

## 9.2 Overdrafts

If we in our discretion overdraft any of your Accounts to make any transfers pursuant to this Access Agreement, we will not be obligated to do so in the future, regardless of the number of times we shall have previously allowed such overdrafts. You are liable for the payment of any transfers made by us pursuant to this Access Agreement even though there were insufficient funds in your Accounts at the time the transfers were made.

## 9.3 Limitation of Liability

9.3.1 **Excluded Damages.** You agree that, in no event will Bank or Bank's affiliates or service providers be responsible or liable to you for any indirect, special, consequential, exemplary, punitive, or incidental damages, losses or injuries (including, without limitation, lost profits, loss of use, loss of data, damages from wrongful dishonor or cost of cover) arising out of your use of any service or the failure of Bank or its service providers to properly process and complete transactions thereunder, even if Bank or Bank's service providers have been specifically advised of the possibility of such damages, losses or injuries.

9.3.2 **Services Provided "As-Is".** You acknowledge and agree that your use of the Services is at your sole risk and that the Services are provided by Bank on an "as is" basis.

9.3.3 **Bank Disclaims Warranties.** Except as expressly set forth in this Access Agreement, Bank makes no, and hereby disclaims any and all, representations or warranties, express or implied, in law or in fact, whatsoever to you or to any other person as to the services or any aspect thereof, including (without limitation) any warranty of merchantability, fitness for a particular purpose, quality, accuracy, or suitability. You agree that no oral or written advice or representation obtained from any Bank employee or representative will create a warranty or representation for purposes of this Access Agreement or any Services to be performed pursuant hereto. Bank makes no representation or warranty, either express or implied, to you as to any computer hardware, software, or equipment used in connection with the services (including, without limitation, your computer systems or related equipment, your software, or your internet service provider or its equipment), or as to the suitability or compatibility of Bank's software, internet delivered service, equipment or communication interfaces with those that you use, or as to whether any software or internet delivered service will perform in an uninterrupted manner, including (but not limited to) any warranty of merchantability or fitness for a particular purpose.

9.3.4 **Liability Limited to Correcting Error.** To the fullest extent allowed by law, and subject to the liability limitations and other provisions of this section, Bank's liability to customer under this Access Agreement is limited to correcting errors resulting from Bank's failure to exercise ordinary care or to act in good faith.

9.3.5 **Bank Not Responsible for Computer or Data Transmission Problems.** Bank is not responsible or liable for any errors or failures resulting from defects in or malfunctions of your computer hardware or software, for the quality of performance or lack of performance of any computer software or hardware or internet delivered services supplied by Bank to you in connection with this Access Agreement, or for the transmission or failure of transmission of any information from you to Bank or from Bank to you. Bank is not responsible for notifying you of any upgrades or enhancements to any of your computer hardware or software or to your processes, procedures or controls.

9.3.6 **Force Majeure.** Bank is not responsible for suspension of performance of all its obligations, responsibilities and covenants under this Access Agreement, whether expressed or implied, if at any time, or from time to time, compliance therewith is prevented or hindered by, or is in conflict with, any federal or state law, regulation, risk control program or rule, the order of any court of competent

jurisdiction or other legal restraints, any act of God or of the public enemy, war, epidemic, strike, or work stoppages of the U. S. Postal Service or commercial carriers, or electric power disruption or shortage, telecommunications failure or computer failures; or the acts, omissions or errors of any carrier and/or agent operating between you and Bank and any Federal Reserve Bank or other agency utilized to exercise transfers, or recipients of transferred funds; or, without limiting the generality of the foregoing, or any other cause or circumstance beyond Bank's control or other conditions or circumstances not wholly controlled by Bank and which would prohibit substantial performance under this Access Agreement.

9.3.7 **Bank Not Responsible for Customer or Third Party Actions.** Bank is not responsible for any acts or omissions of you or your Authorized Agents, including without limitation the amount, completeness, ambiguity, accuracy or timeliness of any item, request, authorization or instruction provided by you or on your behalf, or any act or omission of any other person not under Bank's control, including without limitation, any transmission or communications facility or any of your data processors; the failure of other financial institutions to provide accurate or timely information to you or to Bank or the failure of other financial institutions to accept transactions, your negligence, inadequate security or breach of this Access Agreement. No such person may be deemed our agent.

9.3.8 **Bank not Liable for Insufficient Funds, Etc.** Bank will incur no liability if it is unable to complete any transactions initiated by you through any Service because of the existence of any one or more of the following circumstances:

1. Your Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of your overdraft protection account.
2. The cash management processing center is not working properly and you know or have been advised by the service about the malfunction before you execute the transaction.
3. You have not provided us with the correct names or Account information for those persons or entities to whom you wish to direct payment.
4. Your Account or Loan is closed or it has been frozen.
5. You have not provided us with complete and correct payment information, including without limitation the name, address, Account number, and payment amount for the payee on a bill payment.
6. You have not properly followed the instructions for using the Service.

9.3.9 **Calculation of Interest.** If we fail or delay in making payment or transfer pursuant to your instructions, or if we make a payment or transfer in an erroneous amount which is less than the amount per your instructions, unless otherwise required by law, our liability (if not limited by law or limited by this Access Agreement to correcting errors and otherwise as set forth above) is limited to interest on the amount which we failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or you canceled the instructions. We may pay such interest either to you or the intended recipient of the payment or transfer, but in no event will we be liable to both parties, and our payment to either party will fully discharge any obligation to the other. If we make a payment or transfer in an erroneous amount which exceeds the amount per your instructions, or if we permit an unauthorized payment or transfer after we have had a reasonable time to act on a notice from you of possible unauthorized use as described above, unless otherwise required by law or the foregoing provisions of this section, our liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed 60 days' interest. If we become liable to you for interest compensation under this Access Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district where Bank is headquartered for each day interest is due, computed on the basis of a 365-day year (366 on a leap year).

#### 9.4 Equipment Maintenance

You are solely responsible for obtaining and properly maintaining your equipment and system requirements, including computer equipment, Internet connectivity, scanning terminals (unless contracted with Bank) and any other equipment or items necessary as a prerequisite to receive or use Services and perform your obligations under this Access Agreement. Bank will not be liable to you, in any manner whatsoever, for any type of errors, losses, damages or other claims related to your failure to do so. In the event of any failure of such software, hardware or other equipment, you will deliver to Bank all data which you otherwise would have provided that is necessary to Bank to perform Bank's obligations in connection with the Services.

#### 9.5 Use of Trademarks

You may not use Bank's name or trademarks without the express written consent of Bank, as the case may be. If you are permitted to use any of Bank's promotional materials, you will not indicate, directly or indirectly, that Bank endorses, or is connected in any way with, any of your goods or services.

#### 9.6 Financial Information; Credit Reports

Bank may from time to time request information from you in order to evaluate a continuation of the Services to be provided by Bank hereunder and/or adjustment of any limits set by this Access Agreement. You agree to provide the requested financial information immediately upon request by Bank, in the form required by Bank. If you refuse to provide the requested financial information, or, if Bank concludes in its sole discretion that your risk to Bank is unacceptable, Bank may terminate the Services according to the provisions hereof.

You authorize Bank to investigate or reinvestigate at any time any information provided by you in connection with this Access Agreement or any Services. You authorize Bank at any time to obtain credit reports about you and to report adverse credit information about you to others, including the Internal Revenue Service and state taxing authorities. Bank may obtain credit reports on each Authorized Agent for purposes of verifying identity.

#### 9.7 Confidential Information and Proprietary Right in Data

All information of a business nature relating to the assets, liabilities or other business affairs disclosed to Bank by you or your customers in connection with this Access Agreement is confidential. Bank will not, without your express written consent, disclose or permit access to any such information by any person, firm or corporation and Bank shall cause its officers, employees, and agents to take such action as shall be necessary or advisable, to preserve and protect the confidentiality of disclosing such information to persons required to have access thereto for the performance of this Access Agreement, or to any other party to which Bank may be required by law to report such information. You agree to hold confidential and to use only in connection with the Service provided under this Access Agreement all information furnished to you by Bank or by third parties from whom Bank has secured the right to use the Service, including, but not limited to, Bank's product and service pricing structure, system design, programming techniques or other unique techniques. In addition, should you at any time receive or acquire any information relating to another customer of Bank, you must promptly return such information to Bank and not reveal such information to any other party and shall not make use of such information for your own benefit. Our and your obligations and agreements under this paragraph shall not apply to any information supplied that was known to either party prior to the disclosure by the other, or is or becomes generally available to the public other than by breach of this Access Agreement, or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Bank will not be held liable if Bank, its employees and agents release such information because of a reasonable belief that you have consented to such disclosure.



Notwithstanding anything to the contrary contained herein, it is authorized and agreed by the parties hereto that the performance of said Service is or might be subject to regulation and examination by authorized representatives of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and/or a State regulatory agency and you agree to the release of the your reports, information, assurances, or other data as may be required by them under applicable laws and regulations. You agree that any specifications or programs developed by Bank in connection with this Access Agreement or supplied or made available to you by Bank are the exclusive property of Bank, its agents, suppliers, or contractors, and further agrees that such material shall not be copied or used in any manner or for any purpose without the express written consent of Bank. This clause shall survive the termination of the Access Agreement.

#### 9.8 Internet Disclaimer

For any Services described in this Access Agreement utilizing the Internet, Bank does not and cannot control the flow of data to or from Bank's network and other portions of the Internet. Such flow depends in large part on the performance of Internet Services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt your connections to the Internet (or portions thereof). Bank cannot guarantee that such events will not occur. Accordingly, Bank disclaims any and all liability resulting from or related to such events and in no event shall Bank be liable for any damages (whether in contract or in tort) that are attributable to the public Internet infrastructure, your ability to connect to the Internet, or Bank's ability to connect on the Internet on your behalf.

#### 9.9 Waiver of Jury Trial.

THE PARTIES WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS ACCESS OR ANY INSTRUMENT OR DOCUMENT DELIVERED IN CONNECTION WITH THIS ACCESS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE VALIDITY, PROTECTION, INTERPRETATION OR ENFORCEMENT THEREOF, OR ANY OTHER CLAIM HOWSOEVER ARISING (INCLUDING TORT AND CLAIMS FOR BREACH OF DUTY BETWEEN THE PARTIES HERETO) RELATED TO THIS ACCESS AGREEMENT.

#### 9.10 Reference Provision.

9.10.1 The parties prefer that any dispute between them be resolved in litigation subject to a jury trial waiver as set forth in the Waiver of Jury Trial section above, but the California Supreme Court has held that pre-dispute jury trial waivers not authorized by statute are unenforceable. This Reference Provision will be applicable until: (i) the California Supreme Court holds that a pre-dispute jury trial waiver provision similar to that contained in this Access Agreement is valid or enforceable; or (ii) the California Legislature enacts a statute which becomes law, authorizing pre-dispute jury trial waivers of the type set forth above and, as a result, such waivers become enforceable.

9.10.2 Other than (i) nonjudicial foreclosure of security interests in real or personal property, (ii) the appointment of a receiver or (iii) the exercise of other provisional remedies, including the right of setoff (any of which may be initiated pursuant to applicable law), any controversy, dispute or claim (each, a "**Claim**") between the parties arising out of or relating to this Access Agreement or any other document, instrument or agreement between Bank and the undersigned, will be resolved by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Venue for the reference proceeding will be in the Superior Court or Federal District Court in the County or District as set forth below (the "**Court**").

9.10.3 The referee shall be a retired Judge or Justice selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge

of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. The referee shall be appointed to sit with all the powers provided by law. Pending appointment of the referee, the Court has power to issue temporary or provisional remedies.

9.10.4 The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (a) set the matter for a status and trial-setting conference within 15 days after the date of selection of the referee, (b) if practicable, try all issues of law or fact within 90 days after the date of the conference and (c) report a statement of decision within 20 days after the matter has been submitted for decision.

9.10.5 The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon 7 days written notice, and all other discovery shall be responded to within 15 days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

9.10.6 Except as expressly set forth in this Access Agreement, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

9.10.7 The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision and pursuant to CCP §644 the referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The final judgment or order or from any appealable decision or order entered by the referee shall be fully appealable as provided by law. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

9.10.8 If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or Justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

**THE PARTIES RECOGNIZE AND AGREE THAT ALL DISPUTES RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY DISPUTE BETWEEN THEM WHICH ARISES OUT OF OR IS RELATED TO THIS ACCESS AGREEMENT.**



9.11 No Assignment

You may not assign any right or delegate any obligation under this Access Agreement without our prior written consent.

9.12 No Third Party Beneficiaries

This Access Agreement is made for the exclusive benefit of you and us. No third party has any rights under this Access Agreement.

9.13 Notices

Unless otherwise agreed, notices to us required by this Access Agreement must be in writing. Notices to you may be emailed, mailed, faxed or delivered to you at the statement or mailing address, fax number or email address shown for you on our core banking system. Notices to us must be sent to:

River City Bank  
2485 Natomas Park Drive  
Sacramento, CA 95833  
Attn: Cash Management

9.14 Electronic Mail

You can send electronic mail ("**email**") to us. Since we may not receive or review it immediately, you should not rely on email if you need to communicate with us right away (e.g., to stop the payment of a check). If you need to contact us immediately, you should contact the branch where your Account or Loan was opened in person or by telephone. We shall have a reasonable time to act upon any email request, and reserve the right to reject any transaction or request received by email (e.g., a request to wire funds).

9.15 Representations and Warranties

You represent and warrant as follows:

9.15.1 Information

All information you provided to Bank is true and complete and properly reflects your business, financial condition, and principal partners, owners, or officers. You are not engaged or affiliated with any businesses, products or methods of selling other than those disclosed in writing to Bank.

9.15.2 Corporate Power

You and the person(s) entering into this Access Agreement have the power to enter into and perform your obligations under this Access Agreement. This Access Agreement will not violate any law, or conflict with any other agreement to which you are subject.

9.15.3 No Litigation

There is no action, suit or proceeding pending or to your knowledge threatened which, if decided adversely, would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations.

9.15.4 Transactions

All of your Items and business transactions are bona fide.

#### 9.16 California Law

This Access Agreement will be governed by and interpreted in accordance with Federal law and regulation, and to the extent there is no applicable Federal law or regulation, by the laws of the State of California, without regard to choice of law principles thereof. The parties consent to the exclusive jurisdiction of the Sacramento County Superior Court or the United States District Court for the Eastern District of California.

#### 9.17 Attorneys' Fees

In the event of a dispute in connection with which either party to this Access Agreement employs counsel to pursue, protect or enforce any of the rights afforded that party by the terms hereof or by the terms of any related agreement or to defend against any claims of any other party hereto which arise out of this Access Agreement or any related agreement, in or out of court (including appellate courts), in arbitration, bankruptcy cases and proceedings, or otherwise, the non-prevailing party in such dispute agrees to pay all attorneys' fees, expert witnesses' fees and costs actually incurred by the prevailing party in connection with dispute and all such fees and costs actually incurred by the prevailing party in collecting or enforcing any settlement agreement, judgment, or arbitration award relating to such dispute.

#### 9.18 Monitoring of Communications

To help ensure that your inquiries are handled promptly, courteously and accurately, Bank's supervisory or management personnel may monitor and/or record telephone conversations and electronic communications between you and Bank without additional prior notification to you or your employees, and you will so advise your employees who communicate with Bank by telephone or electronic means.

#### 9.19 Termination

You or we may terminate this Access 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 terminate this Access Agreement immediately if: (a) you breach any agreement with us, including agreements or rules incorporated into or referenced by this Access Agreement; (b) the confidentiality of your Security Code or other security measures is compromised; (c) we have reason to believe that an unauthorized transaction has taken or may take place involving any of your Accounts, Loans or the Service; (d) you become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; (e) we are uncertain as to any person's authority to give us instructions regarding your Accounts, Loans or Cash Management Services; (f) Bank has any cause to believe that you or any Authorized Agent is committing or attempting to commit an illegal or otherwise improper act, whether by means of communications covered by this Agreement or by any other means; or (g) if the volume or type of your transactions present undesirable risks to Bank in Bank's sole discretion. Bank's election to terminate this Access Agreement is in addition to other remedies that may be available to Bank, and will not affect any obligation you may have to Bank arising prior to such termination. Any reinstatement of Services under this Access Agreement will be at Bank's sole discretion and must be agreed upon in writing by an authorized representative of Bank. The termination of this Access Agreement shall not affect the rights or obligations of the parties existing prior to termination. All provisions in this Access Agreement relating to indemnification or reimbursement of Bank, security interests and account holds, limitations on liability, judicial reference, choice of law, venue, jurisdiction, severability, the recoverability of attorney's fees and this termination section will all survive termination of this Access Agreement, in whole or in part.

#### 9.20 Entire Agreement

This Access Agreement supplements (and supersedes where inconsistent) the terms of your Deposit Agreement and Disclosure and Loan Advance Agreement. Together with applicable Appointment Forms, Schedule Agreements and security procedure election forms, they constitute the entire agreement between you and us with respect to Services.

#### 9.21 Captions and Headings

The captions and headings contained in this Access Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Access Agreement.

#### 9.22 Indemnity of Bank

You agree to indemnify Bank against, and hold Bank harmless from, any and all losses, costs, damages and expenses (including reasonable attorney's fees and costs of investigation, at trial and on appeal) arising directly or indirectly from, or relating in any manner to, (a) a breach of your warranties, representations, and/or agreements and obligations under this Access Agreement; (b) inaccurate information provided to Bank; or (c) any actions taken by Bank which were reasonably believed by Bank to be taken pursuant to this Access Agreement, including, but not limited to, actions taken by Bank to amend or cancel any of your instructions or requests or any decision by Bank to effect or not to effect a transaction as provided in this Access Agreement, or any other action taken by Bank in good faith pursuant to its responsibilities under this Access Agreement. You agree to hold Bank harmless against all claims made by you or others resulting from Bank's reasonable reliance on information and data furnished by you or resulting from activities Bank or its agents undertake at your request, or at the request of anyone Bank believes in good faith to be your authorized agent including, without limitation, costs, reasonable attorneys' fees incurred in connections with such claims. Bank will have the right to disburse or withhold any sum, which Bank is authorized to disburse or withhold. This section will survive termination of this Access Agreement.

You agree that you are jointly and severally liable for all obligations to Bank arising under an Access Agreement on the part of other Bank customers who are bound by an Access Agreement and who control you, are controlled by you or are under common control with you. For purposes of this paragraph, the term "control" means the direct or indirect ownership of 25% or more of the voting or equity securities of another person (the "controlled person") or the possession of the power to direct or cause the direction of the management or policies of the controlled person, whether through the ability to exercise voting power, by contract or otherwise. Entities are "under common control" if the same person exercises control over those entities.

#### 9.23 Waiver

No delay or failure on the part of Bank in exercising any of Bank's rights under this Access Agreement shall constitute a waiver of such rights and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. Except for changes made in accordance with this Access Agreement, no deviation, whether intentional or unintentional, will constitute an amendment of this Access Agreement or will constitute a waiver of any right or duty of either party.

#### 9.24 Severability

In the event any one or more of the provisions contained in this Access Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall be binding and enforceable as if any such invalid, illegal or unenforceable provision had never been contained herein.

#### 9.25 Construction

This Access Agreement is an agreement between parties who are experienced in sophisticated and complex matters similar to the transactions contemplated by this Access Agreement, is entered into by both parties in reliance upon the economic and legal bargains contained herein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which



prepared the instrument or drafted any provision thereof, the relative bargaining powers of the parties, or the domicile of any party.

9.26 Banking Day.

The term “**banking day**” means Monday through Friday, excluding weekends and Federal holidays, even if we are open for business.

9.27 Consumer Use of Services

9.27.1 Section 9.27.2 applies unless you and Bank enter into a written agreement that (a) is in form and substance satisfactory to Bank in its sole discretion and (b) expressly allows limited, conditional access to or use of a consumer account or loan through the Services.

9.27.2 You agree not to allow use of Services, or the Accounts or Loans through which Services are accessed or used, for consumer purposes. Bank may terminate providing any or all Services to you without notice if Bank believes a personal transaction has occurred in any of your Accounts at Bank.

9.27.3 You and Bank agree that, if a particular account or loan through which Services are accessed or used is a true consumer account or loan (as defined in Regulations E and Z, respectively), then the terms and conditions of account agreements and disclosures applicable to that account or loan will control over conflicting terms and conditions in this Access Agreement. Each non-consumer Account (and its non-consumer Account owners) that is affiliated with a consumer account or loan (by ownership, control or otherwise) must reimburse, indemnify and defend Bank from and against all liabilities, costs and expenses incurred by Bank as a result of use of Services by that consumer.