



## MONTECITO BANK & TRUST AUTOMATED CLEARING HOUSE SERVICES AGREEMENT

The Automated Clearing House Services Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ (the "Company") and Montecito Bank & Trust ("Bank").

WHEREAS, Bank is a Participating Depository Financial Institution ("Participating Institution") of the Western Payments Alliance ("WesPay") and may initiate electronic funds transfer entries ("Entries") by means of the Automated Clearing House ("ACH").

WHEREAS, Company desires the ability to make electronic funds transfers, including Same Day ACH electronic funds transfers ("Same Day Entries") by means of ACH.

NOW THEREFORE, in consideration of the agreements and promises set forth below and other good and sufficient consideration, the parties agree as follows:

- 1. Rules.** The terms "Entry", "Entries", "Same Day Entry" and "Same Day Entries" will have the meanings provided in the Operating Rules of WesPay and the Operating Rules of the National Automated Clearing House Association ("Rules") and will also mean the data received from Company from which Bank prepares Entries, and any requests from Company for reversal of an Entry. Company will comply with the Rules and the terms of this Agreement will in no way limit Company's obligation to comply with the Rules. Company agrees that Bank shall have the right, but not an obligation, on reasonable notice to audit Company's compliance with this Agreement and the Rules. Company will cooperate with any such audit and provide Bank and its auditors with access to Company's books, records and property for conducting any such audit. Unless otherwise defined herein, capitalized terms used in this Agreement will have the meanings provided in the Rules.

Company acknowledges that the ACH system may not be used in violation of, and that Entries originated by Company must comply with the laws of the United States including, but not limited to sanctions laws administered by the Office of Foreign Assets Control, anti-money laundering laws and Internet gambling laws.

- 2. Delivery of Entries, Including Same Day Entries, to Bank.** Company may deliver Entries to Bank by electronic transmission (including through the Business Online Banking system if Company has a Business Online Banking Agreement with Bank) or by any other means Bank may designate in the future. All Entries delivered by Company will comply with the requirements of Bank and the Rules. Company may initiate Entries only of a type previously approved by Bank. If Company will be initiating tax payments under this Agreement, Company agrees to all terms listed in Schedule B. Company agrees that it must comply with the Rules and with all security procedures ("Security Procedures") that Bank and Company agree to use to verify the authenticity of Entries when delivering Entries to Bank and in taking of any other action covered by the Security Procedures.

- A. Time.** Bank's debiting or crediting an account in the name of the Company (hereinafter called "Company Account") will be referred to herein as "Execute" or "Execution". If the Entry is delivered late, Bank may, but is not required to, execute the Entry when the Company's Account is with Bank ("On-Us Entry") or deliver other Entries to the ACH, on the Effective Entry Date or on a Business Day after the Effective Entry Date. "Business Day" will mean that part of any day the Bank is open to the public for carrying on substantially all of its business functions and the ACH is open for the transmission and processing of Entries.

- i. **Deadline for Bank's receipt of Entries is 3:00 p.m. Pacific Time.** Company assumes all risks of non-Execution for any Entry that is delivered late or not in a format acceptable to Bank.
  - ii. **Deadline for Bank's receipt of Same Day Entries is 8:30 a.m. Pacific Time.** Company assumes all risk of non-Execution for any Same Day Entry that is delivered late or not in a format acceptable to Bank.
- B. **Security Procedures.** Company will comply with the Security Procedures described in Section 9 of this Agreement and will review additional Security Features available in Schedule A attached hereto with respect to all Entries. Company understands and agrees that the Security Procedures described in Section 9 may be amended, from time to time, immediately without prior notice to Company. If not notified prior to changes to the Security Procedures, Company will be promptly notified of such changes after they are implemented.
- C. **Exposure Limits.** Company will be assigned separate credit and debit Exposure Limits. Initial Exposure Limits will be communicated to Company via letter. Such limits may be modified from time to time by Bank at its sole discretion and with notice to Company.
- D. **Customer Authorizations and Record Retention.** Before the initiation by Company of the first Entry involving a Customer's Account, Company will obtain from such Customer a written authorization to initiate Entries to the Customer's Account, which authorization will comply with the Rules. Such authorization will be on a form approved by Bank. Company will provide Customer with a copy of such authorization. Each Entry thereafter will only be made pursuant to such authorization and Company will initiate no Entry after such authorization has been revoked or the arrangement between Company and such Customer has terminated. Company will retain Customer authorizations for two (2) years after the arrangements between Company and Customer are terminated and other documents related to Entries for a period of two (2) years. Company will immediately furnish copies of such authorizations and documents to Bank, without charge, upon Bank's request.
- E. **Prenotification.** If required by the Rules or Bank, Company will deliver a Prenotification, in a format and in the medium prescribed by the Rules or Bank, to be transmitted to the Receiving Depository Financial Institution ("RDFI" within the time limits set forth in the Rules) at which the Customer's Account is held, within the time limits set forth in the Rules. If Company has received notice that such Prenotification has been rejected by the RDFI within the period prescribed by the Rules, Company will not initiate any duplicate or corresponding Entry until the cause for rejection has been corrected and another Prenotification has been submitted to and accepted by the RDFI in accordance with the Rules.
- F. **Cancellation and Amendment of Entries; Reversals.** Company will not have any right to cancel or amend an Entry after it is received by Bank. Bank may act on a request by Company for reversal of an Entry pursuant to the Rules; provided, however, that Bank will not be liable for interest or losses if such reversal is not effected. Any request by Company for reversal of an Entry must comply with the delivery requirements and the Security Procedures. Company will indemnify, defend, hold harmless and reimburse Bank for any expenses, costs (including, but not limited to, in-house legal services), fees, losses, claims or damages Bank may incur in effecting or attempting to effect Company's request for reversal of an Entry. Bank will be entitled to payment from Company in the amount of any request for reversal of a Debit Entry prior to acting on any such request.
- G. **Customer's Rights to Refund of Debit Entry.** Company acknowledges that a customer of Company (a "Customer"), under the Rules, has the right to obtain a refund of funds debited from the Customer's Account by sending a notice to the RDFI that part or all of a Debit Entry was not authorized, and that the RDFI, in turn, may obtain payment of the amount of such Entry from Bank by transmitting an adjustment entry (as described in the Rules, and hereinafter referred to as an "Adjustment Entry") in the amount of such refund. Company agrees to pay Bank the amount of (i) any such Adjustment Entry upon its receipt by Bank, and (ii) with respect to any On-us Entry, any refund paid by the Bank to a Customer in connection with such Customer's claim that an Entry was, in whole or in part, not authorized.

#### H. **Company's Notice to Customers.**

- i. If the amount of a Debit Entry to a Customer's Account varies in amount from the previous Debit Entry relating to the same authorization or preauthorized amount, Company will, at least ten (10) calendar days before the Effective Entry Date of such Debit Entry, send the Customer written notice of the amount of such Debit Entry and its Effective Entry Date, unless the Customer has previously been notified of the Customer's right to receive such notice and Customer has elected to receive such notice only when the Debit Entry does not fall within a specified range of amounts or varies from the most recent Debit Entry by an agreed amount.
- ii. If any change is made by Company in the scheduled Effective Entry Date of one or more Debit Entries, Company will, at least seven (7) calendar days before the Effective Entry Date of the first such Debit Entry to be affected by such change, send the Customer a written notice of the new Effective Entry Date(s) of such Entry or Entries.

3. **Originators of WEB Entries.** If you choose to originate WEB entries, you agree to conduct, or have conducted on your behalf, annual audits to ensure the financial information you obtain from Receivers is protected by adequate security practices and procedures in accordance with the Rules. If requested by the Bank, you must promptly and without charge provide a copy of the annual audit to Bank. Additionally, originators of WEB entries are required to:

- Utilize a commercially reasonable fraudulent transaction detection system to screen all WEB entries;
- Employ commercially reasonable methods of authentication to verify the identity of the Receiver; and
- Take commercially reasonable steps to verify that Receivers' routing numbers are valid.

#### 4. **Execution of Entries.**

A. **Processing, Transmittal and Settlement.** Except as provided in Sections 5 and 6, Bank will (i) process Entries received from Company according to the terms set forth in this Agreement, (ii) transmit such Entries as an Originating Depository Financial Institution ("ODFI") to an ACH processor selected by Bank in its sole discretion, and (iii) settle for such Entries as provided in the Rules.

B. **Timing.** Bank will send Entries to its selected ACH processor by the applicable deadline prior to the Effective Entry Date shown in the Related Entry Data, provided (i) such Entry data are received by Bank by its applicable file input deadline on a Business Day within the applicable processing window for the distribution cycle agreed to by Company and Bank and (ii) the selected ACH processor is open for business. Entry data received by Bank after the applicable file input deadline on a Business Day may be treated by Bank as received on the next Business Day. Entry data are not deemed received by Bank until the complete file in which the Entry data are included has been received in accordance with this Agreement.

C. **Company's Credit for Debit Entries.** Bank will have the right to defer any credit to Company Account until Bank receives final settlement for a Debit Entry. Any credit provided prior to that date will be provisional and Bank will have the right to immediate payment of the amount of such credit upon its receipt of notice that final settlement has not occurred. In addition, Bank will have the right to payment by Company of any returned or rejected Entry for which Company has previously received credit at the time Bank receives such rejection or return.

5. **On-Us Entries.** Except as provided in **Section 6**, in the case of an On-us Entry, Bank will credit or debit (as appropriate) the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (i) and (ii) of **Section 4.B** are met. If either of those requirements is not met, Bank will use reasonable efforts to credit or debit (as appropriate) the Receiver's account in the manner of such Entry on the next Business Day following such Effective Entry Date.

6. **Rejection of Entries.** Bank may reject any Entry, with or without cause or prior notice, for any reason. Bank will notify Company of such rejection (either electronically, in writing, by telephone, or as otherwise agreed to by Bank and Company) no later than the Business Day after the Effective Date. Bank will not be liable to Company for the rejection of any Entry, for Company's non-receipt of a notice given to Company, or for the failure to give notice of rejection at an earlier time than that provided for herein. Bank will not be required to pay Company interest on a rejected Entry for the period from rejection of the Entry to Company's receipt of the notice of rejection.
7. **Notice of Returned Entries.** Bank will notify Customer either electronically, in writing, by telephone, or as otherwise agreed to by Bank and Company of the receipt of an Entry returned by the ACH no later than one (1) Business Day after Bank's receipt of the returned Entry. In the case of a Credit Entry, Bank will have no other obligation to take other action with respect to a returned Entry, or in the case of a Debit Entry, Bank will have no obligation to re-execute a returned Entry.
8. **Provisional Payment.** Company agrees that it will be bound by the provisions of the Rules making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and acknowledges that if such settlement is not received, the RDFI will be entitled to a refund from the Receiver of the amount credited and Company will not be deemed to have paid the Receiver the amount of the Entry.
9. **Security Procedures; Unauthorized and Authorized Entries; Inconsistent Entries.**
  - A. **Purpose of Security Procedures.** Company agrees that the purpose of the Security Procedures is to verify the authenticity of Entries received by Bank in the name of Company and not to detect any errors in the transmission or content of any Entry, and that no security procedure for the detection of such errors has been agreed upon by Bank and Company.
  - B. **Protection of Security Procedures.** Company agrees to maintain written procedures to safeguard against unauthorized transmissions, transactions, or Entries. Company warrants that no individual will be allowed to initiate Entries in the absence of proper supervision or training and safeguards, and agrees to take all reasonable and prudent steps to maintain the confidentiality of the Security Procedures and of any passwords, codes, security devices and related instructions provided by Bank in connection with the Security Procedures. If Company believes or suspects that any such information or instructions are known or have been accessed by an unauthorized person(s), Company will notify Bank immediately.
  - C. **Unauthorized Entries.** An Entry made available to Bank that purports to have been transmitted or authorized by Company will be effective as Company's Entry as provided herein, even if the Entry was not in fact authorized by Company, provided Bank has accepted the Entry in compliance with the Security Procedures with respect to such Entry. If Company discovers an erroneous or unauthorized Entry, Company will immediately notify Bank and the affected Customer(s). Upon receiving such notice, Bank will use reasonable efforts on behalf of Company to correct the Entry in a manner consistent with the Rules. If Company fails to notify Bank or Customer of an erroneous or unauthorized Entry, Company will be liable for any losses or expenses Bank may incur related to such Entry.
  - D. **Authorized Entries.** If an Entry by Bank was authorized by Company, it will be effective as the Company's Entry as provided herein, whether or not Bank complied with the Security Procedures with respect to that Entry and whether or not the Entry was erroneous in any respect or that error would have been detected if Bank had complied with such Security Procedures.
  - E. **Inconsistent Entries.** As specified in the Rules, Company acknowledges and agrees that (i) if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to an RDFI might be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number, even if it identifies a person different from the named Receiver, and that Company's obligations to pay the amount of the Entry to Bank is not excused in such circumstances, and (ii) if an Entry describes an RDFI inconsistently by name and

identifying number, payment of the Entry may be made on the basis of the identifying number, even if it identifies and RDFI different from the named RDFI, and that Company's obligation to pay the amount of the entry to Bank is not excused in such circumstances.

- 10. Company Account.** Company will at all times maintain sufficient available funds in the Company Account to pay the amount of all Entries, returned or reversed Debit Entries, Adjustment Entries, fees and other amounts which Company is obligated to pay Bank under this Agreement. Bank, in its sole discretion, may require Company to have sufficient available funds in Company Account to cover the amount of a Credit Entry prior to Bank's transmittal of such Credit Entry to an ACH or Bank's crediting of a Receiver's account in the amount of an On-Us Entry. In the absence of such a requirement, Company will be obligated to have sufficient available funds in the Company Account at such time on a Settlement Date with respect to such Credit Entry, or in the case of an On-Us Entry, the date of crediting the Receiver's account, as Bank, in its sole discretion, may determine. Bank, in its sole discretion, may defer any credit to the Company Account with respect to a Debit Entry until it has received final settlement for such Entry. Any credit provided prior to that time will be provisional and Bank will have the right to immediate payment by Company upon Bank's receipt of notice that final settlement has not occurred. In addition, Bank will have the right to payment by Company of the amount of any returned or rejected Entry for which Company has previously received credit upon its receipt by Bank. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the Company Account, and may credit the Company Account for any amount to which Company is entitled under this Agreement. If there are insufficient funds available in the Company Account to pay amounts Company owes Bank under this Agreement, Company will pay any amounts due immediately upon demand, and Company agrees that Bank may debit any account maintained by Company with Bank or that Bank may set off against any amount it owes to Company, in order to obtain payment of Company's obligation under this Agreement. Company grants to Bank a security interest in the Account(s) and in any other deposits, funds or accounts, established or maintained at Bank, and in all funds on deposit in the same (including proceeds of Entries and other funds pending settlement through the Account), to secure each of Company's obligations under this Agreement. This security interest will survive termination of this Agreement.
- 11. Company's Representations, Warranties and Indemnification.** Company represents and warrants for each Entry Company delivers to Bank that: (i) the Entry complies with the terms of this Agreement and the Rules; (ii) Company has complied with the Rules with respect to the Entry; (iii) there has not been and will not later be any breach of any representation or warranty of Company as an Originator or of Bank as an ODFI under the Rules; (iv) Company has not breached any representation or warranty contained in this Agreement; and (v) the Entry complies with all local, State and Federal regulations, including, but not limited to, the Electronic Fund Transfer Act and Regulation E (as applicable), as amended from time to time. Company will defend, indemnify and hold harmless Bank against any expenses, costs, including but not limited to, market rate costs for in-house legal services, fees, losses, claims or damages resulting from or arising out of any breach of any of the foregoing representations or warranties or from any breach of this Agreement by Company.
- 12. Notices and Statements.** Bank is not required to and will not provide Company or Customers with notice of receipt of Bank's transmittal or crediting/debiting of Entries. Entries and other debits and credits to the Company Account will be reflected on the periodic statement for the Company Account. Company will review its periodic statements and notices within thirty (30) calendar days of their receipt and will notify Bank immediately by telephone and in writing of any unauthorized or erroneous Entries or any other discrepancy or error on the periodic statement or notice, after which such periodic statement or notice will be conclusively presumed to be correct. Bank will not be liable for any interest or losses resulting from Company's failure to give such notice.
- 13. Performance of Bank.** Bank will be responsible only for performing the services it expressly agrees to perform in this Agreement, and will be liable only for direct damages caused by its gross negligence or willful misconduct in performing those services. Bank will not be responsible for any acts or omissions of Company, including, without limitation, the amount, accuracy, authorization or timeliness of delivery of

any Entry received from Company, or any act or omission of any other person, including, without limitation, WesPay, and Federal Reserve Bank, Financial Institution, any ACH or transmission or communications facility, any data processor of Company, or any Receiver or RDFI (including, without limitation, the return of Entry by such Receiver of RDH), and no such person will be deemed Bank's agent.

- A. **Limit on Damages.** IN NO EVENT WILL BANK, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT LOSS OR DAMAGE WHICH COMPANY MAY INCUR OR SUFFER IN CONNECTION WITH BANK'S ACTIONS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM ANY SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM SUCH ACTS OR OMISSIONS. BANK'S ENTIRE LIABILITY AND COMPANY'S SOLE REMEDY UNDER THIS AGREEMENT FOR DAMAGES (MONETARY OR OTHERWISE) RESULTING FROM CLAIMS MADE BY COMPANY OR ANY OTHER THIRD PARTY ARISING FROM OR RELATED TO ANY AND ALL CAUSES COVERED BY THIS AGREEMENT WILL BE LIMITED TO THE LESSER OF (i) THE AMOUNT OF ACTUAL DAMAGES INCURRED BY COMPANY; OR (ii) \$25,000. COMPANY ACKNOWLEDGES AND AGREES THAT THE AMOUNT BANK CHARGES FOR THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE BASED IN PART ON THIS LIMITATION OF BANK'S LIABILITY AND THAT WITHOUT THIS PROVISION THE BANK WOULD CHARGE MORE FOR SAID SERVICES.
- B. **Force Majeure and Excused Performance.** Bank will not be responsible for any failure to act or delay in acting, if such failure or delay is caused by legal constraint, Company's actions or omissions, the interruption of transmission or communication facilities, computer malfunction or equipment failure, war, civil disorders, emergency conditions, or other circumstances beyond Bank's reasonable control. In addition, Bank will be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's violation of any present or future risk control program of Bank, the Federal Reserve Board or any rule or regulation of any other governmental regulatory authority.
- C. **Interest.** Subject to the foregoing provisions of this **Section 13**, any liability which Bank may have for loss of interest for an error or delay in performing its services hereunder will be calculated by using a rate equal to the average Federal Funds rate of the Federal Reserve Bank of San Francisco for the period involved, reduced by a percentage equal to the reserve requirement on Company Account.

- 14. **Indemnification.** Company will defend, indemnify and hold harmless Bank, and its officers, directors, agents and Employees, from and against any and all actions, expenses, costs (including, but not limited to, market rate costs for in-house legal services), fees, losses, claims, or damages, resulting from or arising out of (i) any breach of any of the agreements, representations or warranties of Company contained in this Agreement, or (ii) any act or omission of Company or any other party acting on Company's behalf, including, but not limited to, the parties described in **Section 13.A** above.
- 15. **Payment for Bank Services.** Company will pay Bank fees and charges for the services provided by Bank under this Agreement in accordance with rate schedules published by Bank from time to time. Such fees and charges do not include, and Company will be responsible for payment of any sales, use, excise, value added, utility or other similar taxes relating to the services provided for in this Agreement. Rate schedules may be changed by Bank upon notice to Company.
- 16. **Termination.** Bank may terminate this Agreement immediately by written notice to Company, or without written notice if Company breaches any of its obligations under this Agreement or the Rules. Company may terminate this Agreement at any time upon ten (10) Business Days' prior written notice to Bank. Without limitation, termination will not affect any of Bank's rights or Company's obligations under **Section 2, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14** above or related to Entries initiated by Company prior to such termination.

- 17. Confidentiality.** Company acknowledges that it will have access to certain confidential information regarding Bank's execution of Entries, the Security Procedures and the services contemplated by this Agreement. Company will not disclose any such confidential information of Bank and will use such confidential information only in connection with the transactions contemplated by this Agreement.
- 18. Tapes and Records.** All tapes, Entries, Security Procedures and records used by Bank for transactions contemplated by this Agreement will be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Company's request. Any expenses incurred by Bank in making any such information available to Company will be promptly paid by Company.
- 19. General Provisions.**
- A. Entire Agreement.** This Agreement and the schedules hereto constitute the entire agreement between Bank and Company and supersede and rescind all prior agreements relating to the subject matter hereof. In the event of any inconsistency between the terms of this Agreement and the agreement governing Company Account, the terms of this Agreement will govern. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. In the event performance of the services provided herein in accordance with the terms of this 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 Agreement, then this Agreement will be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank will not incur any liability to Company as a result of such violation or amendment. No course of dealing between Bank and Company or usage of trade will constitute a modification of this Agreement, the Rules, or the Security Procedures or constitute an agreement between Bank and Company regardless of whatever practices or procedures Bank or Company may use.
  - B. Amendment.** Bank may amend any part of this Agreement, including any schedule hereto, from time to time immediately upon notice to Company.
  - C. No Waiver.** Neither party shall be deemed to have waived any of its rights under this Agreement unless waived in writing. No failure on any party's part to exercise, and no delay in exercising any right or remedy under this Agreement will operate as a waiver of it; nor will any single or partial exercise of any right or remedy under this Agreement preclude any other or further exercise of such right or remedy, or the exercise of any other right to remedy. The remedies provided under this Agreement are cumulative and not exclusively of any other remedies provided by law.
  - D. Severability.** Each term, covenant, condition or provision of this Agreement will be viewed as separate and distinct and, in the event that any such term, covenant, condition or provision will be deemed by a court of competent jurisdiction to be invalid, the remaining provisions will continue in full force and effect.
  - E. Instructions Notices.**
    - i. Except as otherwise expressly provided herein, Bank will not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter.
    - ii. Bank will be entitled to 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 representative of Company (each an "Authorized Representative"). Bank will not be liable for any losses, claims, expenses or damages resulting from Company's failure to give such notice to Bank.

- iii. Company will not appoint any non-employee agent to initiate any Entries on its behalf without Bank's prior written consent. Company agrees that it will be solely responsible for all acts of such third party and agrees to indemnify and hold Bank harmless from any expenses, costs (including, but not limited to, in-house legal services), fees, losses, claims or damages which Bank may incur as a result of any act or omission of such third party. Notwithstanding the foregoing, Company understands and agrees that Bank may refuse to accept any Entry or request from such third party, with or without cause or prior notice.
  - iv. Except as otherwise provided herein, any notice under this Agreement must be in writing and delivered by express carrier, faxed or sent by United States mail to the other party at the address set forth at the end of this Agreement, unless another address is substituted by written notice delivered or sent as provided herein.
  - v. Notice must comply with Security Procedures. Except as otherwise provided herein, any such notice will be deemed given when received. Excepting Company's faxed ACH Transmittal Register form, faxed notices will not be deemed received unless acknowledged by fax or otherwise in writing.
- F. Assignment.** Company may not assign its interest or rights under this Agreement without the prior written consent of Bank, and any purported assignment in violation of this section will be void.
- G. Successor and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not for the benefit of any other person, and no other person will have any right against Bank or Company hereunder.
- H. Counterparts.** This Agreement may be signed in counterparts, all of which will constitute one agreement.
- I. Headings.** Section headings used in this Agreement are for convenience only and will not be deemed a part of this Agreement.
- J. Copy of this Agreement.** Company acknowledges receipt of copy of this Agreement.
- K. Financial Information.** Company authorizes Bank or its agents to verify and check any of the financial and other information given by Company to Bank, to check Company's its credit references, and obtain credit reports. Company further authorizes Bank or its agents to provide credit information about it and its accounts to others. Company agrees to inform Bank immediately of any matter that may cause any significant change in its financial condition.
- L. Rules of Construction.** This Agreement will be construed without regard to any presumption or rule requiring construction against the party drafting it.
- M. Corporate Authorization.** Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement in accordance with each party's respective bylaws or equivalent rules of authorization.
- N. Governing Law.** This Agreement will be construed in accordance with and governed by the laws of the State of California without regard to its conflicts of law provisions. Venue of any proceeding or action concerning this Agreement shall be in the courts for the county of Santa Barbara, California. .
- O. Waiver of Jury Trial.** IN ANY ACTION AT LAW WHICH WOULD OTHERWISE REQUIRE THE RESOLUTION OF ANY DISPUTE BETWEEN BANK AND COMPANY TO BE HEARD IN A COURT OF LAW, THEN TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, COMPANY AND BANK HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT



OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. COMPANY ACKNOWLEDGES THAT COMPANY HAS BEEN INFORMED BY BANK THAT THE PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH BANK HAS RELIED IN ENTERING INTO THIS AGREEMENT.

- P. **Judicial Reference.** TO THE EXTENT A PREDISPUTE WAIVER OF THE RIGHT TO TRIAL BY JURY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING BETWEEN COMPANY AND BANK OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY INCLUDING, WITHOUT LIMITATION, THE MAKING, PERFORMANCE, OR INTERPRETATION OF THIS AGREEMENT, AND INCLUDING WITHOUT LIMITATION CONTRACT AND TORT DISPUTES, SHALL BE HEARD BY A REFEREE AND RESOLVED BY JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE §638. THE REFEREE SHALL BE AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF CALIFORNIA AND EXPERIENCED AND QUALIFIED IN FINANCIAL MATTERS OF THE TYPE CONTEMPLATED BY THIS AGREEMENT OR A RETIRED CALIFORNIA SUPERIOR OR APPELLATE COURT JUDGE. THE PARTIES SHALL NOT SEEK TO APPOINT A REFEREE THAT MAY BE DISQUALIFIED PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE §641 or §641.2 WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN TEN (10) CALENDAR DAYS AFTER ONE PARTY SERVES A WRITTEN NOTICE OF INTENT FOR JUDICIAL REFERENCE ON THE OTHER PARTY, THEN THE REFEREE WILL BE SELECTED BY THE COURT IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE §640(b). ANY DECISION OF THE REFEREE SHALL BE ENTERED AS A JUDGMENT IN THE COURT IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE §§644 and 645. THE PREVAILING PARTY IN ANY ACTION OR PROCEEDING SHALL BE ENTITLED TO RECOVER COURT COSTS, COSTS OF THE REFEREE AND ATTORNEY'S FEES INCLUDING FEES AT MARKET RATES FOR IN-HOUSE COUNSEL.