



## CheckCapture Pro Electronic Check Processing Agreement

This Electronic Check Processing Agreement (this "Agreement") is made and entered into by Montecito Bank & Trust ("Bank") and \_\_\_\_\_ ("Customer").

**Whereas**, Bank offers a service for the electronic deposit of checks which enables Customer to convert checks to electronic items and to transmit those items electronically for deposit into Customer's accounts at Bank.

**Whereas**, Customer desires to use this service to electronically transmit and process checks for deposit and collection purposes.

**Now therefore**, in exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Bank and Customer agree as follows:

- 1. Definitions.** Capitalized terms not specifically defined in this Agreement shall have the meanings ascribed to such terms in Exhibit A.
- 2. Services.** Bank shall provide to Customer the services described in this Agreement to enable Customer to use the Service to convert Checks to Electronic Items for the processing of such Checks electronically. Customer and Bank shall comply with the terms and provisions of Exhibit B with respect to performance of the services hereunder.
- 3. License.** Subject to the terms and conditions of this Agreement, Bank hereby grants Customer a non-exclusive, non-transferable license to: (i) use the Software for those portions of the Service selected by Customer, solely for processing Checks in connection with Customer's own business operations, in accordance with the Documentation and solely on Authorized Equipment; (ii) copy and use the Documentation solely to support Customer's authorized use of the Software; and (iii) copy any Software actually delivered to Customer solely for archival or backup purposes. Customer acknowledges and agrees that the Software is subject to the intellectual property rights of certain third parties including without limitation, the vendor(s) that have licensed the Software and/or other intellectual property to Bank for use by Bank and its authorized customers in connection with the delivery of the Service, and that Customer's failure to take commercially reasonable steps to protect the software from any unauthorized/unpermitted use, copy, dissemination or disclosure may result in the immediate termination of the user license provided herein and/or expose Customer to liability to such third parties.
- 4. Customer Representations.** Customer makes the following representations and warranties with respect to each Check processed by Customer hereunder and the corresponding Electronic Item: (i) the Electronic Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Customer converted the Check to an Electronic Item; (ii) the Electronic Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and (iii) all encoding, transfer and presentment warranties otherwise made under applicable laws, regulations and the Account Agreement, including without limitation all applicable warranties under Regulation CC, and under the Uniform Commercial Code as if the Check were an "item" thereunder.
- 5. Fees.** Customer will pay Bank fees as set forth in Bank's Schedule of Fees and Charges (the "Fee Schedule"). Bank reserves the right to change fees from time to time upon 30 days prior written notice. Customer shall be responsible for and pay all sales, use, VAT and other taxes applicable to this Agreement and imposed by any governmental authority, including without limitation any sales, use, and other taxes associated with the Service or Authorized Equipment, except income taxes of Bank, including all applicable excise, property, value-added, sales or use, or similar taxes, any withholding taxes, national pension or other welfare taxes, customs, import, export, or

other duties, levies, tariffs, taxes, or other similar charges. Bank may charge to any of Customer's accounts at Bank all fees and taxes imposed on Bank that are the responsibility of Customer. Payment of the scanner warranty fee protects the Customer from any liability for returning a scanner in poor or non-working condition. The warranty does not protect the Customer from the cost of replacing the scanner if the scanner is not returned.

## 6. Term and Termination.

- 6.1. **Term:** The term of this Agreement shall commence upon the date of the Bank's execution hereof (the "Effective Date") and shall continue thereafter until terminated as follows: (i) by either party upon 30 days written notice to the other party, for any reason; (ii) by Bank upon 10 days written notice to Customer in the event of Customer's breach of any obligation, representation or warranty of this Agreement, including without limitation Customer's failure to (a) pay Bank any amount due to Bank under this Agreement, or (b) install and use any changes or updates to the Software as required herein, if such breach is not cured within such 10 day period; (iii) by Bank immediately upon written notice to Customer if Bank discovers any willful misconduct (including bad checks, illegal [including "kiting"] or fraudulent activities) on the part of Customer or any other party with respect to Checks or Electronic Items processed by Customer or (iv) upon the closing of all Accounts.
- 6.2. **Effect of Termination:** Any termination will not affect obligations arising prior to termination, such as the obligation to process any Checks and Electronic Items, including returned Electronic Items, that were in the process of being transmitted or collected prior to the termination date. Within 30 days after termination of this Agreement, Customer will return the Authorized Equipment in good working order as specified in Exhibit B of this Agreement, will return or destroy all copies of the Software and Documentation in its possession or under its control, and will, upon request, certify in writing that it has returned or destroyed all such copies. In addition, Customer will keep its Account at Bank open until the later of (i) 60 days after the date of termination, or (ii) final payment with respect to all processing fees, and will maintain funds in such Account in an amount and for a period of time determined by Bank in its reasonable discretion to cover any outstanding checks and Customer's obligations for returns of Checks, warranty claims, fees and other obligations. If any such liabilities exceed the amount in the Account, Customer will pay such excess to Bank immediately upon demand. Customer will also continue to retain Checks and forward Checks to Bank as provided in Exhibit B, section 2.10 of this Agreement.

## 7. Indemnity.

- 7.1. Customer will indemnify and hold harmless Bank, its licensors and providers of services, and their respective directors, officers, shareholders, employees and agents (each an "Indemnified Party") from and against any third party suits, proceedings, claims, demands, causes of action, damages, liabilities, losses or expenses (including reasonable attorneys' fees and other legal expenses) that result from or arise out of (i) the wrongful acts or omissions of Customer, or any person acting on Customer's behalf, in connection with Customer's use of the Service or processing of Checks hereunder, including without limitation (a) a breach by Customer of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Customer, its customers, or any third party on behalf of Customer, (c) any modifications or changes to the Software made by Customer or any third party within the control or on behalf of Customer, (d) any misuse of the Service by Customer or any third party within the control or on behalf of Customer, or (e) the failure by Customer to comply with applicable state and federal laws and regulations; (ii) any act or omission of Bank that is in accordance with this Agreement or instructions from Customer; or (iii) any claim by any recipient of a Substitute Check corresponding to a Check processed by Customer hereunder, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check (a "Claim").
- 7.2. Bank shall indemnify and hold harmless Customer, and its directors, officers, shareholders, employees, and agents (each an "Indemnified Party") from and against any third party suits, proceedings, claims, demands, causes of action, damages, liabilities, losses or expenses (including reasonable attorneys' fees and other legal expenses) arising from a claim by a third party that Customer's use of the Software to (i) capture electronic images of Original Checks, (ii) electronically transmit the resulting Electronic Images to Bank for processing, in accordance with the Documentation, and/or (iii) store electronic copies of such Electronic Images within the

Software, directly infringes any valid United States copyright or United States patent of such third party (a "Claim"). Bank shall have no liability under this Section to the extent a Claim is attributable to (i) modification of the Software by anyone other than Bank or its licensors without the express prior written consent of Bank licensors, if liability for infringement would not have arisen but for such modification; (ii) combination or use of the Software with any software or hardware not provided by Bank, if liability for infringement would not have arisen but for such combination or use with such software or hardware; (iii) use of the Software in any way not authorized by this Agreement, if liability for infringement would not have arisen but for such unauthorized use; (iv) transmission of Electronic Images to any other computer, system or media, other than transmission to Bank or its licensors for the purpose of processing such Electronic Images as contemplated herein, if liability for infringement would not have arisen but for such transmission; (v) use of other than the most current release of the Software provided to Customer, if liability for infringement would not have arisen if the most current release had been in use; or (vi) any breach by Customer of this Agreement, if liability for infringement would not have arisen but for such breach. If Customer's use of the Software is, or in Bank's opinion is likely to be, enjoined due to any Claim, Bank shall, at its sole option and expense, do one or more of the following: (i) provide Customer the right to continue using the Software at no additional expense, (ii) replace or modify the Software with non-infringing software, without a material reduction in functionality or performance, (iii) resolve any Claim so that Customer may continue using the Software at no additional expense, or (iv) terminate the Service and the license of the Software. Any action by Bank under the preceding sentence shall not relieve Bank of its obligation to indemnify Indemnified Parties in accordance with the other provisions of this Section. Customer agrees and acknowledges that the remedy provided in this Section is the sole and exclusive remedy of Customer, and consequently the sole and exclusive liability of Bank, with respect to any Claim or any related action, and Bank shall not be otherwise liable to Customer for providing non-infringing software.

- 7.3. An Indemnified Party shall (i) give the indemnifying party prompt written notice of any Claim for which the Indemnified Party intends to claim indemnification, (ii) give the indemnifying party (and/or its licensors, in case Bank is the indemnifying party) the right to control and direct the investigation, defense and settlement of the Claim, and (iii) cooperate fully with the indemnifying party (and/or its licensors, in case Bank is the indemnifying party) in the investigation, defense and settlement of such Claim. The failure to deliver notice to the indemnifying party promptly after an Indemnified Party becomes aware of a Claim, if prejudicial to the indemnifying party's ability to defend such action, shall relieve the indemnifying party of any liability to Indemnified Parties under this Section to the extent of such prejudice. An Indemnified Party shall not settle or compromise any Claim, and any settlement or compromise by an Indemnified Party of a Claim shall be void as against the indemnifying party and shall terminate the indemnifying party's obligation to indemnify such Indemnified Party. The indemnifying party (and/or its licensors, in case Bank is the indemnifying party) may settle or compromise any Claim, provided that such settlement or compromise does not involve any admission of wrongdoing on the part of any Indemnified Party or require any payment or other performance by any Indemnified Party.

## **8. Limitations on Liability.**

- 8.1. Bank will not be liable to Customer for any of the following, unless liability or loss is a result of Bank's breach of this Agreement or the gross negligence or willful misconduct of Bank or its employees or agents: (i) any damages, costs or other consequences caused by or related to Bank's actions that are based on information or instructions that Customer provides to Bank; (ii) any unauthorized actions initiated or caused by Customer or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Electronic Item or Substitute Check for any reason, including without limitation that the Check, Electronic Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) any other party's lack of access to the Internet or inability to transmit or receive data; (vi) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems, (vii) actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of an Electronic Item to Bank; or (viii) any of the matters described in Section 7.1 above.

- 8.2. Bank's liability for errors or omissions with respect to the data transmitted or printed by Bank will be limited to correcting the errors or omissions. Correction will be limited to reprinting and/or representing Substitute Checks or Electronic Items to the Payor Financial Institution.
- 8.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, BANK'S AGGREGATE LIABILITY TO CUSTOMER FOR CLAIMS RELATING TO THIS AGREEMENT, EXCEPT FOR BANK'S OBLIGATIONS UNDER SECTION 7.2 ABOVE OR CLAIMS ARISING OUT OF THE GROSS NEGLIGENCE OF BANK OR ITS EMPLOYEES OR AGENTS, WHETHER FOR BREACH, NEGLIGENCE, INFRINGEMENT, IN TORT OR OTHERWISE, AND ARISING DURING ANY TWELVE MONTH PERIOD SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID BY CUSTOMER TO BANK FOR SUCH TWELVE MONTH PERIOD.
- 8.4. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS OR LOSS OF ANY OPPORTUNITY OR GOOD WILL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE PARTY AGAINST WHOM SUCH CLAIMS ARE BROUGHT.
- 8.5. BANK AND CUSTOMER ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE A BARGAINED FOR ALLOCATION OF RISK AND LIABILITY, AND AGREE TO RESPECT SUCH ALLOCATION OF RISK AND LIABILITY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE OTHER PARTY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION.
9. **Disclaimer.** BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. THE SOFTWARE IS PROVIDED BY BANK AND ITS LICENSORS "AS IS". BANK AND ITS LICENSORS DISCLAIM, AND CUSTOMER HEREBY WAIVES AND RELEASES BANK AND ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS, AND EMPLOYEES FROM, ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS, AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AUTHORIZED EQUIPMENT AND ANY AND ALL MATTERS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE SOFTWARE OR THE AUTHORIZED EQUIPMENT WILL BE ERROR-FREE OR UNINTERRUPTED.
10. **Miscellaneous.**
- 10.1. **Amendments.** BANK may amend (add to, delete or change) (i) the provisions of this Agreement that govern the procedures and functions of the Service, and any such amendment will become effective (a) 30 days after Customer's receipt of notification, (b) upon such later date as may be specified in such notification, or (c) at such earlier date as Bank may reasonably require if such amendment is necessary or advisable in connection with statutory or regulatory changes or to protect the integrity, security or operability of the Service; and (ii) this Agreement as otherwise provided herein. No other amendment to this Agreement shall be effective until signed by both parties to this Agreement.
- 10.2. **Applicable Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principals. The parties shall submit to venue in Santa Barbara, California.

### 10.3. DISPUTE RESOLUTION:

- a. **Waiver of Jury Trial.** To the extent permitted by law, in connection with any claim, dispute, action or proceeding arising out of or in any manner related to this Agreement, (a "Claim"), whether brought in state or federal court, the parties hereby expressly, intentionally and deliberately waive any right they may otherwise have to trial by jury of any such Claim.
- b. **Judicial Reference.** To the extent a predispute waiver of trial by jury is not enforceable under applicable law, any Claim, including any and all questions of law or fact relating thereto, shall, at the written request of any Party, be determined by reference pursuant to California Code of Civil Procedure ("CCP") Section 638 et seq. and as set forth below.

The parties shall select a single neutral referee, who shall be a retired California state or federal court judge. 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 upon the other party, then the referee will be selected by the court in accordance with CCP Section 640(b).

The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the CCP, California Rules of Court, and California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.

Notwithstanding the foregoing, each party acknowledges that its violation of this Agreement may cause irreparable injury to the other party, and agrees that the other party shall be entitled to seek temporary and preliminary injunctive relief in a court of competent jurisdiction located within Santa Barbara, California, without the necessity of proving actual damages or posting a bond, to prevent such violation.

This clause shall not preclude parties from seeking provisional remedies in aid of judicial reference from a court of appropriate jurisdiction.

Nothing in this Agreement shall preclude any party from seeking injunctive relief, but no equitable relief other than injunctive relief shall be sought from such court. The statute of limitations, estoppel, waiver, laches, and similar doctrines, which would otherwise be applicable in an action brought by a party, shall be applicable in any judicial reference proceeding.

In the event that any provision of this Agreement relating to judicial reference is found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect.

- c. **Fees, Costs and Expenses.** During the pendency of any Claim which is submitted to judicial reference in accordance with this Agreement, each of the parties to such Claim shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Agreement, unless the referee orders otherwise. The compensation of the referee shall not exceed the prevailing rate for like services.
- 10.4. **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Bank may assign this Agreement to an affiliate or subsidiary without Customer's prior consent, provided that Bank remains primarily liable for the performance of its obligations under this Agreement. Any attempted assignment or delegation without the required consent will be void.

- 10.5. **Attorney's Fees.** If any action is brought by either party against the other regarding the subject matter of this Agreement, including any court action or arbitration proceeding, the prevailing party shall be entitled to recover, in addition to any relief granted, reasonable attorney's fees (including reasonable compensation for the work of inside counsel), costs of court, expert witness fees and other expenses of action.
- 10.6. **Compliance with Laws.**
- 10.6.1. Each party will comply with all applicable federal, state and local laws and regulations with respect to this Agreement and such party's activities covered by or related to this Agreement. Each party will abide by all rules of the National Automated Clearinghouse Association (NACHA) as they apply to electronic check conversion and the electronic funds transfers in general.
- 10.6.2. The Bank may request financial and other information from Customer from time to time in order to evaluate the risks of providing the Service to Customer. Customer agrees to promptly provide any financial and other information Bank requests to determine Customer's financial condition and to ensure compliance with the provisions of this Agreement. Customer authorizes Bank to investigate and audit Customer's financial information, history, background, business activities, and records, including credit reports, before authorizing Customer to use the Service and for as long as Customer uses the Service. Customer agrees to inform the Bank immediately if there is a material adverse change in its financial circumstances. Upon request by Bank, Customer authorizes Bank to access any of Customer's business premises during business hours for the purpose of ensuring that Customer is in compliance with this Agreement. Such visits and risk evaluations are for Bank documentation only and do not provide a guarantee of security to Customer. If Customer fails to provide any requested financial or other information or access to its business premises, or if Bank concludes, in its sole discretion, that the credit or other risks of continuing to provide the Service are not acceptable, the Bank may immediately terminate Customer's access to the Service without prior notice.
- 10.6.3. Customer shall promptly notify Bank in writing of any known or suspected security incidents that already have, or have the potential to directly or indirectly affect the Service, whether physical or technical, such as, but not limited to compromise of Customer user credentials, unauthorized access to Customer's computers, scanners, network or other equipment used in providing the Service.
- 10.7. **Construction and Interpretation.** Section headings used herein are for the convenience of reference only, and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be deemed to have been drafted by both parties, and in the event of dispute, no party shall be entitled to claim that any provision hereof should be construed against the other party by reason of the fact that it was drafted by any particular party. The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach shall not be considered a waiver of that right or breach unless the waiver has been reduced to writing and signed by the waiving party. If a party effectively waives a right or breach, that waiver will not constitute a waiver of any other right or breach or of a subsequent breach of the same obligation. If any provision of this Agreement is held invalid, illegal or unenforceable in any particular jurisdiction or circumstance, the remaining provisions of this Agreement shall remain valid and enforceable in such jurisdiction or circumstance, and such provision shall remain valid and enforceable in any other jurisdiction or circumstance.
- 10.8. **Entire Agreement.** This Agreement supplements the terms of the Account Agreement. This Agreement, the Exhibits and schedules to this Agreement (as may be amended from time to time), and the Account Agreement (each of which are expressly incorporated herein by this reference) constitute the entire agreement between Customer and Bank with respect to the subject matter hereof, supersede any prior agreements between Bank and Customer with respect to the subject matter hereof, and shall be binding upon Bank, Customer and their respective successors and permissible assigns. In the event of any inconsistency between this Agreement and the Documentation or any Account Agreement, this Agreement will govern.
- 10.9. **Force Majeure.** Except for the obligation to make payments, nonperformance by either party will be excused to the extent performance is prevented or delayed due to causes beyond such party's reasonable control and without its negligent or willful misconduct, including without limitation acts of God, natural disasters, terrorist



acts, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations, third party nonperformance or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.

10.10. **Injunctive Relief.** Notwithstanding Section 10.3 of this Agreement, each party acknowledges that its violation of Sections 3 or 10.6 of this Agreement may cause irreparable injury to the other party, and agrees that the other party shall be entitled to seek temporary and preliminary injunctive relief in a court of competent jurisdiction located within Santa Barbara, California, without the necessity of proving actual damages or posting a bond, to prevent such violation.

10.11. **Notices.** Any notice required or permitted to be given by any party upon the other shall be given by certified mail, return receipt requested, by nationally recognized overnight courier, or by personal delivery addressed as follows:

If to Bank: Montecito Bank & Trust c/o Banking Services 1010 State Street Santa Barbara, California 93101  
Fax Number: 805-564-4930

If to Customer: The address, email address or facsimile number set forth below Customer's signature.

All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

Consent to Electronic Delivery of Notice – Customer agrees that any notice or other type of communication provided to Customer pursuant to the terms of this Agreement, and full disclosures required by law, including electronic funds transfer disclosures, may be made electronically by posting the notice on the Check Capture System, Business Banker website, or by e-mail. Customer agrees to notify Bank immediately of any change in Customer's physical or e-mail address.

10.12. **Relationship Between Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

10.13. **Security Interest.** Customer hereby grants Bank a security interest in Customer's deposit accounts with Bank, including any present and future principal and interest, as collateral security for the performance of Customer hereunder.

10.14. **Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of Bank and Customer and is not intended to benefit any third party, except third parties that license the Software, directly or indirectly, to Bank. Customer and Bank acknowledge and agree that such licensors are third party beneficiaries to this Agreement with respect to those provisions dealing with use and protection of intellectual property.

10.15. **Survival:** All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 5, 7, 8, 9, and 10 will survive any termination of this Agreement.

EXECUTED as of the last date indicated below.

Customer: \_\_\_\_\_

Authorized Signer: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

Customer's Address: \_\_\_\_\_

Fax: \_\_\_\_\_

Bank: Montecito Bank & Trust

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Exhibit A Definitions

Account means each of Customer's accounts at Bank into which Checks transmitted electronically will be deposited.

Account Agreement with respect to any Account means Bank's standard deposit agreements and disclosures governing the Account, as they may be amended from time to time.

Authorized Equipment means equipment that has been approved or provided by Bank for use with the Software.

Check means a draft that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks and Substitute Checks. Such term does not include Noncash Items or items payable in a medium other than United States money.

Company Administrator means a person who is able to establish access to, and limitations for, System Authorized Users.

Documentation means all documentation, manuals and instructions relating to the Service or the Authorized Equipment which Bank provides to Customer from time-to-time pursuant to this Agreement, including without limitation documentation regarding installation and use of the Software.

Electronic Item means a digitized image of a Check, an Image Exchange Item, or any other electronic version of a Check or other electronic item (such as items processable through the automated clearinghouse (ACH) system) approved by Bank for processing through the Service.

Image Exchange Item means a digitized image of a Check cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check

Noncash Item means an item that would otherwise be a Check, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except a Check that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

Original Check means the first paper Check issued with respect to a particular payment transaction.

Payor Financial Institution means the United States Financial Institution ordered in a Check to make payment to the payee(s) named on the Check.

Regulation CC means 12 C.F.R. Part 229, as it may be amended from time to time.

Service means collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Checks, and includes without limitation the Software and the services described herein.

Software means that portion of the software developed, licensed and/or provided by Bank and its licensors for operation of the Service, that Bank delivers or provides to Customer hereunder.

Substitute Check means a paper reproduction of a Check that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

United States Financial Institution means (i) any person or entity, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

## Exhibit B Service Terms & Conditions

### 1. Bank Responsibilities.

- 1.1. Bank will deliver to Customer, or otherwise provide access to, the Software, and will deliver to Customer Authorized Equipment consisting of one or more scanners (as agreed to between the parties) for capturing digitized images of Checks. Such Authorized Equipment will remain the property of Bank.
- 1.2. Bank will provide installation and training support as reasonably required for Customer's implementation and use of the Service. Any onsite installation or training support outside Santa Barbara, CA or Ventura CA counties shall be on such terms and conditions as the parties agree, including reimbursement for Bank's reasonable travel costs.
- 1.3. Bank will provide maintenance and support for the Software as reasonably necessary to permit Customer's processing of Checks through the Service. Such maintenance and support shall include corrections, workarounds and bug fixes, (ii) such modifications, enhancements and updates as Bank elects to make generally available to its customers without additional license fees, and (iii) telephone support to Customer during Bank's regular business hours.
- 1.4. Bank will accept for deposit to the applicable Account digitized images of Checks that are transmitted to Bank in compliance with this Agreement. Digitized images shall be deemed received upon confirmation by Bank of successful receipt of the transmission of such images that are complete, usable, and adhere to the data specifications set forth in the Documentation. If the digitized images are not complete, are not useable, or do not adhere to such data specifications, the images may not be processed by Bank or its agents, in which event Customer's deposit will be adjusted and notification will be provided.
- 1.5. Customer's digitized images will be processed after Bank has received Customer's transmission of the digitized images. Bank will use commercially reasonable efforts to present Image Exchange Items and Substitute Checks for collection. Unless Bank notifies Customer otherwise, Bank will provide same day credit to the applicable Account for all items transmitted by Customer and received by Bank in accordance with the requirements of this Agreement and the Documentation, and within the timelines established by Bank. Customer shall receive same day credit for all items processed and transmitted until 6:00 p.m. PST.
- 1.6. If a Payor Financial Institution returns an item to Bank for any reason (including fraud), Bank may charge the applicable Account for such returned item, whether or not the return is timely and proper (including, without limitation, outside of any time periods established under any applicable regulations protecting the makers of any checks processed through the software by customer), and may either (i) return the item to Customer, or (ii) re-present it to the Payor Financial Institution before returning it to Customer. Items may be returned as Image Exchange Items, rather than Substitute Checks, as agreed by the parties. If a Payor Financial Institution or other third party makes a claim against Bank or seeks a re-credit with respect to any Check processed hereunder, Bank may provisionally freeze or hold aside a like amount in the applicable Account or Customer's other deposit accounts with Bank pending investigation and resolution of the claim.
- 1.7. Bank may immediately suspend the Service or the processing of any Check or corresponding Electronic Item if Bank has reason to believe that there has been a breach in the security of the Service, fraud or illegal activity involving Customer's Account or such Check, or any uncertainty as to the authorization or accuracy of Electronic Items. Bank reserves the right at any time to process Electronic Items on a collection basis.
- 1.8. Bank's processing of any non-conforming items, including without limitation any items that do not meet the definition of "Check" hereunder, shall not constitute a waiver by Bank or obligate it to process such non-conforming items in the future. Bank may discontinue processing of non-conforming items at any time, without cause or prior notice.

## 2. Customer Responsibilities.

- 2.1. Customer will maintain one or more Accounts at Bank for the receipt of deposits of digitized images of Checks, in accordance with applicable Account Agreement.
- 2.2. Customer will install the Software in accordance with the Documentation, and will install and implement any changes and upgrades to the Software as Bank may require, within 30 days of receipt of such change or upgrade, or within such shorter time frame as Bank may reasonably require in the event such change or upgrade is necessary to comply with statutory or regulatory changes or developments, or to protect the integrity and security of the Service.
- 2.3. Customer's Company Administrator(s) will designate additional authorized check capture user(s) ("Authorized Users") in the System and then notify Bank of additional Authorized Users. Company Administrators will also have the ability to remove Authorized Users at any time.
- 2.4. Customer may use only Authorized Equipment in connection with the Software. Customer will use the Authorized Equipment and the Software, including the entering, processing and transmittal of items, in accordance with the Documentation. Without limiting the foregoing, Customer will comply with all security procedures described in the Documentation, and will not bypass, override or disable any security mechanisms in the Authorized Equipment or Software.
- 2.5. Customer will ensure the Authorized Equipment is clean and operating properly, and inspect and verify the quality of images and that the digitized images of Checks are legible for all posting and clearing purposes and include the endorsement sprayed by the scanner that identifies the items as remote deposit capture items. Customer is responsible for the replacement of the ink cartridge for the sprayed endorsement to ensure no deposited item is processed without the sprayed endorsement.
- 2.6. Customer will (i) use the Authorized Equipment in a careful and prudent manner during the term hereof, (ii) keep and maintain the same in a good state of condition and repair, (iii) promptly notify Bank upon any material change in the operating condition of Authorized Equipment to allow Bank the opportunity to repair or replace Authorized Equipment at its sole discretion, and (iv) replace and/or repair any and all damage thereto to the extent that upon the termination of this Agreement all of said Authorized Equipment shall be returned to Bank in substantially the same condition as it was received (ordinary wear and tear excepted).
- 2.7. Customer will be responsible for training its employees in the use of the Service, and for supervising and auditing their use of the Service.
- 2.8. Customer will ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser with respect to a Check processed by Customer will receive presentment or return of, or otherwise be charged for, the Check (including the Original Check and/or Substitute Check), corresponding Electronic Item, and/or other paper or electronic representation of the Check such that such person will be asked to make payment based on an item that it already has paid.
- 2.9. Customer will be responsible for verifying Bank's receipt of Customer's transmissions by verifying that deposits have been posted to Customer's accounts. The parties shall cooperate in investigating and remedying any unsuccessful or lost transmission.
- 2.10. Customer will retain each Check for such time as Customer deems necessary and advisable, but in no event fewer than 90 days after such Check has been digitized and processed. Customer will promptly (but in all events within 5 business days) provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check. Customer will use a commercially reasonable method to securely store and protect the Checks during the retention period and fully and completely destroy Checks

after the Customer's retention period has expired. Without limiting the foregoing, Customer shall prevent any unauthorized personnel from gaining access to and/or using, copying, imaging, or re-presenting such Checks for payment and shall promptly destroy all Checks at the expiration of the applicable retention period using a method designed to insure that such Checks cannot be subsequently imaged, scanned, repaired or reconstructed in any manner. Customer acknowledges that Customer's failure to properly store, protect and destroy the Checks may result in losses and/or liability to third parties, including without limitation, Bank. By executing the Agreement to which this Exhibit is attached, Customer acknowledges the scope and nature of the risks described herein and accepts responsibility for and the risk of loss in connection with and/or arising out of Customer's failure to properly store, protect and destroy such Checks, including without limitation, liability to Bank under the indemnification provisions of the Agreement to which this Exhibit is attached.

- 2.11. Customer will retain all information about its digitizing of Checks as created by the Software for no less than 7 days. In the event of lost, mistaken, incomplete or unusable Electronic Items, or in the event of claims of fraud, alteration, counterfeit or otherwise, Customer shall cooperate fully with Bank in providing information, including access to such records.
- 2.12. Except as otherwise agreed by the parties, Customer will not use the Service to deposit or otherwise process (i) Noncash Items, (ii) items for which Customer is not a payee and holder-in-due-course, or (iii) Substitute Checks, except those which have been returned to Customer for any reason. If Customer desires to make deposits to multiple **and related** entities an *Intercompany Electronic Banking Agreement* must be executed. If Customer captures for processing a digital image of a previously truncated and reconverted Substitute Check returned to Customer by Bank, Customer will ensure that no information has been deleted or degraded from such Substitute Check as returned by Bank. If Customer captures for processing a digital image of any other previously truncated and reconverted Substitute Check, Customer shall ensure that such Substitute Check meets the requirements for legal equivalency under Regulation CC and the identifications of previous truncating and reconverting bank(s) (as such terms are defined in Regulation CC) are preserved.
  - 2.12.1. Customer and each Entity understand that each Company Administrator and Authorized User will have the ability to make remote deposits to all Entities listed on the *Intercompany Electronic Banking Agreement*.
  - 2.12.2. Checks may be deposited only to the account of the Entity to which the check is made payable.
  - 2.12.3. Customer understands and agrees that any abuse of this agreement (for example, but not limited to, depositing checks payable to Entity 1 to the account of Entity 2, etc.) may result in immediate termination of all check capture service for Customer and all Entities.
- 2.13. Optical Character Recognition (OCR) and Magnetic Ink Character Recognition (MICR) settings must comply with the specifications provided by the Bank and be successfully tested by the Bank. Any changes to the OCR and MICR settings must be re-approved and successfully tested by the Bank.
- 2.14. Customer will ensure that adequate separation of duties at the customer's location are in place to ensure that logical and physical information is not altered without detection. Bank recommends that the person scanning deposits is different than the person submitting the deposit in order to reduce unnecessary errors in the remote deposit process.
- 2.15. Customer will be responsible for bringing deposits to a branch in the event of downtime cause by power outages, internet disruptions, etc. in order to make the deposit.
- 2.16. Customer will be responsible for storing the computer, security token (used for access) and scanner in a secure location when left unattended to prevent unauthorized physical access and tampering.
- 2.17. Customer will establish and commit to memory, not stored either in writing or electronically, a unique PIN for

the security token. Customer must not disclose the PIN to anyone, including co-workers.

- 2.18. Customer is responsible for the security of the computer or network used for check capture. In order for the computer or network to be secure it should be password protected (good password tips can be found at <http://www.us-cert.gov/cas/tips/ST04-002.html>), equipped with a reliable antivirus program (for more information on antivirus visit <http://www.us-cert.gov/cas/tips/ST04-005.html>), have Patches (updates that fix a particular problem or vulnerability with a program; for additional information on Patches visit <http://www.us-cert.gov/cas/tips/ST04-006.html>) performed routinely and use a firewall to shield from access by outside attackers (for additional information on firewalls visit <http://www.us-cert.gov/cas/tips/ST04-004.html>).
- 2.19. Customer is responsible for locking the computer used for check capture when temporarily away so no unauthorized users can access deposit information, etc. **Bank recommends the use of a dedicated and secure computer to be used solely for all electronic banking and check capture activities and no other uses.**
- 2.20. Customer acknowledges that it is aware of social engineering attacks like phishing; a form of social engineering that uses email or malicious websites to solicit personal information by posing as a trustworthy organization and Customer will assure its Authorized Users are educated regarding such threats. For additional information on social engineering attacks visit <http://www.us-cert.gov/cas/tips/ST04-014.html>.