



BUSINESS ONLINE ACH ORIGATION SERVICE AGREEMENT

RECITALS

- A. Company wishes to initiate Credit and/or Debit Entries by means of the Automated Clearing House (ACH) network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (NACHA) and the local ACH Association (the "Rules"), all through the Financial Institution's Business Online Service, and Financial Institution is willing to act as an Originating Depository Financial Institution with respect to such Entries.
- B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules.
- 1) **Rules:** "Rules" of the Automated Clearing House shall also mean Appendices to the rules of the National Automated Clearing House, as amended from time to time. The Company also hereby authorizes the Financial Institution to transmit any Entry received by the Financial Institution from the Company in accordance with the Rules and the terms of this Agreement and to credit or debit the amount of such Entry to the accounts specified by the Company.
 - 2) **Effective Entry Date:** "Effective Entry Date" means the date included in any Entry as the date upon or after which such Entry is to be effective.
 - 3) **Entries:** The terms "Entries" shall have the meaning provided in the Rules and shall also mean the data received from Company hereunder from which Financial Institution prepares Entries. "Entries" shall also include "Entry" and "On-Us Entry".
- C. The Company agrees to be bound by the Rules. The Company represents and warrants that it will not transmit any Entry or engage in any act or omission that violates or causes Financial Institution to violate the Rules, applicable laws, regulations or regulatory requirements, including without limitation, regulations of the Office of Foreign Asset Control (OFAC), laws regulations and orders administered by FinCEN, sanctions or executive orders. The company acknowledges that the Financial Institution prohibits the transfer of International ACH transactions. The Company is obligated to verify that no transactions are processing to or from accounts across U.S. borders. Refer to Section 20 ACH Rulebook – Corporate Edition for additional information.

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1. Transmittal of Entries by Company

Company shall transmit PPD (Prearranged Payments & Deposits) or CCD (Cash Concentration or Disbursement) credit or debit Entries to Financial Institution via its Business Online system, all in compliance with the formatting and other requirements as set forth in the ACH Origination Service Application. Company acknowledges that it has the required equipment, hardware, and software to engage in the transactions contemplated by this Agreement in accordance with the terms of this Agreement, and subject to any applicable terms and conditions set forth on Financial Institution's website where Business Online Services may be accessed. The total dollar amount of Entries transmitted by Company to Financial Institution on any one day shall

not exceed the amount specified in the Maximum Daily Limit described in the ACH Origination Service Application. The total dollar amount of Entries transmitted by Company to Financial Institution in rolling 30-day period shall not exceed the amount specified in the Maximum Monthly Limit described in the ACH Origination Service Application. Should any maximum limit be exceeded, additional approval is required from Financial Institution to increase Company's origination limits. Such an increase may or may not be permanent.

2. Security Procedure

a) Company and Financial Institution shall comply with the security procedure requirements described in the Business Online Standard Service Application with respect to Entries transmitted by Company to Financial Institution. Company acknowledges that the purpose of such security procedure is for the verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between the Financial Institution and Company.

b) Company is strictly responsible to establish and maintain procedures to safeguard against unauthorized transmissions, which procedures shall include proper safeguards to protect the confidentiality of all Login Ids, Passwords/PINs and tokens that are assigned to the Company for initiating transactions using this system. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any logons, passwords, codes, security devices and related instructions provided by the Financial Institution in connection with the security procedures described in the Business Online Standard Service Application. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify Financial Institution immediately by phone, followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Financial Institution prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

c) The Company agrees to establish prudent internal company security standards and policies that include proper safeguards to protect the confidentiality of consumer and non-consumer information obtained by Company to submit debit or credit entries via the ACH network. Consumer and non-consumer information includes but is not limited to: name, address, phone number, bank account number, and routing number. If Company believes or suspects that any such information has been compromised or accessed by unauthorized persons, Company agrees to take reasonable steps to prevent further compromise, and to notify Financial Institution and consumers as necessary. Based on the extent of the compromise,



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Company will also be responsible for contacting local authorities to file appropriate reports.

- d) **Delivery location:** Files are transmitted through electronic means through the Financial Institution's Business Online site at: **www.montereycountybank.com**. The Company is responsible for employing data security that provides a level of security that at minimum is equivalent to 128-bit RC4 encryption technology. In addition, utilization of multi-factor authentication as prescribed by the Financial Institution.
 - e) **Format and content of Entries:** Refer to Appendix two in the Rules for specific formats.
 - f) **Acknowledgement of delivery:** The Financial Institution will acknowledge receipt of the incoming file with the Company as agreed upon between Company and Financial Institution.
 - g) **Pre-notifications:** The Company is strongly encouraged to adopt the practice of pre-notifications specifically for new file transmissions in accordance with section OG44 of the Rules. Pre-notifications should be performed no later than 6 business days prior to the active dollar file settlement date.
 - h) **Data Retention:** The Company shall retain data on file for an adequate timeframe to permit the remaking of Entries, when deemed necessary, in accordance with the Rules.
3. **Compliance with Security Procedure**
- a) If an Entry (or a request for cancellation or amendment of an Entry) received by Financial Institution purports to have been transmitted or authorized by Company, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay Financial Institution the amount of such Entry even though the Entry (or request) was not authorized by Company, provided Financial Institution accepted the Entry in good faith and acted in compliance with the security procedure referred to in the ACH Origination Service Application with respect to such Entry.
 - b) If an Entry (or request for cancellation or amendment of an Entry) received by Financial Institution was transmitted or authorized by Company, Company shall pay Financial Institution that amount of the Entry, whether or not Financial Institution complied with the security procedures referred to in the ACH Origination Service Application with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Financial Institution had complied with such procedure.
4. **Recording and Use of Communications**
- Company and Financial Institution agree that all telephone conversations, emails or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party using any reasonable means.

5. **Processing, Transmittal and Settlement by Financial Institution**

- a) Except as provided in Section 6. On-Us Entries and Section 8. Rejection of Entries, Financial Institution shall:
 - i. process Entries received from Company to conform with the file specifications set forth in Rules,
 - ii. transmit such Entries as an Originating Depository Financial Institution to Federal Reserve Bank of San Francisco acting as an Automated Clearing House Operator (the "ACH Operator"), and
 - iii. settle such Entries as provided in the Rules.
- b) Financial Institution shall transmit or complete the necessary batch authorization of such ACH Entries by the Delivery Date deadline of the ACH Operator as set forth in the ACH Origination Service Application prior to the Effective Entry date shown in such Entries, provided:
 - i. such Entries are received by Financial Institution's related cut-off time set forth in the ACH Origination Service Application on a business day,
 - ii. the Effective Entry Date is at least two (2) days after such business day, and
 - iii. the ACH Operator is open for business on such business day. For purposes of this Agreement (x) a "business day" is a day on which Financial Institution is open to the public for carrying on substantially all of its business [other than Saturday or Sunday], and (y) Entries shall be deemed received by Financial Institution, in case of transmittal by tape, when received by Financial Institution at the location set forth in the ACH Origination Service Application, and in the case of transmittal by electronic transmission, when the transmission (and compliance with any related security procedure provided for herein) is completed as provided in the Business Online Standard Service Application and ACH Origination Service Application.
- c) If any of the requirements of clause, (i), (ii), or (iii) of section 5(b) is not met, Financial Institution shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator following that specified in the ACH Origination Service Application which is a business day and a day on which the ACH Operator is open for business.

6. **On-Us Entries**

Except as provided in Section 8. Rejection of Entries, in the case of an Entry received for credit to an account maintained with Financial Institution (an "On-Us Entry"), Financial Institution shall credit 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 5(b) are met. If either of those requirements is not met, Financial Institution shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.



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7. **Provisional Credit Notice**

In the case of a credit Entry, credit given by the RDFI for the Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or has otherwise received payment. If the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and Company will not be considered to have paid the amount of the credit Entry to the Receiver.

8. **Rejection of Entries**

Financial Institution may reject any Entry which does not comply with the requirements of Section 1. Transmittal Of Entries By Company, or Section 2. Security Procedure, or which contains an Effective Entry Date less than two (2) days after the business day such Entry is received by Financial Institution. Financial Institution may reject an On-Us Entry, for any reason for which an Entry may be returned under the Rules. Financial Institution may reject any Entry if Company has failed to comply with its account balance obligations under Section 15. The Account. Financial Institution may reject any Entry if Company does not adhere to the security procedures as described in the ACH Origination Service Application. Financial Institution shall notify Company by phone of such rejection no later than the business day such Entry would otherwise have been transmitted by Financial Institution to the ACH Operator or, in the case of an On-Us entry, its Effective Entry Date. Notices of rejection shall be effective when given. Financial Institution shall have no liability to Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

9. **Cancellation or Amendment by Company**

Company shall have no right to cancel or amend any Entry after its receipt by Financial Institution. However, if such request complies with the security procedure described in the ACH Origination Service Application for the cancellation of Data, Financial Institution shall use reasonable efforts to act on a request by Company for cancellation of an Entry prior to transmitting it to the ACH or, in the case of an On-Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. Company shall reimburse Financial Institution for any expenses, losses, or damages Financial Institution may incur in affecting or attempting to affect Company's request for the reversal of an Entry.

10. **Reversals**

The Company may reverse a File or Entry pursuant to the Rules. If the Company reverses an entry or File, the Company shall indemnify the Financial Institution against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.

11. **Notice of Returned Entries**

Financial Institution shall notify Company by phone of the receipt of a returned Entry from the ACH no later than one (1) business day after the business day of such receipt. Except for an Entry retransmitted by Company in accordance with the requirements of Section 1. Transmittal of Entries by Company, Financial Institution shall have no obligation to retransmit a returned Entry to the ACH if

Financial Institution complied with the terms of this Agreement with respect to the original Entry.

12. **Entries Returned as Unauthorized**

In the event that an Entry is returned as unauthorized or authorization revoked, the Company will contact the necessary parties and resolve any dispute. During this process the Company may ask the Financial Institution to request from the RDFI a copy of the "Written Statement Under Penalty of Perjury." Financial Institution will make its best effort to obtain the form and will deliver it to the Company when received. Company agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer reauthorized the Entry or Entry stream.

13. **Unauthorized Rate in Excess of 1%**

In the event the rate of unauthorized transactions exceeds 1% based on the calculations noted in the Rules the Company will share the data requested by the Financial Institution based on the Rules and will immediately begin the process of bringing the rate below 1%.

14. **Payment by Company for Entries**

Company shall pay Financial Institution the amount of each Entry transmitted by Financial Institution pursuant to this Agreement at such time specified in the ACH Origination Service Application.

15. **The Account**

Company will, at all times during the term of this Agreement, maintain a deposit account (the "Account") with Financial Institution and Company's maintenance of the Account is a condition precedent to Bank's obligations under this Agreement. Bank reserves the right to suspend or terminate the ACH origination services provided under this Agreement if Company fails to maintain the Account in accordance with the terms of this Agreement. Financial Institution may, without prior notice or demand, obtain payment of any account due and payable to it under this Agreement by debiting the account(s) of Company identified in the ACH Origination Service Application, and shall credit or debit the Account for any amount received by Financial Institution by reason of the return of an Entry transmitted by Financial Institution for which Financial Institution has previously received payment or credit from Company. Such credit or debit shall be made as of the day of such receipt by Financial Institution. If collected balances in the Account are insufficient to cover the aggregate amount of Entries, the Financial Institution shall have no obligation to transmit such Entries.

Company shall, at all times, maintain a minimum balance of available funds in the Company's Fee Account, as identified in the ACH Origination Service Application, and in any event ensure such minimum balance is sufficient to cover its payment obligations under this Agreement. In the event there are not sufficient available funds in the Account to cover Company's obligations under this Agreement, Company agrees that Financial Institution may debit any account maintained by Company with Financial Institution or any affiliate of Financial Institution or that Financial Institution may set off against any amount it owes to



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Company, in order to obtain payment of Company's obligations under this Agreement.

16. Account Reconciliation

Entries transmitted by Financial Institution or credited to a Receiver's account maintained with Financial Institution will be reflected on Company's periodic statement issued by Financial Institution with respect to the Account pursuant to the agreement between Financial Institution and Company (the "Account Agreement"). Company agrees to notify Financial Institution promptly of any discrepancy between Company's records and the information shown on any such periodic statement. If Company fails to notify Financial Institution of any discrepancy within ten (10) days of receipt of a periodic statement containing such information, Company agrees that Financial Institution shall not be liable for any other losses resulting from Company's failure to give such notice or any loss of interest or any interest equivalent with respect to any Entry shown on such periodic statement. If Company fails to notify Financial Institution of any such discrepancy within sixty (60) days of receipt of such periodic statement, Company shall be precluded from asserting such discrepancy against Financial Institution.

17. Company Representations and Agreements; Indemnity

With respect to each and every Entry initiated by Company, Company represents and warrants to Financial Institution and agrees that:

- a) each person shown as the Receiver or an Entry received by Financial Institution from Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry date shown on such Entry;
- b) such authorization is operative at the time of transmittal or crediting/debiting by Financial Institution as provided herein,
- c) Entries to Financial Institution by Company are limited to those types of Credit or Debit Entries set forth in Section 1. Transmittal of Entries by Company, and each such Entry is timely, accurate, is not in violation of any applicable law or regulation, is not being initiated for any illegal purpose, and has not been reinitiated in violation of the Rules;
- d) It shall be the responsibility of the Company to take reasonable steps to assure that the origination of ACH transactions complies with the laws of the United States. This includes, but is not limited to, sanctions enforced by the Office of Foreign Assets Control (OFAC). It shall further be the responsibility of the Company to obtain information regarding such OFAC enforced sanctions (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC) and The Company will obtain written authorizations for consumer and non-consumer entries in accordance with ACH Rules and U.S. law and shall retain the original or an electronic record for two (2) years after termination or revocation of such authorization, and
- e) Company in compliance with the Rules as in effect at the time of such Entry, including, without limitation, the

provisional payment of an Entry by the Receiving Depository Financial Institution to the receiver until receipt by the Receiving Depository Financial Institution of final settlement for such Entry. Company specifically acknowledges that it has received notice of the Rule regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry. Company shall indemnify Financial Institution against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any material breach of any of the foregoing representations or agreements.

- f) With respect to each and every Entry initiated by Company, Company represent, warrants and acknowledges to Financial Institution that they will not initiate entries that violate a law of the United States.
- g) Each debit Entry is for a sum which, on the Settlement Date will be due and owing to the Company from the party whose account will be debited, is for a sum specified by such party or is to correct a previously transmitted erroneous credit Entry;
- h) The Company has used commercially reasonable procedures to verify that all information contained in an Entry, including but not limited to routing numbers, is accurate and valid.

18. Financial Institution Responsibilities; Liability; Limitations on Liability; Indemnity

- a) In the performance of the services required by this Agreement, Financial Institution shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Financial Institution shall be responsible only for performing the services expressly provided for in this Agreement and shall be liable only for its negligence or willful misconduct in performing those services. Financial Institution shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Company) or those of any other person, including without limitation any Federal Reserve Financial Institution, Automated Clearing House or transmission or communication facility, and Receiver or Receiving Depository Financial Institution (including without limitation the return of any Entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed Financial Institution's agent. Company agrees to indemnify Financial Institution against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that the Financial Institution is responsible for any act and or omission of Company or any other person described in this section 18(a).



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- b) Financial Institution shall be liable only for Company's actual damages; in no event shall Financial Institution be liable for any consequential, special, incidental, punitive or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood or such damages was known or contemplated by the Financial Institution and regardless of the legal or equitable theory of liability which Company may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Financial Institution's acts or omissions pursuant to this Agreement.
- c) Without limiting the generality of the foregoing provisions, Financial Institution shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Financial Institution's control. In addition, Financial Institution shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Financial Institution's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Financial Institution's reasonable judgment or otherwise would result in a violation of any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. Governmental regulatory authority.
- d) Subject to the foregoing limitations, Financial Institution's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved, computed on the basis of a 360-day year; provided that in no event shall Financial Institution's liability for loss of interest exceed sixty (60) days. At Financial Institution's option, payment of such interest may be made by crediting the Account resulting from or arising out of any claim of any person that Financial Institution is responsible for any act or omission of Company or any other person described in Section 18(a).

19. **Due Diligence**

The Company will supply the Financial Institution with due diligence information when requested. This information may include; but is not limited to, financial data, names and other information concerning the principles of the Company, information about the business in which the Company participates, information regarding the creditworthiness of the Company, projected return rates and payment history. The Financial Institution may, in its reasonable discretion, conduct a limited review of the Company's operations to ensure compliance with the provisions of this Agreement. Where the Financial Institution reasonably believes the Company's financial condition is impaired to deteriorating, the Financial Institution may refuse to process any Entries or may require prefunding of all entries.

20. **ACH Rule Book – Corporate Edition**

Upon initial set-up of Business Online relationship with ACH Capabilities, Financial Institution will provide Company with a current copy of NACHA's "ACH Rules – Corporate Edition" manual. At Company's cost, Company will be responsible to obtain an updated copy of the ACH Rules – Corporate Edition manual on an annual basis or as published by NACHA. Rule books are available for purchase at: <https://www.nacha.org/eStore>.

21. **Rules Enforcement**

In the event that a Report of Possible Rules Violation is filed on the Company, the Company will take appropriate steps to correct the problem within the time frames suggested by the Financial Institution. In the event that a fine is levied against the Financial Institution for a violation of the Rules, the Company agrees to make the Financial Institution whole for the value of the fine.

22. **ACH Rule Compliance**

The Company agrees to review its compliance with the ACH Rules on a periodic basis. The Financial Institution has a right to request the details of the review.

23. **Inconsistency of Name and Account Number**

Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Financial Institution to the Receiving Depository Financial Institution may be made by the Receiving Depository Financial Institution (or by Financial Institution in the case of an On-Us Entry) on the basis of the account number supplied by the Company, even if it identifies a person different from the named Receiver, and that Company's obligation to pay the amount of the Entry to Financial Institution is not excused in such circumstances.

24. **Notifications of Change**

Financial Institution shall notify Company of all notifications of change received by Financial Institution relating to Entries transmitted by Company by mutually agreeable means, including email, no later than two (2) business days after receipt thereof.

25. **Payment for Services**

Company shall pay Financial Institution the charges for the services provided in connection with this Agreement, as set forth in the ACH Origination Service Application. All fees and services are subject to change upon thirty (30) calendar days prior written notice from Financial Institution to Company. Such charges do not include, and Company shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Account Agreement between Financial Institution and Company with respect to the Account.

26. **Amendments**

From time-to-time Financial Institution may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any business day, and any part of ACH Origination Service Application, Business Online Standard Service Application, or Business Online Standard Service Disclosure. Such amendments shall become effective upon receipt of notice by Company



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or such later date as may be stated in Financial Institution's notice to Company.

27. Notices, Instructions, Etc.

- a) Except as otherwise expressly provided herein, Financial Institution shall 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.
- b) Financial Institution shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Signer of the accounts, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Signers are maintained with the Financial Institution's Operations Department in the form of a Signature Card. Only Authorized Signers may request access for Authorized Employees to gain access to the Business Online System as set forth in the Business Online Service Application. Company may add or delete any Authorized Employee by written notice to Financial Institution signed by at least one (1) Authorized Signer other than that being added or deleted. Such notice shall be effective on the second business day following the day of Financial Institution's receipt thereof.
- c) Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States registered or certified mail, or via encrypted e-mail pursuant to Financial Institution's Business Online Service website. Company agrees that standard e-mail is not a secure method of communication and will not include confidential information in unencrypted e-mails sent to Financial Institution.

Unless another address is substituted by notice delivered or sent as provided herein, except as otherwise expressly provided herein, any such notice shall be deemed given when received.

28. Data Retention

Company shall retain data on file adequate to permit remaking of Entries for thirty (30) days following the date of their transmittal to Financial Institution as provided herein and shall provide such Data to Financial Institution upon its request. Records of each entry shall be retained for six (6) years. If records are retained electronically, Company must verify that the Electronic Form accurately reflects the entry record and is able to be accurately reproduced in hard copy form for later reference. Company shall retain data records in electronic or hard copy form in a secure manner in accordance to Section 2. Security Procedures.

29. Tapes and Records

All magnetic tapes, Entries, Security procedures and related records used by Financial Institution for transactions contemplated by this Agreement shall be and remain Financial Institution's property. Financial Institution may, at

its sole discretion, make available such information upon Company's request. Any expenses incurred by Financial Institution in making such information available to Company shall be paid by Company.

30. Evidence of Authorization and Retention

Company shall obtain proper consents and authorizations for all consumer and non-consumer accounts prior to initiating credit or debit entries via the ACH network as required under the Rules. Company shall retain such consents and authorizations for six (6) years after they expire. Financial Institution may, at its sole discretion and in adherence to the Rules, request copies of such consents or authorizations from Company. Company must provide Financial Institution with copies of the requested information within (5) five banking days.

31. Cooperation in Loss Recovery Efforts

In the event of any damages for which Financial Institution or Company may be liable to each other or a third party pursuant to the services provided under this Agreement, Financial Institution and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

32. Termination

Company may terminate this Agreement at any time. Such termination shall be effective on the second business day following the day of Financial Institution's receipt of written notice of such termination or such later date as is specified in that notice. Financial Institution reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Financial Institution's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Financial Institution prior to termination, or any other obligations that may reasonably survive termination of this Agreement.

33. Entire Agreement

This Agreement (including the Business Online Service Applications, and any applicable terms and conditions contained on Financial Institution's website or Business Online system, is the complete and exclusive statement of the agreement between Financial Institution and Company with respect to the subject matter hereto and supersedes any prior agreement(s) between Financial Institution and Company with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the service provided herein in accordance with the terms of this Agreement would result in a violation of any present or future state or federal statute, rule, regulation or government policy to which Financial Institution is subject, and which governs or affects the transactions contemplated by this Agreement then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Financial Institution shall



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incur no liability to Company as a result of such violation or amendment. No course of dealing between Financial Institution and Company will constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between the Financial Institution and Company regardless of whatever practices and procedures Financial Institution and Company may use.

34. Non-Assignment

Company may not assign this Agreement or any of the rights or duties hereunder to any person without Financial Institution's prior written consent.

35. Hold Harmless Agreement and Right of Offset Agreement

Company shall defend, indemnify and hold harmless Monterey County Bank, and its officers, directors, agents, and employees from and against any and all losses, claims, suits, expenses, costs, damages or liabilities (including, without limitation, reasonable attorneys fees, witnesses' fees, investigation fees, court reporters' fees and other out-of-pocket expenses) (federal or state) to which any one or more of them may become subject which arise out of, relate to, or are based upon MCB's origination of both ACH debits and credits (or any referral there from). This Agreement shall apply to have a right of offset against any and all accounts held at MCB but does not limit MCB to only account right of offsets.

36. Waiver

Financial Institution may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Financial Institution's rights with respect to any other transaction or modify the terms of this Agreement.

37. Binding Agreement; Benefit

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Financial Institution or Company hereunder.

38. Headings

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

39. Severability

In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

40. UCC-4A Disclosures

In accordance with Uniform Commercial Code, Article 4A regarding electronic wholesale credit entries received:

a) the entry may be transmitted through ACH;

b) credit given by Financial Institution to Company with respect to an ACH credit entry is provisional until Financial Institution receives final settlement for such entry through a Federal Reserve Bank. If Financial Institution does not receive such final settlement,

Company is hereby notified and agree that Financial Institution is entitled to a refund of the amount credited to Company in connection with such entry, and the party making payment to Company via such entry (i.e. the originator of the entry) shall not be deemed to have paid Company in the amount of such entry;

c) under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving Company's account, Financial Institution is not required to give next day notice to Company of receipt of an ACH item and Financial Institution will not do so. However, Financial Institution will continue to notify Company of the receipt of payments in the periodic statement Financial Institution provides to Company;

d) Financial Institution may accept on Company's behalf payments to Company's account which have been transmitted through one or more Automated Clearing Houses (ACH) and which are not subject to the Electronic Fund Transfer Act and Company's rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of California as provided by the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving Company's account.

41. Internet Gambling

By signing this Agreement we are certifying that we do not participate in Internet Gambling transactions. If the nature of our business changes and we become involved with Internet Gambling we will notify Monterey County Bank immediately.

42. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California.